

Congress of the United States

Washington, DC 20515

June 9, 2023

The Honorable Joseph R. Biden
President of the United States
1600 Pennsylvania Avenue NW
Washington, DC 20500

RECEIVED

By ESEC at 11:44 am, Jul 14, 2023

Dear President Biden:

We write with the support of numerous industry and trade leaders to urge you to use your executive authority to honor the finest traditions of our nation by expanding immediate access to employment authorization for asylum seekers and other migrants eager to fill the labor shortage from which employers around the country are suffering. This will protect immigrant communities, boost the economy, and alleviate the financial responsibility of local governments who support migrants.

Specifically, we urge you to use your authority to designate deferred enforced departure (DED) and for your administration to designate or redesignate Temporary Protected Status (TPS) for countries in Latin America suffering from pervasive violence and chaos, natural disasters, and unsafe conditions, including Venezuela, El Salvador, Guatemala, Honduras, and Nicaragua.

The UN Refugee Agency's (UNHCR) latest report on the Americas found that the "Americas region is facing a forced displacement crisis that is unprecedented both in its complexity and scale. By the end of November 2022, 16 per cent of the population that UNHCR serves worldwide, or almost 20 million people, are displaced in the region."¹ In addition, the agency found that "hurricanes, storms, floods and droughts continue to disproportionately affect the region and lead to further displacement."²

The current backlog of asylum claims, as well as the statutory requirement for applicants to wait 180 days before applying for work authorization, prevents hundreds of thousands of asylum applicants from legally working and benefitting from labor protections. At the same time, there is a significant labor shortage across the nation, and we have heard from numerous trade and industry leaders who would eagerly hire migrants if they were granted work authorization.

Immigrants are eager to work legally in order to provide for their families and move out of temporary housing administered by local governments and charities. Action here also would significantly alleviate local governments' financial and logistical responsibilities. People who are granted TPS (and DED) contribute to our economy in numerous ways, including by having a labor force participation rate of 87 percent and contributing \$2.3 billion in federal taxes, as well as \$1.3 billion in state and local taxes annually.³ By providing expedited access to employment

¹ *Americas Fact Sheet*. UNHCR. Dec. 2022. <https://reporting.unhcr.org/document/3829>

² *Id.*

³ Nicole Prechal Svajlenka. *What Do We Know About Immigrants With Temporary Protected Status?* Center for American Progress. Feb. 11, 2019. <https://www.americanprogress.org/article/know-immigrants-temporary-protected-status/>

authorization to vetted migrants, the administration would adhere to the finest traditions of our nation in welcoming immigrants, improve the economy, alleviate the financial responsibility of local governments, and address the labor shortage affecting so many different industries.

As you know, TPS is a form of humanitarian relief that allows individuals from countries designated by the Secretary of Homeland Security to live and work lawfully in the United States when they cannot return safely to their country of origin due to armed conflict, natural disasters, or other extraordinary conditions.⁴ The process for persons covered by TPS to receive work authorization is expedited as persons who appear to be *prima facie* eligible for TPS, following an initial review of their TPS application, receive an employment authorization document while USCIS completes the adjudication.⁵ Furthermore, a designation of TPS is not subject to judicial review.⁶

As President of the United States, you also have the authority to extend Deferred Enforced Departure (DED) to noncitizens from designated countries and to direct the Secretary of Homeland Security to authorize employment for noncitizens whose removal has been deferred. DED emanates from your constitutional powers to conduct foreign relations and has been used by Presidents of both parties for decades. DED was first used in 1990 and has been applied to a number of countries for various reasons, including El Salvador, the People's Republic of China, Kuwait, Haiti, Liberia, Venezuela, and Hong Kong.⁷ On January 26, 2023, you extended and expanded eligibility for DED for certain Hong Kong residents and directed the Secretary of Homeland Security to take appropriate measures to authorize employment for noncitizens whose removal has been deferred.⁸ We urge you to take similar measures for Venezuela, El Salvador, Guatemala, Honduras, and Nicaragua.

The Supreme Court has historically granted the President of the United States deference in the sphere of foreign policy finding that “the President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world.”⁹ The Supreme Court has also held that “the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative... They are decisions of a kind for which the Judiciary has neither aptitude, facilities, nor responsibility, and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.”¹⁰

Venezuela

According to the UNHCR, Venezuela is experiencing one of the largest displacement crises globally, with over 7.1 million refugees and migrants, out of which over 84 percent are hosted in countries in Latin America and the Caribbean.¹¹ UNHCR notes that violence, gang-warfare, as

⁴ 8 U.S.C. § 1254a

⁵ 8 U.S.C. § 1254a(a)(4)

⁶ 8 U.S.C. § 1254a(a)(5)

⁷ *Temporary Protected Status and Deferred Enforced Departure*. Congressional Research Service. April 19, 2022. <https://sgp.fas.org/crs/homesec/RS20844.pdf>

⁸ *Memorandum on Extending and Expanding Eligibility for Deferred Enforced Departure for Certain Hong Kong Residents*. The White House. Jan. 26, 2023. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/01/26/memorandum-on-extending-and-expanding-eligibility-for-deferred-enforced-departure-for-certain-hong-kong-residents/>

⁹ *C. & S. Air Lines, Inc. v. Waterman S.S. Corp.* 333 U.S. 103 (1948).

¹⁰ *Id.*

¹¹ *Americas Fact Sheet*. UNHCR. Dec. 2022. <https://reporting.unhcr.org/document/3829>

well as shortages of food, medicine, and essential services have forced millions of Venezuelans to seek refuge in countries across the Western Hemisphere.¹²

The U.S. Department of State’s latest report on human rights practices in Venezuela found that Venezuela faces “significant human rights issues” including, but not limited to, credible reports of: lack of investigation of and accountability for gender-based violence; crimes involving violence or threats of violence targeting indigenous peoples; trafficking in persons; crimes involving violence or threats of violence targeting LGBTQI+ individuals; inability of citizens to change their government peacefully through free and fair elections; and unlawful or arbitrary killings.¹³

El Salvador

The U.S. Department of State’s latest report on human rights practices in El Salvador found that “criminal groups, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes. They committed killings, acts of extortion, kidnapping, human trafficking, intimidation, and other threats and violence.”¹⁴

The Department of State also found that El Salvador faces “significant human rights issues” including credible reports of: unlawful or arbitrary killings; torture and cruel, inhuman, or degrading treatment or punishment by security forces; harsh and life-threatening prison conditions; arbitrary arrest and detention; lack of investigation and accountability for gender-based violence; and crimes involving violence against LGBTQI+ individuals.¹⁵

Guatemala

The U.S. Department of State’s latest report on human rights practices in Guatemala noted that criminal organizations in Guatemala are responsible for drug trafficking, contract killings, kidnappings, extortion, illegal firearms sales, and smuggling.¹⁶

The Department of State also found that Guatemala faces “significant human rights issues” including credible reports of: lack of investigation of and accountability for gender-based violence; crimes involving violence or threats of violence targeting members of Indigenous groups; crimes involving violence or threats of violence targeting LGBTQI+ persons; and arbitrary arrest and detention.¹⁷

The government of Guatemala has also requested the designation of TPS due to the impacts of the 2020 hurricanes on several occasions.¹⁸

Honduras

¹² *Venezuela Humanitarian Crisis*. UNHCR. <https://www.unrefugees.org/emergencies/venezuela/>

¹³ *2022 Country Reports on Human Rights Practices: Venezuela*. U.S. Department of State. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/venezuela/>

¹⁴ *2022 Country Reports on Human Rights Practices: El Salvador*. U.S. Department of State. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/>

¹⁵ *Id.*

¹⁶ *2022 Country Reports on Human Rights Practices: Guatemala*. U.S. Department of State. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/guatemala/>

¹⁷ *Id.*

¹⁸ *United States Asked to Allow Guatemalans to Stay on Humanitarian Grounds After Storm*. Reuters. Nov. 11, 2020. <https://www.reuters.com/article/us-storm-eta-guatemala-migration/united-states-asked-to-allow-guatemalans-to-stay-on-humanitarian-grounds-after-storm-idUSKBN27S05E>

The U.S. Department of State's latest report on human rights practices in Honduras found that "criminal groups, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, intimidation, and other threats and violence."¹⁹

The Department of State also found that Honduras faces "significant human rights issues" including credible reports of: lack of investigation of and accountability for gender-based violence; crimes involving violence or threats of violence against Indigenous and Afro-descendant communities, and against LGBTQI+ persons; unlawful or arbitrary killings; torture and cases of cruel, inhuman, or degrading treatment or punishment by government agents; harsh and life-threatening prison conditions; and arbitrary arrest or detention.²⁰

Nicaragua

The U.S. Department of State's latest report on human rights practices in Nicaragua found that Nicaragua faces "significant human rights issues" including credible reports of: lack of investigation of and accountability for gender-based violence; crimes involving violence or threats of violence targeting ethnic minorities and Indigenous communities; trafficking in persons; crimes involving violence or threats of violence targeting LGBTQI+ persons; inability of citizens to change their government peacefully through free and fair elections; torture and cruel, inhuman, or degrading treatment or punishment by prison guards and parapolice; and arbitrary arrest and detentions.²¹

In conclusion, extending DED and TPS to Venezuela, El Salvador, Guatemala, Honduras, and Nicaragua is both well within your Administration's authority and would provide much needed relief to families, our economy, the business community, and local governments providing essential services to migrants. Thank you for your consideration of this important matter.

Sincerely,



Dan Goldman
Member of Congress



María Elvira Salazar
Member of Congress

cc. Secretary Alejandro Mayorkas and Secretary Antony Blinken

¹⁹ 2022 *Country Reports on Human Rights Practices: Honduras*. U.S. Department of State. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/honduras/>

²⁰ *Id.*

²¹ 2022 *Country Reports on Human Rights Practices: Nicaragua*. U.S. Department of State. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/nicaragua>



U.S. Citizenship
and Immigration
Services

August 8, 2023

The Honorable Daniel Goldman
U.S. House of Representatives
Washington, DC 20515

Dear Representative Goldman:

Thank you for your June 9, 2023 letter to President Biden in support of Temporary Protected Status (TPS) and Deferred Enforced Departure (DED) for Venezuela, El Salvador, Guatemala, Honduras, and Nicaragua. The White House referred your letter to the Department of Homeland Security, and I am responding on behalf of the Department.

The Secretary of Homeland Security may designate a country for TPS and extend or terminate a country's existing TPS designation based upon specific statutory criteria. To designate a country for TPS or extend a country's TPS designation, the Secretary must find one or more of the following: (1) there is an ongoing armed conflict within the country that would pose a serious threat to the personal safety of the country's nationals and habitual residents if they were returned; (2) there has been an environmental disaster resulting in a substantial, but temporary, disruption of the living conditions in the area affected, the country is temporarily unable to handle adequately the return of its nationals, and the country has officially requested TPS designation; or (3) there exist extraordinary and temporary conditions in the country that prevent nationals from returning in safety, and the Secretary does not find that permitting the country's nationals to remain temporarily in the United States would be contrary to the national interest of the United States. *See* Immigration and Nationality Act § 244(b)(1).

DED is an administrative stay of removal that may be authorized by the President for a designated group of foreign nationals. Authority to grant DED arises from the President's constitutional authority to conduct foreign relations of the United States. *See* Executive Order 12711 (April 11, 1990). The President can authorize DED for any reason related to this authority. Although DED is not a specific immigration status, individuals covered by DED are not subject to removal from the United States, usually for a designated period. The President may direct DHS to offer certain benefits, such as employment authorization or advance parole to reenter the United States after travel abroad, to eligible foreign nationals covered by the DED directive. The Secretary authorizes employment for the period and under conditions pursuant to presidential directive. DHS is responsible for adjudicating and processing any DED-related applications for employment authorization or advance parole. In general, eligibility standards are set forth in the Presidential designation of DED for each specific group of eligible foreign nationals.

DHS is closely monitoring conditions in those countries and, like you, is concerned about the ongoing situations there. Venezuela, El Salvador, Honduras, and Nicaragua are currently designated for TPS. DHS is committed to administering programs, including TPS, in an equitable manner and makes decisions regarding TPS designations after consultation with interagency partners and careful consideration of the circumstances pursuant to specific statutory criteria. *See* Immigration and Nationality Act §§ 244(b)(1) and 244(b)(3). As required by statute, at least 60 days before expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review conditions in the foreign state to determine whether conditions for TPS designation continue to be met.

U.S. Citizenship and Immigration Services (USCIS) also offers support that may be available upon request to assist eligible noncitizens affected by special situations in their home country. Such support may include:

- Change or extension of nonimmigrant status if the eligible noncitizen is currently in the United States, even if the request is filed after the authorized period of admission has expired;
- Expedited processing of requests for advance parole documents;
- Expedited adjudication of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited adjudication of employment authorization applications, where appropriate;
- Flexibility for those who received a Request for Evidence or a Notice of Intent to Deny and were unable to appear for an interview, submit evidence, or respond in a timely manner due to the special situation; and
- Replacement of lost or damaged immigration or travel documents issued by USCIS, such as a Permanent Resident Card (Green Card).

More information on these options is available at <https://www.uscis.gov/newsroom/immigration-relief-in-emergencies-or-unforeseen-circumstances>.

Thank you again for your letter and interest in this important issue. Representative Salazar, the cosigner of your letter, will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director