



**Practice Advisory Series**  
**TEMPORARY PROTECTED STATUS**

**EL SALVADOR: TEMPORARY  
PROTECTED STATUS DESIGNATION,  
EXTENSION, AND TERMINATION**

**Third Installment**

**December 2018**

**Center for Human Rights and Constitutional Law**  
**256 S. Occidental Blvd.**  
**Los Angeles, CA 90057**

**Telephone: (213) 388-8693**

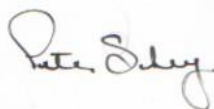
## Practice Advisory Forward

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The Center has achieved major victories in numerous major cases in the courts of the United States and before international bodies that have directly benefited hundreds of thousands of disadvantaged persons.

*This practice advisory reviews El Salvador's designation of TPS, each extension of El Salvador's TPS, the termination of El Salvador's TPS, and the current country conditions justifying extension of TPS.*

Manuals prepared by the Center are constantly being examined for improvements and updated to reflect current practices. Please feel free to email [pschey@centerforhumanrights.org](mailto:pschey@centerforhumanrights.org) if you would like to suggest updates or edits to portions of this practice advisory.



Peter Schey  
President and Executive Director  
Center for Human Rights and  
Constitutional Law

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## **I. Introduction**

This practice advisory acts as the fourth installment in a series about the United States' creation, utilization, and termination of several country's Temporary Protected Status ("TPS"). First, the fourth advisory will provide an overview of El Salvador's designation for TPS. Second, the advisory will discuss the extension of El Salvador's TPS. Third, there will be a discussion of the termination of El Salvador's TPS. Lastly, the advisory will discuss El Salvador's current country conditions and how these conditions support further extension of El Salvador's TPS.

El Salvador's TPS designation was issued on March 2, 2001 by the Department of Homeland Security and former Attorney General John Ashcroft. El Salvador's TPS has been extended on several dates commencing on July 11, 2002 while the final extension was granted on July 8, 2016. It is important for TPS recipients and legal service providers to be familiar with El Salvador's TPS designation, extensions, and terminations to help determine if TPS recipients qualify for additional immigration benefits, adjustment of status, deferred actions status, or asylum, etc.

## **II. Designation of El Salvador for Temporary Protected Status**

On March 1, 2001,<sup>1</sup> the Department of Homeland Security ("DHS") and former Attorney General John Ashcroft designated El Salvador for TPS, making TPS protection available to Salvadoran nationals "continuously physically present" in the United States since March 9, 2001, and who have "continuously resided" in the United States since February 13, 2001.<sup>10</sup> This initial designation was set to run through September 9, 2002.

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<sup>1</sup> The notice announcing designation of El Salvador was dated March 1, 2001 and recorded in the Federal Register on March 9, 2001.

In the same designation report, DHS found, “[b]ased 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. 8 U.S.C. 1254a(b)(1)(B).”<sup>2</sup>

### **III. Extension of El Salvador’s Temporary Protected Status**

El Salvador’s TPS has been extended eleven times from the country’s original designation on March 2, 2001. Since 2001, DHS and the Attorney General have “review[ed] the conditions in [El Salvador] for which a designation is in effect, and determin[e]d, “that El Salvador’s conditions for designation continue to be met.”<sup>3</sup> The following factors have been cited to extend El Salvador’s TPS: climate and environment, economy, infrastructure, public health, safety and security, and governance.

#### **A. El Salvador’s First TPS Extension**

On July 11, 2002, DHS and Attorney General Ashcroft published in the federal register El Salvador’s first TPS extension.<sup>4</sup> Attorney General Ashcroft based this extension on a finding that El Salvador still met all of the requirements for their TPS designation, particularly because the earthquake caused substantial damage to the country’s infrastructure. The report alleged the earthquakes “affected two-thirds of the country and damaged or destroyed over 300,000

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<sup>2</sup> Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14214 (Mar. 9, 2001).

<sup>3</sup> 8 U.S.C. § (b)(3)(a)

<sup>4</sup> Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans, 67 Fed. Reg. 46000-01 (July 11, 2002).

houses.”<sup>5</sup> Attorney Ashcroft found as of April 2002 the Government of El Salvador has, “replaced less than one quarter of the 170,000 homes destroyed by the earthquakes . . . , [and] an estimated one half of all families who lost their homes remain in temporary metal or plastic shelters . . . , [proving that] El Salvador’s infrastructure remains severely damaged...”<sup>6</sup>

Citing the Service Resource Information Center (“SRIC”), DHS and Attorney General Ashcroft found, “El Salvador’s recovery has been further affected by a subsequent drought, [f]ood stocks were already depleted following the earthquakes, and the drought has left at least 35,000 subsistence farming families destitute (approximately 318,000 people).”<sup>7</sup> According to the SRIC, as of April 2002, “up to 200,000 people were still threatened by “food insecurity.”<sup>8</sup>

#### **B. El Salvador’s Second TPS Extension**

On July 16, 2003, DHS and then Secretary of Homeland Security Tom Ridge extended El Salvador’s TPS citing that infrastructure and economy are, “conditions that prompted designation of El Salvador under the TPS program [and] continue to be met.”<sup>9</sup> In this extension notice DHS and Secretary Ridge stated, [a]s of April 2003, only one- third of the 170,000 homes destroyed by the earthquakes had been replaced, and [m]ore than three-quarters of the damaged roads still need repair.”<sup>10</sup>

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<sup>5</sup> Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans, 67 Fed.Reg. 46000-01 (July 11, 2002).

<sup>6</sup> *Id.* at 46001.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans, 68 Fed. Reg. 42000 (July 16, 2003).

<sup>10</sup> *Id.*

Resting on a Department of State recommendation, DHS claimed, “[t]he economy of El Salvador is not yet stable enough to absorb returnees from the United States should TPS not be extended.” They continued, [a] large number of returnees from the United States would not be able to find jobs or possibly housing, creating social unrest and exacerbating a critical crime situation and already dismal living conditions.”<sup>11</sup>

### **C. El Salvador’s Third TPS Extension**

On January 7, 2005, DHS and Secretary Ridge extended El Salvador’s TPS citing infrastructure as the condition present justifying extension.<sup>12</sup> Quoting the Department of State, the extension highlighted, “that almost 50% of the people who lost housing during the earthquakes are still without permanent shelter.”<sup>13</sup> DOS also found, “over 250 schools still require repair at a cost of approximately \$21.7 million.”<sup>14</sup> The USCIS Resource Information Center (RIC Report), cited in the extension stated, “[t]he pace of reconstruction of health infrastructure has been slower, [and] the earthquakes caused severe damage to 55% of the nation’s health infrastructure.”<sup>15</sup>

### **D. El Salvador’s Fourth TPS Extension**

On June 15, 2006, DHS and Secretary of Homeland Security Michael Chertoff extended El Salvador’s TPS citing climate and environment and infrastructure as the conditions present justifying extension. The 2006 notice of extension stated, “El Salvador has not been able to fully

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<sup>11</sup> *Id.*

<sup>12</sup> Extension of the Designation of El Salvador Under the Temporary Protected Status Program; Automatic Extension of Employment Authorization Documentation for Salvadorans, 70 Fed.Reg. 1400 (Jan. 7, 2005).

<sup>13</sup> *Id.* at 1451.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*



recover, in part due to the 2005 eruption of the Santa Ana volcano that was immediately followed by mudslides and flooding caused by Hurricane Stan.”<sup>16</sup>

DHS cited the Department of State’s recommendation and alleged, “[t]he Government of El Salvador remains engaged in earthquake reconstruction activities with USAID assistance.”<sup>17</sup>

DHS relied on subsequent DOS data, “[d]espite USAID’s 170 million dollar disaster reconstruction program, reconstruction projects remain incomplete. . . only 46 percent of the total number of houses destroyed or damaged had been reconstructed or repaired as of January 2006.”<sup>18</sup>

#### **E. El Salvador’s Fifth TPS Extension**

On August 21, 2007, DHS and Secretary Chertoff extended El Salvador’s TPS citing infrastructure as the condition present justifying extension. DHS’s 2007 notice stated, “[b]y the end of July 2004, . . . all major roads appeared to have been reconstructed and were functioning. The notice also claimed despite this progress, “current conditions in El Salvador still reflect much of the destruction caused by the earthquakes, and other critical infrastructure remains damaged or destroyed, particularly in the area of health care.”<sup>19</sup>

#### **F. El Salvador’s Sixth TPS Extension**

On October 2, 2008, DHS extended El Salvador’s TPS citing infrastructure as the condition present justifying extension. DHS found, “[t]ransportation, housing, education, and

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<sup>16</sup> Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvadoran TPS Beneficiaries, 71 Fed. Reg. 34637 (June 15, 2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Extension of the Designation of El Salvador for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 72 Fed. Reg. 46649 (Aug. 21, 2007).

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."<sup>20</sup> Furthermore DHS relied on the fact, "as of February 2007, 136,988 houses had been reconstructed or repaired, approximately 50 percent of the total number destroyed or damaged.."<sup>21</sup>

### **G. El Salvador's Seventh TPS Extension**

On July 9, 2010, DHS and Secretary of Homeland Security Janet Napolitano extended El Salvador's TPS citing climate and environment, infrastructure, and governance as the conditions present justifying extension. The 2010 notice cited, [m]ore recent natural disasters have delayed the recovery from the 2001 earthquakes. The notice also found, "[i]n 2009, Hurricane Ida caused extensive damage to crops, homes, roads, bridges, and other infrastructure ... and resulted in over 190 deaths and displaced more than 14,000 people in November 2009."<sup>22</sup>

In the same 2010 notice DHS found, "[r]econstruction of only two of the damaged hospitals has been completed."<sup>23</sup> The notice recognized, "the Salvadoran government has slowly worked to rebuild the other priority hospitals, but reconstruction of five hospitals is only half complete."<sup>24</sup>

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<sup>20</sup> Extension of the Designation of El Salvador for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 72 Fed. Reg. 46649 (Aug. 21, 2007).

<sup>21</sup> Extension of the Designation of El Salvador for Temporary Protected Status, 73 Fed. Reg. 57128 (Oct. 1, 2008).

<sup>22</sup> Extension of the Designation of El Salvador for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 75 Fed. Reg. 39556 (July 9, 2010).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 39558.

DHS extended TPS based on lack of governance explaining, “El Salvador also continues to suffer a public security crisis that threatens to undermine sustained development and confidence in democratic governance, as well as increasing levels of violent crime.”<sup>25</sup>

#### **H. El Salvador’s Eighth TPS Extension**

On January 11, 2012, DHS extended El Salvador’s TPS citing climate and environment, infrastructure, and public health as the conditions present justifying extension. In the 2012 notice, DHS looked to the United Nations Development Programme which, “classified El Salvador among the most vulnerable countries in the world.”<sup>26</sup> Further citing the UN, DHS found, “[g]iven the ongoing challenges faced by the country, El Salvador remains temporarily unable to handle adequately the return of its nationals from the United States.”<sup>27</sup>

The notice relied on El Salvador’s Ministry of Education, “[who] reported that while over 2,300 schools had been rebuilt as of July 2004, the remaining 270 schools damaged by the earthquakes will require \$21.7 million in financing to complete construction.”<sup>28</sup> Citing, [t]he National Water Institution, DHS found an “estimated that 40–50 percent of the population is without access to potable water on account of a continued lack of electricity and damage to the water system resulting from the earthquakes.”<sup>29</sup>

#### **I. El Salvador’s Ninth TPS Extension**

On January 11, 2012, DHS extended El Salvador’s TPS citing climate and environment and infrastructure as the conditions present justifying extension. In the 2012 notice DHS stated

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<sup>25</sup> *Id.*

<sup>26</sup> Extension of the Designation of El Salvador for Temporary Protected Status, and Automatic Extension of Employment Authorization Documentation for Salvadoran TPS Beneficiaries, 78 Fed. Reg. 1710 (Jan. 11, 2012).

<sup>27</sup> *Id.* at 1712.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

“recovery in the affected areas of El Salvador has been slow and disrupted by subsequent natural disasters, including a recent 7.4 magnitude earthquake in 2012 and Tropical Depression 12E in October 2011.”<sup>30</sup>

Moreover, DHS described El Salvador’s infrastructure , “[a]lthough it has been over 10 years since the 2001 earthquakes and most medical services were restored by 2011, the current infrastructure and conditions in El Salvador severely complicate the country’s ability to absorb the return of its nationals from the United States, approximately 212,000 of whom are TPS beneficiaries.<sup>31</sup> The notice continued, “[f]ollowing the devastation experienced from the 2001 earthquakes, more recent environmental disasters have caused substantial setbacks to road and infrastructure recovery and development.”<sup>32</sup>

#### **J. El Salvador’s Tenth TPS Extension**

On January 7, 2015, DHS and then Secretary of Homeland Security Jeh Charles Johnson extended El Salvador’s TPS citing climate and environment, economy, and public health as the conditions present justifying extension. In the 2015 notice DHS found, “El Salvador is currently experiencing the effects of a severe regional drought that is impacting food security.”<sup>33</sup> This is supported by statistics from the Famine Early Warning Systems Network which stated, “dryness is the worst in 10 years, including the El Nino year of 2009.”<sup>34</sup>

DHS described the state of El Salvador’s economy, “the effects of the drought, a leaf rust epidemic has affected 74 percent of coffee plants in El Salvador, causing a loss of millions of

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<sup>30</sup> Extension of the Designation of El Salvador for Temporary Protected Status, 78 Fed. Reg. 32418 (May 30, 2013).

<sup>31</sup> *Id.* at 32420.

<sup>32</sup> *Id.*

<sup>33</sup> . Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893 (Jan. 7, 2015).

<sup>34</sup> *Id.* at 895.

dollars in coffee production, as well as the loss of over 300,000 jobs in that sector.”<sup>35</sup> The notice also stated, “[e]conomic losses from the earthquakes were reported to be as high as \$2.6 billion, almost 15 percent of El Salvador’s gross domestic product, [and] over a third of the country’s workforce is underemployed or not able to find full- time work.”<sup>36</sup> Taking into consideration El Salvador’s economic situation, “a large influx of returning citizens at this time would overwhelm the labor market and the government’s fiscal ability to extend basic services to its citizens.”<sup>37</sup>

Citing the National Water Institution DHS asserted, “[o]ver 10 percent of El Salvador’s total population, mostly in rural areas, still lacks access to drinking water.”<sup>38</sup> They further found, “water contamination and scarcity are of particular concern in the San Salvador metropolitan area, threatening human health and productivity, as well as generating social conflict.”<sup>39</sup>

#### **K. El Salvador’s Eleventh TPS Extension**

On July 8, 2016, DHS extended El Salvador’s TPS citing climate and environment, economy, infrastructure, and safety and security as the conditions present justifying extension. DHS recognized subsequent natural disasters that have plagued El Salvador and found, “[f]urther, environmental and social conditions have contributed to an outbreak of mosquito borne illnesses, including chikungunya and dengue.”<sup>40</sup>

In the same 2016 notice, DHS stated, [t]he drought is projected to cause more than \$400 million in losses from corn, beans, coffee, sugar cane, livestock, and vegetables, resulting in

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<sup>35</sup> Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893 (Jan. 7, 2015).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 894.

<sup>39</sup> Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 893 (Jan. 7, 2015).

<sup>40</sup> Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44645 (July 8, 2016).

subsistence farmers facing malnutrition and pressure to migrate. Increasing violence and insecurity is also a major constraint to economic growth.”<sup>41</sup> DHS recorded, “El Salvador faces a housing deficit of approximately 630,000 houses, created in part because 340,000 homes destroyed in the 2001.”<sup>42</sup>

DHS indicated, “[h]ampered by limited financial resources, the government continues to struggle to respond adequately to increasing levels of crime, and there is little confidence the security situation will improve in the short term.”<sup>43</sup> DHS supported this notion stating, “[m]urder, extortion, and robbery rates are high, and the government struggles to respond adequately to crime, including significant criminal gang activity.”<sup>44</sup>

#### **IV. Termination of El Salvador’s Temporary Protected Status**

On January 18, 2018 Secretary Kristjen Nielsen terminated TPS for El Salvador claiming,

The social and economic conditions affected by the earthquakes have stabilized, and people are able to conduct their daily activities without impediments directly related to damage from the earthquakes. Additionally, El Salvador has been regularly accepting the return of its nationals with final removal orders. In fiscal year 2016, DHS removed 20,538 Salvadoran nationals, and, in fiscal year 2017, DHS removed 18,838 Salvadoran nationals. Additionally, El Salvador’s Economy is steadily improving. The Salvadoran Government has estimated that the country’s unemployment rate was 7 percent in 2014, 2015, and 2016. The Gross Domestic Product (GDP) in El Salvador reached an all-time high of \$26.80 billion (USD) in 2016 and is expected to reach \$27.3 billion (USD) by the end of 2017. El Salvador’s GDP is projected to increase to about \$28.6 billion in 2020.<sup>45</sup>

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<sup>41</sup> Extension of the Designation of El Salvador for Temporary Protected Status, 81 Fed. Reg. 44645, 44648 (July 8, 2016).

<sup>42</sup> *Id.* at 44647.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 12 (Jan. 18, 2018).

DHS and Secretary Nielsen discussed El Salvador's infrastructure stating, "many reconstruction projects have now been completed, and more specifically, "[d]amaged schools and hospitals have been reconstructed and repaired, homes have been rebuilt, and money has been provided for water and sanitation and to repair damaged roads and other infrastructure."<sup>46</sup> The 2018 termination notice addressed El Salvador's governance and found, "[g]overnment assistance and resources for returnees are reportedly limited, but the Salvadoran Government, U.S. Government, and international organizations are working cooperatively to improve security and economic opportunities in El Salvador to lay the groundwork for an eventual return of many Salvadorans from the United States."<sup>47</sup>

In the January 18, 2018 termination, DHS discussed the current workings of the Salvadoran government stating,

Government assistance and resources for returnees are reportedly limited, but the Salvadoran Government, U.S. Government, and international organizations are working cooperatively to improve security and economic opportunities in El Salvador to lay the groundwork for an eventual return of many Salvadorans from the United States.<sup>48</sup>

#### **V. El Salvador's Current Country Conditions**

DHS and Secretary Nielsen's 2018 termination notice inadequately analyzes El Salvador's current country conditions and the conditions that led to El Salvador's TPS determination. DHS placed great emphasis on the effects of natural disasters on El Salvador's environment, infrastructure, economy, public health, safety and security, and governance. Rather the 2018 termination notice ignores the plight presented in the prior notices and the current conditions faced by those living in El Salvador. The January 18, 2018 termination order makes

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 12 (Jan. 18, 2018).

no reference to current security, infrastructure, and economic problems that continue to persist as the result of the 2001 earthquakes, even though those conditions were consistently cited as reasons to extend El Salvador's TPS.

### **A. Climate and Environment**

El Salvador's climate and environment continue to negatively affect Salvadoran society. In 2016, the Climate and Development Knowledge Network ("CDKN") produced a report entitled *Disaster Risks to Infrastructure in El Salvador*, and found "El Salvador is highly vulnerable to natural hazards, and is also exposed to extreme weather events that cause damage through intense rainfall, floods, landslides and debris flows/lahars."<sup>49</sup> The CDKN report also found, "[o]ver 90% of El Salvador's population lives in areas of high risk to natural disasters and approximately 96% of the country's gross domestic product (GDP) is linked with these locations."<sup>50</sup>

In October 2017, the World Bank reported on El Salvador's economic growth and found, "El Salvador's vulnerability to adverse natural events, exacerbated by environmental degradation and extreme climate variability... compromises the country's sustainable development and long-term economic growth."<sup>51</sup>

In April 2017 USAID produced a factsheet entitled *Climate Change Risk Profile El Salvador* and reported, "[w]arming, drying and extreme weather trends are expected to lead to declines in El Salvador's agricultural production, including domestic staples such as maize and

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<sup>49</sup>*Disaster Risks to Infrastructure in El Salvador Toward a Sustained National Framework for Infrastructure Risk Assessment*, Climate and Development Knowledge Network (2016) (available at: <https://cdkn.org/wp-content/uploads/2016/09/AALA-0010-Component-3-Policy-Brief-EN-final-June2016.pdf>).

<sup>50</sup> *Id.*

<sup>51</sup> *El Salvador: Overview*, The World Bank (Oct. 10, 2017) (available at: <http://www.worldbank.org/en/country/elsalvador/overview>).



beans and the main agricultural export, coffee.”<sup>52</sup> To substantiate this claim the Fact Sheet reported, “[c]hanging weather patterns threaten to bring more shocks, such as the 2012 drought, which led to an estimated \$38 million in agricultural losses, and the 2014–2016 drought, which affected millions across Central America. USAid noted, “[w]eather changes may also increase the incidence of destructive tropical storms, like the 2005 storm that destroyed 70 percent of the corn and bean crop and the 2011 storm that led to \$105.3 million in agricultural losses.”<sup>53</sup>

## **B. Economy**

El Salvador’s economy continues to struggle and will be exacerbated by the return of those with TPS. The Economist Intelligence Unit provided an economic overview of El Salvador and although, “[g]rowing remittances will support a GDP growth of 2.2% in 2018-19; . . . the cancellation of the TPS scheme to 200,000 Salvadorans will curb secondary income inflows in 2020-22.”<sup>54</sup>

The Congressional Research Service (“CRS”) provided background information on the relationship between the United States and El Salvador and quoted the International Monetary Fund stating, “El Salvador posted an economic growth rate of 2.4% in 2016, the lowest of any country in Central America.”<sup>55</sup> Additionally, a recent study by the Inter-American Development Bank (IDB), entitled *The Cost of Crime and Violence: New Evidence and Insights in Latin*

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<sup>52</sup> *Climate Change Risk Profile El Salvador*, United States Agency International Development (April 2017) (available at: [https://www.climatelinks.org/sites/default/files/asset/document/2017\\_USAID%20ATLAS\\_Clim ate%20Change%20Risk%20Profile\\_El%20Salvador.pdf](https://www.climatelinks.org/sites/default/files/asset/document/2017_USAID%20ATLAS_Clim ate%20Change%20Risk%20Profile_El%20Salvador.pdf)).

<sup>53</sup> *Id.*

<sup>54</sup> *El Salvador*, The Economist Intelligence Unit (2018) (available at: <http://country.eiu.com/el-salvador>).

<sup>55</sup> Clare Ribando Seelke, Cong. Research Serv., R43616, *El Salvador: Background and U.S. Relations* (2017).

America and the Caribbean, estimated that the costs of crime and violence in El Salvador could reach 5.9% of GDP.<sup>56</sup>

On October 10, 2017, the World Bank published a report entitled *El Salvador: The Overview* and discussed the current economic trends within the country.<sup>57</sup> The report concluded, “[t]he fiscal deficit is currently around 2.8% of GDP while debt is expected to reach 61.3% of GDP by the end of 2017, almost one percentage point higher than in 2015.”<sup>58</sup> The World Bank also stated, “[t]he rising debt-to-GDP ratio, together with the low growth performance, has negatively impacted El Salvador’s debt profile.”<sup>59</sup>

### **C. Infrastructure**

DHS consistently cited infrastructure as a condition meriting the renewal of El Salvador’s TPS, as evidenced by ten out eleven extension notices. On March 08, 2016, the United Nations delegated the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation to conduct a report on access to safe drinking water within El Salvador. The Special Rapporteur reported that in El Salvador “the obsolete infrastructure, in which asbestos-cement pipes are present, poses a threat to the quality of water for human consumption.”<sup>60</sup>

### **D. Public Health**

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<sup>56</sup> Laura Jaitman, *The Costs of Crime and Violence New Evidence and Insights in Latin America and the Caribbean*, Inter-American Development Bank (2017) (available at: <https://publications.iadb.org/bitstream/handle/11319/8133/The-Costs-of-Crime-and-Violence-New-Evidence-and-Insights-in-Latin-America-and-the-Caribbean.pdf>).

<sup>57</sup> *El Salvador: Overview*, The World Bank (Oct. 10, 2017) (available at: <http://www.worldbank.org/en/country/elsalvador/overview>).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Report by the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to El Salvador, United Nations Human Rights (Mar. 08, 2016) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/170/66/PDF/G1617066.pdf?OpenElement>.

El Salvador continues to suffer from public health crises, but this condition was not discussed in El Salvador's TPS termination notice. USAID produced a fact sheet entitled Climate Change Risk Profile El Salvador in April 2017 and reported, "[e]xtreme weather, warming and drying impact El Salvador's population..."<sup>61</sup> The Fact Sheet indicated,

Heat stress induces dehydration and chronic kidney disease in construction and agricultural workers and threatens increased chronic respiratory and cardiovascular diseases, asthma and rhinitis throughout the population, [while] [s]torms increasingly cause deaths and lead to flooding, with carryover effects for crop losses, water quality and diarrheal disease, the country's tenth leading cause of death.<sup>62</sup>

### **E. Safety and Security**

DHS continued to ignore important country conditions by not discussing the widespread violence overtaking El Salvador. On April 12, 2017, the Department of State ("DOS") updated El Salvador's Human Rights Report and discussed the inadequacies of safety and security in El Salvador. The DOS Human Rights Report concluded, "[c]ivilian authorities failed at times to maintain effective control over security forces ..."<sup>63</sup> DOS found, "[a]s of October the attorney general was investigating 53 possible cases of extrajudicial killings, and [t]he PDDH received 21 complaints of torture or cruel, inhuman, or degrading treatment by the PNC, armed forces, and other public officials ..."<sup>64</sup> They noted, "[g]ang activities in prisons and juvenile holding facilities remained a serious problem, and [a]s of August 15, detention center facilities held 16,215 inmates who were current or former gang members. Dos provided further

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<sup>61</sup> *Climate Change Risk Profile El Salvador*, United States Agency International Development (April 2017) (available at: [https://www.climatelinks.org/sites/default/files/asset/document/2017\\_USAID%20ATLAS\\_Clim%20Change%20Risk%20Profile\\_El%20Salvador.pdf](https://www.climatelinks.org/sites/default/files/asset/document/2017_USAID%20ATLAS_Clim%20Change%20Risk%20Profile_El%20Salvador.pdf)).

<sup>62</sup> *Id.*

<sup>63</sup> *El Salvador 2016 Human Rights Report*, U.S. Department of State (April 12, 2017) (available at: <https://www.state.gov/documents/organization/265798.pdf>).

<sup>64</sup> *Id.*

evidence, “[o]n October 22, the Prison Directorate ordered 235 inmates moved to different prisons in an effort to break up gang “cliques” within prisons.”<sup>65</sup>

The International Crisis Group released a report on April 6, 2017 entitled, *Detailing Gang Activity within the Northern Triangle of Central America*. The study stated in El Salvador, “extortion is on the rise and now affects 22 per cent of firms, although only 15 per cent of all incidents are reported, reflecting the lack of confidence in the response capacities of the local police and judiciary.”<sup>66</sup>

The Congressional Research Service (“CRS”) report spoke to the current safety and security in El Salvador and stated, “[a]lthough homicides decreased by 20% in 2016 to 81.2 per 100,000, they have recently spiked dramatically and have included targeted killings of security forces by gangs.”<sup>67</sup>

In 2017 the Internal Displacement Monitoring Centre (“IDMC”) produced a report and found, “. . . the phenomenon of displacement by generalised violence is still inconsistently monitored across the world, and in El Salvador significant numbers of people were displaced by criminal and gang violence in 2016.”<sup>68</sup> IDMC provided more evidence on El Salvador’s displacement and stated, “placing the country second in the ranking of highest new displacements relative to population size.”<sup>69</sup> The IDMC estimated, “that nearly 220,000 people

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<sup>65</sup> *Id.*

<sup>66</sup> *Mafia of the Poor: Gang Violence and Extortion in Central America*, International Crisis Group at 15 (April 6, 2017).

<sup>67</sup> Clare Ribando Seelke, Cong. Research Serv., R43616, *El Salvador: Background and U.S. Relations* (2017).

<sup>68</sup> *Global Report on Internal Displacement*, Internal Displacement Monitoring Centre at 10 (2017) (*available at*: <http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf>).

<sup>69</sup> *Id.*

were forced to flee generalised violence in 2016, [and] IDPs feel forced to restrict their own basic freedoms and rights to avoid detection by criminal groups or the authorities.”<sup>70</sup>

## **F. Governance**

Although reports produced by various organizations highlight the current discord in El Salvador’s governance, DHS provide a cursory and subpar analysis of this condition in the January 18, 2018 termination notice. According to the Department of State Country Report for El Salvador in 2017,

NGOs reported that public officials, including police, engaged in violence and discrimination against sexual minorities. Persons from the LGBTI community stated that the agencies in charge of processing identification documents, the PNC, and the Attorney General’s Office harassed transgender and gay individuals when they applied for identification cards or reported cases of violence against LGBTI persons. . . The NGO Social Initiative for Democracy stated that officials, particularly in the judicial system, often engaged in corrupt practices with impunity. Autonomous government institutions initiated several investigations into corruption.<sup>71</sup>

The Congressional Research Service’s report on the relationship between the United States and El Salvador concluded that, “a lack of confidence in the underfunded police has led many companies and citizens to use private security firms and the government to deploy soldiers to perform public security functions (see “Military Involvement in Public Security Efforts”).”<sup>72</sup> CRS continued to discuss the lack of confidence in El Salvador’s governance and stated, “[t]here have also been serious concerns about corruption in the police, prisons, and judicial system.”<sup>73</sup>

In 2017 the IDMC produced a report to discuss the prevalence of internal displacement and stated, “[d]isplacement in El Salvador is driven by organised criminal groups committing

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<sup>70</sup> *Id.*

<sup>71</sup> *El Salvador 2016 Human Rights Report*, U.S. Department of State (April 12, 2017) (available at: <https://www.state.gov/documents/organization/265798.pdf>).

<sup>72</sup> Clare Ribando Seelke, Cong. Research Serv., R43616, *El Salvador: Background and U.S. Relations* (2017).

<sup>73</sup> *Id.*

egregious acts of violence against civilians with impunity.<sup>74</sup> The IDMC reported, [t]he population's perception is that the state is unable, and given the human rights violations committed in the "war on gangs", in some cases unwilling to provide protection and assistance."<sup>75</sup>

## **VI. Conclusion**

Over 200,000 Salvador's face imminent deportation at the hands of the U.S. Government because of DHS's decision to terminate their TPS. Based on prior TPS extensions and reports conducted by various non-profits and NGOs EL Salvador cannot reasonably accept the return of Salvadoran nationals. Additionally, DHS's termination of El Salvador's TPS was arbitrary and capricious, because it was not based on actual review of conditions that warranted the designation and extension of TPS.

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<sup>74</sup> *Global Report on Internal Displacement*, Internal Displacement Monitoring Centre at 22 (2017) (available at: <http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf>).

<sup>75</sup> *Id.*