TEMPORARY PROTECTED STATUS FOR EL SALVADOR:
FAR FROM TEMPORARY

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ABSTRACT

Temporary Protected Status (TPS) is a temporary immigration program designed to assist foreign nations during short-term crises. Following two devastating earthquakes in El Salvador in 2001, the United States designated that country for TPS and provided undocumented Salvadoran immigrants in the U.S. with employment authorization and protection from deportation. Since 2001, the Department of Homeland Security (DHS) has repeatedly extended that grant and the accompanying benefits. El Salvador’s current designation expires on September 9, 2010, unless DHS chooses to renew it. This thesis explores the political, economic and moral repercussions of extending Salvadoran Temporary Protected Status and proposes improvements to the TPS program.

The United States and El Salvador have a long-standing relationship based on political and economic interdependence. An examination of Salvadoran-U.S. relations and the economic statistics regarding remittances from immigrants in the United States to El Salvador favors the renewal of the TPS designation. Terminating the grant would jeopardize regional cooperation and political stability, negatively impact trade between the U.S. and El Salvador, and spark the collapse of the Salvadoran national economy.

Salvadoran TPS beneficiaries have resided in the United States for a minimum of nine years. Extending the Temporary Protected Status grant is morally justifiable given these immigrants’ solid and lengthy ties to the U.S. However, there is concern that the
TPS program has been applied to El Salvador as a long-term immigration solution, rather than a response to temporary country conditions. DHS data also reveals that Temporary Protected Status designations have been issued arbitrarily. Numerous deserving countries like Haiti and Guatemala did not receive TPS in the 2000s. The subjective implementation of the program is contrary to legislative intent and humanitarian objectives.

TPS regulations are flawed and require modifications to ensure that the program is applied equitably using impartial criteria. A temporary immigration status should not be issued for long-term country conditions, and Salvadoran Temporary Protected Status beneficiaries merit a permanent immigration solution. Accordingly, TPS provisions ought to be amended to restore credibility and objectivity to the regulations, and registrants from El Salvador should be allowed to become lawful permanent residents.
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INTRODUCTION

Temporary Protected Status "is a temporary immigration status granted to eligible nationals of designated countries or part of a designated country."\(^1\) The Department of Homeland Security (DHS) issues temporary status designations on a country-by-country basis for periods of six to 18 months, and those designations may be renewed or terminated prior to their expiration.\(^2\) As detailed in the Immigration and Nationality Act, countries receive designations for any of the following circumstances:

There is ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;\(^3\)

There has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected;\(^4\)

The foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state;\(^5\) and

The foreign state officially has requested designation under this subparagraph;\(^6\) or

There exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless [it is found] that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.\(^7\)

Once DHS designates a country for Temporary Protected Status (TPS), immigrants\(^8\) from that country who are residing in the United States are able to register for TPS and apply for select immigrant benefits. The program enables qualified aliens to remain in the U.S. with the permission of the government during the designated period.
Functionally, this permission serves as temporary protection from removal, as it provides TPS registrants with freedom from deportation. A Temporary Protected Status beneficiary is eligible to obtain an employment authorization document (EAD), although a separate application must be submitted with the appropriate fee in order to receive a work permit.

The regulations allow aliens to apply for TPS in conjunction with other immigration benefits. In practice, however, those immigrants from the designated country who have lawful permanent residence, asylum or a valid work visa need not apply for the TPS program since the benefits they would receive as a TPS-holder would be inferior to those they currently receive. As a result, applicants for Temporary Protected Status benefits are traditionally illegal immigrants or aliens who are awaiting the processing of their green card applications. The ability to obtain employment authorization and protection from deportation is critical for illegal and quasi-legal immigrants to gain access to better jobs and socioeconomic opportunities.

Regulations limit the eligibility of certain immigrants for benefits under TPS. First, an immigrant must be a citizen or national of the designated country. Second, the immigrant must satisfy the statutory requirements regarding dates of continuous residence in the United States. The foreign national must be in the United States as of the date that the foreign country received a TPS designation. In addition, the Department of Homeland Security specifies a second date (traditionally several weeks prior to the date of official designation) and requires that the eligible national has "continuously resided in the United States since" that date. DHS utilizes these dates to
prevent the flow of new undocumented immigrants from the designated country to the U.S. after the date of the event that prompted the designation. Immigrants must provide the United States Citizenship and Immigration Services (USCIS), formerly the Immigration and Naturalization Service, with evidence that documents their presence in the U.S. prior to the date of the designation.

TPS beneficiaries receive a work permit and freedom from removal during the period that their native country is designated for the status. If the Department of Homeland Security determines that the country conditions improve and that the country is prepared to repatriate those nationals who have been residing in the United States, the agency will terminate the TPS designation. DHS then notifies in writing those foreign nationals with TPS that the program for their country has been terminated, and that they will be required to leave the United States and return to their home country within six months. Those immigrants who do not leave in accordance with the regulations remain in the United States without documentation and are at risk of deportation.

Conversely, if DHS chooses not to terminate the TPS designation, the agency can extend or renew the time period of protection. The initial designation is traditionally issued for a period of 12 months, although the regulations allow for a range of 6 to 18 months. Extensions can be issued for an additional 6 to 18 month period, and can be announced any time prior to the date that the current designation expires. TPS beneficiaries must re-register for the program when the designation is extended. If a re-registration application is not submitted in a timely manner with the requisite fees, the alien will lose his work permit and protections under the program. With each application,
an immigrant is fingerprinted and receives a new employment authorization document. USCIS has streamlined the re-registration process to ensure that applications are filed and processed before the work permits from the prior designation expire. Although the governing regulations indicate the temporal nature of TPS designations, there are no statutory limits to the number of times a designation can be extended.

Eligible nationals from a designated country do not automatically receive TPS benefits. There is an application process, and applications for TPS (Form I-821) and employment authorization (Form I-765) must be filed in a timely manner with the appropriate fees to USCIS. The applicant must include copies of his birth certificate with a certified translation and a passport to demonstrate that he is a citizen and national of the designated country. In addition, the immigrant must submit evidence to prove residence in the United States since the required date. Acceptable documentation includes utility bills, leases, money order receipts, bank account statements and dated correspondence.

USCIS requires that each applicant is fingerprinted, and the agency, in conjunction with the State Department and FBI, conducts several security checks to determine whether the immigrant has been arrested or detained. An alien with an arrest record must submit certified criminal dispositions with his application. If USCIS has any questions or requires additional documentation, the agency will send a form in the mail, asking the immigrant to respond with further evidence within 60 days. An immigrant who receives a request, but fails to respond with additional documentation, will automatically be denied TPS benefits. When USCIS approves an application, the agency mails the alien approval notices and a valid work permit.
An immigrant with a criminal conviction may be barred from obtaining TPS benefits, depending on the severity of the crime and the judgment. "Immigrants who have been “convicted of any felony or two or more misdemeanors” during their time in the United States are statutorily ineligible for TPS benefits." For immigration purposes, probation is regarded the same as jail time, and thus, immigrants are cautioned against pleading guilty to avoid a prison sentence without contacting an attorney who understands the immigration implications of the plea. In addition, an alien who has been involved in the persecution of others cannot obtain protection under the program.\textsuperscript{16}

These restrictions exist to prevent those who are removable from the United States for criminal offenses from receiving immigration benefits.\textsuperscript{17} If an immigrant does not qualify for benefits under TPS because of criminal history, his attorney may advise him against filing an I-821 application and disclosing his current address to USCIS. A criminal record subjects the alien to potential deportation, if the immigration officer reviewing the immigrant’s TPS application denies the claim and forwards the matter to the Deportation and Removal Office.

With respect to the country of El Salvador, the Attorney General designated El Salvador for Temporary Protected Status in 2001. This designation stemmed from a natural disaster which “resulted in a substantial, but temporary, disruption of living conditions” in the country.\textsuperscript{18} Specifically, the US designated El Salvador because:

El Salvador suffered a devastating earthquake on January 13, 2001, and experienced two more earthquakes on February 13 and 17, 2001. Based on a thorough review by the Departments of State and Justice, the Attorney General has determined that, due to the environmental disaster and substantial disruption of living conditions caused by the earthquakes,
El Salvador is ‘unable, temporarily to handle adequately the return’ of its nationals.\textsuperscript{19}

El Salvador qualified for Temporary Protected Status under the first criteria in the regulations, which allows for the issuance of a designation following a flood, epidemic, drought or earthquake.\textsuperscript{20} In reaching this conclusion, the executive branch analyzed the impact of the earthquakes based on the numbers of dead, injured and displaced Salvadorans.\textsuperscript{21} At the time of the earthquakes, El Salvador had a population of 6.2 million.\textsuperscript{22} The earthquakes devastated the country and its residents, resulting in more than “1,100 deaths,” the destruction of “220,000 homes” and the displacement of “1.3 million” people.\textsuperscript{23} “Earthquake-caused losses in housing, infrastructure and the agricultural sector exceed[ed] \$2.8 billion.”\textsuperscript{24} Following the earthquakes, the Salvadorean Government implored the Bush Administration for a Temporary Protected Status designation.\textsuperscript{25} The Attorney General, in conjunction with the State Department and the Department of Justice, evaluated the request and designated El Salvador for TPS for an initial period of 18 months.\textsuperscript{26}

Attorney General John Ashcroft estimated that 150,000 Salvadorans resided in the United States at the time of the earthquakes.\textsuperscript{27} The designation required that registrants were “‘continuously physically present’ since March 9, 2001 and...‘continuously resided’ in the United States since February 13, 2001.”\textsuperscript{28} The governing code provisions fail to provide detailed definitions of what constitutes “physically present” and “resided,” solely requiring that the applicant has been in the United States with a residence as of the
relevant dates. An applicant who left the United States briefly between February 13, 2001 and March 9, 2001, was not barred from applying for benefits under TPS.

The Attorney General and the Department of Homeland Security (which was entrusted with responsibilities for TPS matters following its establishment) have repeatedly extended the designation of El Salvador since 2001. In accordance with the applicable regulations, the Government of El Salvador has “officially requested” the renewal of the Temporary Protected Status designation. President Elias Antonio Saca regularly lobbied President Bush and his administration to continue the TPS designation.

In a press conference in 2007, President George W. Bush confirmed that notion, stating that “[e]very time he [President Saca] comes to the Oval Office he’s expressed his deep concern and strong support for his citizens that may be here in our country.” The Salvadoran President spoke about the strong relationship between the United States and El Salvador, and their mutual commitment to passing a comprehensive immigration reform bill and assisting the 2 million Salvadorans residing in the United States.

The most recent designation was scheduled to expire on March 9, 2009. Traditionally, DHS and the executive branch do not issue information regarding re-registration until 60-90 days prior to the expiration of the latest designation. In surprising fashion, President Bush announced on September 24, 2008, that Temporary Protected Status for El Salvador has been renewed through September 9, 2010. This press conference took place more than five months in advance of the date when the designation was set to expire. One can speculate that President Bush wanted to make the
announcement during his final months in office to reaffirm his commitment to comprehensive immigration reform in general and the Salvadoran people in particular.

President Bush issued the statement regarding the extension of TPS benefits for Salvadorans at a joint press conference with Salvadoran President Saca. At this conference, the U.S. President indicated that the designation of El Salvador for TPS was extended "to improve the lives of El Salvadorans." President Bush also referred to President Saca as an ally and a brave leader.36

Although former Attorney General Ashcroft anticipated that no more than 150,000 Salvadorans would apply for Temporary Protected Status benefits during the initial registration period, there are currently more than 229,000 Salvadorans with TPS residing in the United States.37 The former Attorney-General provided a low estimate through no fault of his own, as calculations as to the numbers of illegal immigrants in the U.S. are unreliable.

In describing why Temporary Protected Status for El Salvador was extended, the Secretary of Homeland Security Michael Chertoff stated:

Based on this review [of conditions in El Salvador], DHS has determined that an 18-month extension is warranted because there continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from the series of earthquakes that struck the country in 2001, and because El Salvador remains unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on significant earthquake damage.38

El Salvador has still not completed reconstruction of the infrastructure damaged by several severe 2001 earthquakes. Transportation, housing, education, and health sectors are still suffering from the 2001 earthquakes, the lingering effects of which limit El Salvador's ability to absorb a large number of potential returnees. The Salvadoran government assessed that
276,594 houses were affected by the earthquakes. As of February 2007, 136,988 houses had been reconstructed or repaired, approximately 50 percent of the total number destroyed or damaged. A housing program funded by the European Union was completed in March 2007, with a total of 5,482 houses constructed. As of June 2008, a housing program funded by the Inter-American Development Bank (3,500 houses) was underway with completion anticipated by the middle of 2009. In June 2003, the Salvadoran legislature approved borrowing $142.6 million for the reconstruction of seven hospitals. As of June 2008, reconstruction of one of seven main hospitals was completed. Reconstruction of three others was underway with completion anticipated by the end of 2008.39

The United States continues to renew the Temporary Protected Status designation for El Salvador. This policy decision contradicts both foreign policy and immigration policy objectives. From a foreign policy perspective, the U.S. terminated TPS designations for war-torn African countries such as Sierra Leone and Rwanda once peace accords were signed. The U.S. did not wait to ascertain whether those countries’ governments and infrastructures were equipped to handle the repatriation of their citizens.

The governments of Guatemala and Haiti officially requested Temporary Protected Status designations in 2005 and 2008, respectively. Those requests were not granted and were equally as legitimate under the law as the request from El Salvador. The current TPS regulations fail to provide uniform, objective guidelines, thereby allowing the executive branch broad discretion in designating certain countries for TPS, while rejecting the legitimate requests of other governments.

From an immigration perspective, TPS is far from a temporary program for El Salvador. Salvadorans registrants have resided in the US since February 13, 2001 (at the latest) and have permission to remain until at least September 9, 2010. A program that lasts for a minimum of nine-and-a-half years cannot be regarded as temporary. If DHS
and the State Department intend for El Salvadorans to reside in the United States
indefinitely, then the TPS designation should be modified to allow registrants to convert
their status to lawful permanent residency. Although this conversion would require a
supra-majority vote in the Senate, a new residency program would be more congruous
with foreign and immigration policy goals.

This thesis will explore the political, economic and moral ramifications of
repeatedly extending Temporary Protected Status for El Salvador. In Chapter One, the
political relationship between the United States and El Salvador is examined. Chapter
Two explores how American foreign policies have impacted U.S. immigration policies,
such as TPS and the Nicaraguan Adjustment and Central American Relief Act
(NACARA). Chapter Three addresses El Salvador’s dependence on remittances from its
nationals in the United States and whether the Salvadoran economy could survive without
this income. Chapter Four analyzes whether U.S. foreign and immigration policy
objectives and Salvadoran economic realities justify the continuous renewals of TPS in
light of how sparingly the program is applied to other countries. Finally, this thesis
provides recommendations for establishing a permanent residency program for
Salvadoran Temporary Protected Status registrants and improving the uniformity of TPS
designations and extensions.
CHAPTER ONE

THE POLITICAL RAMIFICATIONS OF EXTENDING SALVADORAN TPS

Past policy decisions regarding immigration and the extent of U.S. involvement in El Salvador greatly influence present-day policies, including whether to renew the current designation of El Salvador for Temporary Protected Status (TPS). In examining the political ramifications of extending the Salvadoran TPS grant, it is worth exploring the following: 1) the evolution of immigration policy generally in the United States; 2) the relationship between the U.S. and El Salvador; and 3) the application of various immigration programs to benefit the Salvadoran community in the United States.

This chapter reveals how views on immigration and Cold War politics adversely impacted the ability of Salvadoran immigrants to reside in the United States with documentation from 1980-1991. This chapter will also show how the aftermaths of the Cold War and the Salvadoran Civil War led the U.S. to establish immigration policies specifically for the benefit of Salvadorans in the United States. The longstanding strategic relationship between El Salvador and the U.S. has played and continues to play a significant role in the executive branch’s decision to designate and regularly renew Salvadoran Temporary Protected Status.

The Evolution of Immigration Policy Generally in the United States

U.S. immigration policy has been inextricably linked to public policy and foreign policy objectives since the colonies gained their independence from England. The Founding Fathers of the United States “expected and welcomed a large flux of immigrants. . . with virtually no restrictions. . . . [However, t]he Founders’ enthusiasm for
immigration... was tempered by the lessons of experience."¹ Leaders in the newly-formed democracy expressed concern that “immigration... has the potential of exposing public opinion to foreign influence and allowing the manipulation of American politics.”² Rather than restricting immigration, the early leaders of the U.S. decided to ease citizenship requirements.³ They hoped that this strategy would facilitate the assimilation of immigrants by encouraging them to learn English and accepting the prevailing cultural norms, while minimizing foreign ideas and practices.⁴

As the U.S. developed as a nation, “[t]here were so few restrictions on immigration in the 19th and early 20th centuries that there was no such thing as ‘illegal immigration.’ The government excluded a mere 1% of the 25 million immigrants who landed at Ellis Island before World War I.”⁵ In the early 20th century, the United States established immigration quotas to regulate European and Asian immigration.⁶ These quotas evolved in response to the prevailing foreign policies, economic realities and nationalist sentiments of the time period.

In contrast with the policies for Asian and European immigrants, “American diplomatic and business relations” led to an exemption for Latin Americans from immigration quotas.⁷ Specifically, the U.S. aimed to protect its “commercial interests in Latin American and the Caribbean” in the early 20th century, and its reliance on imports including fruit from Central America.⁸ From a foreign policy perspective, the United States government valued stability in the region and regarded lenient immigration restrictions for Latin Americans as beneficial economically, justified morally and in furtherance of the “good neighbor policy” between the United States and Latin America.⁹
The United States Congress sought to find a balance between enacting immigration regulations and protecting cheap immigrant labor and stability in the hemisphere through the passage of the Hart-Cellar Act of 1965.\textsuperscript{10} The Act emphasized the promotion of family unity and employment-based sponsorships, rather than national origin quotas. Unskilled labor and those immigrants who did not have relatives with U.S. citizenship or residency were unable to legalize their status. Those who remained in the United States without a family-member or an employer sponsoring them did so in violation of federal immigration law.

The Hart-Cellar Act also mandated the inspection of all immigrants upon their entry to the U.S.\textsuperscript{11} These inspections were not lengthy ordeals, but immigrants were required to pay an entrance fee and carry a passport and visa.\textsuperscript{12} The documents and the corresponding fee proved to be an obstacle for an overwhelming majority of immigrants crossing the border between the U.S. and Mexico.\textsuperscript{13} Prior to these legislative changes, immigrants from Latin America who entered the United States through the southern border without documentation did not break any U.S. laws. The provisions of the 1965 Act recognized crossing the border into the U.S. without inspection by an immigration official as a violation of administrative law. That legislation thus “created illegal immigration”\textsuperscript{14} from Mexico and Central America.”\textsuperscript{15}

Despite the enactment of the Hart-Cellar Act, the flood of illegal immigrants from Latin America could not be contained. As the governments of Central America became increasingly unstable and the economic landscape changed, large numbers of Central Americans began to seek refuge in the United States. The U.S. government stressed the
economic and moral reasons for looking the other way (cheap immigrant labor and providing a safe haven for migrants, respectively) as more undocumented workers entered the country via the border with Mexico. In addition, the U.S. government did not have enough manpower to adequately patrol the border and enforce governing regulations. By turning a blind eye to the illegal immigration problem, the government indirectly furthered the “good neighbor policy” between the United States and Latin America.16

The past set the stage for present-day immigration policy. The Hart-Cellar Act altered how the U.S. government regarded the immigrant work force from Latin America. Those viewpoints, when combined with Cold War politics, impacted the foreign policy goals of the United States, thereby influencing immigration legislation generally, and the evolution and use of the Temporary Protected Status program specifically.

Repeatedly renewing the designation of El Salvador for Temporary Protected Status is a political decision for the U.S. government. The executive branch, specifically the State Department and Department of Homeland Security, evaluate whether the country conditions in El Salvador warrant the exercise of discretion to extend the designation of TPS. That decision-making process involves the intersection of foreign policy, domestic public policy, and immigration policy. The United States has traditionally developed immigration policies reactively in response to widespread public opinion, labor needs and the ability of specific immigrant groups to acculturate to American society. With respect to TPS designations, the current foreign policy agenda tends to influence domestic policy. When the Department of Homeland Security renews
El Salvador’s TPS designation, that decision impacts those Salvadorans in the United States, the relationship between the U.S. and El Salvador, and Salvadorans in El Salvador.

**The Relationship between the United States and El Salvador**

The United States and El Salvador have been linked politically for several decades. The relationship between those two countries evolved in direct response to the Salvadoran Civil War (1979-1992) and the Cold War. The political connection between El Salvador and the U.S. involved Cold War strategies, economic interdependence, and immigration issues. The intersection of those factors impacted how Salvadoran immigrants were received in the United States and their options – including, but not limited to, Temporary Protected Status – for residing in the country with the U.S. government’s permission.

**The Civil War in El Salvador, Cold War Strategies and U.S. Aid**

The Salvadoran “Civil War [from 1979-1992] was rooted in class and ideological, rather than religious or ethnic, divisions, in an economic system whereby a small number of landed elites controlled the state in alliance with a powerful military.”¹⁷ In El Salvador in the late 19th century, the main export or “cash crop” was coffee, and the established owners of the coffee farms used their monopoly over the coffee industry to maintain their influence over the government.¹⁸ A few landowners possessed an inordinate amount of the country’s resources, property and wealth with six Salvadoran families owning more land than 133,000 Salvadoran farmers.¹⁹
The dichotomy between the elite and peasants continued for decades with the support and protection of the authoritarian government of El Salvador, "[d]espite the holding of periodic elections under a formal constitution between 1948 and 1979." In the late 1900s, small farmers and those without property in El Salvador sought a voice and access to land and joined forces against the established oligarchy. "In one of the few statements with which his leftist opponents agreed, [then Salvadoran] President Alfredo Cristiani stated. . . that the cause of El Salvador's war lay in the absence of democratic political space and the lack of economic hopes in a country characterized by exclusion and authoritarianism."  

By 1979, five separate guerrilla groups were active in their opposition to the repressive, right-wing Salvadoran government and its tactics to suppress peasant upheaval and left-wing political activity. Both sides engaged in brutalities, including kidnappings, torture and death-squad style assassinations. In 1980 alone, 12,000 Salvadorans were murdered, and the government and its military were responsible for the majority of the killings. That same year, "the five guerrilla groups...formed the FMLN [Farabundo Marti National Liberation Front], which, despite internal tensions, would remain a united armed opposition until after the war."  

Prior to the establishment of FMLN party in El Salvador, skirmishes between the Salvadoran military and small left-wing factions occurred sporadically and were relatively easy to contain. Under the FMLN auspices; however, the guerrillas mobilized resources and manpower, becoming not only a voice of the people, but also a strong and united coalition against the Salvadoran government. The FMLN modeled its political
and military strategies after the methods used by the left-wing guerilla groups in Nicaragua. Specifically, the FMLN ingratiated itself within the rural regions of El Salvador by providing the peasants with much-needed medical care and educational programs and establishing “control zone” for their operations.

The fighting between the FMLN and the Salvadoran government “paralyzed the . . . populace and created a culture seeking to survive until the next day.” As the death toll rose in El Salvador, Cold War politics dominated the focus of the executive branch, and the United States attempted to maintain regional stability and continue to spread democracy. U.S. President Jimmy Carter and his administration understandably feared that a leftist regime would gain power in El Salvador as had happened in Nicaragua. These factors and the geographic proximity of El Salvador to the U.S. motivated the United States to provide both military resources and economic aid to the Salvadoran government in its fight against the guerrillas.

President Carter openly expressed concern over the guerrilla’s human rights violations against the Salvadoran people, especially the FMLN’s horrific death squad-style assassinations. However, the 1980 murder of Roman Catholic Archbishop Oscar Romero and the rape and murders of four American nuns in El Salvador prompted the Carter Administration to also worry about the extent to which the Salvadoran military was contributing to the wartime atrocities.

Archbishop Romero had addressed large audiences concerning why the U.S. should not send further military assistance to El Salvador, which led to his assassination at the hands of Salvadoran operatives under the orders of the military. The fact that the
United States funded the national military of El Salvador compounded the concern that the U.S.’ role in the Salvadoran Civil War was contrary to human rights principles, illogical, and financially imprudent. As publicity about the Archbishop’s murder grew, views about the U.S.’ involvement in the Civil War in El Salvador shifted dramatically.

Popular opinion against U.S. appropriations to the Salvadoran government increased after the December 2, 1980 abduction, rape and brutal murders of four American churchwomen in El Salvador. Three years later, little headway had been made on the case. The U.S. Ambassador to El Salvador, Robert White, had hosted two of the nuns the night before they were murdered and felt personally and professionally vested in the case. Under the leadership of Senator Arlen Specter (R-PA), the U.S. withheld 30% of the aid previously appropriated to El Salvador in 1983 with the condition that the Salvadoran government vigorously pursues the investigation and prosecution of those responsible for the crimes. The attachment of a condition to the appropriations bill to El Salvador altered the previous policy of issuing aid without requirements as to how and through which institutions the Salvadoran government would distribute the funds.

An investigation of the rapes and murders led to the arrests and convictions of several members of the Salvadoran National Guard. These men initially claimed that they had acted on their own volition. Ambassador White spoke openly about his beliefs that the Salvadoran military ordered the atrocities, and argued for democratic reform, rather than U.S. military intervention, in El Salvador. Seventeen years later, justice
finally prevailed, as the members of the National Guard confessed that their superiors in the Salvadoran military had ordered the murders of the four American nuns.\textsuperscript{37}

The brutal war crimes and human rights violations in El Salvador in 1980 garnered international media attention. Through that publicity, the U.S. public became aware of the connection between the atrocities in El Salvador and the role – directly and indirectly – that the United States was playing in funding the Salvadoran military. The response to the murders of Archbishop Romero and the four nuns prompted the Carter Administration to question the role of the Salvadoran military in these crimes and their subsequent investigations.\textsuperscript{38} As a result of the executive branch’s well-founded concerns, U.S. financial assistance to the Salvadoran military decreased.\textsuperscript{39}

On January 10, 1981, the FMLN embarked on a large-scale military plan to take control of the major cities in El Salvador from the national government.\textsuperscript{40} The strategy, known as the final or general offensive, failed due to the FMLN’s lack of popular support and military resources.\textsuperscript{41} However, the guerillas gained control over the Chalatenango region and achieved political recognition from Mexico and France.\textsuperscript{42} The FMLN in El Salvador might not have been able to free the peasants from authoritarian rule, but it proved to be a force able to challenge the government. Although President Carter feared that the FMLN’s show of strength would lead to a repeat of the Nicaraguan experience in which a left-wing party came to power, the desire to prevent further human rights abuses by both the Salvadoran military and guerillas prevailed.\textsuperscript{43} As such, the Carter Administration authorized only a meager $10 million aid package to the government of El Salvador.\textsuperscript{44}
The pendulum and political approach shifted when Ronald Reagan was elected president. The Reagan Administration’s policy objectives dramatically differed from that of the Carter Administration, given the recent resurfacing of Cold War tensions. “The United States Department of State issued a special report on February 23, 1981, entitled Communist Interference in El Salvador, which indicated that Nicaragua, Cuba, and the Soviet Union supported the FMLN.” In response to that report, President Reagan emphasized the need to guard against a Communist-takeover of El Salvador.

The Secretary of State under President Reagan, Alexander Haig, feared “the radicalization of the hemisphere” if Marxist regimes gained control over the region. Specifically, he worried that history would repeat itself on a much larger scale, and that the Cuban refugee crisis would seem small in comparison to the situation in El Salvador. The Civil Wars in Central America deeply concerned President Reagan because “the result could be a tidal wave of refugees – and this time they’ll be feet people, not boat people – swarming into our country seeking a safe haven from Communist repression to our south.” The U.S. government reasoned that assisting democratic governments in Latin America, like the national government of El Salvador, would indirectly help limit the number of political refugees and economic migrants fleeing their homelands for the United States.

The Reagan Administration offered its unconditional support to the Salvadoran government. Statements from the White House stressed that the U.S. must assist the Salvadoran people and their military “defend against Marxist violence.” President Reagan also prioritized protecting the border with Mexico from the influx of
undocumented immigrants and developing policies to deal with the growing problem of illegal immigration. Congress recognized the executive branch’s commitment to those issues and authorized large-scale aid packages to El Salvador in accordance with those goals.

Aid from the United States proved critical to the Salvadoran government’s ability to remain in power. “When the FMLN was on the verge of winning the war in 1983, material provided by the United States helped prevent the government's collapse. Military aid per fiscal year rose from $6 million in 1980 to $35 million in 1981 to $197 million in 1984....”52 If the Reagan Administration had condemned the actions or inactions of the Salvadoran government during the Civil War, Congress would have been unable to appropriate money to El Salvador because of the country’s human rights violations.53

From 1980 to 1986, the United States sent El Salvador approximately $1 million a day.54 From 1982 to 1990, the United States provided El Salvador with $1 billion in equipment for the military and $3.2 billion in additional financial assistance.55 The United States government; however, failed to attach conditions or require any accountability for an overwhelming majority of the funds it allocated to the Salvadoran government.56 In addition, El Salvador did not have the necessary governmental structures in place to handle the influx of so much aid. “As the Salvadoran economy falter[ed], U.S. aid then bec[ame] no more than a band-aid, used for programs to cover balance-of-payment deficits, bad debts, shortfalls, and the financial burden of agrarian reform.”57 This dynamic, in turn, left El Salvador increasingly dependent upon financial
assistance from the United States for its economic survival. That dependency remains today, as evidenced by El Salvador’s reliance on economic and political support from the U.S. government, and remittances from Salvadoran immigrants with TPS.

Salvadoran Emigration to the U.S. in the 1980s and the Reagan Administration’s Response

The Civil War in El Salvador also altered the face of the Salvadoran immigrant coming to the United States. “Prior to the 1980s a substantial proportion of [middle-class] Salvadorans... entered the United States legally” to work in white-collar positions. Groups of Salvadorans with limited education began to cross the border between Mexico and the U.S. without inspection in the 1970s in search of low-wage jobs. The undocumented Salvadoran community in the United States “increased exponentially [in the 1980s] as those migrating for economic reasons were joined by those escaping political persecution, violence, or recruitment into the army or guerrilla forces.” An estimated 10% of the Salvadoran population (or 500,000-750,000 people) fled El Salvador and a significant majority of that group settled in the United States.

The U.S.’ support of the Salvadoran military created a problem for immigration policy makers who were tasked with assessing how best to deal with the influx of aliens from El Salvador. Salvadorans who fled their homeland during the Civil War expected to be welcomed as asylees in the United States, yet the U.S. government did not receive them like their counterparts from Cuba and Nicaragua. Refugee or asylee status requires a finding that the immigrant “is unable or unwilling to return to...[his native]
country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁶⁴

Although both potential refugees and asylees must satisfy the persecution element, there is one critical difference between asylee and refugee status. Refugees reside temporarily in a third country (neither their homeland nor the United States) at the time they obtain status as a political refugee.⁶⁵ By contrast, an immigrant can only apply for asylum if he is physically inside of the U.S. or an area under the jurisdiction of the United States Customs and Border Patrol.⁶⁶ One million Salvadorans fled their hometowns, but resettled in other parts of their native country, thereby rendering them ineligible for refugee status since they were still residing in El Salvador.⁶⁷ Those Salvadorans who made the arduous journey north and arrived in the United States lacked the statutory eligibility to apply for refugee status since they were not temporarily residing in a third country. As such, these undocumented Salvadorans had only one option available to them if they wished to remain in the United States: submitting requests for political asylum.

The United States chose not to view that group of Salvadoran immigrants as asylees because doing so would have contradicted the U.S.’ decision to support the Salvadoran government. “Officials of both the U.S. and Salvadoran governments [claimed that] El Salvador is a democratic country that respects human rights; thus the Salvadorans in the United States are ‘economic migrants’ who deserve no special treatment.”⁶⁸ In this context, the phrase, “economic migrants,” refers to those immigrants
who come to the United States in search of more lucrative employment opportunities and a better standard of living than they had in their homeland.

Author and scholar, Elizabeth G. Ferris, aptly describes the connection between foreign policy matters and Salvadoran immigration policy as follows:

US policies toward the Central American refugees reflect[ed] the Reagan administration's foreign policy objective of stopping the spread of revolution in Central America. Given this objective, it [was] necessary for the US to restrict immigration of Central Americans who came from friendly regimes and claim political persecution...since El Salvador...[was] given political, economic, and military support by the US government, to admit...Salvadorans claiming political persecution at the hands of their government would [have] prove[n] embarrassing to US policymakers.69

In accordance with that policy, the immigration agency did not recognize Salvadoran immigrants as political asylees. Successful asylum applicants must prove: 1) that they have been persecuted or have a legitimate fear of persecution; and 2) that the government in their homeland is either responsible for said persecution or ill-equipped to stop it. Approving Salvadoran requests for asylum would have required a finding that the Salvadoran government and its military were unable to protect the country’s citizen. The United States government was simply not in a position to take such a significant political risk, if it wished to continue to back the government of El Salvador in its war against the left-wing FMLN.

The Immigration and Naturalization Service did not waive from its view that Salvadoran asylum requests were without merit, as evidenced by the fact that less than 1% of the 273,372 Salvadorans who applied for asylum from 1987 to 1996 received approvals.70 The executive branch reasoned that granting the asylum applications of
Salvadoran immigrants would have jeopardized relations between the United States and El Salvador. Moreover, treating aliens from El Salvador as political asylees would have prompted debate over whether the U.S. was justified in supporting a military regime that either engaged directly in the persecution of its citizens or was unable to protect its citizens from the FMLN’s violence. The United States had a vested interest in keeping a democratic ally in power in El Salvador during the Cold War, and did not want to raise questions regarding its appropriations to the Salvadoran government.

At a time when only 1-3% of Salvadoran asylum requests were granted, U.S. immigration officials and judges approved approximately 32% of Polish asylum requests, 40% of Afghani applications and 60% of Iranian requests. The disparity between the number of filed Salvadoran requests for asylum and the number of approved requests did not go unnoticed by the international community. Upon learning that only one Salvadoran was granted asylum in 1981, the United Nations High Commission on Refugees (UNHCR) intervened, reasoning that “the United States government was not fulfilling its obligation as a signatory to the United Nations Protocol Relating to the Status of Refugees.” The case of the Salvadorans marked the first time that the UNHCHR infringed upon the sovereignty of the U.S. government.

The UNHCR relied on the Protocol and international law principles in its condemnation of the Reagan Administration for failing to “provid[e] Salvadorans with an adequate opportunity for asylum.” At that time, the UNHCR also recommended that the United States provide Salvadorans in the U.S. with Extended Voluntary Departure (EVD). EVD is often described as a precursor to Temporary Protected Status.
enabled undocumented individuals to remain in the U.S. for a specific period of time until conditions in their home country improved. In the same manner as the present-day TPS, EVD allowed its recipients to obtain work permits and protection from deportation and was discretionary on a country-by-country basis.\textsuperscript{76} Although several countries had been designated for EVD since 1960, the United States declined to grant the same benefits to Salvadorans in the U.S.\textsuperscript{77}

In 1984, three years after the UNHCR implored the United States government to designate EVD to El Salvador, the Attorney General received a similar request from the American Civil Liberties Union (ACLU). The ACLU maintained that the ongoing atrocities in El Salvador warranted the use of the Extended Voluntary Departure program because the United States had used the status in the past to protect citizens from war-torn countries who were temporarily residing in the U.S.\textsuperscript{78}

The Reagan Administration; however, did not agree with the UNHCR and ACLU’s logic. Much like political asylum requests, granting EVD to Salvadorans was incongruous with foreign policy objectives. Specifically, “[t]he U.S. government... reasoned that Salvadorans had left the Central American region merely due to fears of being caught in the violence generated by the political struggles between the Right and the Left.”\textsuperscript{79} These fears, according to the executive branch, failed to reach the level of persecution or fear of persecution required for a finding of asylum and did not warrant the discretionary issuance of an EVD designation.

Border patrol agents, asylum officers and immigration judges played a role in furthering the goals of the Reagan Administration. Not only were Salvadoran asylum
requests approved at disproportionately low rates, but the U.S. government also employed other questionable tactics with respect to the Salvadoran immigrant community. Specifically:

[t]he Justice Department and INS actively discouraged Salvadorans... from applying for political asylum. Salvadorans... arrested near the Mexico-US border were herded into crowded detention centers and pressured to agree to "voluntarily return" to their countries of origin. Thousands were deported without ever having the opportunity to receive legal advice or be informed of the possibility of applying for refugee status. Considering the widely reported human rights violations in El Salvador... the treatment of these migrants constituted a violation of US obligations under the 1951 Refugee Convention.80

The Department of Justice's strategies preyed upon the fears of the Salvadoran immigrants. An overwhelming majority of these aliens spoke Spanish, not English, and lacked basic knowledge about the immigration process and their right to apply for asylum.

The tactics employed with regard to Salvadoran immigrants differed greatly from those utilized with Nicaraguan immigrants, who escaped the leftist Sandinista regime and ended up at the border.81 Immigration officials allowed Nicaraguan immigrants to enter the U.S., and a significant percentage of Nicaraguans, unlike their Salvadoran counterparts, were able to obtain asylum in accordance with the regulations.82 The disparity between the approaches reaffirmed the connection between foreign policy and immigration policy.

The Reagan Administration's policies violated human rights and the notion of what the United States represents. As then Vice-President George H.W. Bush described, the U.S. is a "help and haven... to refugees throughout the world. We are a nation of
immigrants and are all the richer for it. Our tradition of refugee assistance reflects deep principles and abiding commitments.\textsuperscript{83} Unfortunately, adherence to those principles is often dependent upon the latest foreign policy agenda and the prevailing public sentiment. As such, Cold War politics dominated the Reagan Administration's approach to both international and domestic policy matters.

The U.S. judicial system joined the United Nations High Commissioner on Refugees in condemning the executive branch's treatment of Salvadoran immigrants.\textsuperscript{84} In the 1982 class-action suit of Orantes-Hernandez \textit{v. Smith}, the Salvadoran immigrant plaintiffs sought an injunction against the actions of the INS and Attorney General.\textsuperscript{85} Specifically, the plaintiffs argued that immigration officials should be barred from expediting the removal of Salvadorans at the border and required to advise the class of immigrants regarding their rights to apply for asylum.\textsuperscript{86} The Judge in that case granted the injunction and mandated that immigration officials notify Salvadoran immigrants in writing of their rights under the law.\textsuperscript{87} These rights included obtaining legal representation, applying for asylum, appearing in administrative court before an immigration judge, and asking for removal at the immigrant's own expense.\textsuperscript{88}

The U.S. executive branch received pressure from international organizations, the judiciary, the American public, and individual members of the Reagan Administration to alter its policies with respect to the war in El Salvador and the treatment of Salvadoran immigrants in the U.S. Members of the legislature also advocated on behalf of the Salvadoran people. Senator Dennis DeConcini (D-AZ) and Representative Joe Moakley (D-MA) sponsored the Moakley-DeConcini bill in several sessions of Congress in the
hopes of providing Salvadoran immigrants in the U.S. with Extended Voluntary Departure.\textsuperscript{89}

The arguments in support of the bill had been echoed before, but there was a thought that the Administration would respond more favorably to a legislative proposal. Senator DeConcini and Representative Moakley highlighted: 1) the temporal nature of EVD status; 2) the United States’ history as a safe place for refugees; and 3) the fact that EVD only helps those immigrants already in the U.S. Unfortunately, though, their efforts to pass this legislative initiative were futile, as President Reagan remained steadfast in his opposition to immigration benefits for the Salvadoran community.

The End of the Salvadoran Civil War and the Cold War

Comparisons between El Salvador and Vietnam are not without merit since in El Salvador, “the U.S. became involved in its largest counter-insurgency war against left-wing guerrillas since Vietnam.”\textsuperscript{90} The Civil War in El Salvador from 1979 to 1992 also displaced a higher percentage of nationals than the Vietnam War, as 500,000 Salvadorans fled their homes for other cities and 500,000-750,000 more people left El Salvador entirely.\textsuperscript{91} The legitimate fear that El Salvador would become another Vietnam prompted nonprofit organizations, missionaries and lobbyists to join forces to protest against aid and military support in Central America.\textsuperscript{92} The solidarity movement in support of noninterventionist policies in El Salvador mobilized quickly and effectively, yet disbanded shortly after the U.S. withdrew troops from the country and ceased to fund the Salvadoran government once a peace accord was reached between the Salvadoran government and the FMLN in 1992.\textsuperscript{93}
A number of factors contributed to the end of the fighting between the right-wing national military and the left-wing guerillas in El Salvador. First, while FMLN’s attacks on San Salvador and the major military bases in November 1989 were unsuccessful in liberating any territories, the coordinated effort and the presence of 2,000 guerillas in San Salvador sent the national government a strong message. Members of the Salvadoran oligarchy started wondering if it was time to commence peace negotiations and end the war, and FMLN leaders recognized that the left-wing party had yet to make any substantial progress in taking over control of the country.

The second event to precipitate peace accords was the November 16, 1989 assassination of six Jesuits priests and two civilians at a Salvadoran college dormitory. Investigations revealed that the government, not the guerillas, was responsible for the brutal killings. In response to these atrocities, the United States placed a hold on military assistance to El Salvador, pending settlement talks between the government and the FMLN.

The United States’ decision to alter the terms of its appropriations to El Salvador overlapped with the end of the Cold War. With the fall of Soviet Communism, the U.S. emerged from the conflict as the sole global superpower. There was no longer a strategic necessity to protect foreign governments from the influence of Communism, Marxism and other leftist regimes. “The end of the Cold War also coincided with the change from the Reagan administration to the Bush administration, which soon pronounced its support for negotiated settlements in Central America. That shift in U.S. policy prevented the
Salvadoran military from counting on unlimited U.S. support and reduced its ability to ignore the peace process.  

In addition, the downfall of Soviet Communism impacted the ability of FMLN to survive since the new political climate translated into less aid and direction for the Salvadoran guerillas. Recognizing the likelihood of defeat, the FMLN contacted the United Nations (U.N.) to assist with negotiations toward a peace settlement. At the same time, several government officials in both El Salvador and the United States realized the endless fighting needed to stop and expressed their openness toward U.N. involvement. “The United Nations served first as the mediator between the two sides, then as the verifier of a series of peace agreements, and finally as ‘institution-builder’ and reconstruction-agent through its coordination of financial and technical assistance.”

The final peace accord, signed on January 16, 1992, brought an end to the Salvadoran Civil War. “The peace accords created a new Counsel for the Defense of Human Rights, replaced military security forces with a civilian police force, and took steps to make the judicial branch of government more independent.” In addition, the final settlement allowed FMLN to receive recognition as a political party in El Salvador and provided for the establishment of a U.N. Truth Commission to investigate wartime human rights abuses and recommend the appropriate punishment for the perpetrators of those crimes.

The 12-year conflict had drained El Salvador of resources and the spirit of its people, but it also cemented the country’s interdependence with the U.S. In an 11-year time period, the United States provided the national government of El Salvador with $1.1
billion in military support and $3.15 billion in economic assistance.\textsuperscript{104} Aid from the U.S. to the Salvadoran military also had the unexpected consequence of “creat[ing] an institution totally disproportionate to the size of the country, structurally opposed to any reform of its privileges and prerogatives, and convinced of its supremacy over other national institutions, and, therefore, of its primacy over civilian power and even over the law itself.”\textsuperscript{105} El Salvador found itself worse off economically at the end of the war than it had been prior to the formation of the FMLN party.\textsuperscript{106} There was clearly a steep price to pay to protect democracy in the hemisphere.

The United States’ involvement in the Civil War in El Salvador established both El Salvador’s dependence on and strategic importance to the U.S. The Reagan Administration demonstrated its commitment to keeping an ally in power in El Salvador during the Cold War and refusing to recognize Salvadoran immigrants in the United States as political asylees. The influence of U.S. foreign policy over U.S. immigration policy clearly served to the detriment of Salvadoran illegal immigrants in the 1980s.

In subsequent decades, the pendulum would swing in the opposite direction and the long-standing relationship between the United States and El Salvador would prove advantageous to Salvadoran immigrants. The following chapter explores those immigration programs such as Temporary Protected Status and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) that were created for the benefit of undocumented Salvadorans in the United States.
CHAPTER TWO

THE POLITICS BEHIND THE IMMIGRATION POLICIES THAT HAVE BENEFITTED THE SALVADORAN IMMIGRATION COMMUNITY IN THE UNITED STATES

The political and economic relationship between the U.S. and El Salvador negatively impacted the immigration options available to Salvadoran immigrants in the 1980s and early 1990s. However, shifts in foreign policy, an end to the Salvadoran Civil War, and judicial intervention dramatically altered that precedent. As a result of those three factors, illegal immigrants from El Salvador have had greater access to immigration benefits than undocumented aliens from other countries since 1991. The American Baptist Churches (ABC) settlement, Temporary Protected Status (TPS) legislation, the Deferred Enforced Departure (DED) program, and the enactment of the Nicaraguan Adjustment and Central American Relief Act (NACARA) exemplify the extent to which the policies for immigrants from El Salvador have improved. This chapter will examine the aforementioned immigration policies that have benefited Salvadoran immigrants from 1991 through the most recent renewal of TPS. Those programs and the benefits that accompany them demonstrate the connection between U.S. foreign policy and immigration policy. Additionally, past immigration policies serve as guidelines for future legislation and alternatives to regularly renewing El Salvador’s Temporary Protected Status designation.

Events leading up to the Enactment of the Original TPS Legislation

In the 1980s, illegal immigrants from El Salvador had few, if any, options to legalize their status or remain in the United States temporarily with the government’s
permission. Asylum, Enforced Voluntary Departure and amnesty programs\textsuperscript{1} were neither designed for nor available to the Salvadoran immigrant community. Congress also failed to pass legislation to protect illegal immigrants from El Salvador, despite several attempts by Congressman Joe Moakley (D-MA) and Senator Dennis DeConcini (D-AZ) to move bills through the legislature.

In response to the government’s unwavering position, religious leaders in the U.S. took matters into their own hands. Faith-based organizations began to allow their places of worship to be used as safe havens for undocumented Guatemalan and Salvadoran aliens.\textsuperscript{2} The United States reacted to that practice aggressively by filing criminal charges “against U.S. religious activists who declared their congregations ‘sanctuaries’ for Salvadoran and Guatemalan refugees.”\textsuperscript{3}

The faith-based organizations, in turn, filed a class-action suit against the U.S. government. The reasoning behind the case of American Baptist Churches \textit{v.} Thornburgh echoed earlier sentiments regarding U.S. immigration policy from the ACLU and UN:

Salvadorans were refugees, it was just that the U.S. wasn’t recognizing them as refugees. But the U.S. was in violation of both its international and national legal obligations, and, consequently, they shouldn’t be prosecuting people who were just doing what they were supposed to be doing, which is protecting people from refoulement [return] to torture and prosecution.\textsuperscript{4}

In addition to challenging the prosecution of religious activists, the class action suit also contested the discriminatory application of the asylum standards to the Guatemalans and Salvadoran immigrants and requested an end to the removal of more illegal aliens from those countries.\textsuperscript{5} The federal court dismissed two of the three counts
of the case because: 1) it would be unjust to categorically ban all deportations of Salvadorans and Guatemalans without evaluating the merits of each individual case; and 2) the 1986 amnesty program altered the government’s need to vigorously pursue those who helped undocumented immigrants. The 1986 amnesty offered protection and benefits to immigrants who had been residing in the U.S. illegally, and thus, the charges against those religious sanctuaries that harbored illegal alien were dismissed. One count of the original class action suit remained, and the Court grappled with the issue of the INS’ treatment of Salvadoran and Guatemalan asylum applicants.

The case of American Baptist Churches remained unresolved for close to five years, at which time the attorney for the Immigration and Naturalization Service proposed a settlement. As scholar Susan Bibler Coutin opines, the government’s position shifted in 1990 because:

1. The ABC lawsuit had proven to be time consuming and costly in both economic and political terms. Discovery revealed that the executive branch had an unwritten policy to deny an overwhelming majority of Guatemalan and Salvadoran asylum requests. That discriminatory policy clearly contradicted both the law and spirit behind the legislation, while reaffirming the linkage between immigration regulations and foreign affairs;

2. The case garnered public attention, and religious activists and the nonprofit community had effectively organized in their opposition to the government on moral grounds;

3. The immigration agency had started to make concerted efforts at evaluating asylum requests more equitably; and

4. Years of fighting had weakened the FMLN and the Salvadoran government, leaving both parties open to peace talks. Once the political climate in El Salvador had changed, the United States was able to establish new, more lenient policies for Salvadoran immigrants without compromising its support of the national government of El Salvador.
The final settlement in the ABC case directed the INS to review all of the Guatemalan and Salvadoran requests for asylum that the agency had previously denied.\textsuperscript{12} That agreement resulted in the reopening of approximately 500,000 asylum claims.\textsuperscript{13} The settlement required eligible Salvadoran and Guatemalan immigrants to register as ABC class members and resubmit their asylum applications. Governing regulations also allowed all potential asylees to apply for employment authorization and obtain a work permit.

**The Original TPS Legislation**

INS’ willingness to seek a settlement for the lengthy and costly *American Baptist Churches* suit reflected a dramatic shift in national immigration policy. In the same year that the ABC settlement was reached, Congress also enacted a major piece of legislation, The Immigration Act of 1990 (The Act). The Act addressed the surge in the number of undocumented immigrants from Latin America by providing necessary clarifications and additions to immigration regulations. The legislature also recognized the need to resolve the status of the Salvadoran illegal immigrant community and incorporated Temporary Protected Status provisions into the Act. Congressional proponents and immigration advocates viewed the inclusion of TPS provisions within the regulations as a major victory after two prior failed attempts.\textsuperscript{14}

In addition to the Temporary Protection Status regulations that are still in effect today, the Immigration Act of 1990 included separate guidelines for issuing TPS benefits to Salvadoran immigrants.\textsuperscript{15} The default provisions on Temporary Protected Status
provide for the automatic renewal of the status at the Attorney General’s discretion, based on the country conditions at the end of the initial designation period. The 1990 Act; however, specifically excluded El Salvador from that section and enumerated special terms for the Salvadoran TPS designation. The legislation gave TPS registrants from El Salvador permission to remain in the United States for a fixed time period (from January 1, 1991 through June 30, 1992) with the crucial stipulation that the designation could not be renewed. Nearly 200,000 undocumented Salvadorans qualified as TPS beneficiaries and could reside legally in the United States through June 30, 1992. By the statutory end of the TPS designation for El Salvador, the Salvadoran government had signed a peace accord with FMLN and the country was focused on rebuilding. That created a new dilemma for immigration policymakers in the United States.

In sharp contrast to the country conditions prior to the peace agreement, Salvadoran immigrants in the U.S. could now return to their homeland without fearing for their safety. However, if approximately 187,000 Salvadorans left the U.S. en masse, that would dramatically decrease the influx of money from immigrants in the United States to their relatives in El Salvador. El Salvador relied on remittances from the U.S. for its economic survival. In addition, the infrastructure in El Salvador could not support the return of 3% of its citizens at a time when the country was still rebuilding from the devastating effects of the Civil War.

Those factors prompted Salvadoran President Alfredo Cristiani to implore President George H.W. Bush to extend Temporary Protected Status for the Salvadoran
TPS registrants in the United States.\textsuperscript{23} The Immigration Act of 1990; however, clearly prohibited renewing the TPS designation.\textsuperscript{24} In an effort to promote good relations with El Salvador, the Bush Administration devised a plan to help those Salvadoran immigrants in the U.S. without violating the Act’s legislative mandate. President Bush responded to President Cristiani’s request in writing, stating “that Attorney General [William] Barr will be taking the necessary steps to grant Deferred Enforced Departure (“DED”) for Salvadoran citizens for one year.”\textsuperscript{25}

**DED and ABC Asylum Cases**

Practically, DED operated in the same manner and provided the same benefits as Extended Voluntary Departure and Temporary Protected Status. But, by labeling the program as Deferred Enforced Departure, rather than TPS, the first Bush Administration circumvented the legislature and the limitations of The Immigration Act of 1990.\textsuperscript{26} That executive action allowed for the continued protection of all those Salvadoran immigrants who had registered during the original TPS period without requiring a new finding that the country conditions in El Salvador made it unsafe for those aliens to return home.\textsuperscript{27}

The Attorney General regularly renewed the designation of Deferred Enforced Departure for El Salvador from June 30, 1992 through January 31, 1996.\textsuperscript{28} The latter date not only served as the end of the DED period, but it also was “the deadline that immigration officials eventually set for Salvadoran ABC class members to file for political asylum under the terms of the settlement agreement.”\textsuperscript{29} The American Baptist Churches settlement permitted Salvadoreans and Guatemalans who were in the United States as of September 19, 1990, to register as members of the ABC class. However, as
of 1991 (the year after the settlement was reached), only 50,000 Salvadorans and
Guatemalans had done so. The INS estimated that approximately 240,000 Salvadoran
and Guatemalans immigrants qualified as ABC class members, and thus, the extension
was needed to allow a majority of those eligible for ABC benefits to register.

The terms of the settlement required former TPS beneficiaries to file requests for
asylum, in addition to registering as ABC class members. The agreement and renewal
of the Deferred Enforced Departure program facilitated the seamless transition from DED
beneficiary to potential asylee on January 31, 1996. In practical terms, both Deferred
Enforced Departure and filing a request for asylum provide an illegal immigrant with
protection against deportation and eligibility for a work permit until either: 1) the end of
the DED designation period; or 2) the adjudication of the asylum application.

Immigration attorneys, religious groups, notary publics and nonprofit
organizations mobilized to assist Salvadoran and Guatemalan immigrants with the
registration and filing process. Approximately 200,000 people had to submit their
asylum requests as ABC class members before the January 31, 1996 deadline. Asylum
applications from Salvadoran TPS beneficiaries lacked supporting evidence and offered
little substance or detail. A review of Salvadoran requests for asylum filed at that time
revealed how formulaic the applications were, as an overwhelming majority of
immigration lawyers and advocates submitted the most basic of claims.

Why did legal services and religious organizations file such “bare bones” ABC
asylum requests on behalf of the Salvadoran immigrant community? First, the lawyers
and groups helping the class members had a limited amount of time and resources to
assist an estimated 200,000 immigrants (most of whom did not speak English) with their applications. Secondly, the submission of an asylum application under the settlement agreement served the dual purpose of registering the Salvadoran and Guatemalan immigrants as members of the ABC class. The legitimacy of the asylum request or the amount of detail included within the filing held no bearing on the applicant’s right to register as a class member.

In fact, immigration attorneys and religious activists predicted that the ABC registration would prove more beneficial for the class members in the long term than their asylum requests. The executive branch made no guarantees that Salvadoran applications for asylum would be approved, and advocates assumed that the end of the Salvadoran Civil War and the successful implementation of the terms of the peace accords between the national government and the FMLN would prohibit the granting of asylum. The fighting in El Salvador had long since stopped, and as a result, it would be difficult for asylum applicants to satisfy the burden of proof that they had a legitimate fear of returning.

Claims filed by the ABC class addressed concerns that would have been valid during the Civil War years, but did not reflect the current country conditions in El Salvador in 1996. Lawyers and advocates did not expect to obtain favorable adjudications for Salvadoran asylum applications at that time. “Organizations therefore decided to prepare accurate but brief asylum applications in all but the most compelling cases,” and emphasized the importance of registering for ABC benefits. Finally, immigration lawyers and advocates believed that legislation would be enacted to enable
the ABC class members to convert their pending asylum status to that of lawful permanent residents.\textsuperscript{36} The ABC asylum process thus became viewed as a conduit. Through the benefits of the settlement, Salvadoran immigrants who were previously protected under TPS and DED regulations had uninterrupted employment authorization and the potential to obtain their green cards in the future.

The immigration law and advocacy community envisioned that the Salvadoran immigrants' status as ABC asylum applicants would lead to permanent residence through either suspension of deportation or the creation of a new legislative program.\textsuperscript{37} Suspension of deportation regulations entrusted an Immigration Judge with the discretion to issue a green card to an illegal alien who: 1) has demonstrated good moral character; 2) has resided in the United States for at least seven years; and 3) shows that his or her deportation would cause "extreme hardship" to an immediate relative with U.S. citizenship or lawful permanent residence.\textsuperscript{38} The majority of ABC asylum applicants met or soon would meet the standards of eligibility for suspension of deportation.

\textbf{The Illegal Immigration Reform and Responsibility Act}

In 1996, Congress shattered the hope that undocumented Salvadoran immigrants would have the opportunity to apply for their green cards with the passage of more stringent immigration legislation. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) "stiffened border enforcement, expanded the range of criminal convictions that made non-citizens deportable and made it more difficult for undocumented immigrants to acquire legal permanent residency."\textsuperscript{39}
IIRIRA also eliminated the option of suspension of deportation for all undocumented immigrants, replacing the application with the harsher “cancellation of removal.”\textsuperscript{40} Cancellation of removal superseded the seven-year residency and good moral character requirements with a ten-year minimum, and mandated a finding that the illegal alien’s departure would cause “exceptional and extremely unusual hardship” to a lawful permanent resident or U.S. citizen spouse, parent or child.\textsuperscript{41} The legislation placed a tougher burden on the applicant to show that his or her removal would cause significant and unique hardship (rather than just extreme hardship) to a close relative with a legal immigration status. In addition, Congress authorized a cap of 4,000 on the number of cancellation of removal cases that could be granted by Immigration Judges annually.\textsuperscript{42} Given that nearly 173,000\textsuperscript{43} Salvadoran and Guatemalan immigrants sought to convert their status as ABC class members to that of lawful permanent residents, a cap of 4,000 cancellation approvals bordered on derisory.

**NACARA**

Salvadoran immigrants, their attorneys and their advocates worried that the ABC asylum applicants would be unable to avail themselves of any opportunity to permanently legalize their status. Those groups mobilized with Nicaraguan, Cuban and Guatemalan immigrants and activists to pressure Congress to enact legislation to allow illegal aliens from those countries to obtain their green cards.\textsuperscript{44} The concerted effort proved successful with the creation of a new adjustment of status category for the benefit of the aforementioned immigrant groups. That category, the Nicaraguan Adjustment and
Central American Relief Act (NACARA), became law with President Bill Clinton’s signature on November 19, 1997.45

“NACARA was a political response to the concern that many individuals had spent years in the United States, complying with the immigration laws and establishing countless equities.”46 NACARA represented a momentous and compassionate step forward at a time when most immigration policies reflected the government’s disdain for the growing number of illegal aliens.47 Citing Congress’ reasons behind NACARA, Senator Spencer Abraham (R-MI) stated as follows:

[An agreement [was] reached between the House and Senate negotiators to correct provisions in last year’s immigration law. . . . [IIRIRA] would have had the effect of changing the rules in the middle of the game for thousands of Central Americans and others who came to the United States because their lives had been torn apart by war and oppression and are seeking permanent residency. That violates the sense of fairness that is so much a part of American character.]48

NACARA allowed Cuban and Nicaraguan immigrants who had been in the United States since at least December 1, 1995, to apply for permanent residency.49 Orders of deportation and voluntary departure did not bar a Cuban or Nicaraguan immigrant from obtaining his or her green card, and their derivative spouses and unmarried children also had access to the same benefits.50

The provisions of NACARA Section 203; however, did not afford the same opportunities for Salvadoran and Guatemalan immigrants, thus demonstrating the continued linkage between U.S. foreign policy and immigration policy. The legislation “was a highly preferential law which gives virtually absolute amnesty to Cubans and
Nicaraguans, and offers only marginal protection to Guatemalans, El Salvadorians, and Eastern Europeans."51 A senior governmental official from El Salvador viewed the Act "as 'a liquidation of the accounts of the cold war.'"52 Immigrants from El Salvador and Guatemala had to meet far more stringent requirements than their Cuban and Nicaraguan counterparts, including:

1. Showing increased physical presence in the United States. Salvadoran applicants had to show presence in the U.S. on or before September 19, 1990, and Guatemalans needed to have entered the U.S. by October 1, 1990.53 The regulations also permitted those Guatemalans and Salvadorans who did not have TPS, but filed requests for asylum with the immigration agency on or before April 1, 1990, to apply.54 By contrast, Cuban and Nicaraguan applicants had to demonstrate physical presence in the U.S. since December 1, 1995;

2. Proving registration for ABC or TPS benefits. Applicants from El Salvador needed to demonstrate that they applied for Temporary Protected Status or registered as an ABC class member on or before October 31, 1991.55 Guatemalan applicants had to show that they registered for benefits through the American Baptist Churches settlement on or before December 31, 1991.56 The INS did not require Nicaraguan and Cuban immigrants to have register for any special programs or submitted any previous applications to the agency;

3. Demonstrating seven years of "continuous physical presence" and "good moral character" in the United States.57 Acceptable proof of good moral character included, but was not limited to: clean criminal records; membership to a faith-based organization; paying taxes for all seven years; letters from employers; and children's report cards or awards. Cuban and Nicaraguan applicants did not have to submit evidence of good moral character;58

4. Requiring dependent spouses and children to have longer physical presence in the United States. NACARA legislation allowed for dependents to adjust their status as the derivatives of the primary applicant. Salvadoran and Guatemalan spouses and unmarried children under the age of 21 had to prove that they had entered the U.S. by October 1, 1990.59 By contrast, Nicaraguan and Cuban dependents merely needed to show that they had entered the United States by December 1, 1995;60 and
5. Applying under the previous suspension of deportation regulations, rather than receiving a “free pass” to residency, as discussed previously, the suspension of deportation process was complicated and lengthy, although the requisite elements were more lenient than the requirements for cancellation of removal in IIRIRA. Nonetheless, NACARA bestowed prima facie eligibility to Nicaraguans and Cubans, allowing those immigrants who entered the U.S. prior to December 1, 1995, to obtain their green cards. Those immigrants were not burdened with the uncertainty of the application for suspension of deportation like their counterparts from El Salvador and Guatemala.

In his 2005 journal article, Eli Coffino provides further analysis on this topic:

Neither NACARA nor the Congressional Record explains why immigrants from El Salvador, Guatemala and Eastern Europe are treated differently than Cubans and Nicaraguans. Some feel the inequity is the result of partisan politics. Others claim Cuban and Nicaraguan immigrants are favored because they fled Communist governments opposed by the United States.

The immigration community expected NACARA legislation to resolve the status problems of those Salvadorans who had fled the ravages of El Salvador during the Civil War in the late 1980s-early 1990s for the United States without documentation. The provisions of NACARA; however, did not provide immigrants from El Salvador with a clear or easy path to residency. In sharp contrast with the provisions applicable to Nicaraguan and Cuban immigrants, NACARA mandated that Salvadoran immigrants establish lengthy physical presence in the U.S. and meet the requirements for suspension of deportation.

NACARA did not guarantee residency for those aliens from El Salvador, prompting outrage from immigration lawyers and activists. One scholar aptly described the inequities within NACARA as “The Midas Touch” for Cubans and Nicaraguans, and “The Minotaur” for Eastern European, Guatemalans and Salvadorans. Undocumented immigrants from El Salvador had waited years in the hopes that they would be able to
convert their former status as TPS/ABC registrants and asylum applicants to that of lawful permanent residents. Those Salvadoran and Guatemalans with pending asylum applications were eligible to apply for NACARA through their local INS Asylum Office (rather than wait for a court date before an Immigration Judge), but the suspension of deportation requirements remained an almost insurmountable obstacle to residency. The advocacy community needed to lobby once again to pressure the government to grant long-term benefits to Salvadoran immigrants.

**Amended NACARA Legislation**

"Central American advocates, Salvadoran and Guatemalan officials, the National Security Council, and the White House were pushing for interpretations that would minimize disparity" between the immigrant groups. Several hundred individuals and organizations commented on the proposed rule in an unprecedented show of force. On May 21, 1999, the Immigration and Naturalization Service issued regulations that resolved the main concerns of those who submitted comments in opposition to the original NACARA provisions.

The interim NACARA regulations "create[d] a rebuttable presumption of extreme hardship for those ABC class members who are eligible to apply for relief under section 203." The rebuttable presumption of extreme hardship significantly eased the burden for satisfying the elements for suspension of deportation, thereby facilitating the process of obtaining lawful permanent residency through NACARA. Under the revised provisions, Salvadoran and Guatemalan ABC class members had only to answer a series of yes or no questions on their NACARA applications regarding the hardships that would
be experienced if they were removed from the United States.\textsuperscript{71} No additional evidence needed to be attached to their applications, and the Asylum Officer was free to ask any follow-up questions during the adjudication interview.\textsuperscript{72} The INS instructed eligible Salvadorans and Guatemalan immigrants to submit their requests for NACARA benefits on “Form I-881: Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA)).”\textsuperscript{73}

In modifying the regulations, the Department of Justice reasoned “that the ABC class shares certain characteristics that give rise to a strong likelihood that an ABC class member or qualified relative would suffer extreme hardship if the class member were deported or removed.”\textsuperscript{74} The immigration community regarded the issuance of the 1999 interim rule as a major legislative accomplishment for those Salvadorans who had waited years to apply for their residency.

The length of time that the Salvadoran ABC class members had resided in the United States clearly played a significant role in amending the legislation. As INS Commissioner Doris Meissner detailed, “[T]he ABC class members' unique immigration history, deep roots in our society, and contributions to our communities mean that the overwhelming number of them are the people Congress meant to reach by providing relief under NACARA. The presumption of extreme hardship simplifies the process of achieving that goal.”\textsuperscript{75}

The interim rule failed to rectify the provisions’ dichotomy between the overall ease by which Nicaraguan and Cuban immigrants could obtain their green cards, and the difficult journey faced by their Salvadoran and Guatemalan counterparts. However, the
inclusion of a rebuttable presumption of extreme hardship lessened the burden on
NACARA applicants from El Salvador and Guatemala to some extent. In addition, the
amended regulations entrusted the INS with jurisdiction over a larger percentage of
NACARA applications.\textsuperscript{76}

The NACARA Section 203 provisions applicable to Salvadoran and Guatemalans
had one distinct advantage over the Section 202 regulations for Nicaraguans and Cubans.
The latter groups of immigrants had to submit their NACARA applications by April 1,
2000.\textsuperscript{77} Although Nicaraguan immigrants had few requirements to prove their eligibility
for NACARA benefits, only 2/3 of eligible Nicaraguans (50,000 out of 75,000) had filed
their NACARA applications by the April 1, 2000 deadline.\textsuperscript{78} By contrast, Salvadoran
and Guatemalan immigrants were not subjected to any statutory deadline for filing their
NACARA applications.\textsuperscript{79}

The amendments to NACARA Section 203 were not without their disadvantages,
though. The legislation allowed a majority of Salvadoran immigrants to submit their
applications directly to the Immigration and Naturalization Service, rather than face a
seemingly longer and more difficult hearing before an Immigration Judge. However, INS
instructed the local Asylum Offices tasked with adjudicating NACARA applications to
prioritize cases for potential asylees and refugees before NACARA cases.\textsuperscript{80} In 2001,
"agency officials estimate[d] that it w[ould] take 20 years to get through [the backlog of
NACARA applications]."\textsuperscript{81} Approximately 100,000 Salvadoran immigrants filed
NACARA applications by 2001, yet the Asylum Offices adjudicated only 6,000
NACARA cases annually.\textsuperscript{82}
The tragic events of September 11, 2001 dramatically changed immigration law and policy in the United States. The horrifying terrorist attacks revealed the U.S.' vulnerability and flaws within the immigration agency. Since then, there has been increased scrutiny of immigration policies and security measures, leading to the dissolution of the Immigration and Naturalization Service (INS) and the creation of the Department of Homeland Security and the United States Citizenship and Immigration Services (USCIS).

The reorganization of the immigration agency streamlined procedures, which in turn, expedited the processing of Salvadoran NACARA applications. The local asylum offices allocated more immigration officers to adjudicate NACARA claims at a time when fewer immigrants were filing NACARA applications. By 2005, “approximately two [NACARA] cases [we]re being completed for every one new case received.”

In 2005, USCIS made a concerted effort to work through the backlog of Salvadoran asylum claims and encourage those who were eligible to file for benefits under NACARA to submit their I-881 applications. (The fact that an overwhelming majority of Salvadoran asylum claims from the late 1980s and early 1990s had yet to be adjudicated by 2005 demonstrated the extent of the backlog that plagued the immigration agency.) USCIS mailed notices to those immigrants from El Salvador with pending asylum claims. These notices indicated that the immigrants needed to file their NACARA applications and/or apply for Temporary Protected Status as soon as possible.
The local asylum offices informed immigration attorneys and nonprofits that their clients would be interviewed based on their asylum claims approximately six months after they received those notices. In addition, USCIS advised the immigration community to submit skeletal NACARA applications for clients and supplement with all evidence to prove good moral character and extreme hardship at their NACARA interviews. DHS headquarters instructed the Asylum Offices to expedite the processing, interview and approval of NACARA applications, unless the applicant had played a role in the Salvadoran Civil War\textsuperscript{85} or had an extensive criminal record. If a Salvadoran immigrant not only failed to apply for NACARA or TPS benefits, but also was ineligible for those programs, then the local asylum office would hold an interview to adjudicate the original request for asylum. As previously discussed, the immigration agency would not approve a request based on persecution suffered during a Civil War that ended in 1992.

\textbf{The Demographic Profile of Salvadorean in the U.S.}

Immigration officials estimated that approximately 200,000 Salvadoran and Guatemalan immigrants were eligible to adjust their status through NACARA.\textsuperscript{86} From 1999 through 2008, the immigration agency approved 168,461 NACARA Section 203 applications.\textsuperscript{87} The favorable adjudication of Salvadoran NACARA applications and the designation of El Salvador for Temporary Protected Status in 2001 altered the demographic profile of Salvadoreans in the United States.

In a 2003 interview, the Salvadoran Ambassador to the United States, Rene A. Leon, spoke about the immigrant population from El Salvador in the U.S. In that
interview, he described the make-up of the Salvadoran community in the United States as follows:

Many of them are either Salvadoran Americans and in a position to enjoy both nationalities, while around 225,000 families qualify for U.S. residency under NACARA. Another 290,000 individuals are protected under TPS. Others have political asylum or are here on student visas. . . . Only 10 percent of the Salvadoran population here is undocumented. \textsuperscript{88}

The repeated renewal of El Salvador's Temporary Protected Status designation plays a critical role in maintaining those statistics. In addition, Salvadoran TPS holders benefit the economies in both their native country and the U.S. through their employment, taxes, spending and remittances. The Government of El Salvador asks the executive branch to extend TPS because El Salvador: 1) relies on the remittances from the United States; and 2) could not handle the repatriation of 229,000 people.\textsuperscript{89} El Salvador requests the continuation of the TPS designation, and that request is regularly granted because of the friendly relations between the U.S. and El Salvador and recognition of the economic realities.

**The Connection between Elections in El Salvador and U.S. Immigration Policy**

Government officials in the United States make domestic immigration policy decisions with regard for the foreign policy connections or ramifications. The relationship between international relations and immigration regulations served to the detriment of the Salvadoran immigrant community during the Salvadoran Civil War. The policies towards Salvadorans in the U.S. became less restrictionist under President Clinton. The lenient stance and friendly immigration programs continued with the Bush
Administration’s issuance and repeated extension of Temporary Protected Status to El Salvador.

In 2004, the Bush Administration claimed that relations with the United States would be negatively impacted if the people of El Salvador elected a member of the FMLN party as President.\textsuperscript{90} If the FMLN candidate, Schafik Handel, was elected, he vowed to remove Salvadoran troops from the War in Iraq and contest the Central American Free Trade Agreement (CAFTA).\textsuperscript{91} In an interview on March 13, 2004, Otto Reich, Special White House Assistant, stated, "We are concerned about the impact that an FMLN victory would have on the commercial, economic and migration-related relations that the United States has with El Salvador."\textsuperscript{92} The Bush Administration’s threats never materialized; however, since Elias Antonio Saca of the conservative National Republican Alliance party (ARENA) won the Salvadoran Presidential Election.\textsuperscript{93}

As the 2009 elections in El Salvador approached, the Obama Administration applied a different political strategy in its public comments regarding the close race between the FMLN and ARENA presidential candidates.\textsuperscript{94} Thomas A. Shannon, the U.S. Assistant Secretary of State for Western Hemisphere Affairs, announced that the United States’ government is “committed to free and fair elections in El Salvador. And we’ve also made it very clear that we will work with whomever the Salvadoran people elect.”\textsuperscript{95} Assistant Secretary Shannon issued that statement in spite of the fact that the FMLN’s candidate for President, moderate Mauricio Funes, had indicated that if elected, he would
strengthen ties with Venezuelan President Hugo Chavez and withdraw Salvadoran troops from Iraq.96

On March 15, 2009, the citizens of El Salvador elected Funes as their next president.97 The election marked both the first time in 20 years that a member of the ARENA party lost a bid for the Salvadoran presidency and the first time that the FMLN won a presidential election.98 "El Salvador join[ed] a growing number of Latin American countries that have elected leftist governments this decade. In part, the left’s success is a response to disappointment with the failure of free-market policies promoted by Washington in the 1990s to generate economic growth and reduce the region’s yawning inequality."99 In his victory speech, Funes declared his commitment to maintaining El Salvador’s solid relationship with the United States.100

In a press briefing following the Salvadoran Presidential Election, State Department Acting Senior Spokesman Robert Wood advocated a similar stance, affirming that the bond between the U.S. and El Salvador was not dependent on which party was in power.101 Wood also emphasized the connection between the two countries as a result of "the fact that there [are] more than two million Salvadorans in the United States."102

Hilary Rodham Clinton, Secretary of State in the Obama Administration, traveled to El Salvador for the inauguration of President Funes on May 31, 2009.103 During her visit to El Salvador, Secretary Clinton invited President Funes to Washington, D.C., on behalf of President Obama.104 She also advocated policies of mutual cooperation
between El Salvador and the United States in response to the global economic crisis, terrorism, crime and the disparity between the wealthy and the poor in Latin America. \footnote{105}

Only time will tell whether the U.S. and Salvadoran government officials follow through on their pledges to preserve bilateral cooperation. With the recent coup in Honduras, the United States needs political allies in Central America. In addition, the global economic crisis further emphasizes the importance of regional trade agreements and Latin American political and economic stability. Altering long-standing policies such as TPS would have the potential of straining Salvadoran-U.S. relations.

An essential component of the friendly relations between El Salvador and the U.S. involves immigration policy. More than 1/10 of the Salvadoran immigrants in the U.S. carry benefits through TPS, and those benefits allow them to send millions of dollars in remittances to their relatives back home. The current designation of TPS expires on September 9, 2010. The Obama Administration will be expected to announce in early 2010 whether or not Temporary Protected Status for El Salvador has been renewed. That decision will have significant political and economic ramifications for the U.S., El Salvador and Salvadorans in both countries.

**Conclusion**

Since 1991, U.S. immigration policies have directly benefited the Salvadoran community. The ABC settlement, the Temporary Protected Status program, the DED category, and the enactment of Section 203 of NACARA provided immigrants from El Salvador with work permits and protection against deportation at a minimum, and green
cards and a path toward citizenship at a maximum. Those benefits, in turn, have enabled Salvadorans in the U.S. to send vital funds to their relatives in El Salvador.

The economic and political equities of renewing the current Temporary Protected Status designation for El Salvador will be evaluated in the coming months. The Obama Administration will need to weigh the advantages and disadvantages of using a temporary immigration program for 10 straight years with El Salvador’s financial viability and political reaction if the designation is terminated.

In determining whether or not the Salvadoran TPS designation should be extended, one assumes that the executive branch will look at previous policy-making decisions with respect to the Salvadoran immigrant community. Approximately 229,000 immigrants from El Salvador had built lives in and made contributions to the United States. NACARA was created because it would have been unjust on political, economic and moral grounds to require those immigrants to leave the U.S. and return to El Salvador. Past legislation can serve as a guideline for a present solution for the approximately 229,000 Salvadoran Temporary Protected Status beneficiaries. Proposed regulations modeled after the amended Section 203 NACARA law would eliminate the use of temporary TPS benefits as a long-term program, thereby providing eligible Salvadoran immigrants who have resided in the United States for at least eight years with a path toward residency.¹⁰⁶
CHAPTER THREE
THE ECONOMIC RAMIFICATIONS OF EXTENDING SALVADORAN TPS

Immigration policy decisions have economic repercussions on a national and international scale. Immigration, economics and foreign policy are interconnected since according to the United Nations Development Program (UNDP), “a nation’s principal resource is its population.”¹ The movement of people or resources across nation-state boundaries impacts employment, social services and the economy in an immigrant’s country of birth, as well as the nation to which he or she emigrated. The economic issues surrounding large-scale migration also shape the foreign policy and political relationship between immigrants’ countries of origin and their destinations.

As economist George J. Borjas describes, “[e]conomics helps us frame answerable questions about immigration: Who gains by it? Who loses? And, in light of the answers to these questions, what should U.S. immigration policy be?”² These questions provide a useful guide in making a determination as to whether the Department of Homeland Security (DHS) should renew El Salvador’s Temporary Protected Status (TPS) designation.

The original designation of El Salvador for Temporary Protected Status in 2001 enabled Salvadoran economic migrants to reside in the United States temporarily with the government’s permission. Through the TPS program, these immigrants obtained employment authorization documents and had access to higher-paying jobs in the U.S. workforce. Salvadoran TPS registrants regularly send a portion of their income back home to their relatives in El Salvador, and that transaction is referred to as a
“remittance.” The World Bank Committee on Payment and Settlement Systems defines remittances as “a cross-border, person-to-person payment of relatively low value... typically by migrant workers to their families. Especially from developed to developing countries...”

Remittances sent from the U.S. to El Salvador fit within The World Bank’s description of the average remittance transaction. More than 20% of Salvadorans reside outside of El Salvador. A significant majority of these migrants left El Salvador in search of better economic opportunities in the United States. Upon finding employment, they earn money, a portion of which is then sent via cash, bank transfer or money order to their families in El Salvador.

The continued renewal of the designation of El Salvador for TPS allows Salvadoran immigrants to regularly receive valid work permits and find better jobs with greater ease. Steady and legal employment increases these immigrants’ ability to financially provide for their families in El Salvador. The decision regarding the future of Salvadoran TPS thus has a bearing on those Salvadoran immigrants in the United States who have been receiving benefits from the program, as well as their families in El Salvador.

On a macroeconomic scale, approximately 229,000 Salvadoran TPS beneficiaries remit money to their relatives in El Salvador every month, which has a profound impact on the Salvadoran national economy. Chapters One and Two addressed the foreign and domestic immigration policy implications of renewing the designation of Temporary Protected Status for El Salvador. This chapter will examine the state of the Salvadoran
economy and the extent of the country’s dependence on remittances. This section will also address the sources of aid that El Salvador receives from the United States and international monetary organizations. Finally, in exploring those topics, this chapter will evaluate the positive and negative economic ramifications surrounding the decision to renew El Salvador’s TPS designation.

**The Salvadoran National Economy**

Since the Salvadoran Civil War ended in 1992, the national government has focused on rebuilding the country politically and economically. El Salvador has embraced free market economic principles and demonstrated its concern for fiscal responsibility. Specifically, the country “has undertaken a series of structural [economic] reforms, including trade and capital account liberalization, financial liberalization, privatization and deregulation of public enterprises, pension reform, tax reforms, free trade agreements and dollarization.”

In the past 15 years, El Salvador has experienced solid economic growth and a substantial decrease in the number of families living below the poverty line: “from 66% in 1991 to 34.6% in 2007.” The national government has emphasized “boosting economic growth and reducing poverty ‘through greater integration with the global and regional economy.’” In 2001, El Salvador converted to using the U.S. dollar as the Salvadoran national currency in direct response to the amount of remittances sent from the United States to El Salvador.

El Salvador’s ratification of the Central American Free Trade Agreement (CAFTA) with the United States in 2006 also helped to bolster the Salvadoran economy.
economy.\textsuperscript{10} The provisions of CAFTA grant El Salvador “preferential access to U.S. markets.”\textsuperscript{11} The trade agreement has led to an increase in both U.S. investment in El Salvador and the competitiveness of Salvadoran agricultural producers in the export market.\textsuperscript{12} CAFTA has strengthened the trade relationship between the U.S. and El Salvador, as evidenced by the fact that the U.S. supplies El Salvador with 35.6% of its imports and takes 50.8% of its exports.\textsuperscript{13}

According to the most recent 2008 statistics, El Salvador has a population of 7.2 million people with a per capita income of $3,547.\textsuperscript{14} The country’s gross domestic product is $20.4 billion, and imports exceed exports by $4.7 billion.\textsuperscript{15} Although there have been economic developments in El Salvador since the signing of the peace agreement in 1992, the present state of the Salvadoran national economy is still precarious. A primary objective for the newly elected Salvadoran President, Mauricio Funes, is to bolster “the tiny country’s economy to withstand the buffeting of the global economic recession.”\textsuperscript{16} That goal, however, will be no small feat, given that approximately 1/3 of the Salvadoran population still lives in poverty and the country imports significantly more than it exports.\textsuperscript{17}

President Funes’ Administration aims to remedy the widening gaps between the country’s affluent and poor.\textsuperscript{18} According to Mark Weisbrot of the Center for Economic and Policy Research, “the share of income held by the top 10 percent of the population [of El Salvador] is more than 57 times higher than the share held by the bottom 10 percent.”\textsuperscript{19} One of President Funes’ advisers, Carlos Caceres, stated in an interview after the election that the Salvadoran government “has to play a role in redistributing the
country's wealth.\textsuperscript{20} The influx of money into El Salvador through remittances, aid and foreign direct investment is essential to that process.

**The Role of Remittances in El Salvador**

Research indicates that if the flow of remittances to Latin American countries ceased, those "economies would collapse in an estimated three months."\textsuperscript{21} Remittances thus serve a critical function in maintaining the economic stability in El Salvador. Approximately 2.5 million Salvadorans reside in the United States, and 57% of that group remits money to their families in El Salvador.\textsuperscript{22} In 2008, immigrants in the U.S. sent $3.8 billion in remittances to their relatives in El Salvador.\textsuperscript{23}

With almost a quarter of the population in El Salvador receiving remittances,\textsuperscript{24} these transactions comprise 18% of the Salvadoran gross domestic product (GDP).\textsuperscript{25} "El Salvador’s principal export is its people... [and its] principal import are remittances from Salvadorans in the U.S. ... Remittances to El Salvador represent 133% of all exports, 655% of foreign direct investment, and 91% of the... budget."\textsuperscript{26}

In 2006, two economists, Nolvia N. Saca and Luis Rene Caceres, produced a working paper for the International Monetary Fund (IMF) regarding remittances to El Salvador.\textsuperscript{27} In that paper, Caceres and Saca utilized empirical evidence to evaluate the advantages and disadvantages for El Salvador to rely so heavily on remittances.\textsuperscript{28} Specifically, the authors claim:

[Remittances] support a high level of private consumption, financing imports of consumption goods and risky loan provision of the banking system. Moreover, the social benefits of remittances are important in terms of reducing poverty rates and increasing education rates. However, the results presented in this paper suggest that remittance inflows also have
adverse macroeconomic effects in the short run, in the sense that such inflows lead to (1) an appreciation of the real exchange rate; (2) an increase in consumer prices, the interest rate, and imports; and (3) a decrease in economic activity, money supply, and international reserves.²⁹

Salvadorans in the U.S. send millions of dollars annually to their relatives back home. Although remittances have helped individual households in El Salvador in the short run, the Working Paper argues that money from immigrants in the United States to their Salvadoran relatives has not led to large-scale gains.³⁰ Caceres and Saca find a correlation between remittances, a rise in interest rates and a decrease in the growth of the Salvadoran economy.³¹ The economists opine that El Salvador’s dependence on remittances needs to be reconciled with the fact that these small, person-to-person transactions have not provided much benefit to domestic production and investment.³² In addition, they recommend that the government in El Salvador mandate the use of a portion of the remittances “to productive projects” that would improve the Salvadoran national economy.³³

The UNDP also recognizes that remittances to El Salvador have their economic advantages and disadvantages. In a 2005 report, the UNDP observes a positive connection between remittances and local development, “but [notes that] they cannot be the motor that drives either the national or local economy” of El Salvador.³⁴ Although remittances help Salvadoran families cover household expenses such as rent, food and utility bills, a majority of the funds received from relatives in the United States are used to purchase imports.³⁵ “All of this spending on imported goods and going to international companies translates into remittance money quickly leaving El Salvador, and not
circulating within the local economy.”36 That reality, in turn, augments: 1) pressure on Salvadorans in the United States to continue to send money home; 2) motivation to emigrate to the U.S.; and 3) poverty within El Salvador.37

An education specialist in El Salvador believes that “if it weren't for remittances, people would pick up arms again. In real terms people are worse off than they were before the war.” The minimum wage... has decreased in real terms over the last 10 years from $96.70 per month in 1997 to $93.36 in 2007.”38 In the hopes of decreasing poverty and El Salvador’s dependence for consumer spending on imports, the UNDP recommends that Salvadoran municipalities institute strategies for enhancing the local economies.39

Katharine Andrade-Eekhoff of the Migration Policy Institute provides a contrasting view to the UNDP report, arguing that “migration is El Salvador’s principal gateway to globalization... due not only to the volume of remittances but also to a myriad of other economic activities that have increased because of migration.”40 On a microeconomic level, remittances have been shown to decrease inequality, improve education rates, raise household incomes and establish a way to financially take care of the senior citizen population in El Salvador.41

Unfortunately, but not surprisingly, the global economic recession has limited the volume and benefits of remittances to El Salvador. The economic downturn impedes Salvadoran immigrants from finding and holding jobs in the United States. The rise in unemployment reduces how much money immigrants can forward to their families in El Salvador. The situation is further compounded by inflation and the stringent immigration
regulations and border control measures implemented in the United States after September 11, 2001.\textsuperscript{42}

"After years of double digit increases in remittances, the massive remittance growth has ceased" due to the economic downturn, tougher immigration policies and inflation.\textsuperscript{43} From 2006 to 2007, remittances from the United States to El Salvador grew by 6.5 percent.\textsuperscript{44} One year later, from 2007 to 2008, there was "a slowdown from the growth rate for remittances," with only a 2.5 percent increase.\textsuperscript{45}

**Aid and Investment from the U.S. and International Organizations to El Salvador**

Financial assistance from international organizations and aid from the United States contribute to El Salvador’s ability to stay solvent. An examination of the funds that El Salvador receives from the International Monetary Fund (IMF or Fund), the World Bank and the United States also underscore the importance of remittances as the primary source of money for the Salvadoran people.

"U.S. direct investment in El Salvador" in 2007 accounted for 6.8\% of the national GDP.\textsuperscript{46} By comparison, remittances comprise 18\% of El Salvador’s Gross Domestic Product (GDP).\textsuperscript{47} In monetary terms, Salvadoran immigrants in the U.S. send $3.8 billion to their relatives in El Salvador.\textsuperscript{48} Foreign direct investment or “[t]he purchase of factories, buildings and other [Salvadoran] assets”\textsuperscript{49} by U.S. corporations reached $1.4 billion in 2007.\textsuperscript{50} U.S. direct investment plays an important role in bolstering the Salvadoran economy, yet remittances bring El Salvador almost three times more money as direct investment.
The International Monetary Fund expressed concern that El Salvador’s economy would suffer because the economic downturn has limited trade with the United States.51 On January 16, 2009, the IMF “approved a 14 1/2 month... precautionary Stand-By Agreement for El Salvador to support the country’s economic strategy to cope with the adverse effects of the global financial crisis.”52 The arrangement allows for, but does not mandate, the issuance of $800 million upon the request of the Salvadoran government.53

The terms of the precautionary agreement will be enforced only if the global economic recession negatively impacts El Salvador. The Fund designed this agreement to help “strengthen the country’s financial defenses... and provide adequate liquidity.”54 If the global financial market becomes volatile and adversely affects El Salvador’s economy, money through the Agreement would be available to stabilize the country’s situation.55

IMF officials visited El Salvador in May 2009 to gauge the nation’s economic stability and whether the Salvadoran government would need to access the allotted funds through the Stand-By Agreement.56 The IMF Mission “found that El Salvador’s financial system has weathered well the aftershocks of the global financial crisis and the uncertainties surrounding the [Salvadoran presidential] elections, and [the country] remains liquid and well-capitalized.”57 The Fund also praised El Salvador’s recent economic reforms and conservative macroeconomic policies.58

The IMF Mission’s findings, however, were not all positive. The officials recognized that remittances from Salvadorans in the United States to their relatives in El Salvador have noticeably decreased.59 The combination of fewer remittances, lower
export earnings and a drop in financial transactions "has had a large effect on government revenue" in El Salvador.\textsuperscript{60} The IMF expressed its commitment to working with the Salvadoran government to continue to develop sound economic policies to weather the crisis.\textsuperscript{61}

On September 24, 2009, the Fund announced that El Salvador and the IMF had approved a new preliminary agreement for $800 million that will replace the previous Stand-By Agreement.\textsuperscript{62} The impetus for creating this "new economic program" was to develop a response to the effects of the international recession on the Salvadoran economy.\textsuperscript{63} The rise in inflation and drop in trade with the U.S. have had a profound impact on the Salvadoran economy. The unstable market is expected to lead to a 2.5% reduction in El Salvador's GDP in 2009.\textsuperscript{64} The recession also has limited the ability of Salvadoran immigrants to obtain and hold jobs in the United States. An increase in the number of unemployed migrants from El Salvador in the U.S. corresponds to a decrease in the amount of money remitted home to their Salvadoran relatives.\textsuperscript{65}

Pursuant to the terms of precautionary agreements with the International Monetary Fund, El Salvador will only receive funds through the agreement if the money is needed. In slight contrast with the motivation for signing the previous Stand-By Agreement, the intent of this preliminary agreement is "to safeguard fiscal and financial sustainability under the dollarization regime, catalyze resources from private investors and multilaterals, provide space for countercyclical measures aimed at buttressing domestic demand in 2009 and 2010, and support [development]."\textsuperscript{66} Salvadoran officials are committed to implementing social and economic reforms in the hopes of avoiding the
need to draw on funds through the Stand-By Agreement. To that end, the government has developed social services programs to improve education, healthcare, employment rates and infrastructure, and “redirect as much as 2 percent of GDP towards social spending.”

As an additional preventative measure, El Salvador secured loans from the Inter-American Development Bank (IDB) and the World Bank. The international financial organizations designed the loan agreement to protect El Salvador from any potential economic instability following the 2009 Salvadoran presidential election and the installation of a new administration. Government and bank officials anticipate that the increase in bank liquidity from the $950 million loan will have the potential to promote “investor and depositor confidence by reducing uncertainty about macroeconomic policies.”

El Salvador also receives financial assistance from the Millennium Challenge Corporation (MCC). MCC, a corporate arm to the U.S. government, invests in impoverished nations with a proven track record of “good governance, economic freedom and investments in people. MCC’s mission is to reduce global poverty through the promotion of sustainable economic growth.”

In 2006, El Salvador and the MCC signed a Compact, authorizing $461 million to be disbursed over a five-year period. The Compact aims “to improve the lives of Salvadorans through strategic investments in education, public services, agricultural production, rural business development, and transportation infrastructure.” Since
September 2007, the MCC has disbursed $31 million to El Salvador through the Compact and committed to issuing an additional $140 million.\textsuperscript{74} The $461 million in aid through the Compact will help establish projects in the Northern Zone of El Salvador that are expected to yield $530 million in benefits to the Salvadoran economy.\textsuperscript{75} “The largest of the Compact’s components, the transportation project, intends to physically unify El Salvador’s Northern Zone with the rest of the country, enabling new economic opportunities for rural households, lower transportation costs, and decreased travel times to markets.”\textsuperscript{76} The MCC hopes that the projects started through the Compact will translate into a decrease in El Salvador’s dependence on remittances from the United States.\textsuperscript{77} In addition, the corporation aims for the Compact’s projects to boost the incomes of Salvadorans in El Salvador so that they are comparable to the earnings of their family members in the United States.\textsuperscript{78}

The MCC operates separately from government agencies and private investment corporations in the United States. The Salvadoran government receives additional funds from those organizations, although their aid is minimal when compared to remittances, direct investment and development assistance from the IMF, World Bank and MCC. El Salvador received $2.1 million through the Overseas Private Investment Corporation in 2007 and $23 million from the U.S. Agency for International Development in 2008.\textsuperscript{79}

**The Correlation between Remittances and El Salvador’s TPS Designation**

“Remittances from Salvadorans have stepped in to fill the gap in meeting daily needs that neither the government, nor the international community have managed to fulfill in the post war reconstruction process.”\textsuperscript{80} The money sent from immigrants in the
United States to El Salvador is invested in a manner that supports critical community and economic development programs. As the United States government determines whether or not to renew the Salvadoran TPS designation, the repercussions of that decision on remittances cannot be ignored.

Approximately 229,000 Salvadorans temporarily reside in the United States with valid work permits through the TPS program. “Remitters come disproportionately from the working poor. . . . They remit on average. . . approximately 10% of their household income.” One-tenth of the income earned by 229,000 Salvadoran Temporary Protected Status registrants significantly contributes to the household incomes of El Salvador’s lower class and the national economy. A decrease in the amount of remittances sent from the United States to El Salvador “will have a ‘dramatic’ effect on poor households, because it will force them to ‘further limit their spending to basic items,’ especially food.” Lower-income families in El Salvador rely on money from the United States for their “financial stability.”

Failing to renew the Salvadoran TPS designation would negatively impact the economy in El Salvador in several ways:

1. Those immigrants from El Salvador who have held benefits through the TPS program would be required to depart the United States within six months. Remittances from that group of immigrants to their families in El Salvador would cease upon their return to their native country;

2. If the executive branch ends El Salvador’s TPS designation, those Salvadoran immigrants who illegally remain in the U.S. would no longer possess valid employment authorization documents. They would be forced to work in the underground economy for lower salaries, and thus, have less money to send back home to their relatives;
3. El Salvador is experiencing a sizeable economic downturn. Trade and U.S. direct investment have declined, and inflation is on the rise. Remittances are not growing at the typical rate, and it is expected that the Salvadoran national GDP will decrease by 2.5% in 2009. Remittances have served a critical function in keeping El Salvador solvent. Stopping the influx of money from TPS beneficiaries in the United States to their families El Salvador during a recession would thus jeopardize the country's economic stability; and

4. El Salvador is still in the process of rebuilding from the earthquakes of 2001. The country’s infrastructure and social services programs are ill equipped to handle the return of 229,000 of its citizens. If the TPS designation is not extended, El Salvador would lose much-needed remittances from the U.S., while having to handle the added burden of population growth on its national budget.

Renewing El Salvador’s Temporary Protected Status designation allows for the continued flow of remittances from immigrants in the U.S. to their families in El Salvador. That money is essential to the stability of the Salvadoran economy. If TPS is not renewed beyond September 9, 2010, the U.S. and Salvadoran governments need to ensure that there are economic safety nets in place to prevent the collapse of the Salvadoran economy. As the Obama Administration evaluates whether or not to extend the Salvadoran TPS program, answers to the following questions should be explored:

1. In 2008, El Salvador received $3.8 billion in remittances from 57% of the 2.5 million Salvadoran immigrants in the United States. There are approximately 229,000 TPS beneficiaries in the U.S. If 57% of that group sends the average of $200 a month back to their families in El Salvador (a conservative estimate), that total accounts for $273.6 million. Are there other means by which the Salvadoran economy can receive that influx of cash? Would additional aid from the MCC or USAID factor in the increased burden that 229,000 more Salvadorans residing in El Salvador would place on the tiny country's economy?

2. In a global economic recession, is the IMF able to deliver the funds on its Stand-By Agreement with El Salvador? If so, how quickly can those funds be issued?
3. How can growth and investment in El Salvador be encouraged in a way that strengthens the national economy? What infrastructure and financial institutions need to be in place to ensure the country’s solvency and decrease its reliance on remittances?

4. How would the U.S. economy fare with the loss of 229,000 immigrants (the majority of whom work in low-wage and low-skill jobs), their tax dollars and their consumer spending?

5. How can the United States, El Salvador and international financial institutions work together to guarantee that remittances are being utilized in the manner that will deliver the greatest impact on the Salvadoran national economy? Should remittances be taxed or monitored so that a portion goes directly to El Salvador first?

From an economic perspective, there are no winners and several losers if the United States decides not to renew El Salvador’s Temporary Protected Status designation. El Salvador is not equipped to handle the loss of remittances and the repatriation of approximately 229,000 of its citizens at a time of national and global economic instability. The tiny country is far from having the proper safety nets, financial institutions and infrastructure in place to support a substantial decrease in remittances and a sizeable population increase.

Salvadoran government officials regularly lobby the United States government to extend the TPS designation in large part because of the economic ramifications. El Salvador and the U.S. should continue to collaborate with international financial institutions on ways to strengthen the Salvadoran economy, while maintaining the status quo with respect to the Temporary Protected Status designation.
CHAPTER FOUR

THE MORAL RAMIFICATIONS OF EXTENDING SALVADORAN TPS

Politics and economics drive immigration policy-making in the United States. Government officials recognize the significant impact that immigration regulations have on domestic affairs, international relations, and market stability. Legislators emphasize the political and economic rationales for their proposals, yet that emphasis often overlooks the people who are helped or harmed by immigration policies.

Since immigration involves the movement of people across nation-state borders, the effect of regulations on migrants and migration cannot be ignored. On a broader scale, the U.S. is the sole superpower and has a long history of serving as a haven for refugees and immigrants. Ignoring the human component of foreign and immigration policy-making would thus be tantamount to disregarding the United States’ ethical obligation to aid lesser-developed countries and the world’s most vulnerable citizens. On a small, but no less profound scale, policies that provide or deny immigration benefits affect the immigrants themselves. Lenient immigration regulations enable individuals to reside in the U.S. legally, reunite with their families, and have access to a better future in a safe country. By contrast, restrictionist legislation has the potential to tear families apart, limit socioeconomic opportunities, and force immigrants to return to politically unstable, underdeveloped and/or violent homelands.

With respect to the Temporary Protected Status program, the continuation or termination of El Salvador’s designation directly affects the approximately 229,000 Salvadoran TPS registrants and indirectly affects their families in the U.S. and El
Salvador. There are moral ramifications surrounding whether or not to extend the Salvadoran TPS designation. In exploring these repercussions, four key questions ought to be addressed. First, in light of U.S. and foreign policy objectives and Salvadoran economic realities, is the continued renewal of the program justified? Second, if the program is not renewed, is it just or realistic to require approximately 229,000 Salvadoran immigrants to voluntarily return to El Salvador? Third, what message is the United States sending by extending Salvadoran Temporary Protected Status, while rejecting pleas for an extension from Sierra Leone and designations from Guatemala and Haiti? Finally, does the lack of a temporal nature of the Salvadoran designation glorify illegal immigration? This chapter will provide answers to those questions and serve as a reminder of the importance of human values in immigration policy-making.

Is the Continued Renewal of El Salvador’s TPS Designation Justified in light of Foreign Policy and Economic Factors?

In 2010, President Barack Obama’s Administration will decide whether or not to extend El Salvador’s Temporary Protected Status designation. Foreign and economic policy considerations also bring moral and humanitarian issues into play. It is thus worth evaluating whether the United States’ foreign policy objectives and the Salvadoran economic reality validate the renewal of the TPS program.

With respect to the international affairs between the two countries, the U.S. has had a complex political relationship with El Salvador. In the late 1900s, the United States regarded the right-wing Salvadoran government as a Cold War ally in Latin America. The United States supported the military during the Civil War in El Salvador in
the hopes of promoting democracy and eradicating Communism in the hemisphere. The U.S. supplied the national government with millions of dollars in aid, military training and arms. The close political ties between the United States and El Salvador continued after the cease-fire in 1992, and the U.S. has consistently provided El Salvador with development aid and foreign investment since then.

In 2009, both the United States and El Salvador inaugurated new presidents. U.S. President Obama has vowed to maintain close relations with Salvadoran President Mauricio Funes, in spite of the fact that Funes is a member of the leftist FMLN Party. Officials within the Obama Administration recognize that El Salvador is still an important ally in Latin America and the connections that the two countries share through immigration, the coup in Honduras, drug trafficking, and the global economic crisis.

Economically, remittances from Salvadoran immigrants in the U.S. to their relatives back home account for 18% of the Gross Domestic Product (GDP) of El Salvador.\(^1\) Remittances totaling $3.8 billion in 2007 represented El Salvador’s greatest import and were almost three times as much as foreign direct investment in the country.\(^2\) With a quarter of Salvadoran families receiving remittances to cover basic household expenses, El Salvador and its people could not survive without the money being sent by immigrants in the U.S. It is estimated that the Salvadoran economy would collapse within approximately three months without remittances.\(^3\)

Since the 2001 earthquakes, the country has focused on economic recovery and rebuilding. “Transportation, housing, education, and health sectors are still suffering from the 2001 earthquakes, the lingering effects of which limit El Salvador’s ability to
absorb a large number of potential returnees.⁴ Salvadoran presidents have repeatedly implored U.S. government officials to extend the country’s TPS designation because of that fact. The precarious state of the Salvadoran economy is further exacerbated by the global financial crisis, decreased trade with the United States, and a slower growth rate in remittances. To El Salvador’s credit, the country cut its poverty rate in half from 1991 to 2007, but one in every three Salvadorans still lives below the poverty line.⁵ If the U.S. fails to renew El Salvador’s TPS designation, that number is likely to rise. Furthermore, the job market and available infrastructure in El Salvador would be burdened by the rapid repatriation of 229,000 immigrants. That burden and the accompanying loss of remittances would place a huge strain on the Salvadoran national economy at a time of global economic instability.

Opponents of the Temporary Protected Status program argue that the United States is not being straightforward about the basis for extending El Salvador’s designation. “The reason they [the U.S. government] let them [Salvadoran TPS registrants] stay is not because there is an emergency back home or because they are a tremendous asset to the United States, but because they are a cash cow for the home country.”⁶ Although El Salvador received the initial designation in 2001 because of a natural disaster, the regulations allow for discretionary renewal if the designated country is unable to handle the return of its nationals. The Salvadoran government maintains that it is ill equipped to do that, primarily due to economic factors. That reason falls within the intent of the legislation, humanitarian policies, and the executive branch’s discretion.
Since international relations and economics drive immigration policy, the Obama Administration is expected to evaluate those factors and their moral implications in the coming months as it decides whether to renew El Salvador’s TPS designation. The United States still needs allies in Latin America, especially given the prevailing regional concerns: the rise of leftist and anti-U.S. leaders to power; the coup in Honduras; drug trafficking; terrorism; and illegal immigration. Only time will tell if relations between President Obama and President Funes remain solid in the midst of party politics. However, with the United States’ role as the sole global superpower waning, logic and foreign relations support maintaining the status quo with respect to its affairs with El Salvador and its TPS designation. The only possible alternative to that stance without a significant foreign policy backlash would be the creation of a new immigration program to protect Salvadoran TPS beneficiaries.

In sum, economically, the facts overwhelmingly favor the renewal of El Salvador’s Temporary Protected Status designation. Policy experts predict that the Salvadoran economy would collapse within three months if remittances cease, and TPS registrants contribute a considerable amount of money to El Salvador’s GDP. The lack of remittances combined with the sudden repatriation of 229,000 Salvadoran migrants would worsen the collapse of the national economy of El Salvador. A severe economic downturn in the midst of a global recession without the necessary infrastructure would also lead to an increase in the number of Salvadorans living below the poverty line. If the United States terminates El Salvador’s TPS designation next year, the U.S. needs to be prepared to either: 1) assist the Salvadoran government with aid and the creation of the
appropriate economic and social safety nets; or 2) propose an alternative option for those immigrants who have held TPS benefits since 2001.

**Is It Just or Realistic to Require Salvadoran Immigrants to Voluntarily Return to El Salvador after Nine Years of Protection through the TPS Program?**

Immigration policymaking requires a determination of what is in the best interest of: 1) the United States; 2) the immigrants; and 3) the immigrants' country of origin. That evaluation does not; however, guarantee that the U.S. government will weigh all interests and factors equally. With respect to renewing El Salvador's Temporary Protected Status designation, it is imperative that the Obama Administration considers whether it is just or realistic to expect 229,000 Salvadoran immigrants to depart the U.S. if the program ends.

Temporary Protected Status is by its nature a temporary program. The U.S. government designates a country for TPS for a discrete period of time until the conditions in that nation improve. Temporary Protected Status provides immigrants from a designated country with permission to remain in the United States and obtain an employment authorization document during a given time period. The legislative intent in establishing TPS was to offer protection and benefits to immigrants for a brief time period without granting permanent residency. The expectation that motivated the drafting of the regulations was that the period of protection would cease when the designated countries were able to handle the return of their nationals from the U.S.

When the executive branch declares a country for Temporary Protected Status, the country and its citizens residing in the U.S. know that the designation and accompanying
benefits will be issued for a set time. TPS is a privilege, and not a right, and has only been utilized sparingly for that reason. Countries receiving designations from the United States government prepare for the return of their citizens from the U.S. at the end of the program. Immigrants who register for Temporary Protected Status submit their I-821 forms with the understanding that the program provides benefits of a temporary nature, and that they will be issued a work permit, rather than a green card. The employment authorization documents for TPS recipients allow them to work legally in the U.S. for 12 to 18 months. If the designation is extended, immigrants are able to renew their work permits and their TPS registration.

From a legal perspective, legislators designed TPS to assist during temporary crises, and all involved parties recognize the limited nature of the program. Since receiving a designation and obtaining benefits through Temporary Protected Status is never guaranteed, the termination of the program for a specific country and immigrant group cannot be regarded as unjust. Assuming that the end of the designation corresponds with the end of the crisis or disaster recovery in that country, it is not unreasonable to expect immigrants from that country to voluntarily depart the U.S. and return home. Furthermore, TPS registrants receive work permits and permission to reside in the United States during the time period of the program. The expiration dates on their employment authorization documents and driver’s licenses (which are issued to correspond with the dates on their work permits) serve as regular reminders that their time in the United States is temporary.
The legal argument for supporting the intent and implementation of the temporariness of the TPS legislation is valid. However, those factors overlook the reality a Salvadoran immigrant with Temporary Protected Status experiences. In order to qualify as TPS beneficiaries, Salvadoran immigrants had to have resided in the U.S. since February 13, 2001. El Salvador’s current TPS designation is valid through September 9, 2010. If the Obama Administration does not extend the status, 229,000 Salvadoran immigrants will have six months to depart the United States. Is that just or realistic when one considers that these immigrants have resided in the U.S. for a minimum of nine and a maximum of 20 years?

During their time in the United States, Salvadoran TPS beneficiaries have contributed to the U.S. economy through their employment and spending. In addition, these immigrants have formed lives in the United States as they have: started businesses; purchased homes; gotten married; obtained jobs; paid taxes; and gave birth to U.S. citizen children. In analyzing whether Salvadoran TPS should be renewed for moral reasons, the issue of family unity is pivotal. If 229,000 immigrants return to El Salvador, what happens to their relatives in the United States? One of the goals of the United States Citizenship and Immigration Services is family unification. However, that objective would not be satisfied if immediate relatives were separated from each other through the termination of El Salvador’s TPS designation.

In addition, the regulations indicate that immigrants with Temporary Protected Status are responsible for their own departure at the conclusion of the designation. It is unlikely that a Salvadoran who left El Salvador in search of opportunity would then
return back home to poverty with or without their U.S. citizen relatives. Prior to receiving TPS benefits, these immigrants did not have a problem entering the United States illegally or remaining in the U.S. without permission after their visas expired. Logic would dictate that the same group of immigrants would not find it morally reprehensible to stay in the United States without government permission if the U.S. chooses not to renew El Salvador’s TPS designation.

As discussed in Chapter Three, Salvadoran TPS registrants left El Salvador and entered the United States as economic migrants. If the U.S. government terminates the Salvadoran TPS designation, those immigrants who had been receiving benefits through the program would be required to leave their homes and loved ones in the United States and pay for all expenses associated with their return to El Salvador. Expecting these immigrants to depart the United States at their own cost and of their own volition when their lives, jobs and families are in the U.S. is unrealistic. USCIS either needs to implement procedures to effectuate the departure of immigrants who formerly held benefits through TPS or ignore the obvious consequence that the majority of immigrants will continue to reside in the United States upon the conclusion of the designation.

Based on the letter of the law alone, it is reasonable to expect that the terms of the TPS program will be enforced. Salvadoran immigrants with TPS knew that El Salvador’s designation and the benefits that accompanied the designation were temporary and should adhere to the established protocols when the program expires. However, an analysis of how these immigrants ended up in the U.S. illegally, the length of time that they have spent in the U.S., and the factors favoring their continued residence in the U.S. reveals
that it is unrealistic at a minimum and unjust at a maximum to assume that 229,000 immigrants will voluntarily return home.

**Does TPS Glorify Illegal Immigration?**

The immigration system in the U.S. is clearly flawed, and there is a need to address the problem of illegal immigration. The conservative, restrictionist approach to the issue maintains that all those immigrants who are residing in the U.S. illegally are criminals and should be deported. That view; however, is simplistic and ignores: 1) the economic benefits that immigrants in the United States provide; 2) the exorbitant cost of sending approximately 12 million undocumented immigrants back to their home countries; and 3) the fact that being in the U.S. without legal status is an administrative law violation, rather than a criminal defense.

The issue of Temporary Protected Status often gets lost within the larger debate on illegal immigration. However, there is a consensus among anti-immigrant nonprofit organizations and policy institutes that TPS glorifies or encourages illegal immigration. It is thus worth exploring those viewpoints before providing the opposing stance and proposing recommendations to improve the Temporary Protected Status program.

Proponents in favor of deporting all illegal immigrants express concern when the U.S. government issues any benefits to people who have entered the United States without inspection and have resided here illegally. In 1999, Dan Stein, Executive Director of the Federation for American Immigration Reform, testified before Congress that, “laws should not reward illegal immigrants to the United States regardless of the
political or natural upheavals in their homeland. . . [E]xperience shows that we will encourage further illegal immigration.\textsuperscript{9}

People in Central America receive news from the media or their relatives in the U.S. regarding TPS designations and potential amnesty programs. That news instills a sense of optimism in the minds and hearts of citizens from El Salvador, Honduras and neighboring countries that they, too, could successfully cross the border between Mexico and the United States and take advantage of current immigration legislation. "Temporary protection, whether institutionalized or ad hoc, is not merely a tool of foreign policy or a stratagem to avoid deporting politically popular illegal aliens. In recent months it has become clear that the prospect of receiving TPS is also a magnet for new illegal immigration."\textsuperscript{10}

Opponents to the use of Temporary Protected Status also condemn the use of a temporary immigration program for benefits that are far from temporary. "[W]hat we [the United States] offer as 'temporary' protection is most often seen by the aliens residing illegally in the United States as a foot in the door to legal permanent residence."\textsuperscript{11} History supports that perception since interim statuses such as EVD, DED and TPS have for the majority of immigrants led to permanent residency.\textsuperscript{12} Mark Krikorian of the Center for Immigration Studies contends that "[w]hatever the theoretical benefits of temporary protection, it is clear that in the real world there is nothing as permanent as a temporary refugee."\textsuperscript{13}

With respect to Salvadoran and Honduran Temporary Protected Status registrants, restrictionist groups believe that immigrants from El Salvador and Honduras expect to
hold a valid immigration status indefinitely. The Americans for Legal Immigration Political Action Committee describes TPS as a “virtual entitlement[] because [the designations] are routinely renewed every 18 months.” The fact that the U.S. government has extended Salvadoran and Honduran TPS regularly since 2001 supports that belief. The Federation for American Immigration Reform concurs, claiming that immigrants with Temporary Protected Status will not return home if the program ends. Restrictionists like Krikorian opine that if the TPS designation is not extended, the U.S. government will allow Salvadoran immigrants to “become permanent residents through some other means or until Congress passes legislation legalizing their status. Few, if any, will ever depart voluntarily or be removed.”

Pro and anti-immigration advocates agree that Temporary Protected Status for El Salvador and Honduras has been implemented in a manner that is far from temporary. However, there is a difference between acknowledging the flaws within the TPS program and finding a correlation between Temporary Protected Status and an increase in illegal immigration. First of all, there is no guarantee that a country in the midst of war, civil unrest or a natural disaster will receive a TPS designation. The U.S. grants Temporary Protected Status benefits on a discretionary and country-by-country basis.

Second, a Temporary Protected Status registrant submits the initial I-1821 application without any assurances that the program will be extended beyond the original time period specified by the regulations. The U.S. government has not exhibited a clear pattern regarding which countries obtain designations and extensions. International affairs, hemispheric unity, and economic realities play a role, but it is illogical to assume
that a person migrates to the United States for the sole purpose of possibly receiving TPS benefits at some point in the future. Moreover, the executive branch designates a particular country for Temporary Protected Status and does not protect illegal immigrants from that country who enter the U.S. after the issuance of the designation. The designation date corresponds with the date that the armed conflict began or the natural disaster occurred, and thus, immigrants who flee their homeland after the precipitating event has happened are statutorily ineligible to receive benefits through the program.

Third, since September 11, 2001, the immigration agency has mobilized efforts to crack down on illegal immigration. The journey across the border between Mexico and the United States has always been an arduous one, but the security measures implemented since the terrorist attacks have compounded the difficulties for migrants attempting to cross the border and reside in the U.S. illegally. Rising anti-immigrant sentiment and unemployment rates also create an environment that is neither welcoming nor prosperous for unskilled and illiterate illegal immigrants. Despite the risk of deportation, migrants continue to enter the United States without inspection, but it is doubtful that they cross the border in hopes of acquiring TPS benefits or permanent residence. Rather, an overwhelming majority of undocumented immigrants from Latin America come to the U.S. in search of economic opportunity.

There are no statistics to support the notion that Temporary Protected Status glorifies illegal immigration. Nonetheless, a temporary immigration program that the government is able to renew indefinitely is inherently flawed. The U.S. granted El Salvador TPS in 2001, and the status has been repeatedly renewed since then. If the
government terminates the designation in 2010, there is no guarantee that Salvadorans will depart the United States in accordance with the regulations. Temporary Protected Status legislation as applied to El Salvador thus encourages misperceptions about the program’s intent, use and beneficiaries. TPS regulations need to be amended, and a new option for the Salvadoran community introduced to ensure that temporary immigration benefits are granted objectively and for a limited time period.

**What Message Is the U.S. Sending by Extending Salvadoran TPS and Rejecting Requests for Grants for Haiti and Guatemala and a Renewal for Sierra Leone?**

The United States government has renewed El Salvador’s Temporary Protected Status designation since the initial registration period expired on September 9, 2002. These extensions occurred despite the extensive concerns regarding the immigration system that arose after the terrorist attacks on September 11, 2001, and the subsequent creation of the Department of Homeland Security. Other countries, however, have not been as fortunate in obtaining designations or renewals. Advocates on behalf of Haitians and Guatemalans repeatedly lobbied for TPS declarations in the 2000s, and Sierra Leone was denied an extension for its designation in 2004. TPS regulations allow the U.S. government to have broad discretion in issuing or denying protection through the program. Nevertheless, when Temporary Protected Status designations, renewals and denials are made subjectively, the United States appears more politically and economically motivated than morally motivated in its decisions. The cases of Haiti, Guatemala and Sierra Leone reinforce that assessment.
Haiti

Congress created the Temporary Protected Status program to assist countries in the midst of war, armed conflict and natural disasters. Since the TPS regulations passed in 1990, Haiti has regularly experienced brutal civil unrest and devastating natural disasters. On January 12, 2010, a 7.0 “earthquake, the worst in the region in more than 200 years,” struck Haiti, causing massive casualties and large-scale destruction.\(^\text{17}\) Three days later, DHS designated Haiti for Temporary Protected Status.\(^\text{18}\) That grant marked the first time that Haiti received TPS since the inception of the program, although conditions in Haiti, most recently in 2008, warranted designations. The Haitian experience in 2008-2009, as contrasted with the Salvadoran experience, thus provides the clearest example of how discretionary and political the TPS program has been.

In 2009, the United States Department of State included Haiti on its Current Travel Warning lists because of “long-term, protracted conditions that ma[de it] dangerous or unstable.”\(^\text{19}\) Specifically, the State Department cautioned against travel to Haiti because of “the potential for politically-motivated violence…and the absence of an effective police force in many areas.”\(^\text{20}\) In addition, the warning described the likelihood that severe hurricanes and tropical storms will hit Haiti during the six-month rainy season.\(^\text{21}\) The State Department indicated as follows:

The lack of infrastructure and rescue services, combined with impassable roads and bridges, severely hindered rescue and relief efforts. During the 2008 hurricane season, four tropical storms struck Haiti, causing torrential rains, extensive flooding and mudslides, and hundreds of reported casualties.\(^\text{22}\)
The Department of State’s warning seemed incongruous with the objectives of the Temporary Protected Status program. In 2008 alone, Haiti faced four natural disasters, massive food shortages and political upheaval.23 “The rising cost of living [] caused great hardship and triggered a social and political crisis, as violent protests erupted and the Senate voted out Prime Minister Jacques-Edouard Alexis and his Government.”24 The regulations specifically allow for grants of TPS to countries experiencing violence and civil unrest, and yet, the U.S. government failed to designate Haiti for the program.

In August to September 2008, tropical storms and hurricanes ravaged Haiti in what was believed to be the worst storm season for the country in 100 years.25 Flooding from the storms caused $1 billion in damage and left one million Haitians homeless.26 At that time, remittances from Haitian immigrants in the United States totaled more than $1.8 billion annually and represented 35% of the country’s Gross Domestic Product.27 The flow of money from immigrants in the U.S. to their families in Haiti thus played a critical part in assisting with Haiti’s recovery. “Deporting Haitians, and thereby diminishing millions of dollars in what [wa]s essentially foreign aid, would [have] devastate[d] a country that c[ould] ill afford to take more economic hits.”28

Following the crises, the Haitian Prime Minister Rene Preval and Haitian immigrant advocacy organizations lobbied the U.S. government to designate Haiti for Temporary Protected Status.29 In response to those requests, the Department of Homeland Security placed a stay on 30,000 Haitian deportations in September 2008, pending a determination as to whether Haiti would receive a designation.30 Three months later, on December 19, 2008, then DHS Secretary Michael Chertoff sent a letter to Prime
Minister Preval, stating that Haiti did not warrant a TPS designation. 31 In the letter, Chertoff did not offer a reason why the U.S. government was not issuing Temporary Protected Status to Haiti. 32 DHS also resumed deportations of Haitian nationals that same month. 33

The United Nations asked the international community to assist with Haiti’s reconstruction through $106 million in aid, yet as of April 2009, member states have only donated one-third of that amount. 34 “[Haiti’s] recovery [has been] mired in a lack of leadership, infighting by political and relief organizations and profiteering.” 35 That reality when combined with the small amount of international assistance that Haiti has received since the storms reinforced the country’s dependency on remittances. A TPS designation for Haiti in 2008 or 2009 would have ensured the national economy obtained much-needed funds from immigrants in the U.S.

The U.N. retained former U.S. President Bill Clinton in 2008 for a yearlong assignment as a special envoy to Haiti to help the country “rebuild [after the brutal storm season] and attract investments.” 36 At the 13th Annual Americas Conference in September 2009, Bill Clinton indicated that both he and Secretary of State Hillary Clinton support the designation of Haiti for Temporary Protected Status. 37 In addition, he stated that “the decision on whether to prevent the wholesale deportation of an estimated 30,000 Haitians ultimately was ‘a decision for the Secretary of Homeland Security.’” 38

In 2008 and 2009, nonprofit organizations and advocacy groups also expressed their hope that DHS Secretary Janet Napolitano would issue a TPS designation for Haiti, yet statements from the immigration agency revealed that DHS was staunchly opposed to
Secretary Napolitano’s spokesperson, Steve Smith, indicated in March 2009 that “[t]here is no change in our [DHS] policy on temporary protected status, and deportations to Haiti are continuing. And let me be clear: No one living in Haiti right now should be attempting to come to the United States in hopes that they will be granted TPS.”

In 2008, the Haitian parliament ousted the Prime Minister and his administration, sparking politically motivated violence. Shortly after the installation of a new, but still unstable, government, four storms wrought havoc of catastrophic proportions on the country and its citizens. In 2008 and 2009, Haiti clearly met the requirements for a Temporary Protected Status designation in accordance with the regulations since:

1. The civil unrest jeopardized the safety of its people and visitors (enough to warrant mention in the State Department’s Travel Advisory Warning for Haiti);

2. The natural disasters rendered a considerable portion of the population homeless and destroyed buildings, homes and roads;

3. As the government attempted to bring order to Haiti and lead the rebuilding efforts, the repatriation of Haitian immigrants from the U.S. would have placed an enormous burden on the national economy and translated into a significant loss of remittances; and

4. The Preval Administration specifically asked the U.S. immigration agency to issue Haiti a TPS designation.

The fact that the United States chose not to designate Haiti for Temporary Protected Status brings the intent of the program into question. El Salvador received a designation for two natural disasters and repeated extensions due to the importance of remittances to its national economy. In 2008, Haiti suffered four debilitating natural disasters and political tensions so extreme that the government in power was voted out by

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the legislature. Much like El Salvador, Haiti also relies heavily on remittances from the U.S. Although DHS is more restrictive now than the DOJ was when El Salvador’s initial designation was granted in 2001, the argument that Haiti did not receive TPS in 2008 or 2009 because of current immigration policy is implausible.

The United States government did not grant Haiti Temporary Protected Status from 2008-2009, despite multiple opportunities to do so for country conditions that satisfied the statutory requirements. There is speculation that Haiti did not receive a designation during that period because of racial or socioeconomic bias, although the United States government never provided a clear reason for failing to grant TPS to Haiti. From a moral perspective, there was no clear reason, as Haiti merited a Temporary Protected Status designation more so than any other country in the Western Hemisphere.

Guatemala

The case of Guatemala also provides insight into the subjective and politically motivated nature of the TPS program. In late 2005 and 2006, the Guatemalan government repeatedly implored then President George W. Bush’s Administration to issue a TPS designation. Guatemala met the elements for TPS eligibility due to a natural disaster. From October 4-9, 2005, Hurricane Stan devastated the tiny country with torrential rain, flooding and mudslides. Hurricane Stan and its aftermath caused more than 1000 deaths, left 280,000 people homeless, destroyed 35,000 homes, and created economic losses nearing $100 million.

In 2005, Guatemala’s population was 12.5 million, and 57% of that group lived in poverty. Guatemalan households relied heavily on remittances from the U.S. for their
basic needs. At the time of the hurricane, approximately 500,000 Guatemalan nationals resided in the United States, and two-thirds of that group was undocumented.\textsuperscript{45} The Guatemalan immigrant community remitted $2.9 billion dollars to their relatives back home in 2005.\textsuperscript{46} That amount comprised 9\% of Guatemala’s Gross Domestic Product.\textsuperscript{47}

As Guatemala attempted to rebuild the roads, homes and villages that were destroyed by Hurricane Stan, the national government recognized that it was unable to handle the return of 320,000 illegal immigrants. In addition, the country’s economic survival in this critical time of reconstruction was dependent on continued remittances from immigrants in the U.S. Accordingly, “[Guatemalan] President [Oscar] Berger . . . asked the U.S. government to grant Temporary Protected Status (TPS) to undocumented Guatemalan immigrants due to the devastation caused by the storm.”\textsuperscript{48}

Congress enacted TPS legislation for the purpose of assisting countries during political upheaval and after natural disasters. The destruction Hurricane Stan caused in Guatemala clearly satisfied the requirements for a designation. The Guatemalan government and immigration advocacy groups repeatedly lobbied for Guatemala to receive the same designation that Honduras and El Salvador were issued in response to natural disasters of similar proportions in 1998 and 2001 (respectively). However, the United States government never designated Guatemala for Temporary Protected Status.

Speculation arose that “the Guatemalan request, combined with the fact that TPS has been renewed five times for [Salvadorans and Hondurans]. . . prompted a debate over whether TPS has turned into a guest worker program.”\textsuperscript{49} Undersecretary of State for Public Diplomacy Karen Hughes confirmed that assumption when she toured Guatemala
after the hurricane.\textsuperscript{50} In response to a question regarding whether TPS would be granted, she replied that the United States would offer development aid, but was unable to designate Guatemala for the program after “having invested so much money in fortifying our borders.”\textsuperscript{51}

Although the U.S. government failed to designate Guatemala for Temporary Protected Status, the relevant factors supported the issuance of a designation in 2005. From a legal perspective, the devastation wrought by Hurricane Stan on Guatemala fits within the intent behind and the scope of TPS provisions. Economically, Guatemala sustained more than $100 million in damages from the hurricane and heavily depended on remittances from immigrants in the U.S. to remain solvent, rebuild from the damages, and help its citizens pay for food and accommodations. Morally, the United States was in a position to assist Guatemala and its people during a time of crisis. And, yet, the U.S. failed to designate Guatemala for TPS.

The United States applied different (and possible politically motivated) logic to justify the TPS designations issued to El Salvador and Honduras. The effects of Hurricane Stan on Guatemala impacted that country in a similarly devastating manner as the natural disasters that enabled Honduras and El Salvador to obtain TPS. Hughes’ comment that the U.S. would not grant Guatemalan TPS because the U.S. government had spent so much to strengthen its border only added insult to injury. Border security and the Temporary Protected Status program are not closely related issues within immigration law and policy. Unauthorized immigrants who were not residing in the United States as of the first day that Hurricane Stan hit the shores of Guatemala would
not have been eligible to receive any benefits through TPS. In addition, if Guatemala obtained a designation, Guatemalan immigrants in the U.S. would continue to contribute an average of 90% of their income to the United States economy through taxes and spending. The U.S. government does not incur any additional costs when it designates a country for TPS.

It is highly unlikely that Secretary Hughes traveled to Guatemala after the hurricane without being briefed on the TPS issue. However, her claim that Guatemala would not receive a TPS designation because the United States had been focusing its efforts on tightening the borders is illogical. The government issues TPS designations in a manner that does not allow immigrants who enter the U.S. after the designation date to register for the program and accompanying benefits. The Bush Administration erred by not designating Guatemala for Temporary Protected Status in 2005. The U.S. government also reinforced the notion that the TPS program is applied unevenly by renewing El Salvador’s and Honduras’ grants for natural disasters at the same time that it failed to designate Guatemala for TPS.

Sierra Leone

Sierra Leone offers another solid example of how there is little uniformity in the U.S. government’s application of TPS legislation. In 1991, Civil War erupted in Sierra Leone between the national government and the insurgent Revolutionary United Front over “government corruption and mismanagement of diamond resources.” The Civil War brought a decade of atrocities and devastation to the country and its people. By the time a permanent cease-fire agreement was reached in May 2001, approximately
75,000 Sierra Leoneans had been killed and 100,000 mutilated. Almost two million more citizens from Sierra Leone, half of the country’s total population, ended up in refugee camps in Liberia and Guinea or internally-displaced within their own country.

The United States government designated Sierra Leone for Temporary Protected Status on November 4, 1997. The Attorney General and Department of Homeland Security regularly granted extensions to the designation because of continued violence, and the inability of the refugees, internally displaced persons (IDPs) and TPS registrants to safely return home. After five renewals; however, the United States government determine that it would let Sierra Leone’s TPS program lapse on November 2, 2003. Temporary Protected Status regulations allow the government to provide TPS registrants with six months to effectuate their departure from the U.S. With respect to the termination of Sierra Leone’s status, DHS allowed TPS registrants to remain in the U.S. with protection from deportation and a work permit through May 3, 2004. Sierra Leonean TPS beneficiaries either had to depart the United States voluntarily by May 3, 2004, in accordance with the regulations, or remain in the U.S. out of status.

The Department of Homeland Security “determined that termination of the TPS designation of Sierra Leone is warranted because there is no longer an ongoing armed conflict within Sierra Leone that would pose a serious threat to the personal safety of returning nationals.” In further support of ending Sierra Leone’s TPS designation, DHS cited: 1) the reduction of human rights abuses in the country; 2) the return of 40,000 refugees to Sierra Leone; and 3) the United Nations High Commissioner for Refugees’ statement that refugees from Sierra Leone could now return home safely.
After the termination of Sierra Leone’s Temporary Protected Status designation, the U.S. State Department and USAID released information, indicating that the post-war rebuilding of Sierra Leone was far from finished. When a significant percentage of the Sierra Leonean refugees and IDPs returned to their villages in 2005, they found their communities had been completely destroyed in the war, and a cholera epidemic flourished. USAID sent a mission to Sierra Leone to work with community leaders on improving education, roads, medical care, water supply and sewage disposal. USAID projects from 2005-2008 proved critical in addressing the villages’ needs and in bettering the lives of the Sierra Leonean people.

According to the 2009 U.S. State Department travel advisory for Sierra Leone, “[the] developing country in western Africa [is] still recovering from a ten-year civil war that ended [with full disarmament] in 2002.” The State Department issued that advisory more than five years after the U.S. government ordered Sierra Leonean TPS registrants to voluntarily depart from the United States. Although the armed conflict in Sierra Leone had ended, the country’s ability to effectively handle the repatriation of its people in 2004 was limited at best. Nonetheless, the U.S. government ended Sierra Leone’s TPS designation. After six years of protection through the program, Sierra Leonean immigrants had six months to resolve their affairs in the U.S. and return to Sierra Leone. Their repatriation occurred less than two years after the armed conflict in Sierra Leone had stopped, but clearly before the country had undergone the necessary reconstruction after a brutal, decade-long war.
The United Nations and U.S. State Department data indicate that Sierra Leone has an extremely high poverty index, a low rate of human development and an average life expectancy of 41.24 years. Temporary Protected Status regulations provide the executive branch with discretion over what occurrences merit a TPS designation or extension. From a moral perspective, the devastating effects of the Civil War in Sierra Leone continue to the present day. Ending Sierra Leone’s TPS designation and mandating the voluntary departure of Sierra Leonean TPS registrants on March 3, 2004, contradicts the intent behind the program’s legislation. Ethically, a favorable exercise of discretion to extend the designation or develop an alternative immigration status for Sierra Leoneans in the United States was warranted. The failure to do so – at a time when El Salvador continued to receive extensions – reflects that the United States government does not weigh the moral ramifications of a TPS designation or extension as heavily as the political and economic repercussions.

Conclusion

This chapter explored the political and economic justifications for renewing El Salvador’s Temporary Protected Status designation. El Salvador is simply not equipped to handle the repatriation of 229,000 of its citizens, the burden that group would place on the national economy, and the accompanying loss of remittances. The continuation of the Salvadoran TPS designation or the creation of a new immigration program for that group of immigrants does not encourage more illegal immigration. Any immigrant who entered the United States after 2001 would be statutorily ineligible for benefits. There is thus no correlation between granting or renewing TPS and increased entries without inspection.
Although the case of El Salvador merits repeated renewals or a permanent solution, there are numerous examples of how the United States government does not issue designations in an objective manner. The fact that Guatemala and Haiti did not receive TPS in the 2000s and that Sierra Leone was not granted an extension of its designation in 2003 reflects the faults of the Temporary Protected Status program.

The U.S. has a long-standing history as a haven for refugees, asylees and economic migrants. The Temporary Protected Status program, while flawed, provides the government with an option to bestow status and benefits on immigrants from countries in crisis. Forcing the departure of these immigrants to countries that are not able to handle their return further limits the ability of these countries to rebuild politically, economically and structurally. If a country is not solid and stable in those regards, then its ability to provide a safe, healthy, and prosperous environment for its citizens is in jeopardy. The United States is in a position politically and economically to assist nations in crisis and citizens from those nations who reside in the U.S. without documentation. The government needs to factor moral repercussions into the decision-making process to make a fair determination as to which countries receive Temporary Protected Status designations and extensions. In the case of El Salvador, the continued renewal of its designation or the enactment of a new immigration program to benefit current registrants is warranted politically, economically and morally.
CHAPTER FIVE

RECOMMENDATIONS

The decision to renew or terminate El Salvador’s Temporary Protected Status designation has political, economic and moral repercussions. The future of the Salvadoran TPS grant will impact relations between the United States and El Salvador, as well as the countries’ national economies. In addition, the continuation or expiration of the designation will have a profound effect on the lives of Salvadoran TPS registrants and their relatives in El Salvador who have been receiving remittances. An examination of the Temporary Protected Status program generally and how it has been applied to El Salvador in particular reveals the inherent flaws of the program and the need to amend existing TPS legislation.

Since TPS regulations were incorporated into the Immigration Act of 1990, the program has provided vital assistance to countries in crisis and their nationals residing without documentation in the U.S. Temporary Protected Status grants exemplify how domestic immigration policy can further global humanitarian objectives, while reaffirming the perception that the United States is a safe haven for immigrants. In addition, remittances from TPS beneficiaries in the United States to their families back home have resulted in a considerable economic boost to nations in need. The money sent from immigrants in the U.S. to relatives in the designated foreign state comprises a substantial percentage of that country’s Gross Domestic Product and helps to stabilize the national economy at a critical time.
Although the implementation of Temporary Protected Status legislation has been a success in those regards, the program is not without its weaknesses. The U.S. executive branch has granted and failed to grant designations and extensions in a manner that is contrary to legislative intent and foreign policy goals. Current TPS provisions lack objective criteria to aid DHS in its decision-making, and thus, the agency has broad discretionary authority. Temporary Protected Status regulations need to be modified to enumerate specific requirements for designations and ensure that the program is utilized equitably.

With respect to El Salvador's TPS grant, a temporary immigration program is far from temporary if the benefits are extended indefinitely. In amending Temporary Protected Status legislation, the executive branch would be wise to determine how to effectively use the program for temporary crises as it was intended. Regulatory amendments should detail the specific criteria that merit a TPS designation and outline alternative options for immigrants from foreign states with long-standing conflicts and lengthy reconstruction processes.

Revisions to the current TPS provisions need to promote consistency within the issuance of designations and extensions. Once Temporary Protected Status grants are distributed impartially, the government then must address what will happen to the immigration status of long-term TPS beneficiaries. With regard to Salvadoran registrants, how will they be affected if the program is uniformly applied to only support countries as they resolve and rebuild from temporary problems? If DHS decides to terminate El Salvador's designation, will the agency provide an immigration safety net
for Salvadorans with TPS in recognition of the length of time that they have resided in the United States? In addition, if 229,000 Salvadoran immigrants are forced to return home, will the U.S. government step in and offer financial assistance to El Salvador to prevent the collapse of the national economy from the loss of remittances?

This chapter will address the aforementioned concerns regarding the problems with the current Temporary Protected Status provisions and the future of El Salvador’s designation. Specifically, this chapter proposes: 1) amendments to the governing legislation; and 2) a better immigration solution for TPS registrants from El Salvador. The suggestions in this chapter are presented in response to a line-by-line analysis of the current TPS legislation, as codified in section 244 of the Immigration and Nationality Act.¹

**Granting Of Status**

The original TPS regulations entrusted the Attorney General with the power to determine whether to issue a Temporary Protected Status designation. With the establishment of the Department of Homeland Security in 2002, Congress transferred that authority to the Secretary of Homeland Security.² At present, the Department of Homeland Security holds exclusive jurisdiction over the TPS program. Checks and balances are needed to ensure that DHS does not misuse its decision-making power and that designations and extensions are issued more uniformly.

Input from other agencies would allow the Department of Homeland Security to develop a comprehensive balance sheet as to whether or not a country warrants a designation or extension. Since the decision to grant TPS has foreign policy
ramifications, it is essential that the State Department plays a part in the process. DHS should also seek out the opinions of international and nonprofit organizations, as they have practical experience with disaster relief, refugee and IDP crises, international economic analyses, conflict resolution and nation-state building.

The case of Haiti in 2008-2009 best illustrated the need for inter-agency communication. In 2009, Haiti was one of only two countries in the Western Hemisphere that was included on the U.S. Department of State’s Travel Warning list. The State Department discouraged U.S. citizens from traveling to Haiti because of the country’s ongoing political violence and instability. The prolonged civil unrest clearly warranted Temporary Protected Status, and yet, no grant was issued to Haiti at that time.

In 2008, Haiti also met the criteria for a TPS designation due to environmental disaster. Four hurricanes and tropical storms ravaged the country during the 2008 storm season, causing more than $1 billion in damage. Bill Clinton, in his capacity as UN Special Envoy to Haiti, remarked that he and Secretary of State Hillary Clinton support the issuance of a TPS designation. Nongovernmental organizations publicly concurred with the Clintons' viewpoint. Nonetheless, Secretary of Homeland Security Napolitano indicated that DHS' position regarding Haitian TPS remained unchanged and no grant was issued in 2009.

It is poor politics and policy making to have two agencies within the executive branch of the United States government going on record with completely opposite positions on the same issue. The Department of Homeland Security and the State Department need to develop cohesive strategies with respect to immigration matters and
collaborate with the United Nations and other organizations as necessary. Inter-agency communication is essential to providing checks and balances to the TPS program and restoring credibility to the decision-making process.

**Issuing a Designation for a Part of a State**

TPS regulations allow DHS to issue designations to "any foreign state (or any part of such foreign state)." In practice; however, the U.S. government has granted Temporary Protected Status to entire nations in all but one circumstance. In 1998, the Province of Kosovo, rather than the whole country of Serbia-Montenegro, received TPS in response to the brutalities that the Serbian government had been inflicting on Kosovar Albanians. Immigrants from Kosovo in the United States received protection under TPS through December 8, 2000. That grant complied with the regulations governing Temporary Protected Status and satisfied the political and moral objectives of the program.

Although the provisions allow for grants to be made to whole or parts of a country, the regulations have not been applied equitably in that regard. Since the enactment of TPS legislation, the U.S. government has issued designations to 13 foreign states and one part of a foreign state (Kosovo). As DHS focuses on border security and curbing illegal immigration to the United States, it is worth implementing Temporary Protected Status in accordance with the intent of the legislation.

For those cases in which ongoing civil unrest and catastrophic natural disasters affect a discrete portion of a nation, the Department of Homeland Security should consider designating only that impacted area. Issuing a grant of TPS to a part of a foreign
state, rather than the entire state, is likely to be perceived more favorably by those members of the public and government officials with restrictionist views on immigration. The application of TPS to isolated regions in crisis satisfies the political and moral aims of the program, while limiting foreign dependence on remittances and tempering fears that temporary status will lead to permanent residence for a large group of immigrants.

From an immigration policy perspective, the governing regulations enable DHS to grant Temporary Protected Status to a portion of a country in crisis or an entire country in crisis. Designations should thus be issued to both, in accordance with the legislation. If, however, the Department of Homeland Security consults with other relevant agencies and determines that discrete areas within a foreign state should not receive TPS, then the relevant provisions should be amended to accurately reflect that interpretation. Credibility and efficiency need to be restored to the TPS program. Utilizing Temporary Protected Status as it was intended or modifying the regulations to reflect how the program is implemented would help effectuate that.

**Criteria for Issuing a Designation**

The Department of Homeland Security is authorized to grant TPS to countries experiencing “ongoing armed conflict. . . that would pose a serious threat to [returning immigrants’] personal safety,” or a natural disaster that caused “a substantial, but temporary, disruption of living conditions in the area affected.” The provisions also allow for designations upon the foreign government’s request or for temporary conditions in that country that “prevent aliens who are nationals of the state from returning to the state in safety.”
TPS legislation entrusts DHS with the sole authority to determine which countries receive designations or extensions. However, the decision-making process is not a clear one since the regulations fail to elaborate on how severe the armed conflict or natural disaster must be to warrant a grant. Under the current provisions, the U.S. government is not required to comply with any designation guidelines. As such, the Attorney General and DHS have utilized that freedom to issue Temporary Protected Status based on political and economic factors beyond the scope of the legislation’s intent. The combination of broad discretion, no checks and balances and a lack of specific requirements for a designation has caused the TPS program to be applied inequitably. That claim is supported by the case of Guatemala. Guatemala experienced an environmental disaster on par with the natural disasters that wreaked havoc on El Salvador and Honduras, and yet, the U.S. government only chose to designate the latter two countries for Temporary Protected Status.

Amendments to TPS regulations would provide unambiguous and consistent guidelines for a designation. Revisions that enumerate specific criteria for the Temporary Protected Status program would allow for benefits to be issued more uniformly. With respect to an ongoing armed conflict, how grave is the civil unrest to create a dangerous situation for repatriating immigrants? How many citizens of the country in crisis have been displaced\textsuperscript{14} from their homes or have fled to other countries as refugees? For how long has the country endured political turmoil? How many nationals from that foreign state have been raped, assaulted or killed during the crisis?
DHS should rely on statistics, rather than discretion, in determining the answers to those questions. For example, if either: a) 5% or more of the country’s citizens in the affected area have been displaced from their homes as IDPs or refugees; b) the conflict has continued for more than six months; or c) a minimum of 1% of the population from the affected area has been assaulted, injured or killed, then a designation is warranted for immigrants from the part of the foreign state at a minimum or the entire foreign state at a maximum.

With respect to natural disasters, Congress needs to establish guidelines within Temporary Protected Status legislation based on: a) the percentage of people who have been displaced from the aftermath; and b) how much damage has been inflicted upon the country in proportion to its Gross Domestic Product. One suggestion would be to impose a 5% minimum for both criteria. If the environmental disaster resulted in less than 5% of the country being forced to leave their homes, or if the damage is not higher than 5% of the foreign state’s GDP, then the U.S. government does not designate that country for TPS. If the natural disaster caused severe damage in only a discrete area of the foreign state, then the same threshold of 5% with respect to that specific region of the country would be applied. Including the aforementioned detailed requirements within the regulatory amendments would encourage a more equitable implementation of the TPS program.

Current Temporary Protected Status provisions entrust too much discretion in the hands of DHS. Political and economic factors thus influence the decision making process in a manner that is contrary to the intent behind the legislation. Concrete guidelines with
specific criteria for designation would eliminate this problem and resolve a major flaw of
the regulations governing Temporary Protected Status.

Transparency

At present, the U.S. government is free to reject a foreign state’s request for a TPS
designation without giving a reason for that decision. The absence of accountability
reinforces the argument that international affairs and economics, rather than current
country conditions, influence which nations receive Temporary Protected Status grants.
The case of Haiti provides further support to that point. Following the devastating storm
season of 2008, Haitian President Rene Preval implored the Department of Homeland
Security to designate Haiti for Temporary Protected Status.¹⁵ Former DHS Secretary
Michael Chertoff refused to grant TPS to Haiti and provided no reason for the denial in
his letter to President Preval.¹⁶ That approach was contrary to legislative intent and
foreign policy objectives. Modifications to Temporary Protected Status regulations ought
to improve the transparency of the decision-making process.

Bill Frelick and Barbara Kohnen of the U.S. Committee for Refugees describe the
advantages of increased transparency with respect to TPS designations as follows:

A more open process that would solicit information and recommendations from
humanitarian organizations such as the UN High Commissioner for Refugees,
Human Rights Watch, the International Committee of the Red Cross, and
Amnesty International would benefit from the insights of the entities that are often
best situated to assess potential dangers nationals would face if returned to
countries undergoing armed conflict and other extraordinary situations.
Consultation with such groups, as well as with individual country experts, would
also provide an important check to prevent inappropriate and irrelevant criteria
from creeping into the decision-making process.¹⁷
Better transparency and more consultation with international organizations and disaster relief agencies would help ensure that TPS designations are being issued to countries in crisis appropriately. An open decision-making process with inter-agency communication would allow DHS to make reasonable determinations regarding Temporary Protected Status grants and extensions and be held accountable for those decisions.

**Review of the Designation**

Governing TPS provisions indicate that the Department of Homeland Security shall review country conditions at least 60 days prior to the end of the designation period.\(^\text{18}\) However, if the designation is then extended, immigrants require more than 60 days to file their re-registration and work permit renewal applications, and USCIS requires more than 60 days to review those applications and issue new employment authorization cards. The 60-day requirement is insufficient, especially if there are large numbers of Temporary Protected Status beneficiaries. With respect to El Salvador, it is unrealistic to expect 229,000 TPS holders to file paperwork and have USCIS process 440,000 applications within a 60-day time period.

A common practice has thus been for DHS to automatically extend work permits for an additional 90 to 120 days. TPS holders rely on that extra time to submit the necessary paperwork, and USCIS utilizes the extension to review the applications and issue employment authorization cards. That practice; however, sends a confusing message to employers, state agencies\(^\text{19}\) and immigrants because there is a clear expiration date on the front of all work permits.
If the Department of Homeland Security automatically extends TPS benefits, the immigrants then bear the burden of explaining to their employers and other interested parties that their work permits have been automatically extended. At a time when corporations and state agencies are understandably wary of immigration fraud, that burden is an exorbitant one. The regulations need to be modified to require the U.S. government to make a decision regarding the future of the designation at least 120 days before the grant is due to expire. That would streamline the renewal process for employers, immigrants, USCIS and state agencies, and avoid potential misunderstandings.

If DHS chooses not to renew a foreign state’s Temporary Protected Status, the agency typically allows TPS holders from that country to reside in the United States for six months after the end of the designation period. However, that may not give Temporary Protected Status beneficiaries who have lived in the U.S. for years enough time to settle up their affairs. If the Department of Homeland Security makes a decision regarding the future of the TPS grant six months prior to the end of the designation (rather than the current two months), then immigrants would have a total of one year (rather than the current eight months) in which to handle their affairs in the U.S. and return home. Alternatively, if the 60-day provision is not amended, the United States government should let immigrants with TPS reside in the U.S. for 10 months after the last day of the grant. Four extra months with protection from removal and a work permit would enable immigrants with United States citizen children, jobs and mortgages to adequately prepare for their departure.
Since TPS is traditionally issued for a one-year period, an amendment mandating review of the grant at least 120 days before it expires also guarantees that DHS will be more cautious in its decision-making. If civil unrest in the designated country has not abated or the country has not made significant progress with the disaster recovery effort within six months, then DHS should renew Temporary Protected States in accordance with the regulations. However, if conditions in the foreign state have noticeably improved within six months, then the state’s designation should not be extended.

If the Department of Homeland Security is unsure as to whether country conditions will continue to improve, the regulations should allow for the agency to have “the flexibility not to become locked into terminating TPS on a certain date if deteriorating conditions in the country of origin indicate that TPS should be extended.”20 DHS ought not to end Temporary Protected Status designations precipitously, and revisions should be made to the relevant provisions to encourage policies that are both compassionate and logical.

**Assistance upon Termination of the Designation**

For the Temporary Protected Status program to work effectively, the United States government needs to make certain that immigrants with TPS depart by the end of the designation period. At present, after DHS terminates a grant, the executive branch has no further obligation to the foreign state in crisis or the immigrants from that nation who have been residing in the U.S. The lack of federal support to Temporary Protected Status holders before their benefits expire exacerbates the chances that these immigrants will choose not to voluntarily depart the United States. Frelick and Kohnen propose that
the United States “provide[s] some type of repatriation assistance” as an incentive to those immigrants who will lose their status and return home to unknown, if not dangerous, country conditions and limited economic opportunities.\textsuperscript{21} “Without some form of repatriation assistance, a TPS beneficiary who wanted to return home after the expiration of TPS but was uncertain about job and housing prospects might decide against returning.”\textsuperscript{22}

The authors also recommend involving UNHCR, USAID and non-governmental organizations to assist TPS registrants who have to give up their jobs, pay for travel expenses, leave the U.S. by the end of the designation period, and then rebuild their lives back home.\textsuperscript{23} UNCHR and international organizations with a similar focus could evaluate country conditions and facilitate the immigrants’ return.\textsuperscript{24} Non-governmental organizations could offer “support at the grassroots level for returnees,” and USAID and the Millennium Challenge Corporation could provide much needed development assistance to improve the country’s economy and infrastructure.\textsuperscript{25}

From an economic and moral perspective, aid should be granted to a nation that loses its Temporary Protected Status designation so that it will be better prepared to handle the return of its citizens and enhance country conditions. Without assistance from the United States and the global community, the combination of rapid mass repatriation, the lingering effects of the civil unrest or environmental disaster, and the loss of remittances could lead to further political and economic volatility in the foreign state. The U.S. and international organizations have a moral obligation to help prevent additional instability in a country that is rebuilding from a crisis. DHS ought to
collaborate with other agencies and nongovernmental organizations to ensure that the immigrants’ return home does not burden their families and their country at a minimum, and spark increased economic volatility and displacement at a maximum.

From a political perspective, the executive branch has received criticism that USCIS does not enforce the requirement that immigrants depart by the end of the TPS designation. Anti-immigrant groups also maintain that a grant of Temporary Protected Status inevitably leads to long-term benefits. Those concerns are well founded since the majority of immigrant beneficiaries remain in the U.S. out of status after the designation expires and are eventually able to apply for permanent residency. Offering assistance to TPS holders prior to the termination of the designation would help effectuate their departure and resolve a major complaint of the existing legislation.

**Permanent Residence in lieu of Long-Term Designations**

Temporary Protected Status grants and denials have political, economic and moral ramifications. With respect to the future of El Salvador’s TPS designation, the relevant political, economic and moral factors favor renewal for the reasons enumerated in the previous four chapters. However, these factors need to be weighed against the concern that the Temporary Protected Status program has not been utilized in a temporary manner. The Salvadoran grant has been in place continuously since 2001, and that long-term designation is contrary to legislative intent.

When the Department of Homeland Security evaluates whether to renew El Salvador’s grant in 2010, TPS registrants will have resided in the U.S. for a minimum of nine years. If DHS “plans to continue extending TPS, then it should be recognized that
[the aftermath of the natural disaster in El Salvador has] not been of a temporary nature and that TPS recipients have built up equities in their respective communities” in the United States.\textsuperscript{26} A better solution would be to amend the immigration regulations to: 1) allow for a permanent residence option for certain Temporary Protected Status beneficiaries, including those from El Salvador; and 2) restrict the issuance of TPS designations and extensions to foreign states undergoing short-term crises that satisfy objective criteria.

Immigrants from a nation with Temporary Protected Status for a continuous period of not less than five years should be eligible to apply to adjust their status. Regulations need to be modified to enable the TPS program to be applied equitably and exclusively as a temporary immigration option in response to brief conflicts and disaster recovery processes. Country conditions warranting a Temporary Protected Status designation from the U.S. for more than five years are experiencing ongoing, rather than temporary, crises and merit an alternative immigration solution.

Current Temporary Protected Status legislation allows for the conversion from TPS benefits to adjustment of status only if the Senate approves that proposal by a supermajority or 60\% vote.\textsuperscript{27} Obtaining 60\% approval from members of the Senate is obviously no small feat. However, the TPS program has not been operating as intended, and changes need to be made to ensure that the program is utilized for its designated, temporary purpose in a manner that does not place an unfair burden on countries recovering from a crisis and their nationals residing in the U.S. If the regulations are modified so that grants are issued using objective criteria, then legislators would be more
inclined to respond favorably to the conversion from TPS benefits to adjustment of status for those cases that warrant a permanent solution.

A permanent residence option for Salvadoran TPS registrants could operate in a similar manner to and rely on the same legal authority as NACARA. NACARA Section 203 stemmed from the executive branch’s recognition of “ABC class members’ unique immigration history, deep roots in our society, and contributions to our communities.”

Much like their NACARA counterparts, Temporary Protected Status registrants from El Salvador have: 1) lived in the U.S. for approximately a decade; 2) long-standing ties to their communities; 3) provided benefits to the United States through their employment, talents, taxes and spending; and 4) shared a “unique immigration history.”

Utilizing the language of NACARA legislation as a model, a NACARA II program could allow for the conversion of Salvadoran TPS benefits to adjustment of status. The proposed requirements for eligibility for permanent residence through NACARA II are set forth below:

1. The applicant must be a national of El Salvador;

2. The applicant must have continuously resided in the U.S. since February 13, 2001, and maintained continuous physical presence since March 9, 2001, in accordance with the dates delineated in the 2001 notice designating El Salvador for TPS;

3. The applicant must have either:
   a. Initially registered for Temporary Protected Status in 2001 and re-registered for benefits continuously through the last re-registration period in 2008; or
   b. Met the criteria for late initial registration pursuant to the regulations and received approval notices for all late re-registration applications; and
4. The applicant has not been convicted of a crime that would render him or her ineligible for either TPS or adjustment of status.

In accordance with the governing provisions for cancellation of removal, an applicant for NACARA II must satisfy a ten-year residency requirement in the United States and have exhibited good moral character throughout that time period.\textsuperscript{31} Cancellation of removal also mandates a finding that the immigrant's departure would cause "exceptional and extremely unusual hardship" to a lawful permanent resident or U.S. citizen spouse, parent or child.\textsuperscript{32} However, for NACARA II to be effective, proposed provisions ought to incorporate the language of the interim NACARA Section 203 regulations from 1999.\textsuperscript{33} Those amendments eliminated the cancellation of removal hardship requirement in recognition of the fact that it was too burdensome for the average ABC class member to prove. The revised NACARA regulations also replaced the exceptional and extremely unusual hardship requirement with the more lenient suspension of deportation requirement of extreme hardship. In addition, the executive branch "create[d] a rebuttable presumption of extreme hardship for...ABC class members" to facilitate approvals for eligible applicants to obtain their lawful permanent residence through NACARA Section 203.\textsuperscript{34}

Using the same logic, proposed NACARA II legislation should allot for the fact that the burden of proving exceptional and extremely unusual hardship would be inordinately difficult for most Salvadoran Temporary Protected Status beneficiaries to meet. Applicants for NACARA II should thus be required to demonstrate extreme also ought to recognize that TPS registrants from El Salvador have accrued significant
hardship, rather than exceptional and extremely unusual hardship. The executive branch equities during their lengthy time in the United States to satisfy that hardship requirement. Therefore, NACARA II, like NACARA Section 203, should establish a rebuttable presumption of extreme hardship for eligible TPS beneficiaries as an exception to the criteria for cancellation of removal.

If the government enacts NACARA II prior to the expiration of the current Temporary Protected Status designation, Salvadoran TPS holders would receive continued protection from removal and employment authorization during the time that their cancellation of removal applications are processing. A NACARA II program would also restore integrity to TPS regulations and ensure that 229,000 immigrants from El Salvador are not forced to return back home in a manner that has serious and negative political, economic and moral ramifications.

Conclusion

Temporary Protected Status designations and extensions have been utilized effectively in several instances to assist countries in crisis and provide a temporary safe haven for foreign nationals residing without documentation in the United States. Nonetheless, there are significant flaws within the existing TPS provisions that allow the U.S. government to apply the program and its benefits in an inequitable manner. Frellick and Kohnen addressed many of the faults that plague Temporary Protected Status legislation in their 1995 journal article, and those problems continue to this day.35 Specific amendments to the TPS provisions should be made to: 1) establish objective
criteria for granting designations and extensions; 2) increase transparency and inter-agency communication, thereby improving the decision-making process; 3) help countries rebuild and handle the repatriation after a grant expires; and 4) provide a permanent residence option for long-term Temporary Protected Status beneficiaries.

With regard to Salvadoran TPS, international relations, economics and morals favor extending El Salvador’s designation. However, the country’s grant has been in place since 2001, and an additional renewal would be incongruous with the goals of the Temporary Protected Status program. A better solution would be for the U.S. government to offer Salvadoran TPS holders a path toward adjustment of status like the NACARA II plan proposed in this chapter.

NACARA II legislation could operate in a similar manner to the original NACARA regulations and rely on the same legal authority. An overwhelming majority of Temporary Protected Status beneficiaries from El Salvador would be eligible for cancellation of removal with a rebuttable presumption of extreme hardship under NACARA II. A long-term solution with the benefits of permanent residency is warranted in recognition of the contributions that Salvadoran TPS registrants have made and the positive equities that they have accumulated during their lengthy time in the United States.
CONCLUSION

Temporary Protected Status (TPS) provides interim immigration benefits to undocumented individuals from foreign states experiencing civil unrest or recovering from environmental disasters. The Department of Homeland Security (DHS) issues TPS grants to countries in crisis that are unable to handle the repatriation of their citizens from the United States. DHS designates a nation for Temporary Protected Status for a period of six to 18 months, and renews the grant if the ongoing nature of the armed conflict or disaster recovery warrants an extension. During that period, the United States allows immigrants from the foreign state with TPS to remain in the U.S. with protection from removal and employment authorization.

The executive branch designated Temporary Protected Status to El Salvador on March 9, 2001, after three earthquakes ravaged the country within a five-week period. Approximately 229,000 immigrants from El Salvador have received benefits through that Temporary Protected Status grant. Since 2001, the Department of Homeland Security has continuously renewed Salvadoran TPS, and the current designation is valid through September 9, 2010. According to then DHS Secretary Michael Chertoff, the most recent extension was issued because El Salvador is still in the process of rebuilding from the earthquakes.\(^1\) Although that reasoning is not without merit, political, economic and moral factors also played a role in the Department of Homeland Security’s decision-making process.

From a political perspective, past relations between the United States and El Salvador influence foreign affairs and immigration policy in the present. From 1979 to
1992, the Salvadoran national military fought a brutal Civil War against leftist guerrillas from the Farabundo Marti National Liberation Front (FMLN). Fearing a Marxist takeover of El Salvador and the expansion of a Communist presence in the Western Hemisphere during the Cold War, the U.S. decided to supply the Salvadoran government with $3.2 billion in financial aid and $1 billion in military equipment from 1982 to 1990. The U.S. placed no restrictions on that assistance, and El Salvador began to rely on money from the United States for its financial stability. Through its role in the Salvadoran Civil War, “the U.S. became involved in its largest counter-insurgency war against left-wing guerrillas since Vietnam.”

The Civil War in El Salvador sparked a wave of illegal immigration to the United States. Hundreds of thousands of Salvadoran migrants fled the political persecution and brutal violence in their homeland and sought refuge in the U.S. from 1979 through 1992. Salvadoran immigrants assumed that the United States would welcome them as political asylees like their counterparts from Nicaragua and Cuba, yet that was not the case. The U.S. government decided not to view migrants from El Salvador as asylees because granting their asylum claims would have contradicted the United States’ decision to support the Salvadoran government during the Civil War.

In accordance with that policy, the Immigration and Naturalization Service rejected between 97-99% of asylum requests from Salvadoran immigrants. The United States maintained that immigrants from El Salvador in the 1980s and early 1990s were economic migrants who entered the U.S. illegally in search of better opportunities.
Salvadoran immigrants were thus unable to avail themselves of any benefits and remained in the United States without status.

Faith-based organizations vehemently opposed the government’s unfair treatment of asylum seekers from El Salvador and Guatemala. Religious leaders believed that the United States ought to provide a safe haven for foreigners fleeing civil unrest and persecution. Since the government failed to do that for Salvadoran and Guatemalan immigrants, religious sanctuaries began to open their doors to harbor undocumented migrants from these countries. Rather than turning a blind eye, the U.S. government prosecuted faith-based organizations and religious leaders for providing refuge to illegal immigrants. The immigration advocacy and faith-based communities were outraged at the government’s actions and joined forces to file a class-action lawsuit against the U.S. Attorney General’s Office. The case of American Baptist Churches v. Thornburgh (ABC) eventually proved successful for the class members by: 1) exposing the executive branch’s discriminatory policies toward Salvadoran and Guatemalan immigrants; and 2) leading to the reopening of approximately 500,000 class members’ asylum applications.  

The ABC case magnified the flaws within the immigration system at a time when the issue of illegal immigration from Latin America was garnering significant publicity. Congress recognized the need to clarify and toughen existing regulations and enacted the Immigration Act of 1990 (the Act). The legislature also addressed the status of Salvadoran illegal immigrants by incorporating Temporary Protected Status provisions into the Act. Through the TPS program, the government allowed eligible beneficiaries
from El Salvador to reside in the United States with protection against deportation and employment authorization through June 30, 1992. In 1992, the government of El Salvador and the FMLN party signed a peace agreement and order was restored to the country. The end of the Salvadoran Civil War happened to coincide with the end of the Cold War. The fall of Communism dramatically altered the Bush Administration’s foreign policy objectives, and the U.S. withdrew its troops from El Salvador and stopped funding the national military. Without aid from the United States, the Salvadoran government lacked the resources to rebuild from the Civil War’s devastating effects.

El Salvador was also not equipped to handle the repatriation of approximately 3% or 200,000 of its citizens when the TPS grant expired. Salvadoran President Alfredo Cristiani implored President George H.W. Bush to extend TPS for El Salvador beyond the June 30th expiration date. However, The TPS provisions in the Immigration Act of 1990 stipulated that El Salvador’s designation could not be renewed, and thus, the U.S. Attorney General was statutorily bound to let the grant lapse.

The Bush Administration determined that it could circumvent the legislative mandate and continue to provide Salvadoran Temporary Protected Status holders with benefits through the Deferred Enforced Departure (DED) program. In practical terms, DED is similar to TPS since it offers undocumented immigrants protection from removal and access to employment authorization. Salvadoran Temporary Protected Status beneficiaries converted their status from TPS to Deferred Enforced Departure, and the
executive branch regularly renewed the DED grant to El Salvador through January 31, 1996.\textsuperscript{10}

That date in 1996 also represented the court-imposed deadline by which eligible Salvadoran immigrants were required to register as ABC class members and submit their asylum applications.\textsuperscript{11} However, since the Civil War in El Salvador was over, class members could no longer satisfy the fear of persecution element for a successful asylum claim. Salvadoran immigrants thus followed their attorneys' advice and filed bare-bones asylum requests. Lawyers and advocates thought that this group of immigrants would eventually obtain permanent residency through the suspension of deportation category, and viewed ABC registration as the first step in that process.

In 1996, Congress once again tightened immigration regulations with the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), and IIRIRA eliminated the suspension of deportation category. ABC registrants from El Salvador feared that they would be unable to obtain their green cards, and activists mobilized to lobby for an adjustment of status option for the ABC class members. These efforts proved successful, and the executive branch passed the Nicaraguan Adjustment and Central American Relief Act (NACARA) in 1997.

NACARA stemmed from the recognition that immigrants from several countries, including El Salvador, had fled civil unrest and spent years accumulating equities in and contributing to the United States. The original NACARA provisions; however, demonstrated bias against ABC class members from El Salvador and Guatemala since those immigrants came from foreign states that the U.S. supported during the Cold War.
The nonprofit and faith-based communities lobbied the government to remedy that problem, and amendments to the legislation were passed in 1999. The revised NACARA regulations enabled immigrants from El Salvador to obtain their green cards provided that they: 1) entered the U.S. by September 19, 1990; 2) filed for asylum by April 1, 1990, or registered for ABC or TPS benefits by October 31, 1991; 3) demonstrated good moral character and continuous physical presence in the U.S. for seven years; and 4) satisfied a rebuttable presumption that their departure would cause extreme hardship to their relatives in the U.S. and El Salvador. An estimated 225,000 immigrants from El Salvador adjusted their status through the NACARA program.

In 2009, Salvadorans elected the FMLN candidate, moderate Mauricio Funes, as President. Despite the United States’ historical opposition to the FMLN party, the Obama Administration has expressed its support for President Funes and the continuation of strong relations between the two countries. State Department Acting Senior Spokesman Robert Wood also commented publicly about the important connection between El Salvador and the United States as a result of the “more than two million Salvadorans in the” U.S. The immigration issue clearly affects politics and policies between El Salvador and the United States, as well as the economies within those countries. Current relations between the U.S. and El Salvador also impact the likelihood of the renewal of the Salvadoran Temporary Protected Status grant.

From an economic perspective, the national economy of El Salvador relies on remittances from immigrants in the United States. On average, Salvadoran immigrants in the U.S. send 10% of their income home to their families in El Salvador. In 2008, that
money totaled $3.8 billion or 18% of the Salvadoran gross domestic product (GDP).\textsuperscript{16} “El Salvador’s principal export is its people. . . [and its] principal import are remittances from Salvadorans in the U.S. . . . Remittances to El Salvador represent 133% of all exports, 655% of foreign direct investment, and 91% of the government budget.”\textsuperscript{17} The continued renewal of TPS is thus essential to keeping the Salvadoran economy solvent.

Economists and development organizations have stressed that El Salvador needs to lessen its dependence on remittances and question the effect of remittances on interest rate stabilization. Economists also predict that the global recession and rise in unemployment in the United States will translate into lower remittances and lead to economic volatility in El Salvador in the coming years. In an effort to address these concerns, the Salvadoran government has implemented conservative economic reforms, including industry privatization and conversion to the U.S. dollar, and sought alternative sources of investment. In addition, El Salvador secured pledges of loans and aid from the International Money Fund (IMF), the Interamerican Development Bank (IDB), and the Millennium Challenge Corporation (MCC), a corporate arm of the U.S. government. The IMF and IDB pledged $1.75 billion to the Salvadoran government, but that money will only be disbursed in the event of a debilitating economic crisis.\textsuperscript{18} The MCC has started to issue funds from a $461 million agreement, although the package will be disbursed over a five-year period.\textsuperscript{19}

Aid, loans and investment from the international community have yet to reach the billions of dollars that El Salvador receives annually through remittances. In recognition of that fact, economists recommend the establishment of Salvadoran financial
institutions, infrastructure and regulations to ensure that remittances from the U.S. are utilized effectively to benefit El Salvador and its people on a microeconomic and macroeconomic level. If DHS terminates the TPS designation, the Salvadoran national economy will lose an estimated $273 million in annual remittances from Temporary Protected Status registrants, and El Salvador would need to prepare for the rapid repatriation of 3% of its population or 220,000 people. The Salvadoran government should develop economic safety nets and locate alternative sources of aid to benefit the country regardless of the future of the TPS grant.

From a moral perspective, the renewal of El Salvador’s Temporary Protected Status designation is warranted for several reasons. The problems that plague the hemisphere (drug trafficking, immigration, political instability and economic crises) require the United States to have strong allies in Latin America. The government of El Salvador has repeatedly requested the renewal of the Temporary Protected Status designation from the U.S. government. Denying that request would understandably strain relations between the two countries at a time when the United States needs support from its Latin American neighbors.

The link between economics and ethics will also play a role in the Obama Administration’s decision regarding the future of Salvadoran TPS. The government of El Salvador repeatedly asks the U.S. government to renew the designation because it could not handle the rapid repatriation of 3% of its citizens and the accompanying loss of remittances. The Salvadoran national economy relies more on remittances from immigrants in the U.S. than any other source of income, investment or aid. The loss of
money from Temporary Protected Status beneficiaries would jeopardize the ability of Salvadoran households to cover their basic expenses and potentially lead to a national economic crisis. The United States has a moral obligation as a global superpower to prevent that possibility from becoming a reality.

With respect to the immigrants themselves, TPS registrants from El Salvador have resided in the U.S. for a minimum of nine years. During that time, they have established lives, embraced opportunities, made contributions, and had United States citizen children. Ending the Temporary Protected Status designation would ignore the favorable equities that Salvadoran TPS registrants have accumulated over the years and contradict a main goal of immigration policy: to unite families.

Although the political, economic and moral ramifications merit an extension of the Temporary Protected Status grant to El Salvador, there are several legitimate reasons for altering the government’s position. First, the TPS program has been utilized in a manner that is not temporary. The executive branch originally designated Temporary Protected Status to El Salvador in 2001, and that grant is valid through September 9, 2010, at the earliest. Benefits that are issued for a minimum of nine years are not temporary, and yet, TPS does not lead to permanent residence. A temporary immigration program should not be applied to long-term country crises since that is incongruous with the intent of TPS legislation.

From a legal perspective, Temporary Protected Status registrants obtain work permits that are valid through the designation period. These immigrants are aware that their benefits are not permanent and attest to that with their signature on the I-821
Application for TPS. Foreign states with Temporary Protected Status recognize that their citizens will return once country conditions improve, and immigrant beneficiaries agree to voluntarily depart the U.S. at the termination of the grant. However, it is illogical to expect that an immigrant who entered the U.S. illegally and resided in the country for years will voluntarily depart once their Temporary Protected Status benefits expire. If the past serves as a guide for the future, Salvadoran immigrants will remain in the United States without documentation and reenter the underground work force after the TPS designation lapses. DHS is not presently equipped to effectuate the departure of immigrants after the termination of Temporary Protected Status, and thus, ending a TPS grant does not necessarily have the desired effect to encourage immigrants to repatriate.

Opponents of the TPS program also maintain that temporary benefits eventually lead to permanent residency. The fact that DHS repeatedly renews Temporary Protected Status designations for protracted, rather than short-term, conditions only furthers that notion. Although there are no guarantees that Temporary Protected Status registration will allow immigrants to adjust their status in the future, an overwhelming majority of TPS beneficiaries have eventually obtained their green cards through amnesty programs or NACARA.

Critics of the Temporary Protected Status program claim that the issuance of TPS glorifies illegal immigration. However, that viewpoint overlooks the fact that immigrants who enter the United States without documentation after their country has received a Temporary Protected Status designation are not eligible for the program. Furthermore,
illegal immigrants are offered no assurances that they will ever be eligible to apply for benefits, including, but not limited to, those available through the TPS program.

There are several foreign states that are seemingly eligible for Temporary Protected Status grants, yet designations have not been issued. Likewise, there are countries in which the conditions merit an extension of their TPS designation, but DHS allows these grants to lapse. The cases of Haiti, Guatemala and Sierra Leone illustrate that the U.S. government does not utilize the Temporary Protected Status program in a logical or equitable manner.

Haiti is the poorest country in the Western Hemisphere and has experienced decades of political instability, violence and catastrophic natural disasters. In 2008-2009, the U.S. State Department included Haiti on its Travel Warning list due to “long-term, protracted conditions that ma[de it] dangerous or unstable.”20 In 2008 alone, Haiti endured four separate hurricanes and tropical storms that left one million citizens homeless and caused $1 billion in damage.21 Also that year, the Haitian parliament overthrew the Prime Minister, and civil unrest ensued.

Based on country conditions alone, Haiti has been one of the most deserving of Temporary Protected Status. The economic factors have also favored the issuance of a TPS grant, as annual remittances from immigrants in the U.S. to their relatives in Haiti total $1.8 billion or 35% of Haiti’s GDP.22 The Haitian government, faith-based organizations and immigration advocates repeatedly requested that the executive branch issue TPS to Haiti in 2008-2009. Nonetheless, the U.S. government chose not to designate Haiti for Temporary Protected Status at that time.
In 2008 and 2009, DHS Secretaries Chertoff and Janet Napolitano indicated that Haiti would not receive TPS without citing the reasons behind that decision. Secretary Napolitano also cautioned Haitian citizens against coming to the United States in the hopes of obtaining Temporary Protected Status benefits. The Department of Homeland Security’s position contradicted public comments made by Secretary of State Hillary Clinton and United Nations Special Envoy to Haiti Bill Clinton in support of a TPS grant for Haiti.

With respect to Guatemala, Hurricane Stan ravaged the tiny Central American country in 2005, leaving 1000 dead, 280,000 people homeless and $100 million in damages. At that time, more than half of the country’s population lived in poverty, and $2.9 billion in annual remittances from the United States played a key role in keeping the Guatemalan national economy stable. The President of Guatemala Oscar Berger implored the U.S. to designate Guatemala for Temporary Protected Status, as the United States had done for El Salvador and Honduras after similarly debilitating natural disasters. However, DHS failed to issue TPS to Guatemala.

Karen Hughes, then Undersecretary of State for Public Diplomacy, indicated that the U.S. would give aid to Guatemala, but not a Temporary Protected Status designation because the United States has “invested so much money in fortifying our borders.” That statement is false and only perpetuates the misperception that immigrants can flee for the U.S. after civil unrest begins or an environmental disaster occurs to obtain Temporary Protected Status benefits. The United States also does not incur any costs in issuing a TPS designation so Secretary Hughes’ statement is misleading on two fronts.
Sierra Leone provides an example of a country with conditions that merited an extension of the Temporary Protected Status grant or an alternative immigration solution for Sierra Leoneans residing in the U.S. From 1991 to 2001, Sierra Leone endured a brutal Civil War. That decade of political violence in Sierra Leone led to 75,000 deaths, the mutilation of 100,000 people, and the displacement of two million people.\textsuperscript{29}

The U.S. granted TPS to Sierra Leone on November 4, 1997.\textsuperscript{30} Ongoing country conditions limited the ability of displaced Sierra Leoneans to safely return home, and thus, the executive branch regularly extended the designation.\textsuperscript{31} However, after the United Nations High Commissioner for Refugees (UNHCR) indicated that it was safe for refugees and internally displaced persons to return home to Sierra Leone, DHS terminated the status on November 2, 2003.\textsuperscript{32}

TPS holders from Sierra Leone had to voluntarily depart the United States by May 3, 2004.\textsuperscript{33} Although country conditions had improved slightly by then, the United States Agency for International Development (USAID) continued to send missions to Sierra Leone through 2008 to help the many communities that were completely destroyed by the Civil War and treat the cholera epidemic.\textsuperscript{34} The current State Department description of Sierra Leone states that the nation is still rebuilding from the decade-long war in 2009.\textsuperscript{35} Other agencies within the executive branch have recognized that country conditions in Sierra Leone did dramatically improve once the fighting stopped, and yet, the Department of Homeland Security chose not to extend Sierra Leone’s Temporary Protected Status designation beyond 2003.
The examples of Haiti, Guatemala and Sierra Leone demonstrate that the United States does not have an objective and equitable approach to issuing and extending Temporary Protected Status grants. Politics, economics and moral obligations clearly play a role in how the TPS program is applied and why El Salvador has been designated for the status since 2001. These factors also provide insight as to why the U.S. government has not issued Temporary Protected Status to certain foreign states in crisis.

Congress enacted TPS regulations in 1990 to offer temporary protection and benefits to illegal immigrants from countries undergoing civil unrest or the aftermath of an environmental disaster. Since then, the program has been utilized effectively in several instances, in accordance with legislative intent. Nonetheless, there are inherent weaknesses in the existing Temporary Protected Status regulations, and these flaws ought to be addressed:

1. At present, DHS has the sole authority over all aspects of the TPS program. Checks and balances should be implemented to guarantee that the immigration agency does not abuse its decision-making power, and that grants and renewals are issued more uniformly. Since determinations concerning the Temporary Protected Status program involve and affect international relations and the conditions in a foreign state, the Department of Homeland Security needs to consult with the State Department before reaching a final decision;

2. TPS regulations allow the U.S. government to make a designation for a part of a foreign state, yet that has only been done on one occasion for Kosovo. The Department of Homeland Security ought to issue Temporary Protected Status to an area within a country, rather than the entire country, if that section meets the requirements for a designation. Issuing TPS to a part of a state is likely to be received more favorably than designating the whole state, given the current anti-immigrant sentiment and desire to limit the benefits provided to illegal immigrants;

3. Congress enacted Temporary Protected Status legislation without specifying objective criteria for issuing a grant. That has led to subjective interpretations of the provisions and an inequitable application of the program and its benefits.
The immigration agency should rely on facts, rather than discretion, in deciding whether to designate a country for TPS.

For example, if either: a) 5% or more of the foreign state’s citizens in the affected area have fled their homes as internally-displaced persons or refugees; b) civil unrest has continued for more than six months; or c) a minimum of 1% of the population from the affected area has been assaulted, injured or killed, then a Temporary Protected Status grant is warranted for immigrants from the part of the country in crisis at a minimum or the entire country at a maximum. With respect to environmental disasters, if the disaster resulted in at least 5% of the foreign state being forced to leave their homes, or if the damage is 5% or more of the country’s GDP, then DHS should designate that country for Temporary Protected Status.

Objective criteria would help ensure that the political or economic relationship between the United States and a given foreign state has no or minimal impact on whether or not TPS is granted. Likewise, there has been concern that Temporary Protected Status has been applied unfairly to the detriment of African countries and nations with a high poverty index. Definitive guidelines would take the guesswork and discretion out of the decision-making process;

4. DHS rejected Haiti and Guatemala’s requests for TPS without providing its reasoning. Transparency and accountability ought to be a part of the TPS program and DHS procedures. In addition, DHS should seek input from international organizations such as the United Nations, the World Bank and the International Red Cross. These organizations and their insight regarding refugees, political and economic stability, the role of remittances, and disaster relief efforts would help ensure that DHS is fully briefed about the implications of issuing or failing to issue a Temporary Protected Status grant or extension;

5. TPS legislation should be amended to require the immigration agency to decide the future of a designation six months (rather than 60 days) prior to the end of a Temporary Protected Status grant. If DHS extends the designation, the additional time would be useful for the immigration agency to process renewal applications and issue new work permits before the current permits expire. If DHS chooses to end the grant, six months’ notice gives the affected group of immigrants adequate time to handle their affairs and depart the United States. The additional time also forces the Department of Homeland Security to make decisions more cautiously, and if needed, issue a six-month extension;

6. Presently, when DHS lets a TPS grant lapse, the United States has no further responsibility toward the foreign state that received the designation or immigrants from that country who have been residing in the U.S. It is essential for the international community and the United States to provide assistance to the foreign state and its citizens to ensure the country’s full recovery from the
crisis and the successful repatriation of those immigrants who held Temporary Protected Status benefits. Without help from the United States government, the MCC, UNHCR, USAID and non-governmental organizations, immigrants who lose their TPS benefits are not likely to risk the uncertainty of leaving the U.S. and returning home to rebuild their lives.

In addition, countries recovering from the devastating effects of civil unrest or natural disasters need aid, investment and new infrastructure to become stable politically and economically. The United States ought not to terminate a Temporary Protected Status grant without being an active participant in making sure that each country is politically and economically sound and that its citizens are able to return home in a manner that is not overly burdensome; and finally

7. The case of Salvadoran TPS highlights the main weaknesses of the Temporary Protected Status program: a) designations and extensions are issued subjectively; and b) DHS renews grants for prolonged, rather than temporary, country conditions. Congress ought to enact an alternative, permanent immigration solution for beneficiaries from foreign states that have received TPS designations for a continuous period of not less than five years. Temporary Protected Status should be reserved for temporary country conditions only, and immigrants from foreign states experiencing ongoing crises require access to long-term options to safely remain in the United States.

Amending TPS legislation requires a supramajority or 60% of the Senate to approve the conversion of Temporary Protected Status benefits to lawful permanent residence. A 60% vote is crucial to resolving a major criticism of the current TPS regulations. The conversion from Temporary Protected Status to adjustment of status would also ensure that the implementation of objective criteria for designations and extensions does not penalize long-term TPS registrants.

NACARA legislation could serve as a model for a new permanent residence option for Salvadoran Temporary Protected Status holders (NACARA II). In order to be eligible for adjustment of status through NACARA II, the immigrant must:

1. Be a Salvadoran national;
2. Have continuously resided in the United States since February 13, 2001, and have continuous physical presence since March 9, 2001;

3. Have either registered for TPS in 2001 and properly filed re-registration applications, or qualified for late-initial registration; and

4. Have not been convicted of a crime that is a bar to Temporary Protected Status benefits or permanent residency.

Utilizing provisions from the original NACARA, NACARA II regulations should also allow for a rebuttable presumption of extreme hardship based on the length of time that Salvadoran TPS beneficiaries have resided in the U.S. and the relationships that they have formed during that time.

The political, economic and moral ramifications favor renewing El Salvador’s TPS designation. However, Salvadoran Temporary Protected Status registrants have already received temporary benefits since March 3, 2001. These immigrants have built lives in the United States, accumulating numerous positive equities and making contributions to the U.S. and its economy. It would be politically unwise, economically devastating and morally unjust to require Temporary Protected Status beneficiaries from El Salvador to return home at this juncture. Nonetheless, extending the Salvadoran TPS designation is incongruous with legislative intent and the objective of the program: to provide assistance to countries experiencing short-term crises. Accordingly, the current Temporary Protected Status provisions ought to be amended to include objective criteria for designations and extensions, and a permanent residence solution should be developed for TPS registrants from El Salvador. It is time to restore the temporary nature of the Temporary Protected Status program and allow long-term Salvadoran residents of the United States to become permanent residents.
ENDNOTES

Introduction


2 Prior to the establishment of the Department of Homeland Security, the Attorney General, in consultation with the State Department, issued TPS designations.


8 In this work, I use the terms, “immigrant” and “alien,” interchangeably. There is debate within the immigration community as to whether the use of the term, “alien,” is derogatory. I do not ascribe to the negative connotations associated with the word, and merely use it as it was intended under federal immigration law. Under the Immigration and Nationality Act, an “alien” is “any person not a citizen or national of the United States.” Department of Homeland Security, U.S. Citizenship and Immigration Services, Immigration and Nationality Act, Definitions, sec. 101(a)(3) (2008).


17 Entering the United States without inspection and overstaying a visa are administrative violations of immigration law, rather than criminal offenses.


21 Ibid.


23 Ibid.

24 Ibid.

25 Ibid.

26 Ibid.

27 Ibid.

28 Ibid.


30 Department of Homeland Security (formerly Immigration and Naturalization Service), *Code of Federal Regulations*, Title 8, Temporary Protected Status for Nationals of Designated States, Definitions, Part 244.1 (2003), stating that a “brief, casual and innocent absence…of short duration” does not impact the “continuous” nature of physical presence and residence.


Chapter One


2 Ibid, 4.

3 Ibid.


7 Ibid.

8 Ibid.

9 Ibid.
The term, “illegal immigration,” is a misnomer. Entering the United States without a valid visa or without getting processed by an immigration officer is an administrative violation of U.S. immigration law, rather than a misdemeanor or felony under federal criminal law. An alien who enters the United States without a valid visa and does not qualify for any immigration benefit is deportable under immigration law, but is not guilty of a crime. The Department of Homeland Security does not have enough Border Patrol Officers to control the influx of illegal immigrants. As a result, some aliens successfully cross the border without documentation and begin to build their lives in the United States. DHS stops as many illegal aliens as it can and these immigrants are either removed from the U.S. immediately after completing the necessary paperwork or allowed to stay in the country until a hearing before an Immigration Judge.


29 Ibid.

30 Ibid.


39 Ibid.


41 Ibid.

42 Ibid.


44 Ibid.
45 Ibid.

46 Ibid


48 Ibid.

49 Ibid, n. 124.

50 Ibid, 316.


58 Ibid.


60 Ibid.

61 Ibid.


66 Ibid.

67 Ferris, Central American Refugees, 4.


69 Ferris, Central American Refugees, 111.

70 Carlos B. Cordova, The New Americans: The Salvadoran Americans (Westport, CT: Greenwood Press, 2005), 37. It is worth noting that statistics vary slightly between sources, and thus, all data should be viewed as a general approximate. Alba and Nee state that close to 3% of Salvadoran requests for asylum were granted. Richard Alba and Victor Nee, Remaking the American Mainstream: Assimilation and Contemporary Immigration (Cambridge, MA: Harvard University, 2003), 196.


73 Ferris, Central American Refugees, 297.

74 Ibid.

75 Cordova, The New Americans: The Salvadoran Americans, 35.

76 Cordova, 35-36.


79 Ibid.


82 Ibid.


85 Ibid, 298.

86 Ibid.

87 Ibid.

88 Ibid.


91 Ferris, Central American Refugees, 22.


93 Ibid.


95 Ibid.

96 Ibid.

97 Ibid.

98 Ibid.

99 Ibid, 549.

100 Ibid.

101 Ibid, 543.


Chapter Two

1 An overwhelming majority of immigrants from El Salvador who entered after January 1, 1982, were also unable to avail themselves of the benefits of a 1986 amnesty program. Carlos B. Cordova, The New Americas: The Salvadoran Americans (Westport, CT: Greenwood Press, 2005), 45. Under the auspices of the Immigration Reform and Control Act (“IRCA”), undocumented aliens residing in the United States by the designated date were eligible to legalize their status. Since more than 50% of illegal immigrants from El Salvador entered the U.S. during the most violent years of the civil war (1982-1989), Salvadoran immigrants were statutorily ineligible to adjust their status to that of permanent residents. Ibid; Cecilia Menjivar, Fragmented Ties (Berkeley, CA: University of California Press, 2000), 83.


3 Ibid.


5 Ibid.

6 Ibid. Immigration Judges determine whether or not to deport aliens on a case-by-case basis, and thus, a general ban on the deportation of all citizens from a particular foreign country would be incongruous with long-standing immigration policy. The 1986 amnesty program also allowed a large class of illegal immigrants to legalize their status based on their date of entry into the United States. Since the definition of what constituted an “illegal immigrant” had changed, the government no longer had the legal grounds to prosecute religious leaders who harbored immigrants in their sanctuaries. Ibid, n. 108.

7 Ibid, 54-55.

8 Ibid, 54.

9 Ibid.

10 Ibid, 55.

11 Ibid.

13 Ibid.


16 Ibid, 684-85.

17 Ibid.


22 Coutin, *Nation of Emigrants,* 59-60.


29 Ibid.


31 Coutin, *Nation of Emigrants,* 58.


34 Ibid, 95-99.


36 Ibid.


39 Coutin, “The Odyssey of Salvadoran Asylum Seekers,” 40.


41 Ibid; Coutin, “The Odyssey of Salvadoran Asylum Seekers,” 40.

42 Ibid.


Ibid.

Ibid.

Ibid, 503.

Ibid, 503-05.


Coutin, Nation of Emigrants, 66.


Ibid, 193; Coutin, Nation of Emigrants, 65.


Ibid.

Ibid.


“NACARA 203: Eligibility to Apply with USCIS,” http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=140748afcb41e010VgnVCM1000000eccd190aRCRD&vgnextchannel=828807b03d92b010VgnVCM1000045f3d6a1RCRD.


62 Ibid, 194.

63 Ibid, 192.


67 Coutin, Nation of Emigrants, 67.

68 Ibid.


70 Ibid, 27857.


81 Ibid.

82 Ibid.

83 American Immigration Lawyers Association, Southern California Chapter, “Asylum” (February 9, 2005), www.socalailla.org/worddoc/9Feb05approved.DOC (accessed January 17, 2010). Local asylum offices conduct meetings with immigration attorneys and service providers. The aforementioned document contains the public notes from one such meeting.

84 An immigrant is entitled to receive a work permit if he or she has a pending asylum request or pending NACARA application. Registering for Temporary Protected Status also allows an immigrant to obtain employment authorization. Some Salvadoran immigrants submitted their asylum claims and obtained a work permit through that request, thus eliminating the urgency or necessity in applying for NACARA or registering for TPS. By contrast, other immigrants from El Salvador availed themselves of all possible benefits and had access to employment authorization through whichever application they chose.

With the establishment of the Department of Homeland Security and streamlined computerized databases, the agency had access to immigrants’ current addresses. Salvadoran immigrants submitted renewal applications for their work permits and TPS registrations, and thus, DHS had the immigrants’ most recent addresses on file. Notices from USCIS encouraged a significant number of Salvadoran immigrants who were eligible for NACARA to finally submit their applications.

85 Evidence that the applicant was involved in the persecution of others is a bar to NACARA eligibility. The local asylum offices are not permitted to adjudicate the applications of an immigrant who had any involvement in the Salvadoran Civil War (whether on the side of the national military or the guerrillas). These cases must be forwarded to Asylum Headquarters, and that office takes several years to adjudicate them.


95 Ibid.


100 Ibid.

Chapter Three


12 Ibid.

13 Ibid.

14 Ibid.

15 Ibid.


17 Ibid.


20 Ibid.


22 Ibid.


24 Ibid.


28 Ibid.

29 Ibid, 23.
31 Ibid, 6.
32 Ibid, 7.
33 Ibid, 24.


36 Ibid.
37 Ibid.
38 Ibid.


40 Ibid.
41 Ibid.


43 Ibid.


45 Ibid.

46 Department of Commerce, International Trade Administration, Association of American Chambers of Commerce of Latin America, “The United States Contributes to Economic Prosperity in El Salvador” (January 2009), http://docs.google.com/viewer?a=v&q=cache:GC0qYE1eMgIJ:www.aaccla.org/NR/rdonlyres/eza3spl2gjt7nw3aeeia5uaut6ouomqno27ce5y6r3ehbyrsfnaslawnmvq5gydxcac3tuprwxfsydrdwag/ElSalvadorJanuary2009.pdf+%22us+direct+investment%22+%22el+saldor%22+%222007%22&hl=en&gl=us&pid=b1&srcid=ADGEESgtdfH865FG5U89a8eTrusSbH_bZUEhxgKxmQt97nvQHNqm3T83JaqkhU7DnV73PKBP9Evq6gwo0K-150
47 Ibid.


52 Ibid.

53 Ibid.

54 Ibid.


57 Ibid.


60 Ibid.

61 Ibid.


63 Ibid.

64 Ibid.


67 Ibid.


69 Ibid.

70 Ibid.


75 Ibid.


78 Ibid.


82 Ibid.


Chapter Four


8 Some Salvadoran TPS registrants have resided in the United States for closer to 20 years, if they entered after the 1990 deadline to apply for suspension of deportation under NACARA, but were unable to avail themselves of the 245(i) amnesty program.


13 Ibid.


20 Ibid.

21 Ibid.

22 Ibid.


27 “Bishops Request Temporary Protected Status for Haitians,”

28 “Hope for Haitians?”

29 Ibid.

30 Florida Immigrant Advocacy Center, “Secretary Napolitano: Grant Haitians a Stay of
17, 2010).

31 Nicholas Kralev, “Protected Status Sought for Haitians,” Washington Times, March 18, 2009,
(accessed January 17, 2010).


33 Kralev, “Protected Status Sought for Haitians,”

34 Charles and Daniels, “Mud and Misery Rule Storm-Ravaged City,”

35 Ibid.

36 Jacqueline Charles, “Bill Clinton Sees Big Opportunity for Haiti,” Miami Herald, September 30,
2009,

37 Ibid.

38 Ibid.

39 Kralev, “Protected Status Sought for Haitians,”

40 Ibid.

41 Department of Homeland Security, U.S. Citizenship and Immigration Services, Immigration
and Nationality Act, Temporary Protected Status, Sec 244(b) (2008).

42 Office for the Coordination of Humanitarian Affairs, Environment Unit, Hurricane Stan –
Environmental Impacts from Floods and Mudslides in Guatemala (Switzerland: Joint UNEP/OCHA
Environment Unit, October 26, 2005), 2,


Ibid.


Ibid.


60 Ibid.

61 Ibid, 52408.

62 Ibid.


64 Ibid.

65 Ibid.


Chapter Five


4 Ibid.


11 Ibid.


13 Ibid.

14 The UNCHR defines “displaced” as “persons who have been forced to flee their homes for the same reasons as refugees, but who have not left their own countries and are therefore not considered ‘refugees’ under the UNHCR Statute. United Nations High Commissioner for Refugees, “Protection Aspects of UNHCR Activities on behalf of Internally Displaced Persons,” *Refugee Survey Quarterly* 14, no. 1-2 (1995): 176, http://rsq.oxfordjournals.org/cgi/pdf_extract/14/1-2/176 (accessed January 18, 2010).


16 Ibid.


19 As an example, the Department of Motor Vehicles will issue an immigrant a driver’s license that is valid for the time during which his or her work permit is valid. An automatic extension of TPS does not account for the logistical problems that will ensue if an immigrant does not possess an employment authorization document that is valid on its face.


21 Ibid, 353.
Ibid.

Ibid.

Ibid, 358.

Ibid, 357.

Ibid, 357.


Ibid.


Ibid.


Ibid.


**Conclusion**


5 Carlos B. Cordova, The New Americans: The Salvadoran Americans (Westport, CT: Greenwood Press, 2005), 37. It is worth noting that statistics vary slightly between sources, and thus, all data should be viewed as a general approximate. Alba and Nee state that close to 3% of Salvadoran requests for asylum were granted. Richard Alba and Victor Nee, Remaking the American Mainstream: Assimilation and Contemporary Immigration (Cambridge, MA: Harvard University, 2003), 196.


7 Ibid, 684-85.


10 Ibid.


34 Ibid, 52407.


BIBLIOGRAPHY


Coffino, Eli. “Long Road to Residency: The Legal History of Salvadorean and Guatemalan Immigration to the United States with a Focus on NACARA.”


Contributes to Economic Prosperity in El Salvador” (January 2009).
http://docs.google.com/viewer?a=v&q=cache:GC0qYEIEmgJ:www.aaccla.org/NR/rdonlyres/ea3spll2gtj7nw3aecaia5uaut6rouomqno27ocge3sy6r3ehbyrsfnaslaw
mnvq5gyddcaac3tupravfsvdvwag/ElSalvadorJanuary2009.pdf+%22us+direct+in
vestment%22+%22el+salvador%22+%222007%22&hl=en&gl=us&pid=bl&srcid=ADGEESgt-
fh865FG5U89a8eTrusSbH_bZUEhxxgKxmtQ97nvQHNNqm3T83JafqkU7DnV73P
KBP9Evq6gwo0K-
ihJCNuF81NmSHWBXPgPc866v3ofF5Y1eYnsbB6bTuXCG9eC_qTFitY&sig=
=AHIEtbT2KbRklVb7a0vwwU3tZRISpzNwu2Q (accessed January 17, 2010).

Temporary Protected Status; Extension of Employment Authorization

“NACARA 203: Eligibility to Apply with USCIS.”
http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f
6d1a/?vgnextoid=140748afcb41e010VgnVCM1000000ecd190aRCRD&vgnextch
annel=828807b03d92b010VgnVCM10000045f3d6a1RCRD (accessed January
17, 2010).

Leadership Journal Archives (September 26, 2008).
http://www.dhs.gov/journal/leadership/2008/09/temporary-protected-status-
extensions.html (accessed January 17, 2010).

2010).

“Section 203 of the Nicaraguan Adjustment and Central American Relief Act.”
January 17, 2010).

“Designation of the Province of Kosovo in the Republic of Serbia in the State of
the Federal Republic of Yugoslavia (Serbia-Montenegro) under Temporary


http://books.google.com/books?id=yPF8H0a9iS0C&dq=%22el+salvador+rural+development+study%22&printsec=frontcover&source=bl&ots=Ep-dvp7daK&sig=Gfvs1YB939rqX98zJckpqyzSL0&hl=en&ei=GK0USobdDZbFtgej0KSPBA&sa=X&oi=book_result&ct=result&resnum=1#v=onepage&q=&f=false (accessed January 13, 2010).