
Developments Relating to DACA and TPS

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This week has seen two significant developments affecting hundreds of thousands of noncitizens afforded protection from deportation under the Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS). Specifically, on Tuesday, January 9, 2018, the United States District Court for the Northern District of California issued a [preliminary injunction](#) requiring the Department of Homeland Security (DHS) to resume accepting DACA renewal applications. And on Monday, January 8, 2018, DHS Secretary [Kirstjen M. Nielsen](#) announced her decision to terminate the TPS designation for El Salvador with a delayed effective date of 18 months.

DACA

DACA provides temporary but renewable relief from deportation (called deferred action) and work authorization to certain young undocumented immigrants who were brought to the United States as children. DACA does not bestow lawful permanent resident status or create a pathway to citizenship. Since its creation in 2012 by President Obama, DACA has allowed roughly 800,000 young people to pursue education and employment opportunities without the fear of deportation. DACA was administered primarily by U.S. Citizenship and Immigration Services (USCIS), the sub-agency within the Department of Homeland Security (DHS) that is responsible for adjudicating immigration benefits. Individuals who qualified for DACA were granted its benefits in two-year increments.

On September 5, 2017, then-Acting DHS Secretary Elaine Duke issued a memo describing how DHS would wind down the program. A small group of DACA recipients whose grants of deferred action were slated to expire on or before March 5, 2018 were permitted to file for renewal, provided they did so before October 5, 2017. But DACA recipients whose grants of deferred action would expire after March 5, 2018 were precluded from applying for renewal. And no new initial applications would be accepted.

On January 9, 2018, however, in a case brought by various plaintiffs, including California, Minnesota, and Maryland, the United States District Court for the Northern District of California issued a decision finding the Trump Administration's rescission of DACA likely unlawful and ordering DHS to resume accepting renewal applications pending further litigation. The court instructed DHS to "post reasonable public notice that it will resume receiving DACA renewal applications and prescribe a process consistent with" the court's order. As of the drafting of this practice alert, such notice has not been posted.

The White House has criticized the decision, and the government will likely appeal.

The court's decision comes as Democrats and Republicans are in negotiations over various aspects of immigration reform, including the possible creation of a pathway to citizenship for DACA recipients, elimination of the diversity visa (also known as the "visa lottery"), modifications to the family-based immigration system, and funding to further secure the border.

TPS

U.S. immigration law authorizes the Secretary of Homeland Security to designate specific countries for Temporary Protected Status. TPS affords a safe-haven to the nationals of countries who are present in the United States when certain disastrous events—like civil war or natural disasters—strike their home countries rendering their forcible return dangerous. Designation by the DHS Secretary of a country's nationals for TPS allows all of those country's nationals who are in the United States on the day of the designation to apply for TPS. Anyone from that country who enters after that date is not eligible.

El Salvador was first designated for TPS in 2001 by the George W. Bush Administration following a violent earthquake that leveled much of the country. El Salvador was then re-designated for TPS on several occasions over the next seventeen years. Roughly 200,000 Salvadorans currently hold TPS.

On Monday, January 8, 2018, DHS Secretary Nielsen announced the termination of the TPS designation for El Salvador. The status of the individuals who hold TPS will not terminate, however, until September 9, 2019. At that time, the approximately 200,000 Salvadorans who hold TPS will fall out of status and become vulnerable to the initiation of removal proceedings, unless they can pursue another means to obtain lawful status, such as asylum or family-based immigration.

The Clark Hill Immigration Practice Group will monitor developments in these areas and provide updates as appropriate.