

# How Many Could Executive Action Protect? Estimating the Scope of Protection Through TPS and DACA

---



June 2020

## I. POPULATION ESTIMATES<sup>1</sup>

The next administration, through the use of prosecutorial discretion and deferred action—and designations of Temporary Protected Status (TPS)—has the ability to reverse the Trump administration’s use of executive authority to strip away protections from undocumented immigrants in the United States. Specifically, through strategic use of Deferred Action for Childhood Arrivals (DACA) and TPS, the next administration can quickly expand employment authorization (also known as “work permits”) and protection from deportation for upwards of 3.5 million individuals *without* legislation. Of note, Deferred Enforced Departure (DED), a form of protection stemming from the Presidents’ authority to conduct foreign affairs, and that similarly provides work permits and protection from deportation, could also be utilized to protect the TPS population described in this report. Importantly, DED could be used as a “bridge” by the next administration to provide interim relief immediately upon taking office to provide the relevant agencies the time to develop recommendations for the administration on the use of TPS.

The below table represents the number of people who could benefit from the strategic use of DACA and TPS, including restoring proper use of the law and past policy and procedure. This means designating countries for TPS that the Trump administration failed to designate for political purposes—including the Bahamas, Guatemala, and Venezuela—restoring TPS for the countries terminated under the Trump administration, and redesignating the countries that received TPS extensions but the Trump administration failed to redesignate. In the TPS context, countries were included because there are recent or longstanding country conditions that would feasibly support a recommendation for TPS from U.S. Citizenship and Immigration Services (USCIS), the U.S. Department of State, and, ultimately, designation from the Secretary of U.S. Department of Homeland Security. The table also assumes the restoration of DACA (though not the expansion of DACA, which was enjoined under the Obama administration). Between the statutory authority supporting TPS and the longstanding success of DACA, the below represents a credible roadmap to protect large swaths of the undocumented population.

<i>TPS Country</i>	<i>Mechanism</i>	<i>Potential Beneficiaries</i>
Bahamas	Initial Designation	14,200
El Salvador	Restoring Designation	750,000
Guatemala	Initial Designation	600,000
Guinea	Initial Designation	930
Haiti	Restoring Designation	100,000
Honduras	Restoring Designation	400,000
Nepal	Restoring Designation	36,795
Nicaragua	Restoring Designation	54,926
Sierra Leone	Initial Designation	1,180
Somalia	Redesignation	455
South Sudan	Redesignation	96
Sudan	Restoring Designation	774
Syria	Redesignation	6,934
Venezuela	Initial Designation	200,000
Yemen	Redesignation	1,646
<b>TPS Total</b>		<b>2,167,936</b>
<b>DACA Total</b>		<b>1,322,000</b>
<b>Total</b>		<b>3,489,936</b>

*Source: See methodology section.*

“Initial Designation” represents a new designation for TPS. “Restoring Designation” involves issuing a designation for a country whose TPS was terminated under this administration. “Redesignation” involves the administration redesignating a country for TPS, renewing its TPS designation when the current period expires.

## II. METHODOLOGY

DACA allows immigrants who arrived in the United States as children without documentation to apply for a temporary reprieve from deportation provided they meet certain criteria. To obtain estimates regarding the total eligible population for DACA, we referred to analysis from the Migration Policy Institute, which indicates that 1.32 million people meet all the eligibility criteria for DACA as of its initial termination in September 2017.<sup>2</sup>

Country can be designated for TPS due to temporary circumstances that would prevent its nationals from returning safely, such as armed conflict or a natural disaster. TPS allows immigrants in the United States at the time of their country’s designation or redesignation to affirmatively apply for documentation demonstrating their TPS status, which provides temporary employment authorization and protection from deportation. TPS may be used as a defensive argument in removal proceedings. TPS is a blanket protection which can cover undocumented immigrants, immigrants with visa status (e.g. a visitor or student visa), and those with pending asylum cases or other pending humanitarian protection cases. Technically, TPS protects individuals with legal permanent resident (LPR) status, but generally LPR holders will have no need and will not apply for these protections. Additionally, in certain circumstances an individual may decide to retain their current visa status instead of applying for TPS.

To obtain estimates regarding the total eligible population for TPS, we employed a variety of strategies. When possible, we used the most recent estimates regarding the number of undocumented immigrants in the United States, acknowledging that this would undercount nationals from these countries who entered and held some sort of visa (and would therefore be eligible for TPS). In other cases, we used the current count of nationals of a country with TPS, again acknowledging that this would undercount these populations as it does not include recent entrants. We utilized this latter methodology for the countries with smaller populations where reliable Census data was not available or practical.

**Bahamas.** For the Bahamas, in collaboration with Professor Tom K. Wong, we combined the existing non-LPR population in the United States with new entrants. Professor Wong pulled these data from the 2017 American Community Survey (ACS) 1-YR Public Use Microdata (PUMS) from IPUMS. Noncitizen, non-lawful permanent resident holders (e.g. those who would be eligible for TPS) foreign-born nationals from the Bahamas are estimated as the weighted count of (i) foreign-born persons, who were (ii) born in Bahamas, and who (iii) are not likely persons with LPR status. As of 2017, out of the 15,800 foreign-born noncitizens from the Bahamas, an estimated 10,200 are non-lawful permanent residents and would be eligible for TPS.<sup>3</sup> Approximately 4,000 Bahamian nationals entered the United States after Hurricane Dorian struck the Bahamas in 2019.<sup>4</sup> Thus, approximately 14,200 (10,200 plus 4,000) Bahamian nationals would be eligible for TPS.

**El Salvador.** For El Salvador, we obtained the total estimated number of undocumented immigrants in the United States as of 2017 through Pew Research Center (which based its estimates on U.S. Census data).<sup>5</sup> We did not include current visa holders.

**Guatemala.** For Guatemala, we obtained the total estimated number of undocumented immigrants in the United States as of 2017 through Pew Research Center (which based its estimates on U.S. Census data).<sup>6</sup> We did not include current visa holders.

**Guinea.** For Guinea, the population is too small to use data from the ACS microdata, so we began with the number of nationals who had TPS as of its last extension in September 2016: 930.<sup>7</sup> As a result, however, this likely undercounts the number of people who would be eligible, including those who would benefit from redesignation. We did not include current visa holders.

**Haiti.** For Haiti, we obtained the total estimated number of undocumented immigrants in the United States as of 2017 through Pew Research Center (which based its estimates on U.S. Census data).<sup>8</sup> We did not include current visa holders.

**Honduras.** For Honduras, we obtained the total estimated number of undocumented immigrants in the United States as of 2017 through Pew Research Center (which based its estimates on U.S. Census data).<sup>9</sup> We did not include current visa holders.

**Nepal.** For Nepal, Professor Tom K. Wong utilized Census data to determine the undocumented immigrant population for these countries.<sup>10</sup> For Nepal specifically, there are an estimated 36,795 undocumented immigrants. This translates into 32.4% of the total 113,456 Nepalese noncitizens. Professor Wong pulled these data from the 2017 ACS 1-YR Public Use Microdata (PUMS) from IPUMS. Noncitizen, non-lawful permanent resident holders (e.g. those who would be eligible for TPS) foreign-born nationals from these countries are estimated as the weighted count of (i) foreign-born persons, who were (ii) born in the foreign country, and who (iii) are not likely persons with LPR status.

**Nicaragua.** For Nicaragua, Professor Tom K. Wong utilized census data to determine the undocumented immigrant population for these countries.<sup>11</sup> Specifically, for Nicaragua, there are an estimated 54,926 undocumented immigrants. This translates into 52.8% of the total 103,967 Nicaraguan noncitizens. As with Nepal, Professor Tom K. Wong pulled these data from the 2017 ACS 1-YR Public Use Microdata (PUMS) from IPUMS. Noncitizen, non-LPR holders (e.g. those who would be eligible for TPS) foreign-born nationals from these countries are estimated as the weighted count of (i) foreign-born persons, who were (ii) born in the foreign country, and who (iii) are not likely persons with LPR status.

**Sierra Leone.** For Sierra Leone, the population is too small to use data from the ACS microdata, so we began with the number of nationals who had TPS as of its last extension in September 2016: 1,180.<sup>12</sup> As a result, however, this likely undercounts the number of people who would be eligible, including those who would benefit from redesignation. We did not include current visa holders.

**Somalia.** For Somalia, the population is too small to use data from the ACS microdata, so we began with the number of nationals who have TPS as of November 2019: 455.<sup>13</sup> As a result, however, this likely undercounts the number of people who would be eligible, including those who would benefit from redesignation. We did not include current visa holders.

**South Sudan.** For South Sudan, the population is too small to use data from the ACS microdata, so we began with the number of nationals who have TPS as of November 2019: 96.<sup>14</sup> As a result, however, this likely undercounts the number of people who would be eligible. We did not include current visa holders.

**Sudan.** For Sudan, the population is too small to use data from the ACS microdata, so we began with the number of nationals who have TPS as of November 2019: 774.<sup>15</sup> As a result, however, this likely undercounts the number of people who would be eligible. We did not include current visa holders.

**Syria.** For Syria, the population is too small to use data from the ACS microdata, so we began with the number of nationals who have TPS as of November 2019: 6,934.<sup>16</sup> As a result, however, this likely undercounts the number of people who would be eligible. We did not include current visa holders.

**Venezuela.** For Venezuela, we adopted the Congressional Budget Office's estimate of the number of Venezuelans who would obtain TPS under H.R.549, the Venezuela TPS Act of 2019: 200,000.<sup>17</sup>

**Yemen.** For Yemen, the population is too small to use data from the ACS microdata, so we began with the number of nationals who have TPS as of November 2019: 1,646.<sup>18</sup> As a result, however, this likely undercounts the number of people who would be eligible. We did not include current visa holders.

---

<sup>1</sup> The Temporary Protected Status Advocacy Working Group (TPS AWG) is a multi-ethnic, multi-organizational working group consisting of state, local, and national organizations advocating on behalf of TPS holders and their families. Led by the Catholic Legal Immigration Network, Inc. (CLINIC), the TPS AWG produces reports, engages in administrative advocacy, and advocates for extension, redesignation, and initial designation for countries whose conditions warrant TPS. For more information on the TPS AWG, visit CLINIC's website at [cliniclegal.org/](http://cliniclegal.org/). The TPS AWG offers its sincere thanks to Professor Tom K. Wong and Nicole Svajlenka of the Center for American Progress for their assistance in developing the methodologies in this report.

For questions regarding these estimates, please contact [jose@masadc.com](mailto:jose@masadc.com).

<sup>2</sup> *Deferred Action for Childhood Arrivals (DACA) Data Tools*, Migration Policy Institute, last updated March 2020, [www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles](http://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles).

<sup>3</sup> Email Interview with Tom K. Wong, Associate Professor of Political Science, University of California, San Diego (Sept. 16, 2019) (on file with author).

<sup>4</sup> Rachel Knowles et al., *Bahamas Hurricane Survivors, Desperate for Respite, Seek Passage to U.S.*, *The N.Y. Times*, Sept. 10, 2019, [www.nytimes.com/2019/09/09/us/bahamas-hurricane-immigration-visa-ship.html](http://www.nytimes.com/2019/09/09/us/bahamas-hurricane-immigration-visa-ship.html).

<sup>5</sup> *Unauthorized immigrant population trends for states, birth countries and regions*, Pew Research Center, June 12, 2019, [www.pewresearch.org/hispanic/interactives/unauthorized-trends/](http://www.pewresearch.org/hispanic/interactives/unauthorized-trends/) (Click on "Region/Country of Birth" and then select "El Salvador" from the dropdown menu).

<sup>6</sup> *Id.* (Click on "Region/Country of Birth" and then select "Guatemala" from the dropdown menu).

<sup>7</sup> *Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Guinea's Designation for Temporary Protected Status*, U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS), 81 FR 66066, Sept. 26, 2016, [www.federalregister.gov/documents/2016/09/26/2016-23244/six-month-extension-of-temporary-protected-status-benefits-for-orderly-transition-before-termination](http://www.federalregister.gov/documents/2016/09/26/2016-23244/six-month-extension-of-temporary-protected-status-benefits-for-orderly-transition-before-termination).

<sup>8</sup> *Id.* (Click on "Region/Country of Birth" and then select "Haiti" from the dropdown menu).

<sup>9</sup> *Id.* (Click on "Region/Country of Birth" and then select "Honduras" from the dropdown menu).

<sup>10</sup> Email Interview with Tom K. Wong, Associate Professor of Political Science, University of California, San Diego (Nov. 13 2019) (on file with author).

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

---

<sup>12</sup> *Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Sierra Leone's Designation for Temporary Protected Status*, USCIS, DHS, 81 FR 66055, Sept. 26, 2016, [www.federalregister.gov/documents/2016/09/26/2016-23249/six-month-extension-of-temporary-protected-status-benefits-for-orderly-transition-before-termination](http://www.federalregister.gov/documents/2016/09/26/2016-23249/six-month-extension-of-temporary-protected-status-benefits-for-orderly-transition-before-termination).

<sup>13</sup> *Temporary Protected Status: Overview and Current Issues*, 5 Congressional Research Service, updated April 1, 2020, [fas.org/sgp/crs/homsec/RS20844.pdf](http://fas.org/sgp/crs/homsec/RS20844.pdf).

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

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

<sup>16</sup> *Id.*

<sup>17</sup> *Congressional Budget Office: Cost Estimate: H.R. 549, Venezuela TPS Act of 2019*, Congressional Budget Office, June 27, 2019, [www.cbo.gov/system/files/2019-06/hr549.pdf](http://www.cbo.gov/system/files/2019-06/hr549.pdf). (“In total, about 200,000 people would receive TPS under the bill, CBO estimates.”)

<sup>18</sup> *Temporary Protected Status*, Congressional Research Service (2020).