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RACE DISCRIMINATION IN TEMPORARY PROTECTED STATUS: Why Honduras still lacks sufficient protection

In November 2020, Hurricane Eta, a category 4 hurricane, slammed the coast of Honduras and caused widespread flooding and destruction across the whole of Central America.[1] Just two weeks later, Hurricane Iota, a category 5 hurricane, hit an already-reeling Honduras, causing water levels to reach rooftops, completely washing away bridges, and causing billions of dollars in damage across the country.[2] In the area of the Ulua River near San Pedro Sula, water levels rose almost a meter higher than the highest-recorded levels during the infamous Hurricane Mitch in 1998.[3] These hurricanes affected more than 4.5 million people in Honduras alone, with an estimated 100 people dying and over a million who had to be evacuated.[4] The hurricanes caused a humanitarian crisis that is still being felt today.[5]

In October 2022, Tropical Storm Julia, formerly a hurricane, hit Honduras's coast, causing massive flooding across the country and much of Central America, killing 16.[6] Those who were most impacted by Hurricanes Eta and Iota once again felt the effects of the new storm, and they again face an uncertain future.[7] Climate change and environmental disasters are not the only major problems Honduras has faced in recent years. Since the 2009 coup d'état, the country has struggled to deal with exceedingly high levels of gang violence, corruption, and impunity. Honduras has one of the highest homicide rates in the world, with its largest city, San Pedro Sula, earning the title of the "murder capital of the world." [8] International criminal gangs like MS-13 and Barrio 18 control whole blocks of cities, infiltrate the government and police, and operate with near-total impunity.[9]

In 2014, San Pedro Sula had a homicide rate of 171 per 100,000 people, and an estimated 97% of all homicides in the city went unreported.[10] In 2022, Honduras is still the most dangerous country in the region. [11] The effects of gang violence are widespread--children are left orphaned, people are forced to comply with demands or die, and people become internally displaced or must leave the country altogether.[12] The problems in Honduras are so entrenched in the system that even the federal government is involved.[13] Former President Juan Orlando Hernandez was arrested and extradited to the US in 2022 on international drug trafficking charges. Hundreds of thousands of Hondurans have left the country, creating whole caravans to travel in large numbers to the US-Mexico border to seek safety and respite from the violence and corruption.[15] And yet, the U.S. government continues to drag its feet in protecting Hondurans, continuing to deport large swaths of people back to the country.[16]

The last Temporary Protected Status (TPS) designation for Honduras was in 1998 after Hurricane Mitch, a category 5 hurricane that devastated the Northern Triangle of Central America (NTCA), particularly Honduras.[17] The U.S. government acted swiftly to provide protection to Honduran nationals in the U.S. who could not safely return to the country by offering them TPS.[18] In 2020, however, the destruction caused by not one but two massive hurricanes was not enough to overcome the politics of TPS designation.[19] Despite the former President of Honduras, Juan Orlando Hernandez, pleading with the U.S. government to confer new TPS or other protections to Hondurans after the hurricanes, no such protection was ever granted.[20] Biden, who promised to expand protections for those fleeing violence when he took office, has equally failed the people of Honduras and the whole of the NTCA.[21] So why is there such a lack of protection for a country struggling with violence, corruption, and major environmental disasters? Many activists and immigration experts have come up with no possible explanation aside from racial animus.[22]

8 U.S.C § 1254a grants the federal government the power to designate certain countries for TPS based on specific categorizations. Section (b)(B) specifies that TPS may be designated for a country where:

“the Attorney General finds that (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected; (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who nationals of the state; and (iii) the foreign state officially has requested designation.”[23]

Section (b)(C) further specifies that the AG may designate status where they find that “there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety...”[24] A straightforward reading of the statute lays clear that Honduras qualifies for TPS.[25]

Racial animus has been present in TPS designations and terminations before and is not a far-fetched explanation for this lack of designation for Hondurans. In March of 2018, a group of plaintiffs—consisting of U.S. Citizen children, their non-citizen parents, and other non-citizen adults who have lived in the U.S. lawfully for years—filed a class action against the Trump administration for its decision to terminate TPS for Haiti, El Salvador, Nicaragua, and Sudan.[26] Among other things, the lawsuit, *Ramos v Nielsen*, alleged a violation of the Equal Protection guarantee of the Due Process clause because the termination decision “was motivated by intentional race- and national-origin-based animus against individuals from what President Trump has referred to as ‘shithole countries.’”[27] The complaint alleged that the new rule to terminate TPS for these countries arose from “the Trump Administration’s repeatedly-expressed racism toward non-white, non-European people from other countries.”[28] While the Ninth Circuit disagreed with the plaintiffs in that case, an additional lawsuit was filed after the Trump administration’s move to terminate TPS for Honduras and Nepal.[29] The new lawsuit—*Bhattarai v. Nielsen*—made many of the same arguments as *Ramos v. Nielsen*.[30] The litigation in that case is ongoing.[31]

The lawsuit alleging racial animus is a first-of-its-kind suit, but the core issue is not. TPS designations and terminations have long been the result of racism—the same that permeates the U.S. immigration system.[32] Within days of Russia’s invasion of Ukraine, Biden took action to protect Ukrainians by granting them TPS status to remain in the country.[33] This essay does not purport to disagree with this decision. But the clear lack of concern for those from Central American and African countries, compared to immediate protections granted to Ukraine, a majority-white country with close proximity to Europe, is concerning. Those from non-white-majority countries are not granted the same protections, and often have to spend years fighting and lobbying the government for the most basic level of protection through TPS.[34] The Biden Administration needs to reevaluate its TPS designation policies and take real steps to afford equal opportunities for protection to countries like Honduras which desperately need it, starting with granting a new TPS designation for the country.

As of now, TPS is one of the only options available to Honduran nationals seeking international protection. The Refugee Convention does not provide for claims arising from climate change or environmental disasters.[35] Most asylum claims based on gang violence also fall short, with DHS arguing it is ‘generalized’ violence and not sufficiently particular to satisfy the standards of what constitutes a ‘particular social group’.[36] Beyond this, the U.S. has essentially closed its doors to those from Central America since the inception of the Trump-era Migrant Protection Protocols,[37] which has seen thousands of migrants seeking asylum being refouled back to Mexico under the guise of ‘national security,’ many of whom are from Honduras.[38] Despite recognizing the major problems in Honduras,[39] the federal government continues to refuse to grant a new designation of TPS for Honduras and has worked to strip protections for those from countries the U.S. views as ‘unfavorable.’ It is long past the time for Honduras to receive a new TPS designation and for the U.S. government to remove racial animus from its TPS—and all immigration-related—decisions.

[1] Report, *Operation Update No. 2: Honduras/Hurricanes Eta & Iota*, INT. FED’N OF RED CROSS AND RED CRESCENT SOCIETIES (Jan. 21, 2021), <https://reliefweb.int/report/honduras/honduras-hurricane-eta-and-iota-emergency-appeal-n-mdr43007-operation-update-no-2>.

[2] *Id.*

[3] *An unprecedented response to an unprecedented disaster in Honduras*, The World Bank (January 11, 2021), <https://www.worldbank.org/en/news/feature/2021/01/11/respuesta-honduras-desastre-huracanes-eta-iota>

[4] *Id.*

[5] *Communities affected by Hurricanes Eta and Iota are threatened by food insecurity, displacement and the climate crisis*, IFRC (Nov. 11, 2021), <https://www.ifrc.org/press-release/communities-affected-hurricanes-eta-and-iota-are-threatened-food-insecurity>.

[6] Anna-Cat Brigada, *Hurricane Julia pushes displaced Hondurans to consider migration*, Al Jazeera (Oct. 18, 2022), <https://www.aljazeera.com/news/2022/10/18/hurricane-julia-pushes-displaced-hondurans-to-consider-migration>.

[7] *Id.*

[8] David Bacon, *If San Pedro Sula is Murder Capital of the World, Who Made it That Way?*, THE AM. PROSPECT (June 13, 2019), <https://prospect.org/economy/san-pedro-sula-murder-capital-world-made-way/>.

[9] Human Rts. Watch, *Honduras Events of 2020*, <https://www.hrw.org/world-report/2021/country-chapters/honduras>.

[10] Latin Am. Working Group, *San Pedro Sula, Honduras: Nearly a War Zone*, <https://www.lawg.org/san-pedro-sula-honduras-nearly-a-war-zone/>.

[11] Int’l. Rescue Comm., *Crisis in Honduras: Ongoing violence and climate shocks* (Jan. 26, 2022), <https://www.rescue.org/article/crisis-honduras-ongoing-violence-and-climate-shocks#:~:text=Gang%20violence%20and%20organized%20crime,38%20homicides%20oper%20100%2C000%2>

opeople.

[12] See generally, *Death threats and gang violence forcing more families to flee northern Central America – UNHCR and UNICEF survey*, UNHCR (Dec. 17, 2020), <https://reliefweb.int/report/honduras/death-threats-and-gang-violence-forcing-more-families-flee-northern-central-america>.

[13] Amelia Cheatham and Diana Roy, *Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (June 22, 2022), <https://www.cfr.org/background/central-americas-turbulent-northern-triangle>.

[14] *Id.*

[15] *Supra*, note 12.

[16] Marcia Biggs and Julia Galian-Rios, *Honduran migrants deported from the U.S. often face a grim fate*, PBS (Apr. 1, 2019), <https://www.pbs.org/newshour/show/honduran-migrants-deported-from-the-u-s-often-face-a-grim-fate>.

[17] *In debt to disaster: What happened to Honduras after Hurricane Mitch*, Christian Aid (Oct. 31, 1999), <https://reliefweb.int/report/honduras/debt-disaster-what-happened-honduras-after-hurricane-mitch>.

[18] *Mitch Leads to TPS*, Migration News, vol. 6 (Jan. 1999), <https://migration.ucdavis.edu/mn/more.php?id=1689>.

[19] Silva Mathema and Tom Jawetz, *TPS Can Promote Stability and Recovery for Central American Countries Hit by Recent Hurricanes*, Central for Am. Progress (Dec. 21, 2020),

<https://www.americanprogress.org/article/tps-can-aid-recovery-central-american-countries-hit-recent-hurricanes/>.

[20] *After hurricanes, Honduran nationals in US gain protections against deportation*, Catholic News Agency (Dec. 8, 2020, 18:10 PM), <https://www.catholicnewsagency.com/news/46843/after-hurricanes-honduran-nationals-in-us-gain-protections-against-deportation>.

[21] *Id.*

[22] See generally, *Challenges to TPS and DED Terminations and Other TPS-Related Litigation*, Clinic Legal (Sept. 21, 2021), <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/challenges>.

[23] 8 U.S.C § 1254a(b)(B).

[24] *Id.*

[25] *Tell the President: TPS for Central America!*, Immigrant Law Center of Minn. (Sept. 19, 2022), <https://www.ilcm.org/latest-news/tell-the-president-tps-for-central-america/>.

[26] See Nat. TPS Alliance, **Updated* TPS Lawsuit Information*, <https://www.nationaltpsalliance.org/tps-lawsuit/>. See also Complaint, *Ramos v. Nielsen*, 321 F.Supp.3d 1083 (N.D. Ca. 2018) (No. 3:18-cv-01554), https://www.aclusocal.org/sites/default/files/aclu_socal_tps_20180312_complaint.pdf.

[27] Complaint, *Ramos v. Nielsen*, *supra* note 9.

[28] *Id.*

[29] Nat'l TPS Alliance, **Updated* TPS Lawsuit Information*, <https://www.nationaltpsalliance.org/tps-lawsuit/>.

[30] *Id.*

[31] U.S. Citizenship and Immigr. Serv., *Update on Ramos v. Nielsen* (Sept. 9, 2021), <https://www.uscis.gov/humanitarian/update-on-ramos-v-nielsen>.

[32] Julissa Arce, *The structural racism of our immigration system*, Unidos US (July 1, 2021), <https://www.unidosus.org/blog/2021/07/01/the-structural-racism-of-our-immigration-system/>.

[33] Camila Montoya-Galvez, *Biden administration expands Temporary Protected Status eligibility for Ukrainians in U.S.*, CBS News (Apr. 18, 2022), <https://www.cbsnews.com/news/temporary-protected-status-ukrainians-us-eligibility/>.

[34] Amnesty Int'l., *Cameroon Advocacy Network to Congress and Biden Administration: Why is TPS for Cameroon Taking so Long?* (Dec. 1, 2021), <https://www.amnestyusa.org/press-releases/cameroon-advocacy-network-to-congress-and-biden-administration-why-is-tps-for-cameroon-taking-so-long/>.

[35] Sreyas Adiraju, *What is a "Refugee"? Expanding the UN Refugee Convention in the Face of Climate Change*, Columbia Undergraduate Law Review (Feb. 7, 2022), <https://www.culawreview.org/journal/what-is-a-refugee-expanding-the-un-refugee-convention-in-the-face-of-climate-change>.

[36] *Particular Social Group Practice Advisory: Applying for Asylum Based on Membership in a Particular Social Group*, National Immigrant Justice Center (July 2021).

[37] While the Migrant Protection Protocols (MPP) have been ended by the Biden administration, they continue to have an effect, with thousands of people still waiting to be let into the country. See *Featured Issue: Migrant Protection Protocols (MPP)*, AILA (Oct. 7, 2022), <https://www.aila.org/advo-media/issues/port-courts#:~:text=In%20short%2C%20MPP%20is%20over,least%20one%20government%20attorney%20reported>

[38] Jessica Eller, Emma Israel, Priscilla Lugo, and Juany Torres, *Migrant Protection Protocols: Implementation and Consequences for Asylum Seekers in Mexico* (University of Texas at Austin, 2020)

https://www.strausscenter.org/wp-content/uploads/PRP-218_-Migrant-Protection-Protocols.pdf.

[39] U.S. Dep't of State, *2021 Country Reports on Human Rights Practices: Honduras*,

<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/honduras/>.