
In the Supreme Court of the United States

JOSE SANTOS SANCHEZ AND SONIA GONZALEZ,
Petitioners,

v.

ALEJANDRO N. MAYORKAS, SECRETARY, UNITED
STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Respondents.

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT*

**BRIEF OF DISTRICT OF COLUMBIA,
MASSACHUSETTS, CALIFORNIA,
CONNECTICUT, HAWAII, ILLINOIS, MAINE,
MARYLAND, MICHIGAN, MINNESOTA,
NEVADA, NEW JERSEY, NEW MEXICO,
NEW YORK, OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, VIRGINIA,
AND WASHINGTON AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

MAURA HEALEY
*Attorney General
of Massachusetts*

DAVID C. KRAVITZ
Deputy State Solicitor

ABIGAIL B. TAYLOR
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

KARL A. RACINE
*Attorney General
for the District of Columbia*

LOREN L. ALIKHAN*
Solicitor General

CAROLINE S. VAN ZILE
*Principal Deputy
Solicitor General*

MARK S. WIGLEY
SAMSON J. SCHATZ
Assistant Attorneys General
Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 727-6287
loren.alikhan@dc.gov

** Counsel of Record*

QUESTION PRESENTED

Whether, under 8 U.S.C. § 1254a(f)(4), a grant of Temporary Protected Status authorizes eligible noncitizens to obtain lawful-permanent-resident status under 8 U.S.C. § 1255.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Temporary Protected Status (“TPS”) holders are integral members of American communities. Their ability to adjust to permanent resident status, when otherwise eligible, would benefit them and the American families, communities, and industries to which they belong. The District of Columbia and Massachusetts, together with California, Connecticut, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington (“*Amici States*”), submit this brief as *amici curiae* in support of petitioners because TPS holders’ long-term stability strengthens the vitality of the *Amici States*.

Collectively, the *Amici States* are home to more than 240,000 holders of TPS, a legal status provided to foreign nationals who are present in the United States when their countries of origin become unsafe due to natural disaster or political conflict. Jill H. Wilson, Cong. Rsch. Serv., RS20844, *Temporary Protected Status: Overview and Current Issues* 2, 17 tbl.A-1 (2020).¹ TPS holders live and work in the *Amici States*, and often have for years or decades. The *Amici States*’ collective experience underscores that the TPS program has benefited not only TPS holders, but also their families, neighbors, employers, schools, communities, states, and American society as a whole. Making available a pathway toward permanent residence for otherwise-eligible TPS

¹ Available at <https://bit.ly/384K8Gz>.

holders would help to ensure the continuation of these substantial benefits.

Such a pathway would also avert the significant harms to the *Amici* States that would result if a country's TPS designation were to end. Without the possibility of adjusting their status, TPS holders—many thousands of whom have lived in this country for over two decades—may find themselves without the right to legally live and work in the communities they have long called home. This would not only harm individual TPS holders, but it would also rip families and communities apart. And it would damage the *Amici* States' economic vitality, public safety, and public health. The *Amici* States thus have a strong interest in ensuring that TPS holders have the same pathway to permanent legal residence afforded to other nonimmigrant foreign nationals.

The *Amici* States therefore urge the Court to order the respondents to follow the plain language of 8 U.S.C. § 1255(a) and allow eligible TPS holders to adjust their statuses.

SUMMARY OF ARGUMENT

1. TPS holders occupy crucial social and economic roles within the United States. Many have lived here for decades—19 years on average. They have built careers, joined civic organizations, and lived out their dreams here. They are meaningfully embedded within diverse American communities. And just as these communities depend on them, so too do their families—many of which include American citizen spouses or children. Tragically though, TPS holders' impermanent statuses threaten to undermine their family relationships and often cause harm.

Beyond their communities and families, TPS holders also make concrete, valuable contributions to states' economies. They participate in the American labor force at a high rate and bolster states' economies by purchasing homes, paying taxes, and spending their income locally. They disproportionately fill positions in critical industries like construction, healthcare, child- and elder-care, and food service. Indeed, while the nation has been ravaged by the COVID-19 pandemic, over 100,000 TPS holders have served as essential workers.

2. This Court should reject respondents' reading of the Immigration and Naturalization Act ("INA"), in particular 8 U.S.C. § 1255(a), which would lead to arbitrary and irrational results. Respondents maintain that TPS holders cannot adjust their status to that of permanent resident unless they were inspected when they *originally* entered the country. This means that the vast majority of TPS holders, like petitioners, would have to leave the country and attempt to reenter lawfully in order to adjust their status, which, if even possible, could take years. Yet a random assortment of TPS holders who, for example, arrived in the United States on tourist or student visas and remained—perhaps even overstaying their visas—at the time their home countries received TPS designations *would* be eligible to adjust status.

This reading is inconsistent with congressional intent and makes little sense. First, all TPS holders already undergo thorough vetting, including a determination of whether an applicant is "admissible." 8 U.S.C. § 1254a(c)(1)(A)(iii). Second, forcing TPS holders to leave the United States in

order to be considered to have been “admitted and inspected” for purposes of eligibility to adjust status is unduly burdensome. Under respondents’ theory, TPS holders—even those who have lawfully resided in the United States for years or decades—have no viable path to permanent residency without leaving the country, potentially returning to a country the federal government has officially designated as unstable, and undergoing an application process that could take years. Moreover, many TPS holders are subject to three- or ten-year bars on returning to the United States if they leave, which would only compound their wait time. In short, respondents’ interpretation of 8 U.S.C. § 1255(a) would inflict serious harm with no corresponding benefit or statutory rationale. The Court should reject it.

ARGUMENT

I. TPS Holders Occupy Critical Roles Within The United States.

This nation is home to over 400,000 TPS holders. Wilson, *supra*, at 6. Having lived in the country for years and often decades, TPS holders have built their lives here and are integral members of American families, communities, and economies. See Cecilia Menjivar, Ctr. for Migration Stud., Univ. of Kan., *Temporary Protected Status in the United States: The Experiences of Honduran and Salvadoran Immigrants* 8-21 (2017).² But every 6 to 18 months, the U.S. Department of Homeland Security (“DHS”) could terminate their countries’ TPS designations. Wilson, *supra*, at 2. In fact, in just the past several

² Available at <https://bit.ly/39MUIbG>.

years, DHS sought to terminate TPS for six of the current designee countries. Wilson, *supra*, at 6.³ Without a viable path to permanent status, TPS holders would be trapped in perpetual legal limbo. TPS holders and the States where they reside will markedly benefit if TPS holders have a path to permanent residency.

A. TPS holders are integral members of their communities and families.

1. Because the conditions that led to a country's TPS designation are often difficult to address, can lead to even more instability, and often coexist with or are followed by other dangerous and emergent conditions, DHS has extended several countries' TPS designations numerous times. *See Temporary Protected Status*, U.S. Dep't of Just. (listing each TPS country's designations and redesignations);⁴ *see, e.g., Jayesh Rathod et al., Extending Temporary Protected Status for El Salvador: Country Conditions and U.S. Legal Requirements 24-26* (Ctr. Latin Am. & Latino Stud., Am. Univ., Working Paper No. 17, 2017) (summarizing conditions in El Salvador that led to designation and extension of TPS from 2001 to 2018).⁵ In fact, DHS has extended the statuses of all ten current designee countries at least once. *See Temporary Protected Status*, U.S. Citizenship &

³ These terminations were enjoined by federal courts, and, therefore, the TPS designations remain in place. *See Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal*, 85 Fed. Reg. 79,208 (Dec. 9, 2020).

⁴ Available at <https://bit.ly/3q2vB4f>.

⁵ Available at <https://bit.ly/3kp6hnV>.

Immigr. Servs. (“USCIS TPS Website”) (“Countries Currently Designated for TPS” tab);⁶ U.S. Dep’t of Just., *supra*. And three countries—El Salvador, Honduras, and Nicaragua, which represent 81 percent of all TPS holders—have had their statuses extended for approximately 20 years. *See* Wilson, *supra*, at 6; U.S. Dep’t of Just., *supra*. Thus, over 300,000 TPS holders have lived and worked in the United States for decades.

Over their many years here, TPS holders have continued to make profound contributions to American communities. They have built their lives, families, and careers here. *See, e.g.*, Nancy Cutler, *Haiti Marks 10 Years After Devastating Earthquake as TPS Holders Face a Forced Return*, LoHud.com (Jan. 10, 2020).⁷ They have purchased homes, developed expertise in particular fields, become valued employees and managers, supported spouses and children (many of whom are American citizens), and joined churches, unions, and civic organizations. *Id.*; *About the National TPS Alliance*, Nat’l TPS All.;⁸ Leila Schochet & Nicole Prchal Svajlenka, *How Ending TPS Will Hurt U.S.-Citizen Children*, Ctr. for Am. Progress (Feb. 11, 2019).⁹

Consider Luis Figueroa, who arrived in the United States more than 20 years ago, when he was nine.

⁶ Available at <https://bit.ly/3sseA1E> (last visited Feb. 28, 2021).

⁷ Available at <https://bit.ly/3bLJwGR>.

⁸ Available at <https://bit.ly/37OJj4v> (last visited Feb. 28, 2021).

⁹ Available at <https://ampr.gs/2NyyT23>.

Olivia P. Tallet, *Zero Tolerance: End of Temporary Protected Status Brings Uncertainty in Lives of Thousands of Houston Residents*, Hous. Chron. (July 14, 2018).¹⁰ He owns a home and recently paid off his mortgage. *Id.* He has three young children who are all American citizens. *Id.* He founded a real estate business and feels he is “reaching the American Dream.” *Id.* But without a pathway to permanent status, he worries that one day he will be uprooted from his children, his home, and the life he has spent two decades building. *See id.* That uncertainty—especially when multiplied by the over 400,000 TPS holders in similar situations—has a profound impact on communities across the nation.

2. Having lived and worked legally in the United States for years or even decades, many TPS holders have established families here. Among the TPS population from El Salvador, Haiti, and Honduras alone—the three countries with the largest numbers of TPS recipients—more than a quarter of a million U.S. citizen children have a TPS holder as a parent, and tens of thousands of legal United States residents are married to TPS holders. Robert Warren & Donald Kerwin, Ctr. for Migration Stud., *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 5 J. Migration & Hum. Sec. 577, 578, 581 (2017).¹¹ Their presence and stability significantly bolster their families’ emotional, financial, and academic wellbeing. *Cf.* Luis H. Zayas & Laurie Cook Heffron, *Disrupting Young Lives: How Detention and*

¹⁰ Available at <https://bit.ly/3uzwaFY>.

¹¹ Available at <https://bit.ly/3kq0JcG>.

Deportation Affect US-Born Children of Immigrants, Am. Psych. Ass'n (Nov. 2016).¹²

Without the possibility of permanent residence, and with the looming threat of termination of TPS designation for their countries of origin, TPS holders' uncertain status threatens to erode their relationships with their children. Cf. Cecilia Menjívar & Andrea Gómez Cervantes, *The Effects of Parental Undocumented Status on Families and Children*, Am. Psych. Ass'n (Nov. 2016) ("The possibility of losing a parent to deportation, having to hide a family member's legal status, and living in fear of authority and in social marginality has consequences on children's mental wellbeing . . .").¹³ One study showed that a parent's legal status, and thus their stability of presence, was a "significant predictor" of a child's academic achievement. *Id.* And over the past four years, children across the country experienced serious mental health problems due to fears about family members' deportation, including increased aggression, anxiety, self-harm, and backsliding on performance of age-appropriate skills. Wendy Cervantes et al., Ctr. for L. & Soc. Pol'y, *Our Children's Fear: Immigration Policy's Effects on Young Children 9-11* (2018).¹⁴

Children suffer when their parents' legal statuses are impermanent. "Even in the absence of actual deportation, worries about its possibility may affect . . . children's development by increasing their

¹² Available at <https://bit.ly/3bg8mOA>.

¹³ Available at <https://bit.ly/2Od8Ihd>.

¹⁴ Available at <https://bit.ly/2Lm7JKq>.

parents' anxiety or distress or influencing their own worries and ability to concentrate in school." Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children* 120 (2011). Indeed, children whose mothers' legal statuses are less stable have a higher incidence of adjustment and anxiety disorders than those whose mothers' statuses are more stable. See Jens Hainmueller et al., *Protecting Unauthorized Immigrant Mothers Improves Their Children's Mental Health*, 357 *Science* 1041, 1043 (2017) ("[P]arents' unauthorized status is a substantial stressor that stymies normal child development and perpetuates health inequalities by transferring parental disadvantages to children.").¹⁵ This harm only intensifies when fears of forcible separation become reality. In one study, children with deported parents "refused to eat, pulled out their hair, . . . had persistent stomachaches or headaches," "cut[] themselves," "abus[ed] substances," "lost interest in daily activities[,] and struggled to maintain positive relationships" with their remaining parent or guardian. Heather Koball et al., Urban Inst. & Migration Pol'y Inst., *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents* 5 (2015).¹⁶ TPS holders may not face immediate deportation, but the impermanence of their statuses makes the fear of deportation, and its attendant harms for holders' children, all too real.

TPS holders' families also depend on them for economic and domestic stability. See E. Bay

¹⁵ Available at <https://bit.ly/2Mr7VZz>.

¹⁶ Available at <https://bit.ly/3tvvx1M>.

Sanctuary Covenant, *Lives in the Balance: Dreamers and TPS Holders Share Their Stories* 7 (2020).¹⁷ They are often their households' primary breadwinners, and their absence or inability to legally work could financially devastate their families. *See id.*; Cora Cervantes, *Families Protected by U.S. Plead with Trump Administration to Let Them Stay*, NBC News (Oct. 24, 2017).¹⁸ This instability would affect states and local communities, who are left to pick up the pieces and provide needed social services when families are torn apart or children are suffering. *Cf.* Seth Freed Wessler, Applied Rsch. Ctr., *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 6 (2011).¹⁹

B. TPS holders are integral to states' economies.

1. Beyond the four walls of their households, TPS holders are also key players in states' economies. Their labor force participation rate was over 94 percent in 2017—dramatically higher than the 63 percent rate for the total U.S. population that year. New Am. Econ., *Overcoming the Odds: The Contributions of DACA-Eligible Immigrants and TPS Holders to the U.S. Economy* 3 (2019) (“*Overcoming the Odds*”);²⁰ *Employment-Population Ratio and Labor Force Participation Rate by Age*, U.S. Bureau of Lab. Stat. (Aug. 9, 2017).²¹ In 2017, TPS holders

¹⁷ Available at <https://bit.ly/39V08Mi>.

¹⁸ Available at <https://nbcnews.to/3cMfSmT>.

¹⁹ Available at <https://bit.ly/3uE2w2w>.

²⁰ Available at <https://bit.ly/39Zl6K4>.

²¹ Available at <https://bit.ly/2N5dM6S>.

earned a combined \$7.3 billion. *Overcoming the Odds, supra*, at 4. It is perhaps unsurprising then that without TPS holders, the United States would, over ten years, lose over \$160 billion in GDP and \$6.9 billion in Social Security and Medicare contributions, in addition to billions of dollars in state and local taxes. *Id.*; Nicole Prchal Svajlenka et al., *TPS Holders Are Integral Members of the U.S. Economy and Society*, Ctr. for Am. Progress (Oct. 20, 2017).²² Employers would also lose almost \$1 billion in turnover costs. Svajlenka et al., *supra*.

TPS holders undergird some of the states' most essential fields, including construction, hospitality, food service, landscaping, and childcare. Warren & Kerwin, *supra*, at 584. For example, over 10 percent of TPS holders are construction workers. See Nicole Prchal Svajlenka, *What Do We Know About Immigrants with Temporary Protected Status?*, Ctr. for Am. Progress (Feb. 11, 2019).²³ In the District of Columbia, TPS holders are the "backbone" of the construction industry—comprising an estimated 20 percent of the area's skilled construction workforce—and almost one in three TPS holders in the area (11,500 individuals) works in the industry. *ICYMI: Facing Work Disruptions, TPS Holders' Futures Remain in Flux as Consequences of Trump's Mass Deportation Policies Take Hold*, Am.'s Voice (Sept. 13, 2019);²⁴ *How Temporary Protected Status Holders Help Disaster Recovery and Preparedness*, New Am.

²² Available at <https://ampr.gs/2MidKbG>.

²³ Available at <https://ampr.gs/3q17fss>.

²⁴ Available at <https://bit.ly/2LuU4Rk>.

Econ. (Nov. 6, 2017).²⁵ TPS holders quite simply build and, oftentimes, rebuild American communities. See Nicole Prchal Svajlenka, *TPS Workers Are Rebuilding States Devastated by Natural Disasters*, Ctr. for Am. Progress (Mar. 5, 2019) (explaining how TPS holders have helped rebuild billions of dollars in damaged infrastructure after climate disasters).²⁶

The economic benefits that TPS holders confer on the states have been particularly pronounced during the COVID-19 pandemic. Over 131,300 TPS holders currently serve as “essential workers.” Nicole Prchal Svajlenka & Tom Jawetz, *A Demographic Profile of TPS Holders Providing Essential Services During the Coronavirus Crisis*, Ctr. for Am. Progress (Apr. 14, 2020).²⁷ Roughly 11,600 TPS holders work in healthcare. *Id.* More than 37,000 work in restaurants and grocery stores. *Id.* And over 15,000 work in farming, agriculture, and food manufacturing. *Id.*

TPS holders make other contributions to the states’ economies as homeowners, taxpayers, and employers. For example, around 30 percent of the more than 200,000 households with TPS holders from El Salvador, Haiti, and Honduras own their homes and have mortgages. See Warren & Kerwin, *supra*, at 581, 588. They pay more than \$1.5 billion in taxes every year. See *Overcoming the Odds, supra*, at 4. They start businesses and create jobs. *Id.* at 5; Warren & Kerwin, *supra*, at 588. And they revitalize

²⁵ Available at <https://bit.ly/3tDU1Uu>.

²⁶ Available at <https://ampr.gs/3p0eEXx>.

²⁷ Available at <https://ampr.gs/3cSUoER>.

neighborhoods in the process. *Overcoming the Odds*, *supra*, at 5.

2. American childcare and other caregiving systems also depend heavily on TPS holders. Approximately 10,000 TPS holders from El Salvador, Haiti, and Honduras alone work in childcare. Warren & Kerwin, *supra*, at 583. Parents frequently report substantial difficulty in finding affordable, trustworthy, and quality childcare, Harvard T.H. Chan Sch. of Pub. Health, *Child Care and Health in America* 7 (2016),²⁸ making TPS holders in this industry particularly vital. Not only does quality care benefit children’s “well-being, health, and development,” *id.* at 11, it also enables parents, particularly mothers, to participate in the workforce, see Nicole Bateman & Martha Ross, *Why Has COVID-19 Been Especially Harmful for Working Women?*, Brookings (Oct. 2020).²⁹ Never before has the importance of accessible, affordable childcare been as apparent as during the COVID-19 pandemic, when schools have been closed for months and many people, especially women, have been forced to leave their jobs to supervise their children. *Id.*

Beyond childcare, TPS holders also play a significant role in caring for seniors and people with disabilities. Nationwide, more than 8,000 TPS holders are home health and personal care aides, nursing assistants, orderlies, or psychiatric aides. Svajlenka & Jawetz, *supra*. In Massachusetts alone, nursing facilities employ about 4,300 Haitian

²⁸ Available at <https://rwjf.ws/2MIPq30>.

²⁹ Available at <https://brook.gs/2Oc5Z7B>.

individuals, many of whom are TPS holders. *See Nursing Facilities, and Their Residents, Will Feel Impact If Haitians' Status Ends*, Bos. Globe (Dec. 4, 2017).³⁰ The instability of TPS holders' statuses therefore threatens many vulnerable residents' established, trusted relationships with their care providers.

These "direct care" positions are often difficult to fill, and that difficulty underscores the value of TPS holders' contributions. Workers in direct care fields generally receive low wages, and the work is physically and emotionally demanding. Melissa Bailey, *As Trump Targets Immigrants, Elderly Brace to Lose Caregivers*, Kaiser Health News (Mar. 26, 2018).³¹ As a result, turnover in the industry is high. In Massachusetts, one in seven certified nursing assistant positions is vacant, leaving a shortage of 3,000 workers. *Id.* Nationwide, 25 percent of nursing assistants and 20 percent of home health aides reported that they were actively looking for different jobs. Kezia Scales, Paraprofessional Healthcare Inst., *Growing a Strong Direct Care Workforce: A Recruitment and Retention Guide for Employers 7* (2018).³² Making matters worse, the demand for direct care assistance is growing as the population ages. Howard Gleckman, *Trump's Latest Immigration Curbs Threaten Older Adults Who Need Personal Care*, Forbes (Sept. 26, 2018).³³ If these

³⁰ Available at <https://bit.ly/3p6wBDK>.

³¹ Available at <https://bit.ly/3rCSGvA>.

³² Available at <https://bit.ly/3aRmdMw>.

³³ Available at <https://bit.ly/2ZkdgVi>.

positions go unfilled, patients who would otherwise be able to stay in their homes and communities may be forced to move to skilled nursing facilities—which have suffered mightily during the COVID-19 crisis—with higher costs to them and to the states.

* * *

TPS holders are often long-term residents of the United States with deep ties here. They support their family members, many of whom are American citizens. They build up and invest in their neighborhoods, oftentimes at great risk to themselves. They contribute to the economy and care for the most vulnerable. But respondents, with their narrow reading of Section 1255, would put all of this at risk by depriving the vast majority of TPS holders the ability to apply for permanent status without leaving the country.

II. Denying Adjustment Of Status To Petitioners Harms TPS Holders Yet Yields No National Security Or Other Benefits.

In addition to profoundly harming TPS holders, respondents' interpretation fails to advance the objectives of the INA. The INA established a statutory scheme designed for the precise purpose of allowing vetted, hardworking, and law-abiding foreign nationals—like petitioners—to apply for permanent residence and continue contributing to their communities while their applications are pending. *See* 7 U.S. Citizenship & Immigr. Servs., *USCIS Policy Manual*, pt. B, ch. 1(B) (Feb. 22, 2021) (describing the evolution of immigration law to allow foreign nationals to adjust their status from within

the United States).³⁴ And the ability to adjust status while remaining in the United States is uniquely important to TPS holders, whose very justification for being here is that returning to their home countries is unsafe. It defies logic, then, that Congress would have intended for TPS holders like petitioners—unlike other similarly situated foreign nationals—to be forced to *return* to those countries just to apply for permanent-resident status in the United States. Yet respondents’ interpretation requires just that.

Section 1255(a) instructs that a nonresident must be “inspected and admitted or paroled into the United States” before she can apply to adjust her status to lawful permanent residence. For TPS holders, Congress provided that they “shall be considered as being in, and maintaining, lawful status as a nonimmigrant” “for purposes of adjustment of status under section 1255.” 8 U.S.C. § 1254a(f)(4). Yet respondents take the position that “admission” requires that an individual be inspected and authorized when she first enters the country. U.S. Resp. to Pet. for Cert. 9-10. This means that TPS holders who were not inspected and authorized at their time of entry—the vast majority of holders, *see* Geneva Sands, *What You Need to Know About Temporary Protected Status*, ABC News (Jan. 9, 2019)³⁵—can *never* apply to adjust their statuses unless they leave the country and return. By contrast, under respondents’ interpretation, a TPS holder who, for example, was temporarily admitted on a student visa and remained in the United States

³⁴ Available at <https://bit.ly/2P8bfJX>.

³⁵ Available at <https://abcn.ws/3bItlK6>.

after her country received TPS designation *would be* able to apply for adjustment. Such an individual, however, is no more thoroughly vetted than, nor in any way meaningfully distinct from, a TPS holder who was not inspected at her time of entry. Congress could not have intended this incongruous and irrational result when it provided that a TPS holder be considered as having “lawful status as a nonimmigrant.” 8 U.S.C. § 1254a(f)(4).

That distinction is especially unwarranted because *all* TPS holders undergo rigorous approval and reapproval processes, including a determination of “admissib[ility].” 8 U.S.C. § 1254a(c)(1)(A)(iii); *see* 8 U.S. Citizenship & Immigr. Servs., *USCIS Policy Manual*, pts. A-Q (Feb. 22, 2021). In practical terms, this means that TPS applicants must first complete a 13-page application, totaling more than 150 questions. On this application, candidates must, for example, provide their United States address; the exact date and location of their last entry into the United States; precise biographic information including height, weight, eye color, and hair color; almost two full pages of information about current and former spouses; the names and addresses of any of their children; and three pages of information about criminal history. *See* U.S. Citizenship & Immigr. Servs., *USCIS Form I-821 Application for Temporary Protected Status* 2-10 (2019).³⁶ Applicants must then submit evidence establishing identity and nationality, such as a passport or birth certificate; evidence establishing date of entry into the United States, usually a departure or arrival record; and

³⁶ Available at <https://bit.ly/3dfLl19>.

evidence establishing continuous residence in the United States, such as a utility bill. USCIS TPS Website, *supra* (“What to File” tab). Once the United States Citizenship and Immigration Services (“USCIS”) receives the application, it then collects biometric data from the applicant—photographs, signatures, fingerprints, or some combination of the three. *Id.* (“Application Process” tab). USCIS then reviews these submissions and decides whether to grant the candidate TPS. *Id.* If approved, the TPS holder must then re-register each time her country’s status is extended, which happens every 6 to 18 months. *Id.* (“Maintaining TPS” tab). Each time she re-registers, she must again complete the same 13-page application form. U.S. Citizenship & Immigr. Servs., *USCIS Form I-821 Instructions for Application for Temporary Protected Status* 1 (2019).³⁷ The average TPS holder may therefore have had to apply and reapply—and be screened—as many as 13 times over the course of her residence. See Wilson, *supra*, at 6. In other words, the United States “inspect[s]” TPS holders thoroughly, 8 U.S.C. § 1255(a), so respondents’ interpretation can hardly be justified as a means of bolstering national security.

Yet respondents’ interpretation would force TPS holders—many of whom have lived here for decades—to undergo the onerous, protracted, and often perilous process of returning to their countries of origin and applying for a visa in order to be eligible for permanent status. A TPS holder in this situation would essentially have two routes to permanent status. First, she may be fortunate enough to have a

³⁷ Available at <https://bit.ly/3tRYuD4>.

family member sponsor her visa, *see Green Card for Family Preference Immigrants*, U.S. Citizenship & Immigr. Servs.,³⁸ but these often take years to process. For example, unmarried children of United States citizens who petitioned for a visa from outside the United States in August 2015 have only now—in early 2021—become eligible to *submit* their applications to the National Visa Center for approval. *Visa Bulletin for February 2021*, U.S. Dep’t of State (Jan. 11, 2021).³⁹ Even spousal visas—typically the quickest option—often take more than a year to obtain. *See* Andy J. Semotiuk, *How to Make Spousal Sponsorships a Priority in U.S. Immigration*, *Forbes* (Nov. 30, 2020).⁴⁰

The second option is an employment-based visa, for which a TPS holder must find an employer sponsor. This is no easy task. As a threshold matter, the individual must fall under one of a few narrow categories of workers; not every job qualifies an applicant for a visa. *Visa Bulletin*, U.S. Dep’t of State, *supra*. Next, the employer typically must extend the TPS holder a concrete job offer, certify that there are no available United States workers to fill the position, and shepherd a petition through the USCIS process. *Permanent Workers*, U.S. Citizenship & Immigr. Servs.;⁴¹ *Employment-Based Immigrant Visas*, U.S.

³⁸ Available at <https://bit.ly/3qVVhk3> (last visited Feb. 28, 2021).

³⁹ Available at <https://bit.ly/2MYvKbe>.

⁴⁰ Available at <https://bit.ly/3jKQPC1>.

⁴¹ Available at <https://bit.ly/3pi19Th>.

Dep't of State;⁴² see U.S. Citizenship & Immigr. Servs., *I Am an Employer: How Do I Sponsor an Employee for U.S. Permanent Resident Status?* (2013).⁴³ And even after she finds an employer to sponsor her, an applicant must often still wait years before receiving her visa, as USCIS issues only a limited number each year. David J. Bier, *Employment-Based Green Card Backlog Hits 1.2 Million in 2020*, Cato Inst. Blog (Nov. 20, 2020).⁴⁴

To be sure, an individual applying for permanent-resident status must find a sponsor regardless of whether she applies from within or outside the United States. See *When to File Your Adjustment of Status Application for Family-Sponsored or Employment-Based Preference Visas: January 2021*, U.S. Citizenship & Immigr. Servs.⁴⁵ The issue nonetheless remains that a TPS holder who is forced back to her country of origin will be unable to remain in her job or with her family while she awaits approval.

Compounding these difficulties, USCIS will subject many TPS holders to automatic three- or ten-year reentry bars if they leave the country. Residents who have been “unlawfully present” in the United States for more than 180 days cannot return for at least three years, and those who have lived here without authorization for more than one year cannot

⁴² Available at <https://bit.ly/3tZb1oG> (last visited Feb. 28, 2021).

⁴³ Available at <https://bit.ly/3afCj1Z>.

⁴⁴ Available at <https://bit.ly/3pdLjc7>.

⁴⁵ Available at <https://bit.ly/3bAIXzy> (last visited Feb. 28, 2021).

return for ten. 8 U.S.C. § 1182(a)(9)(B)(i). “Unlawful presence,” according to USCIS, includes any months in which TPS holders resided in the country without authorization *before* obtaining TPS protection, making most TPS holders already subject to these bars. U.S. Citizenship & Immigr. Servs., *Adjudicator’s Field Manual* § 40.9.2(b)(1)(F)(iii).⁴⁶ Respondents’ interpretation thus has the practical effect of preventing TPS holders from ever achieving lawful permanent-resident status.

At bottom, the requirement that TPS holders leave the country to apply to adjust their status reaps no tangible benefit for respondents or for the national security interests that the INA seeks to protect, yet it inflicts grave harm on TPS holders. As the Sixth Circuit once observed, respondents’ policy “is simply a waste of energy, time, [and] government resources,” and it has tragic effects on the families of TPS holders. *Flores v. U.S. Citizenship & Immigr. Servs.*, 718 F.3d 548, 555-56 (6th Cir. 2013). Congress could not have intended this result when it provided that a TPS holder “shall be considered as being in, and maintaining, lawful status as a nonimmigrant” “for purposes of adjustment of status under section 1255.” 8 U.S.C. § 1254a(f)(4). In fact, the plain language of Section 1254a(f)(4) unambiguously conveys Congress’s intention to override technical or procedural bars to adjustment of status for TPS holders who are otherwise eligible. The Court should give that language its full and intended effect.

⁴⁶ Available at <https://bit.ly/3qZx7W0> (last visited Feb. 28, 2021).

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted,

MAURA HEALEY
Attorney General of
Massachusetts

DAVID C. KRAVITZ
Deputy State Solicitor

ABIGAIL B. TAYLOR
Assistant Attorney General

OFFICE OF THE ATTORNEY
GENERAL
One Ashburton Place
Boston, MA 02108

KARL A. RACINE
Attorney General for the
District of Columbia

LOREN L. ALIKHAN
Solicitor General
Counsel of Record

CAROLINE S. VAN ZILE
Principal Deputy Solicitor
General

MARK S. WIGLEY
SAMSON J. SCHATZ
Assistant Attorneys General

OFFICE OF THE ATTORNEY
GENERAL
400 6th Street, NW, Ste. 8100
Washington, D.C. 20001
(202) 727-6287

loren.alikhan@dc.gov

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On behalf of:

XAVIER BECERRA
Attorney General
State of California

WILLIAM TONG
Attorney General
State of Connecticut

CLARE E. CONNORS
Attorney General
State of Hawaii

KWAME RAOUL
Attorney General
State of Illinois

AARON M. FREY
Attorney General
State of Maine

BRIAN E. FROSH
Attorney General
State of Maryland

DANA NESSEL
Attorney General
State of Michigan

KEITH ELLISON
Attorney General
State of Minnesota

AARON D. FORD
Attorney General
State of Nevada

GURBIR S. GREWAL
Attorney General
State of New Jersey

HECTOR BALDERAS
Attorney General
State of New Mexico

LETITIA JAMES
Attorney General
State of New York

ELLEN F. ROSENBLUM
Attorney General
State of Oregon

JOSH SHAPIRO
Attorney General
Commonwealth of
Pennsylvania

PETER F. NERONHA
Attorney General
State of Rhode Island

THOMAS J. DONOVAN, JR.
Attorney General
State of Vermont

MARK R. HERRING
Attorney General
Commonwealth of
Virginia

ROBERT W. FERGUSON
Attorney General
State of Washington