

2-27-2023

Sanchez v. Mayorkas: Is This the End of Green Cards for Temporary Protected Status Holders?

Thalia G. Rivet
University of Miami School of Law

Follow this and additional works at: <https://repository.law.miami.edu/umialr>



Part of the [Civil Law Commons](#), [Common Law Commons](#), and the [Immigration Law Commons](#)

Recommended Citation

Thalia G. Rivet, *Sanchez v. Mayorkas: Is This the End of Green Cards for Temporary Protected Status Holders?*, 54 U. MIA Inter-Am. L. Rev. 205 ()

Available at: <https://repository.law.miami.edu/umialr/vol54/iss1/8>

This Student Note/Comment is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

Sanchez v. Mayorkas: Is This the End of Green Cards for Temporary Protected Status Holders?

Thalia G. Rivet*

This Note was inspired by the U.S. Supreme Court’s decision in Sanchez v. Mayorkas. This decision put an end to the decade-long circuit split over whether a Temporary Protected Status (“TPS”) recipient, who entered the United States unlawfully, could still become a Lawful Permanent Resident (“LPR”). Since its inception, TPS holders have been denied an avenue to adjust their status despite their socioeconomic impact on the United States and every TPS-designated country. This Note will break down and analyze the decision in Sanchez v. Mayorkas through (1) the examination of the circuit split cases, (2) the analysis of TPS holder’s impact on the United States and abroad, and (3) the effects of the pending bills in Congress on future TPS holders.

I. INTRODUCTION.....	206
II. BACKGROUND.....	209
A. <i>What is TPS?</i>	209
B. <i>Who is Eligible for TPS?</i>	210
C. <i>How Can a TPS Holder Adjust to LPR?</i>	211
III. CIRCUIT COURT DECISIONS.....	212
A. <i>Having TPS Meets the Inspected and Admitted</i>	

* Student Writing Editor, University of Miami Inter-American Law Review, Volume 54; J.D. Candidate 2023, University of Miami School of Law; B.A. 2018, Political Science, University of Central Florida. I want to dedicate this Note to my loving family – Yamile Camejo and Thaily Rivet— for their constant support and love. I would also like to thank Professor of Legal Writing Christie Anne Daniels for her guidance and advice, and the Inter-American Law Review’s 2021-22 Student Writing Editor, Camila Chediak, for her feedback and support.

<i>Requirement</i>	213
i. Sixth Circuit	213
ii. Eighth Circuit	214
iii. Ninth Circuit	215
B. <i>Having TPS Does Not Mean an Individual is Inspected and Admitted</i>	216
i. Third Circuit	216
ii. Fifth Circuit	217
iii. Eleventh Circuit	218
IV. <i>SANCHEZ V. MAYORKAS: THE TIEBREAKER</i>	219
A. <i>Factual Background</i>	219
B. <i>Procedural History</i>	219
C. <i>The Resolution of a Circuit Split</i>	220
i. Plain Language of § 1255	220
ii. Section 1184 Does Not Require Admission for Nonimmigrant Status	221
iii. Section 1101: Nonimmigrant Status Without Admission	222
iv. Congress and Legislation	223
V. <i>SOCIOECONOMIC IMPACT OF SANCHEZ V. MAYORKAS</i>	223
A. <i>Economic and Social Contributions of TPS Holders in the United States</i>	224
B. <i>Human Rights Implications</i>	227
C. <i>TPS and its Economic Impact on Designated Countries</i>	229
D. <i>U.N.-Backed Treaties</i>	231
VI. <i>BIDEN ADMINISTRATION</i>	233
A. <i>Stance on TPS and Designation of New Countries</i>	233
B. <i>U.S. Citizenship Act of 2021</i>	236
C. <i>American Dream and Promise Act of 2021</i>	238
VII. <i>CONCLUSION</i>	242

I. INTRODUCTION

In October 1998, Honduras was devastated by Hurricane Mitch, a Category Five hurricane with 150 mph winds and several days of

torrential rain.¹ The hurricane left one-fifth of the Honduran population homeless, killed more than 5,600 people, and destroyed two-thirds of roads and bridges, as well as agricultural farms vital to the economy.² In response, on January 5, 1999, then-President Bill Clinton designated Honduras for Temporary Protected Status (“TPS”).³ Now, imagine that Maria, a five-year-old girl, and her family decided to immigrate to the United States after Hurricane Mitch left them homeless.⁴ They entered without inspection in 1998 and received approval for TPS in 1999. Maria has continuously renewed her TPS since then.⁵

It is now November 2022, and Maria wishes to adjust her status from TPS to Lawful Permanent Resident (“LPR”).⁶ Maria has been in the United States since 1998, has not returned to Honduras, and has been working for over ten years.⁷ She married a U.S. citizen last year and can now apply to adjust her status.⁸ Her husband filed an Immediate Relative I-130 Petition on her behalf with an accompanying I-485 Application for Adjustment of Status.⁹ Growing up, Maria met many people who adjusted their status from TPS to LPR.¹⁰ She understands the process well and is ready for her chance.¹¹ However, she is surprised to learn that a recent U.S. Supreme Court case, *Sanchez v. Mayorkas*, renders her unable to adjust her status to LPR because she was not “inspected and admitted or paroled into the United States” in 1998.¹²

Maria is one of “many immigrants liv[ing] in a state of legal limbo that can persist indefinitely . . . without ever leading to

¹ *Temporary Protected Status for Honduras*, CATH. LEGAL IMMIGR. NETWORK, INC., <https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-honduras> (last updated Feb. 15, 2018).

² *Id.*

³ *Id.*

⁴ This is a fictitious set of facts meant only to educate the reader. This example will be referenced further down this Note to analyze new solutions and legislative acts more effectively [hereinafter Maria Introductory Hypothetical].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Maria Introductory Hypothetical, *supra* note 4.

¹¹ *Id.*

¹² *Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1811 (2021).

citizenship or permanent legal status.”¹³ She is endowed with characteristics of both legal and illegal status.¹⁴ Although her TPS status allows her to remain in the country temporarily, she will have to renew her status every eighteen months in the hopes that the Attorney General does not remove Honduras from the list of designated countries deserving of TPS.¹⁵ Her state of limbo is further complicated because of the Department of Homeland Security’s interpretation of two statutes: 8 U.S.C. § 1255 (“Adjustment of Status Statute”)¹⁶ and 8 U.S.C. § 1254a (“Temporary Protected Status Statute”).¹⁷

The Adjustment of Status Statute states that an individual seeking to adjust their nonimmigrant status to that of a Lawful Permanent Resident must be “inspected and admitted or paroled into the United States.”¹⁸ Alternatively, the Temporary Protected Status Statute declares that “for the purposes of adjustment of status under section 1255 . . . the [TPS holder] shall be considered as being in, and maintaining, lawful status as a nonimmigrant.”¹⁹ Since *Sanchez*, the government’s position is that a TPS recipient who entered unlawfully is not eligible to adjust their status to LPR because they were not inspected and admitted into the United States.²⁰

Sanchez addressed a circuit split regarding “whether a TPS recipient who entered the country unlawfully can still become an LPR.”²¹ The Court rejected the idea that TPS “constructively ‘admit[s]’ a TPS recipient [such that it] ‘consider[s]’ him as having entered the country ‘after inspection and authorization.’”²² This note will analyze the decision in *Sanchez* and identify its future implications on TPS holders in the United States and those who wish to enter the country. Part II of this article will define what TPS is and

¹³ ROBERTO G. GONZALES, *LIVES IN LIMBO: UNDOCUMENTED AND COMING OF AGE IN AMERICA* 9 (University of California Press, 2015) (1969).

¹⁴ *Id.*

¹⁵ See 8 U.S.C. § 1254a(b)(2) (2012).

¹⁶ 8 U.S.C. § 1255 (2020).

¹⁷ 8 U.S.C. § 1254a (2012).

¹⁸ 8 U.S.C. § 1255(a) (2020).

¹⁹ 8 U.S.C. § 1254a(f)(4) (2012).

²⁰ 8 U.S.C. § 1255 (2020); see generally *Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1813 (2021).

²¹ *Sanchez*, 141 S. Ct. at 1812.

²² *Id.* at 1813.

explain who is eligible, and how individuals can adjust their status from TPS to LPR. Part III will analyze the relevant previous circuit court decisions and their approach to allowing TPS holder to adjust their status to LPR. Part IV of this piece will illustrate how *Sanchez's* facts, procedural history, and rationale led the U.S. Supreme Court to rule that a TPS recipient who entered the United States without inspection is not eligible to adjust to permanent residence.²³ Part V will address TPS's socioeconomic impact on both the United States and its designated countries. Part VI will discuss the Biden administration's view on *Sanchez* and examine the U.S. Citizenship Act of 2021 and American Dream and Promise Act of 2021, analyzing their likelihood of passing the Senate, as well as their implications if passed. Finally, Part VII will briefly conclude the paper.

II. BACKGROUND

A. *What is TPS?*

Congress created TPS in the Immigration Act of 1990.²⁴ It is a temporary immigration status provided to nationals of specifically designated countries who are experiencing problems that make it unsafe or difficult for their citizens to return or deport.²⁵ TPS has been a lifeline to thousands of individuals in the United States when problems in their home country prevent them from returning.²⁶ As of February 2022, the United States provides TPS to 354,625 foreign nationals.²⁷

Under the Immigration Act of 1990, the Attorney General has the discretion to decide which countries merit a TPS designation.²⁸ When considering a TPS designation, the Attorney General considers whether: (1) there is an ongoing armed conflict that poses a

²³ *Id.* at 1811.

²⁴ *Temporary Protected Status: An Overview*, AM. IMMIGR. COUNCIL 1, 1 [hereinafter *TPS Overview*], https://www.americanimmigrationcouncil.org/sites/default/files/research/temporary_protected_status_an_overview.pdf (last modified Sept. 30, 2022).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See* 8 U.S.C. § 1254a (2012).

serious threat to the personal safety of nationals of that country;²⁹ (2) there is an environmental disaster that results in a substantial but temporary disruption of living conditions and the foreign state is temporarily unable to handle the return of its nationals adequately;³⁰ or (3) there are extraordinary and temporary conditions in that foreign country that prevents its nationals from making a safe return.³¹ The Attorney General may designate a country for TPS for a period of six months and no more than 18 months.³² However, TPS may be extended, or a country may be re-designated if the country continues to meet the conditions for designation.³³ As of September 2022, there are fifteen countries designated for TPS, including El Salvador, Haiti, Honduras, Nicaragua, and Venezuela.³⁴

B. Who is Eligible for TPS?

If the Attorney General deems a foreign country's nationals deserving of TPS, an individual from that country may apply for TPS.³⁵ To qualify, an individual must (1) be a national of the foreign country designated with TPS designation; (2) be continuously, physically present in the United States since the date of designation; (3) have continuously resided in the United States since the country's designation date; and (4) have registered during the specific registration period.³⁶ In addition to these requirements, some individuals do not qualify for TPS because they are (1) individuals who are inadmissible to the United States or barred from asylum;³⁷ (2)

²⁹ 8 U.S.C. § 1254a(b) (2012).

³⁰ *Id.* (noting that TPS designations based on an environmental disaster require the foreign state to officially request designation).

³¹ *Id.*

³² 8 U.S.C. § 1254a(b)(2) (2012).

³³ 8 U.S.C. § 1254a(b)(3)(B) (2012). *See generally Temporary Protected Status*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated Nov. 14, 2022) (Since 1999, Honduras and Nicaragua have been designated and re-designated for TPS over fifteen times. El Salvador was first designated for TPS in 2001. Haiti was first designated in 2010 for TPS and were recently re-designated 2021 under a new designation. In 2021, Venezuela was designated for the first time).

³⁴ *TPS Overview*, *supra* note 24, at 3.

³⁵ *See id.* at 2.

³⁶ 8 C.F.R. § 244.2 (2016).

³⁷ *See* 8 U.S.C. § 1158(d)(5)(A)(i) (2020).

individuals who have been convicted of a felony;³⁸ or (3) individuals who have two or more misdemeanors.³⁹

An individual begins their TPS application process by filing an I-821 Application for Temporary Protected Status.⁴⁰ When filing a TPS application, an individual can also request an Employment Authorization Document (“EAD”) by submitting an I-765 Request for Employment Authorization concurrently with the I-821.⁴¹ Along with the application, the noncitizen must pay the filing fees, totaling \$545 for first-time applicants, and submit extensive documentation to support their application.⁴² Every eighteen months until the country is no longer entitled to TPS, the noncitizen must re-submit their application, filing fees, documentation, and fingerprints.⁴³ Failure to re-submit the required documentation will cause the noncitizen to become undocumented and subject to removal.⁴⁴

C. *How Can a TPS Holder Adjust to LPR?*

Adjustment of status is a process in which foreign nationals who have a nonimmigrant visa apply to become an LPR, a procedure often referred to as obtaining a Green Card.⁴⁵ Title 8 U.S.C. § 1255 lays out the foundation of eligibility for adjustment of status and how nonimmigrants can obtain permanent residence.⁴⁶ TPS does not provide beneficiaries with a path to becoming LPR; however, they may apply if a TPS recipient is otherwise eligible for permanent residence.⁴⁷

To start the adjustment of status process, an applicant must complete at least two forms: an immigrant petition and a Green Card application.⁴⁸ The applicant may be eligible to file for themselves in

³⁸ 8 C.F.R. § 244.4(a) (2016).

³⁹ *Id.*

⁴⁰ *Temporary Protected Status*, *supra* note 33.

⁴¹ *Id.*

⁴² *I-821, Application for Temporary Status*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/i-821> (last updated Aug. 19, 2022).

⁴³ *See generally id.*

⁴⁴ *TPS Overview*, *supra* note 24, at 5.

⁴⁵ *Adjustment of Status*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/greencard/adjustment-of-status> (last updated Sept. 25, 2020).

⁴⁶ *See generally* 8 U.S.C. § 1255 (2020).

⁴⁷ *See* 8 U.S.C. § 1254a (2012).

⁴⁸ *Adjustment of Status*, *supra* note 45.

certain cases, although someone else usually files the immigrant petition on their behalf.⁴⁹ For instance, a family member may file a Form I-130, Petition for Alien Relative; an employer may file a Form I-140, Immigrant Petition for Alien Worker; or the applicant themselves can file a Form I-589, Application for Asylum and for Withholding of Removal.⁵⁰ Most immigrant categories require the applicant to have an approved immigrant petition before filing a Form I-485 Application to Register Permanent Residence or Adjust Status.⁵¹ However, some categories allow applicants to file their I-485 at the same time their immigrant petition is filed or while it is pending.⁵² This is known as “concurrently filing.”⁵³ The next step is determining whether a visa is available in their immigrant category.⁵⁴ Unless the foreign national is an immediate relative to a U.S. citizen, an immigrant visa must be immediately available, or the applicant cannot file an I-485.⁵⁵ The Department of State publishes a monthly Visa Bulletin, which indicates when limited visas are available to prospective immigrants based on their priority date.⁵⁶ Once the petitioner properly files the forms, they will begin the long and challenging journey to becoming an LPR.⁵⁷

III. CIRCUIT COURT DECISIONS

U.S. Courts of Appeals have been split “regarding whether a grant of TPS [is] an ‘admission’ such that it allow[s] an applicant for permanent residence to meet the threshold ‘inspected and admitted or paroled’ requirement to adjust status within the United

⁴⁹ *Id.*

⁵⁰ *Green Card Eligibility Categories*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/greencard/eligibility-categories> (last updated July 11, 2022).

⁵¹ *Adjustment of Status*, *supra* note 45.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Concurrent Filing of Form I-485*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/greencard/concurrent-filing-form-i-485> (last updated Nov. 10, 2020); *see also Adjustment of Status*, *supra* note 45.

⁵⁶ *See generally Adjustment of Status*, *supra* note 45.

⁵⁷ *See id.*

States.”⁵⁸ Previously, the Sixth, Eighth, and Ninth Circuits have held that TPS does provide admission, while the Third, Fifth, and Eleventh Circuits ruled that TPS does not.⁵⁹ Thus, TPS holders in the Sixth, Eighth, and Ninth Circuits could “apply to adjust even if they had last entered the United States without inspection if they otherwise met the requirements” to adjust.⁶⁰

A. Having TPS Meets the Inspected and Admitted Requirement

i. Sixth Circuit

In *Flores v. United States Citizenship and Immigration Services*, the petitioner is a Honduran TPS recipient who entered the United States without inspection.⁶¹ Upon marrying his wife, she filed an Immediate Relative I-130 Petition on the petitioner’s behalf, along with an accompanying I-485.⁶² Although the petitioner’s I-130 Petition was approved, providing him with an independent basis to become an LPR, the United States Citizenship and Immigration Services (“USCIS”) denied his I-485 Application because he “entered the United States without inspection” in 1998.⁶³ The petitioner then filed a complaint for declaratory judgment under the Administrative Procedures Act (“APA”).⁶⁴ However, the district court denied the petitioner’s claim based on the plain language of 8 U.S.C. § 1255.⁶⁵ According to the district court, this statute “precludes a TPS beneficiary who was not initially ‘inspected and admitted or paroled’ into the United States . . . from adjusting his status to LPR.”⁶⁶

⁵⁸ Ariel Brown, *Sanchez v. Mayorkas: TPS and Adjustment After the Supreme Court’s Decision*, IMMIGRANT LEGAL RSCH. CTR. (July 8, 2021), https://www.ilrc.org/sites/default/files/resources/tps_and_aos_after_supreme_court_decision-july_2021_final.pdf.

⁵⁹ *TPS Overview*, *supra* note 24, at 4.

⁶⁰ Brown, *supra* note 58.

⁶¹ *Flores v. U.S. Citizenship and Immigr. Servs.*, 718 F.3d 548, 550 (6th Cir. 2013).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 550-51.

On appeal, the Sixth Circuit reversed the district court's judgment and found that USCIS's interpretation of § 1254a(f) was "unduly narrow and ignores the plain language of the statute."⁶⁷ USCIS asserted that § 1254a(f) of the TPS statute pertains only to § 1255(c)(2), a subsection that precludes adjustment of status to LPR if an immigrant works without authorization.⁶⁸ Subsection 1254a(f)(4) does not explicitly refer to § 1255(c)(2) or any specific bars to adjustment of status.⁶⁹ According to the Sixth Circuit, there is no reason why Congress would write § 1254a(f) to refer to § 1255 as a whole if it was meant to apply only to § 1255(c)(2).⁷⁰ Since the provision was written broadly, the Sixth Circuit interpreted the statute precisely as it is written, allowing the petitioner to be considered in lawful status as a nonimmigrant for purposes of adjusting his status under § 1255.⁷¹

ii. Eighth Circuit

Velasquez v. Barr bears remarkable similarities to *Flores*, as the court in *Velasquez* used very similar analyses to the court in *Flores* to interpret TPS as providing admission for purposes of adjusting status.⁷² Similar to *Flores*, the petitioners in *Velasquez* are TPS recipients whose applications for adjustment of status, based on having immediate relatives who are U.S. citizens, were initially denied by USCIS.⁷³ After USCIS told the petitioners there was no administrative appeal, the petitioners brought two separate lawsuits under APA in district court.⁷⁴ In both cases, the district courts decided that based on the unambiguous language in the Immigration and Nationality Act ("INA"), a grant of TPS satisfies the "inspected-and-admitted" requirement of § 1255(a).⁷⁵

On appeal, the Eighth Circuit affirmed the district courts' judgments and reviewed *de novo* questions of statutory interpretation of

⁶⁷ *Flores*, 718 F.3d at 553.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 553-54.

⁷² *Velasquez v. Barr*, 979 F.3d 572, 575 (8th Cir. 2020).

⁷³ *Id.* at 575-76.

⁷⁴ *Id.* at 576.

⁷⁵ *Id.* at 576.

§ 1255(a).⁷⁶ In applying the two-step analysis from *Chevron U.S.A., Inc. v. Natural Resources Defense Council Inc.*⁷⁷ to review an agency decision, the court concluded that § 1254a(f)(4) “unambiguously requires that TPS recipients be considered ‘inspected and admitted’ for purposes of adjusting their status under § 1255.”⁷⁸ Section 1254a(f)(4) provides that TPS beneficiaries “shall be considered as being in, and maintaining, lawful status as a nonimmigrant” under § 1255.⁷⁹ By operation of § 1254a(f)(4), TPS holders are considered “inspected and admitted,” regardless of whether they entered the United States without inspection.⁸⁰ Therefore, USCIS’s interpretation conflicts with the plain meaning of the INA and is thus unlawful.⁸¹

iii. Ninth Circuit

The petitioner in *Ramirez v. Brown* shares notable similarities to those in *Flores* and *Velasquez*.⁸² Like the two prior cases, the petitioner in *Ramirez* was granted TPS, married a U.S. citizen, and filed an I-130 petition and I-485 application.⁸³ USCIS denied the petitioner’s I-485 because he could not show he was inspected and admitted or paroled at the time of his entry into the United States.⁸⁴ The petitioner then filed suit under the APA, after which the district court determined that USCIS’s interpretation is incorrect because 8

⁷⁶ *Id.* at 576, 581.

⁷⁷ *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction of the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”).

⁷⁸ *Velasquez*, 979 F.3d at 577.

⁷⁹ *Id.*

⁸⁰ *Id.* at 581.

⁸¹ *Id.*

⁸² *Ramirez v. Brown*, 852 F.3d 954, 955-56 (9th Cir. 2017).

⁸³ *Id.* at 957.

⁸⁴ *Id.*

U.S.C. § 1254a provides that recipients are considered “inspected and admitted” for purposes of adjusting their status.⁸⁵

On appeal, the Ninth Circuit affirmed, determining that § 1254a(f)(4) unambiguously treats individuals with TPS as being admitted for purposes of adjustment of status.⁸⁶ Under *Chevron*, the fact that the statutory language is clear “ends the inquiry: the agency has no interpretive role to play but must follow the congressional mandate.”⁸⁷ Under immigration law, by the very “nature of obtaining lawful nonimmigrant status, the alien goes through inspection and is deemed ‘admitted.’”⁸⁸ Thus, USCIS’s denial of the petitioner’s I-485 application was legally flawed, and the petitioner was eligible for adjustment of status.⁸⁹

B. Having TPS Does Not Mean an Individual is Inspected and Admitted

i. Third Circuit

In *Sanchez v. Secretary United States Department of Homeland Security*, the plaintiffs, husband and wife, are citizens of El Salvador.⁹⁰ They entered the United States without inspection or admission and applied for and received TPS.⁹¹ In 2014, they applied to become LPR, but the husband was deemed “statutorily ineligible” because he had not been admitted into the United States.⁹² USCIS also denied the wife because it depended on the success of the husband’s application.⁹³ The district court held that a grant of TPS meets the § 1255(a) requirement that an alien must be “inspected and admitted or paroled” to be eligible for adjustment of status.⁹⁴

⁸⁵ *Id.*

⁸⁶ *Id.* at 958.

⁸⁷ *Id.*

⁸⁸ *Ramirez*, 852 F.3d at 960.

⁸⁹ *Id.* at 964.

⁹⁰ *Sanchez v. Sec’y U.S. Dep’t of Homeland Sec.*, 967 F.3d 242, 244 (3d Cir. 2020).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

The Third Circuit reversed on appeal.⁹⁵ The court held that Congress did not intend a grant of TPS to serve as an admission for those who entered the U.S. illegally.⁹⁶ First, it held that the text of § 1254a does not mention that a grant of TPS is an inspection and admission.⁹⁷ Second, a grant of TPS cannot be an admission because § 1254a requires that an alien be present in the United States to be eligible for TPS.⁹⁸ Third, although it is correct that an admission often accompanies a grant of lawful status, it does not follow that a grant of lawful status is an admission.⁹⁹ Therefore, a grant of TPS does not constitute an “admission” into the United States.¹⁰⁰

ii. Fifth Circuit

In *Nolasco v. Crockett*, the Fifth Circuit granted a petition for a panel rehearing, withdrawing its prior opinion and substituting it with the following holding.¹⁰¹ The petitioner was a national and citizen of El Salvador who entered the United States unlawfully and was later granted TPS.¹⁰² The petitioner sought to adjust his status to become LPR, but USCIS denied his request because the government determined that he had not been “inspected and admitted or paroled” into the United States.¹⁰³ His suit was dismissed under Federal Rule of Civil Procedure 12(b)(1).¹⁰⁴

On appeal, the Fifth Circuit dismissed the petitioner’s complaint with prejudice, reversed the district court’s holding that it lacked jurisdiction, and asserted the court’s jurisdiction over the petitioner’s claim.¹⁰⁵ Following *Melendez v. McAleenan*,¹⁰⁶ the court held that the district court erred in concluding it did not have jurisdiction because this is a “pure legal task” and it is a nondiscretionary decision

⁹⁵ *Id.* at 252.

⁹⁶ *Sanchez*, 967 F.3d at 251.

⁹⁷ *Id.* at 246.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 252.

¹⁰¹ *Nolasco v. Crockett*, 978 F.3d 955, 956 (5th Cir. 2020).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 957.

¹⁰⁵ *Id.* at 959.

¹⁰⁶ *Melendez v. McAleenan*, 928 F.3d 425, 426-27(5th Cir. 2019).

that is not barred by the jurisdiction–stripping statute.¹⁰⁷ The court further held that the petitioner failed to state a claim upon which relief could be granted.¹⁰⁸ Ultimately, the court found those with TPS who first entered the United States without inspection are, as a matter of law, foreclosed from applying for adjustment of status.¹⁰⁹ Therefore, the court determined the petitioner’s suit had to be dismissed.¹¹⁰

iii. Eleventh Circuit

In *Serrano v. U.S. Attorney General*, the petitioner was a national of El Salvador who received TPS shortly after unlawfully entering the United States.¹¹¹ After USCIS denied his application for adjustment, the petitioner appealed with a *writ of mandamus* and a complaint seeking declaratory and injunctive relief under the APA.¹¹² When the district court denied both claims, the petitioner took his case to the Eleventh Circuit.¹¹³

The Eleventh Circuit affirmed the lower court’s ruling, reasoning that the plain language of § 1255 was unambiguously clear in allowing adjustment only for those who have previously been inspected and admitted or paroled.¹¹⁴ The court concluded that the TPS statute’s granting of “‘lawful status as a nonimmigrant’ for purposes of adjusting [the petitioner’s] status does not change 1255(a)’s threshold requirement that [the petitioner] is eligible for adjustment of status only if he was initially inspected and admitted or paroled.”¹¹⁵ Thus, the Eleventh Circuit held that the plain language of § 1255 is clear in requiring an inspection and admission or parole, and nothing about the TPS statute or § 1254a(f)(4) alters this requirement.¹¹⁶

¹⁰⁷ *Nolasco*, 978 F.3d at 957.

¹⁰⁸ *Id.* at 958.

¹⁰⁹ *Id.* at 959.

¹¹⁰ *Id.* at 958.

¹¹¹ *Serrano v. U.S. Att’y Gen.*, 655 F.3d 1260, 1263 (11th Cir. 2011).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 1265.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

IV. SANCHEZ V. MAYORKAS: THE TIEBREAKER

Sanchez v. Mayorkas resolved the decade-long circuit split over whether a TPS recipient who entered the United States unlawfully can still become an LPR.¹¹⁷ The decision nullified *Flores v. United States Citizenship and Immigration Services*, *Velasquez v. Barr*, and *Ramirez v. Brown*.¹¹⁸

A. Factual Background

The appellant, Jose Santos Sanchez, was a Salvadoran immigrant.¹¹⁹ In 1997, he entered the United States without “inspection and authorization by an immigration officer.”¹²⁰ Once in the country, he worked without legal authorization.¹²¹ In 2001, the government extended TPS status to Salvadoran citizens following the devastating earthquakes.¹²² That same year, Sanchez obtained TPS status and has held it ever since.¹²³ In 2014, he applied to adjust his status to LPR.¹²⁴ However, USCIS denied his application stating he was ineligible for LPR status because he was not lawfully admitted to the United States.¹²⁵ The agency reasoned that recipients of TPS must still meet the threshold requirement of a lawful entry.¹²⁶ In other words, a “grant of TPS does not cure a foreign national’s entry without inspection or constitute an inspection and admission of the foreign national,” as demanded by § 1255.¹²⁷

B. Procedural History

After Sanchez’s denial of adjustment of status, he filed a complaint before the U.S. District Court for the District of New Jersey.¹²⁸ The district court granted summary judgment in Sanchez’s

¹¹⁷ *Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1812 (2021).

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1811.

¹²⁰ *Id.* at 1812.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Sanchez*, 141 S. Ct. at 1812.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

favor.¹²⁹ He relied on the statutory mandate that a TPS recipient “shall be considered as” having “lawful status as a nonimmigrant” for purposes of applying to become an LPR.¹³⁰ That provision required treating TPS recipients as though they had been inspected and admitted.¹³¹

However, the Third Circuit Court of Appeals reversed the lower court’s decision, holding that “a grant of TPS does not constitute an ‘admission’ into the United States.”¹³² The court noted that “admission” and “status” are separate concepts in immigration law, so providing a person with nonimmigrant status is not equivalent to admitting them.¹³³ The U.S. Supreme Court then granted certiorari.¹³⁴

C. *The Resolution of a Circuit Split*

i. Plain Language of § 1255

The Supreme Court focused its attention on the plain terms of § 1255.¹³⁵ Specifically, it emphasized the language that declared an LPR applicant must have entered the country “lawfully” with “inspection” to have been admitted.¹³⁶ Section 1255 imposes an admission requirement twice over.¹³⁷ Its primary provision states that an applicant for LPR status must have been “inspected and admitted or paroled into the United States.”¹³⁸ Another provision states that a person who has worked without authorization in the country may become an LPR only if their presence in the United States is “pursuant to a lawful admission.”¹³⁹ Thus, a direct application of § 1255 supports the government’s decision to deny Sanchez LPR status.¹⁴⁰

¹²⁹ *Sanchez*, 141 S. Ct. at 1812.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *See Sanchez*, 141 S. Ct. at 1813.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

He has never claimed he could satisfy the demands for admission without support from the TPS provision.¹⁴¹

Furthermore, nothing in the grant of TPS changes that result as a TPS recipient is “considered as being in, and maintaining, lawful status as a nonimmigrant” to become an LPR.¹⁴² This provision ensures that a TPS recipient will be treated as having nonimmigrant status when applying for permanent residency, even when they do not.¹⁴³ It also guarantees that every TPS recipient has the status generally needed to invoke § 1255’s adjustment process.¹⁴⁴ But the provision does not help TPS recipients meet §1255’s independent legal–entry requirement.¹⁴⁵ While the TPS statute permits Sanchez to remain in the United States and deems him in nonimmigrant status for purposes of adjustment, it does not consider him as having entered the country “after inspection and authorization.”¹⁴⁶ Therefore, a grant of TPS does not eliminate the disqualifying effect of an unlawful entry.¹⁴⁷

ii. Section 1184 Does Not Require Admission for Nonimmigrant Status

The Supreme Court referenced 8 U.S.C. § 1184 to further support its decision.¹⁴⁸ That provision states that “[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the [Secretary of Homeland Security] may by regulations prescribe.”¹⁴⁹ The statute also provides that a foreign national is “presumed to be an immigrant until” the individual establishes that they are entitled to a nonimmigrant status at the time of application for admission.¹⁵⁰ Thus, §1184 regulates the process for admitting foreign nationals as nonimmigrants.¹⁵¹

¹⁴¹ *Sanchez*, 141 S. Ct. at 1813.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Sanchez*, 141 S. Ct. at 1814.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

The Court was unpersuaded by Sanchez's assertion that an "indissoluble relationship between admission and nonimmigrant status" grants TPS holders with a "ticket of admission."¹⁵² Sanchez contended that nonimmigrant status always requires admission and "[o]ne cannot obtain lawful nonimmigrant status without admission."¹⁵³ He cited § 1184, entitled "[a]dmission of nonimmigrants," to further support his claim.¹⁵⁴ According to Sanchez, it is impossible to "identif[y] any category of individuals who are lawful nonimmigrants but are not admitted," so when a TPS recipient is considered a nonimmigrant, it is necessarily saying that he shall be deemed to be admitted.¹⁵⁵ However, nothing in § 1184 states that admission is a prerequisite of nonimmigrant status.¹⁵⁶ Without an "indissoluble" link, there is no reason to view the TPS provision's grant of nonimmigrant status as also a grant of admission.¹⁵⁷

iii. Section 1101: Nonimmigrant Status Without Admission

While Sanchez claims there is no nonimmigrant status without admission, there are actually two immigration categories that feature this exact reality.¹⁵⁸ The first category is for "alien crewmen," who receive nonimmigrant status when their vessel or aircraft lands in the United States.¹⁵⁹ However, the law still provides that they are not considered to have been admitted.¹⁶⁰ The second category is for foreign nationals who have been "the victim[s] of a serious crime in the United States and can assist with the investigation," also known as "U" nonimmigrants.¹⁶¹ These individuals could receive nonimmigrant status even if they entered the country unlawfully.¹⁶² Section 1255 recognizes this possibility by making "U" nonimmigrants

¹⁵² *Id.* at 1813-14.

¹⁵³ *Sanchez*, 141 S. Ct. at 1814.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Sanchez*, 141 S. Ct. at 1814.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

eligible for LPR status if they were either “admitted into the United States” or “otherwise provided nonimmigrant status.”¹⁶³

iv. Congress and Legislation

The Court argued that when Congress confers status but says nothing about admission, for purposes of § 1255, the Court has no basis for ruling an unlawful entrant eligible to become an LPR.¹⁶⁴ Instead, it stated that Congress could have deemed TPS recipients to have both nonimmigrant status and lawful admission.¹⁶⁵ Legislation currently pending in Congress would do just that: The American Dream and Promise Act of 2021 would amend § 1254a(f)(4) so that a TPS recipient would be considered inspected and admitted into the United States, and as being in and maintaining lawful status as a nonimmigrant.¹⁶⁶

V. SOCIOECONOMIC IMPACT OF *SANCHEZ V. MAYORKAS*

Based on their admission, *Sanchez* limited who can and cannot adjust to LPR status.¹⁶⁷ Considering that TPS recipients are assets to the United States’ economy, the *Sanchez* decision further limits their socioeconomic contributions to the country.¹⁶⁸ When the removal of TPS status can impact every designated country, one must consider whether it is fair to limit which TPS holders can adjust their status if the United States benefits from their presence in the country.¹⁶⁹

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 1815.

¹⁶⁵ *Sanchez*, 141 S. Ct. at 1815.

¹⁶⁶ *Id.*

¹⁶⁷ *See id.*

¹⁶⁸ Nicole Prchal Svajlenka, et al., *TPS Holders Are Integral Members of the U.S. Economy and Society*, CTR. FOR AM. PROGRESS (Oct. 20, 2017) [hereinafter *TPS Holders Are Integral Members*], <https://www.americanprogress.org/article/tps-holders-are-integral-members-of-the-u-s-economy-and-society/>.

¹⁶⁹ *See id.*

A. Economic and Social Contributions of TPS Holders in the United States

TPS beneficiaries are vital to the American economy and American society.¹⁷⁰ Immigration contributes to increased productivity by increasing the size of the labor force and the nation's potential economic output.¹⁷¹ Since the program's enactment in 1990, TPS holders have had over two decades to build their careers and businesses in the United States.¹⁷² Their contributions will only continue to rise in the future as they raise their families that include over 275,000 U.S.-born children.¹⁷³

Among the countries designated for TPS, more than 90 percent of TPS holders in the United States are from El Salvador, Honduras, and Haiti.¹⁷⁴ TPS holders from these three countries are employed at high rates and are key contributors to construction, restaurant and other food services, childcare, and landscaping services.¹⁷⁵ In 2017, the 318,000 TPS holders in the country earned about \$7.3 billion in total income.¹⁷⁶ Their labor force participation rates are also exceptionally high, topping 94.1 percent.¹⁷⁷ Even though TPS holders are a relatively small population, they paid an impressive \$891 million into federal tax reserves in 2017.¹⁷⁸ TPS holders were also responsible for another \$654 million in state and local tax payments that year that contributed to sustaining public services such as public schools, garbage collection, and police forces.¹⁷⁹ These tax

¹⁷⁰ *Id.*

¹⁷¹ Chair Cecilia Rouse, et al., *Economic Benefits of Extending Permanent Legal Status to Unauthorized Immigrants*, WHITE HOUSE (Sept. 17, 2021) [hereinafter *Economic Benefits*], <https://www.whitehouse.gov/cea/written-materials/2021/09/17/the-economic-benefits-of-extending-permanent-legal-status-to-unauthorized-immigrants/>.

¹⁷² *Overcoming the Odds: The Contributions of DACA-Eligible Immigrants and TPS Holders to the U.S. Economy*, NEW AM. ECON. (June 3, 2019) [hereinafter *Overcoming the Odds*], <https://research.newamericaneconomy.org/report/overcoming-the-odds-the-contributions-of-daca-eligible-immigrants-and-tps-holders-to-the-u-s-economy/>.

¹⁷³ *TPS Holders Are Integral Members*, *supra* note 168.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Overcoming the Odds*, *supra* note 172.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

contributions are even more significant in light of the fact that TPS recipients are relatively light users of several public services and assistance programs.¹⁸⁰ For example, TPS holders are ineligible for all federal public assistance programs, including the Supplemental Nutrition Assistance Program (“SNAP”), Temporary Assistance for Needy Families (“TANF”), and Social Security Supplemental Income.¹⁸¹ They are also ineligible to receive regular coverage under Medicaid, with the program available only on an emergency basis.¹⁸²

Considering how much they contribute to the economy, if Salvadoran, Honduran, and Haitian workers with TPS were removed from the labor force, the United States would lose \$164 billion in gross domestic product (“GDP”) over a decade.¹⁸³ Additionally, as calculated by the Immigration Legal Resource Center, if TPS holders lost their work authorization, it would cause a \$6.9 billion reduction to Medicare and Social Security contributions over a decade.¹⁸⁴ Finally, if TPS holders could no longer work their current jobs, employers would experience \$967 million in turnover costs.¹⁸⁵ With all this in mind, why shouldn’t all TPS holders be given an avenue to adjust their status?

While critics claim that legalizing unauthorized immigrants could be costly because these individuals would become eligible for additional social insurance benefits, granting LPR would likely raise tax revenues, increase productivity, and provide additional benefits for children of TPS holders.¹⁸⁶ First, allowing TPS recipients to get permanent legal status would likely increase the effective labor supply of unauthorized immigrants.¹⁸⁷ Currently, about 73 percent of unauthorized immigrant adults ages eighteen to sixty-five are employed, which is roughly equal to the employment rates of legal residents and U.S. citizens.¹⁸⁸ Permanent legal status would allow them to pursue jobs for which their skills are suited, rather than being

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Overcoming the Odds*, *supra* note 172.

¹⁸³ *TPS Holders Are Integral Members*, *supra* note 168.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Economic Benefits*, *supra* note 171.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

restricted to specific sectors where wages are lower on average.¹⁸⁹ Moreover, aside from the addition to employment opportunities, legalization also encourages immigrants to improve their language skills, to complete additional education and training, and improve their health outcomes.¹⁹⁰ Thus, allowing TPS holders to adjust their status will make them more productive members of society.¹⁹¹

Second, permanent legal status will likely have implications for revenues and costs for the federal government.¹⁹² Some critics are concerned that increasing the number of legal immigrants eligible to enroll in social benefit programs will raise the costs of these programs.¹⁹³ Legal status can make TPS holders more comfortable using federal benefits for which they are already eligible, such as emergency-based Medicaid and the Special Supplement Nutrition Program for Women, Infant, and Children (“WIC”).¹⁹⁴ Further, newly legalized immigrants would be able to take advantage of social benefits they were previously ineligible for due to their unauthorized status.¹⁹⁵ However, some of the increased cost resulting from increased use would likely be offset by the immigrants’ increased tax contributions and positive fiscal contributions from their children.¹⁹⁶

Federal income tax compliance rates for unauthorized immigrants are estimated between 50 and 75 percent.¹⁹⁷ In comparison to the U.S. population as a whole, tax compliance rates on an ordinary wage income are close to 100 percent.¹⁹⁸ Shifts from the informal to the formal sector would likely increase tax compliance rates.¹⁹⁹ After the passage of the Immigration Reform and Control Act of 1986 (“IRCA”), researchers found that income tax compliance rates of previously unauthorized immigrants in the state of California

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *See id.*

¹⁹² *Economic Benefits*, *supra* note 171.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Economic Benefits*, *supra* note 171.

¹⁹⁹ *Id.*

became comparable to other residents.²⁰⁰ Combined with wage gains, gross tax revenues would increase and benefit all in the United States by expanding economic output.²⁰¹ Therefore, allowing TPS recipients to engage fully in the labor force would not only help them and their families but society as a whole.²⁰²

B. *Human Rights Implications*

By denying a path for permanent residency for TPS recipients, the Supreme Court's decision highlights the United States' dire need to take further steps towards compliance with existing human rights trends concerning immigrants.²⁰³ Although *Sanchez* does not contradict any existing international immigration law, it calls on society to further reflect on the human rights implication of its decision.²⁰⁴ There are two primary arguments against the Supreme Court's decision: (1) the narrow definition of legal entry is inhumane and incredibly harmful to immigrant communities, and (2) denying TPS holders the possibility of obtaining legal permanent status perpetuates exclusionary precedent for immigration policy.²⁰⁵

To start, immigrants who hold TPS status have built their lives in the United States, and some have only known life in this country.²⁰⁶ They deserve to live without fear that their status could be revoked tomorrow and leave them at risk of being deported to their home country.²⁰⁷ Denying LPR to those who have been in the country for entering illegally, but have legitimately established their lives in the United States, is cruel and limits legal pathways to citizenship.²⁰⁸ The International Organization of Migration's ("IOM") 69th Session Document emphasized the importance of recognizing immigrants as persons with legal status, no matter if they entered the

²⁰⁰ *Id.*

²⁰¹ *See id.*

²⁰² *Id.*

²⁰³ Muna Ali, *Sanchez v. Mayorkas and the Perilous Future of Migrant Rights in the United States*, COLUM. UNDERGRADUATE L. REV. (Aug. 22, 2021) [hereinafter *Future of Migrant Rights*], <https://www.culawreview.org/journal/sanchez-v-mayorkas-and-the-perilous-future-of-migrant-rights-in-the-united-states>.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

country illegally, and as “drivers of development.”²⁰⁹ Discriminating against TPS holders who entered the country unlawfully does not align with the United Nation’s position on migrants.²¹⁰

Furthermore, *Sanchez* makes life more precarious for potential TPS holders who entered the United States without admission by denying them an avenue of obtaining LPR status.²¹¹ By decreasing immigrants’ mobility, the Court’s decision can increase exclusionary precedent and anti-immigrant rhetoric.²¹² In 2017, former President Donald Trump signed Executive Orders No. 13769 and No. 13780, which banned foreign nationals from seven predominantly Muslim countries from visiting the United States for ninety days and suspended entry of all Syrian refugees indefinitely.²¹³ President Joe Biden reversed the “Muslim ban” on his first day in office, taking an essential step in rectifying the past administration’s concerted targeting of immigrants to America.²¹⁴ In 2019, when Trump attempted to terminate Deferred Action for Childhood Arrivals (“DACA”), the Supreme Court overturned that termination because it violated APA.²¹⁵ In the past five years alone, presidential acts have fueled the anti-immigrant rhetoric.²¹⁶ Biden has taken the first steps toward rectifying the situation, but it is critical that the United States “remedy past orders by reaffirm[ing] its commitment to humanitarianism.”²¹⁷

²⁰⁹ *Future of Migrant Rights*, *supra* note 203.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Timeline of the Muslim Ban*, AM. CIV. LIBERTIES UNION WASH., <https://www.aclu-wa.org/pages/timeline-muslim-ban> (last visited Nov. 20, 2022).

²¹⁴ Harsha Panduranga, *The ‘Muslim Ban’ is Gone. Now What?*, BRENNAN CTR. FOR JUST. (Jan. 21, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/muslim-ban-gone-now-what>.

²¹⁵ *Supreme Court Overturns Trump Administration’s Termination of DACA*, NAT’L IMMIGR. L. CTR. 1, 1 (June 22, 2020), <https://www.nilc.org/wp-content/uploads/2020/06/Alert-SCOTUS-overturns-termination-of-DACA-2020.pdf>.

²¹⁶ *See Future of Migrant Rights*, *supra* note 203.

²¹⁷ *Id.*

C. *TPS and its Economic Impact on Designated Countries*

TPS holders contribute tremendously to their families and communities, both in the United States and their home countries.²¹⁸ Remittances, “or money immigrants send to their families back home,” are instrumental in lifting “families out of poverty; spurring investment in education, health care, entrepreneurial activities; and even affecting their decision to migrate.”²¹⁹ These remittances also play an essential role in helping support countries recovering from devastating environmental disasters that have taken lives and destroyed housing, infrastructure, and access to adequate nutrition.²²⁰ A 2017 survey conducted by the Center for Migration Research at the University of Kansas found that 77 percent of all TPS holders send remittances amounting to approximately eight to eleven percent of their monthly wages.²²¹

Remittances from workers in the United States are crucial to expediting the recovery and bolstering the economies of designated countries, especially when U.S. foreign aid to these countries has declined.²²² Remittances sent to Latin American countries are substantially larger than foreign aid and go directly to the people, allowing them to spend the money on what they need most.²²³ It is no surprise that many families rely on this supplemental source of income to pay for basic needs such as food, medicine, education, and health care.²²⁴ In 2019, the United States sent a little over half a billion dollars in official development assistance to El Salvador, Guatemala, Honduras, and Nicaragua.²²⁵ In comparison, nearly \$20

²¹⁸ *TPS Holders Are Integral Members*, *supra* note 168.

²¹⁹ Silva Mathema & Joel Martinez, *Temporary Protected Status Is Critical To Tackling the Root Causes of Migration in the Americas*, CTR. FOR AM. PROGRESS (Oct. 28, 2021) [hereinafter *Tackling the Root Causes*], <https://www.american-progress.org/article/temporary-protected-status-critical-tackling-root-causes-migration-americas/>.

²²⁰ *TPS Holders Are Integral Members*, *supra* note 168.

²²¹ Cecilia Menjivar, *Temporary Protected Status in the United States: The Experiences of Honduran and Salvadoran Immigrants*, CTR. FOR MIGRATION RSCH., UNIV. OF KAN. 1, 15 (May 2017), https://ipsr.ku.edu/migration/pdf/TPS_Report.pdf.

²²² *TPS Holders Are Integral Members*, *supra* note 168.

²²³ *Tackling the Root Causes*, *supra* note 219.

²²⁴ *Id.*

²²⁵ *Id.*

billion in remittances were sent in the same year.²²⁶ Remittances from the United States are an important source of international funds that “complement other types of foreign aid and go directly to people’s pockets, rather than through other government or nongovernmental channels.”²²⁷

Remittances significantly impact Central American economies and make up a high share of their GDP.²²⁸ According to a report by Manuel Orozco, Director of the Center for Migration and Economic Stabilization, in 2020, citizens abroad sent over \$25 billion in remittances to just five countries in Central America.²²⁹ Out of the TPS designated countries, this sum made up 23 percent of the GDP in El Salvador, 24 percent of the GDP in Honduras, and 14 percent of the GDP in Nicaragua.²³⁰ Between 2019 and 2020, about 90 percent of the remittances sent to El Salvador, 80 percent sent to Honduras, and 60 percent sent to Nicaragua came from the United States.²³¹ Should the flow of remittances from the United States to the TPS designated countries disappear, the situation on the ground in those countries would indeed worsen.²³²

Research on macroeconomic impact finds that remittances lower income inequality, reduce poverty, and boost economic growth in the receiving countries.²³³ A 2005 study found that a 10 percent increase in per capita official remittances lead to a 3.5 percent decline in the share of people living in poverty.²³⁴ Another study found that remittances in the Caribbean and Latin America have decreased inequality and poverty, and increased growth.²³⁵ The reality that

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Manuel Orozco, *Migration, the Economy and Remittances in Central America*, CTR. FOR MIGRATION & ECON. STABILIZATION 1, 14 tbl.K (Mar. 2021), http://www.creativeassociatesinternational.com/wp-content/uploads/2021/04/Migration_the_Economy_and_Remittances_in_Central_America.pdf.

²³⁰ *Id.*

²³¹ *Id.*

²³² *TPS Holders Are Integral Members*, *supra* note 168.

²³³ *Tackling the Root Causes*, *supra* note 219.

²³⁴ Richard H. Adams Jr. & John Page, *Do International Migration and Remittances Reduce Poverty in Developing Countries?*, 33 *WORLD DEV.* 1645, 1655 (2005).

²³⁵ Pablo Acosta, et al., *What is the Impact of International Remittances on Poverty and Inequality in Latin America?*, 36 *WORLD DEV.* 89, 89 (2008).

poverty is one of the main reasons people decide to migrate demonstrates the value in individual's ability to send money back home to insure against uncertainties, and shows how beneficial it would be to allow TPS holders to adjust their status, even if they entered unlawfully.²³⁶ Conversely, results from a survey of Hondurans found that not receiving remittances increases the probability of migration.²³⁷ Therefore, when TPS holders are constantly at risk of losing their status because they cannot adjust, not only will they be impacted, but their home countries will be negatively affected, leading to a surge of migration into the United States.²³⁸

D. U.N.–Backed Treaties

In the context of international law, what constitutes a legal entry for immigrants is a critical issue.²³⁹ U.N.–backed treaties have paved the way for migrant group protections worldwide.²⁴⁰ So how does the United States consider these treaties when creating their immigration laws?

One source of protection the U.N. provides is the International Covenant on Civil and Political Rights (“ICCPR”).²⁴¹ The ICCPR is an international human rights treaty that obligates countries that have ratified the treaty to protect and preserve fundamental human rights.²⁴² The ICCPR compels governments to take “administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”²⁴³ Article 12 of the treaty highlights important protections for migrant groups, such as allowing for everyone living lawfully within a territory to have the freedom to choose their residence and the ability to leave any country, including their own.²⁴⁴ The U.S. Senate ratified the

²³⁶ See *Tackling the Root Causes*, *supra* note 219.

²³⁷ *Id.*

²³⁸ See *TPS Holders Are Integral Members*, *supra* note 168.

²³⁹ *Future of Migrant Rights*, *supra* note 203.

²⁴⁰ See *id.*

²⁴¹ *Id.*

²⁴² *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, AM. CIV. LIBERTIES UNION (Apr. 2019) [hereinafter *FAQ ICCPR*], <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>.

²⁴³ *Id.*

²⁴⁴ *Future of Migrant Rights*, *supra* note 203.

ICCPR in 1992.²⁴⁵ Upon ratification, it became the “supreme law of the land” under the Supremacy Clause of the U.S. Constitution, “which gives ratified treaties the status of federal law.”²⁴⁶ However, one of the United States’ Reservations, Understandings, and Declarations (“RUDs”) attached to the law by the Senate is a “not self-executing” declaration, intended to limit the litigants’ ability to sue in court for direct enforcement of the treaty and making the ICCPR simply an advisory doctrine.²⁴⁷

Another U.N.-backed treaty is the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), which guarantees equal socioeconomic protections for individuals, regardless of their immigration status.²⁴⁸ There are no conditions to these protections for people living in developed countries.²⁴⁹ The United States is among the last major developed nations to ratify the ICESCR.²⁵⁰ The ICCPR and ICESCR give deference to each country’s own immigration laws.²⁵¹ Although the *Sanchez* decision does not contradict any existing international law, there is no overarching definition of an admission that is universally accepted.²⁵² Professor James Nafziger of Willamette University College of Law argues that “domestic courts should not define their own means of excluding aliens ‘without regard to the exigencies of world order.’”²⁵³ Professor Vincent Chetail of the Graduate Institute of International and Development Studies in Geneva explains that “states do not have complete discretion over the admission of non-citizens; a court’s ruling on migrant entry should align with existing international norms.”²⁵⁴ Both Nafziger and Chetail stress that domestic bodies should

²⁴⁵ *Id.*

²⁴⁶ *FAQ ICCPR*, *supra* note 242.

²⁴⁷ *Id.*; *see also Future of Migrant Rights*, *supra* note 203.

²⁴⁸ *Future of Migrant Rights*, *supra* note 203.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*; *see James Nafziger*, WILLAMETTE UNIV. COLL. OF L., <https://www.willamette.edu/law/faculty/profiles/nafziger/index.html> (last visited Nov. 20, 2022).

²⁵⁴ *Future of Migrant Rights*, *supra* note 203; *see Vincent Chetail*, GENEVA GRADUATE INST., <https://www.graduateinstitute.ch/academic-departments/faculty/vincent-chetail> (last visited Nov. 20, 2022).

accommodate to international laws, even if they are not required to do so, rather than bending international laws to the will of domestic states.²⁵⁵

VI. BIDEN ADMINISTRATION

Since taking office in January 2021, President Biden and his administration have acted on several fronts to reverse Trump-era restrictions on immigration in the United States.²⁵⁶ The president has taken some steps to “boost refugee admissions, preserv[e] deportation relief for unauthorized immigrants who came to the U.S. as children, and not enforc[ing] the ‘public charge’ rule that denies green cards to immigrants who might use public benefits.”²⁵⁷ Biden has already designated new countries for TPS and proposed a large immigration bill that would create a pathway for certain TPS recipients to gain legal permanent status.²⁵⁸ This Section will address Biden’s actions towards TPS and take a closer look at the U.S. Citizenship Act of 2021 and the American Dream and Promise Act of 2021.

A. *Stance on TPS and Designation of New Countries*

The Biden administration, understanding the need to address both root causes and acute factors in its approach to managing migration, has prioritized this challenge, with Vice President Kamala Harris leading the efforts.²⁵⁹ Vice President Harris, with a \$4 billion aid package, was tasked to work with El Salvador, Guatemala, and Honduras to address the root causes of migration.²⁶⁰ She also announced that the government would provide \$310 million in increased assistance to get at the acute factors forcing people out of Guatemala, El Salvador, and Honduras and \$115 million in

²⁵⁵ *Future of Migrant Rights*, *supra* note 203.

²⁵⁶ Jens Manuel Krogstad & Ana Gonzalez-Barrera, *Key facts about U.S. immigration policies and Biden’s proposed changes*, PEW RSCH. CTR. (Jan. 11, 2022) [hereinafter *Biden’s Proposed Changes*], <https://www.pewresearch.org/fact-tank/2022/01/11/key-facts-about-u-s-immigration-policies-and-bidens-proposed-changes/>.

²⁵⁷ *Id.*

²⁵⁸ *See id.*

²⁵⁹ *Tackling the Root Causes*, *supra* note 219.

²⁶⁰ *Id.*

cooperation aid to El Salvador to help them manage the problem.²⁶¹ While these efforts are a step in the right direction, U.S. foreign assistance will not be a cure-all solution to the region's challenges.²⁶² Furthermore, in January 2021, President Biden sent an immigration bill to Congress, known as the U.S. Citizenship Act of 2021, which creates an earned pathway to citizenship for undocumented immigrants.²⁶³ However, President Biden opposed the immigrants in *Sanchez*, placing him at odds with immigration advocacy groups and his fellow Democrats.²⁶⁴ His administration will defend the government's policy of blocking permanent-residency applications from thousands of immigrants who've been living legally in the United States for years.²⁶⁵ The Supreme Court case highlights the challenges for President Biden in "navigating a polarizing subject and fending off criticism from both sides."²⁶⁶

Since the start of his term, the Department of Homeland Security ("DHS") has added two nations, Burma and Venezuela, to the list of TPS designated countries.²⁶⁷ DHS also extended benefits into 2022 and beyond for eligible immigrants of nine other countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, Syria, and Yemen.²⁶⁸ Moreover, based on the recent turmoil in Haiti, the Biden administration expanded eligibility for its immigrants as a

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System*, WHITE HOUSE (Jan. 20, 2021) [hereinafter *Immigration Bill*], <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>.

²⁶⁴ Andrew Chung, *U.S. Supreme Court Blocks Permanent Residency for Some Immigrants*, U.S. NEWS (June 7, 2021, 10:30 AM), <https://www.usnews.com/news/top-news/articles/2021-06-07/supreme-court-rules-against-immigrants-allowed-in-us-on-humanitarian-grounds>.

²⁶⁵ Greg Stohr, *Biden Clashes with His Allies in Supreme Court Green-Card Case*, BLOOMBERG L. (Apr. 19, 2021, 2:00 AM), <https://news.bloomberglaw.com/us-law-week/biden-clashes-with-his-allies-in-supreme-court-green-card-case>.

²⁶⁶ *Id.*

²⁶⁷ *Biden's Proposed Changes*, *supra* note 256.

²⁶⁸ *Id.*

failsafe if the Trump administration's termination is allowed to take effect.²⁶⁹

When designating Venezuelans as eligible for TPS, the Biden administration said the country "is currently facing a severe humanitarian emergency" with impacts on its economy, human rights, crime, medical care, and access to food and basic services.²⁷⁰ The Federal Register notice estimated that about 323,000 Venezuelans will now be eligible to apply for TPS.²⁷¹ However, after the devastation caused by hurricanes Eta and Iota and worsening humanitarian conditions in some Central American countries, the Center for American Progress urged Biden's administration to exercise its authority and grant new TPS redesignations for El Salvador, Honduras, and Nicaragua, in addition to a new TPS designation for Guatemala.²⁷² New designations and redesignations of countries that meet TPS conditions will help prevent countries from experiencing further destabilization.²⁷³ Without new TPS designations, these countries would have to integrate hundreds of thousands of people back into their country, an effort which they cannot sustain.²⁷⁴

The Biden administration has rightly renewed the United States' commitment to tackle migration's root and critical causes.²⁷⁵ As he continues to address this issue, Biden should view TPS as a tool to add to his overall strategy, especially given TPS holders' contributions to the economy.²⁷⁶

²⁶⁹ *Id.*; *Temporary Protected Status (TPS): 5 Things to Know*, FWD.US (May 26, 2021), <https://www.fwd.us/news/temporary-protected-status-tps-5-things-to-know/>.

²⁷⁰ *Biden's Proposed Changes*, *supra* note 256.

²⁷¹ Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure, 86 Fed. Reg. 13574, 13575 (Mar. 9, 2021).

²⁷² *Tackling the Root Causes*, *supra* note 219; *see also Warner, Kaine call for TPS designations for El Salvador, Guatemala, Honduras, Nicaragua*, BRUNSWICK TIMES-GAZETTE (Jan. 14, 2022), https://www.brunswicktimes-gazette.com/news/article_dc79aee6-748e-11ec-a23f-ab2df375781d.html.

²⁷³ *Tackling the Root Causes*, *supra* note 219.

²⁷⁴ *See id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

B. U.S. Citizenship Act of 2021

President Biden sent a bill to Congress to provide hardworking people who have lived in the country for years, and in some cases decades, an opportunity to earn citizenship.²⁷⁷ The U.S. Citizenship Act of 2021 aims to modernize the United States' immigration system and "prioritizes keeping families together, growing our economy, responsibly managing the border with smart investments addressing the root causes of migration from Central America, and ensuring that the United States remains a refuge for those fleeing persecution."²⁷⁸ If this bill passes, TPS holders who entered the country without authorization will be able to evade the *Sanchez* decision and become LPR.²⁷⁹

Firstly, this bill allows "undocumented individuals to apply for temporary legal status, with the ability to apply for green cards after five years if they pass criminal and national security background checks and pay their taxes."²⁸⁰ Under the legislation, TPS holders who meet specific requirements are eligible for green cards.²⁸¹ By applying the bill to the introductory "Maria" hypothetical, Maria would be eligible to apply for a green card because she has resided in the country for twenty-four years, has no criminal record, and has paid taxes for over a decade.²⁸² "Applicants must [also] be physically present in the United States on or before January 1, 2021"; Maria has been present since 1998.²⁸³ However, DHS may waive the presence requirement for those who departed the United States or were "deported on or after January 20, 2017, who were physically present for at least three years prior to removal for family unity and other humanitarian purposes."²⁸⁴ Moreover, after three years, all green card holders who pass additional background checks and meet the usual naturalization conditions of English and U.S. civics

²⁷⁷ *Immigration Bill*, *supra* note 263.

²⁷⁸ *Id.*

²⁷⁹ See U.S. Citizenship Act of 2021, H.R.1177, 117th Cong. § 1104 (2021).

²⁸⁰ *Immigration Bill*, *supra* note 263.

²⁸¹ *Id.*

²⁸² Maria Introductory Hypothetical, *supra* note 4; see *Immigration Bill*, *supra* note 263; see also H.R.1177 at § 1104.

²⁸³ Maria Introductory Hypothetical, *supra* note 4; see *Immigration Bill*, *supra* note 263; see also H.R.1177 at § 1106.

²⁸⁴ *Immigration Bill*, *supra* note 263; see H.R.1177 at § 1106.

knowledge can apply for U.S. citizenship.²⁸⁵ This process is two years earlier than usual for other green card holders.²⁸⁶ The bill further recognizes America as a nation of immigrants by doing away with the term “alien” and replacing it with “noncitizen” in its immigration laws.²⁸⁷

Secondly, “[t]he bill provides new funding to state and local governments, private organizations, educational institutions, community-based organizations, and not-for-profit organizations to promote integration and inclusion, increase English-language instruction, and provide assistance to individuals seeking to become citizens.”²⁸⁸ Funding these organizations allows immigrants to take full advantage of the bill’s citizenship path.²⁸⁹ For instance, while immigrants might be deterred from naturalizing because they cannot speak English, the increase of English-language instructions makes the language much more accessible to them.²⁹⁰ In addition, the bill clears employment-based visa backlogs, recollects unused visas, reduces long wait times, and eliminates per-country visa caps.²⁹¹ Under current processing times, an application for an EAD can take over twelve months to adjudicate.²⁹² Foreign nationals in certain employment eligibility categories who file to renew their EADs may receive automatic extensions of their employment authorization for up to 540 days.²⁹³ However, the earliest a foreign national can file a

²⁸⁵ *Immigration Bill*, *supra* note 263.

²⁸⁶ D’Vera Cohn, *Biden administration widens scope of Temporary Protected Status for immigrants*, PEW RSCH. CTR. (Oct. 28, 2021), <https://www.pewresearch.org/fact-tank/2021/10/28/biden-administration-widens-scope-of-temporary-protected-status-for-immigrants/>.

²⁸⁷ *Immigration Bill*, *supra* note 263; *see* H.R. 1177 at § 3.

²⁸⁸ *Immigration Bill*, *supra* note 263.

²⁸⁹ *See id.*

²⁹⁰ *See id.*

²⁹¹ *Id.*

²⁹² Jonathan Eggert et al., *USCIS Expands Automatic Employment Authorization Extensions and Nonimmigrant Categories Eligible to Work Incident to Status*, JDSUPRA (Jan. 5, 2022), <https://www.jdsupra.com/legalnews/uscis-expands-automatic-employment-1932882/>.

²⁹³ 4.4 *Automatic Extensions of Employment Authorization Documents (EADs) in Certain Circumstances*, U.S. CITIZENSHIP AND IMMIGR. SERV. [hereinafter *Automatic Extensions of EADs*], <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/40-completing-section-2-of-form-i-9/44-automatic-extensions-of-employment-authorization-documents-eads-in>

renewal application is 180 days before their EAD expires.²⁹⁴ Therefore, if DHS does not extend the expiration date of a TPS beneficiary's EAD, TPS holders are at risk of losing their work authorization simply because USCIS has not processed their application.²⁹⁵ Lastly, the bill creates a trial program to encourage regional economic development, allows DHS to "adjust green cards based on macroeconomic conditions, and incentivizes higher wages for non-immigrant, high-skilled visas to prevent unfair competition with American workers."²⁹⁶

Linda Sanchez, a Democratic Representative of California, introduced the U.S. Citizenship Act in the House of Representatives on February 18, 2021.²⁹⁷ Since then, the bill has been referred to several committees until it landed at the Subcommittee on Immigration and Citizenship on April 28, 2021.²⁹⁸ Since then, there has not been any further action on the bill.²⁹⁹ Considering the drastic impact this bill may have for TPS holders in nullifying the *Sanchez* decision, the Subcommittee on Immigration and Citizenship should release the bill and put it on the House of Representative's calendar to be voted on.³⁰⁰

C. *American Dream and Promise Act of 2021*

While the U.S. Citizenship Act is at a standstill, some TPS holders still hold hope of adjusting their status if House Bill 6, the American Dream and Promise Act of 2021 ("Promise Act") is passed.³⁰¹ Democrats have introduced DREAM Acts for over two decades, but

certain-circumstances (last updated Aug. 23, 2022); *see also Automatic Employment Authorization Document (EAD) Extension*, U.S. CITIZENSHIP AND IMMIGR. SERV., <https://www.uscis.gov/eadautoextend> (last updated July 22, 2022).

²⁹⁴ *Employment Authorization Document*, U.S. CITIZENSHIP AND IMMIGR. SERV. (Feb. 11, 2022), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document>.

²⁹⁵ *See Automatic Extensions of EADs*, *supra* note 293.

²⁹⁶ *Immigration Bill*, *supra* note 263.

²⁹⁷ U.S. Citizenship Act of 2021, H.R.1177, 117th Cong. (2021).

²⁹⁸ *Id.*

²⁹⁹ *See id.*

³⁰⁰ *See generally id.*

³⁰¹ American Dream and Promise Act of 2021, H.R. 6, 117th Cong. (2021).

none have passed both the House and the Senate.³⁰² The Promise Act is no different.³⁰³ While its enactment will benefit hundreds of thousands of TPS recipients, the bill itself has several challenges to surpass before it becomes law.³⁰⁴

The Promise Act allows Dreamers and individuals with TPS and Deferred Enforced Departure (“DED”) to contribute fully to the country by providing them a pathway to citizenship, similar to the U.S. Citizenship Act.³⁰⁵ Specifically, the bill would grant TPS holders LPR status and cancel removal proceedings if they (1) have lived continuously in the United States for at least three years before the bill’s enactment; (2) demonstrate they were eligible for or had TPS on September 17, 2017; (3) apply within three years of the bill’s enactment and meet the admissibility requirements for LPRs; and (4) pay the application fee.³⁰⁶ The bill would protect individuals from numerous TPS designated countries, including “El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Syria, and Yemen.”³⁰⁷ However, it would not provide additional relief to TPS holders benefiting from the March 2021 grants from Venezuela and Burma.³⁰⁸ Under this bill, so long as Maria pays the application fee and applies in the designated application period, she would be able to adjust her status because she has been in the country for over

³⁰² Nolan Rappaport, *Are Democrats really serious about passing a DREAM Act in 2021?*, HILL (Mar. 22, 2021, 10:00 AM) [hereinafter *Are Democrats Serious About DREAM Act?*], <https://thehill.com/opinion/immigration/544288-are-democrats-really-serious-about-passing-a-dream-act-in-2021?rl=1>.

³⁰³ *See id.*

³⁰⁴ JILL H. WINSTON, CONG. RSCH. SERV., RS20844, TEMPORARY PROTECTED STATUS AND DEFERRED ENFORCED DEPARTURE (2022); *see generally Are Democrats Serious About DREAM Act?*, *supra* note 302.

³⁰⁵ Lucille Roybal-Allard et al., *H.R. 6, the Dream and Promise Act of 2021*, NEW DEMOCRAT COALITION [hereinafter *Dream Act Fact Sheet*], <https://newdemocrat-coalition.house.gov/imo/media/doc/Dream%20and%20Promise%20Act%20of%202021%20Fact%20Sheet.pdf> (last visited Nov. 18, 2022).

³⁰⁶ *Bill Summary: American Dream and Promise Act of 2021*, NATIONAL IMMIGRATION FORUM (Mar. 12, 2021) [hereinafter *Bill Summary*], <https://immigrationforum.org/article/bill-summary-american-dream-and-promise-act-of-2021/>.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

two decades and has had TPS status since 1999, which she has continuously renewed.³⁰⁹

Furthermore, “the bill amends current TPS law to require the Secretary of Homeland Security to provide an explanation of a decision to terminate a TPS designation and requires the Secretary [to] provide a report [three] days after publishing a notice of such termination.”³¹⁰ The report must explain the original designation and any developments made by the country to resolve the issues that made it eligible for a TPS designation in the first place.³¹¹ The Secretary also must “describe the qualitative and quantitative methods used to assess whether or not country conditions have improved.”³¹² In other words, the bill would impede the process of removing a country’s TPS designation, preventing a situation similar to when Trump ended protections for immigrants from four countries.³¹³

The central part of this bill is its direct contradiction to the *Sanchez* decision.³¹⁴ The Promise Act would clarify that an “individual with TPS is considered inspected and admitted into the United States” under current law.³¹⁵ By including this provision, future TPS recipients can adjust their status under certain circumstances, “including when they marry a U.S. citizen.”³¹⁶ Therefore, Maria would be able to adjust her status because she married a U.S. citizen, even though she entered the country without inspection.³¹⁷

The American Dream and Promise Act was introduced in the House of Representatives and passed in March of 2021 by a vote of 228–197, “with nine Republicans joining Democrats in favor of the

³⁰⁹ Maria Introductory Hypothetical, *supra* note 4; *see Bill Summary, supra* note 306.

³¹⁰ *Dream Act Fact Sheet, supra* note 305.

³¹¹ *Id.*

³¹² *Id.*

³¹³ Brennan Weiss, *The Trump administration has ended protections for immigrants from 4 Countries — here’s when they will have to leave the US*, INSIDER (Jan. 11, 2018, 6:01 PM), <https://www.businessinsider.com/trump-has-ended-temporary-protection-status-for-4-countries-2018-1>.

³¹⁴ *See* American Dream and Promise Act of 2021, H.R. 6, 117th Cong. § 202 (2021); *see also* *Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1811 (2021).

³¹⁵ *Bill Summary, supra* note 306.

³¹⁶ *Id.*

³¹⁷ Maria Introductory Hypothetical, *supra* note 4; *see Bill Summary, supra* note 306.

legislation.”³¹⁸ But like every similar bill before it, the Promise Act has an Achilles’ heel.³¹⁹ Because of its provision to provide LPR status to immigrants eligible for TPS, a single Republican can prevent the bill from being considered in the Senate with a point of order objection based on 8 U.S.C. § 1254a(h).³²⁰ A point of order is “an objection that the pending matter or proceeding violates a rule of the House.”³²¹ Title 8 U.S.C. § 1254a(h) provides that it “shall not be in order in the Senate to consider any bill . . . that provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status [.]”³²² This restriction can be waived, but it would require an affirmative vote by three-fifths of the Senate, or sixty senators.³²³

According to Senator Bob Menendez, a Democrat from New Jersey, it will be challenging to gain the support of the ten Republican senators needed to pass President Biden’s legislation.³²⁴ The Senate is split 50–50, and Democrats need at least sixty votes to overcome a filibuster.³²⁵ Still, Menendez rejected arguments that Congress should pursue more targeted bills that provide citizenship to smaller groups of undocumented people.³²⁶ While it may be easier to pass such a bill, Menendez said, “We will do the righteous thing and make our case for both inclusive and lasting immigration reform. And we have seen in poll after poll, the vast majority of Americans are standing with us.”³²⁷

³¹⁸ Tucker Higgins, *House passes two immigration bills that would establish path to citizenship for millions*, CNBC, <https://www.cnbc.com/2021/03/18/house-passes-dream-and-promise-act-setting-up-path-to-citizenship.html> (last updated Mar. 19, 2021, 1:25 PM).

³¹⁹ *Are Democrats Serious About DREAM Act?*, *supra* note 302.

³²⁰ *Id.*

³²¹ *Points of Order; Parliamentary Inquiries*, AUTHENTICATED U.S. GOV’T INFO., <https://www.govinfo.gov/content/pkg/GPO-HPRACTICE-104/pdf/GPO-HPRACTICE-104-38.pdf> (last visited Aug. 27, 2022).

³²² 8 U.S.C. § 1254a(h).

³²³ *Are Democrats Serious About DREAM Act?*, *supra* note 302.

³²⁴ Michael D. Shear, *Biden’s Immigration Plan Would Offer Path to Citizenship For Millions*, N.Y. TIMES (Dec. 5, 2021), <https://www.nytimes.com/live/2021/02/18/us/joe-biden-news>.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.*

If the American Dream and Promise Act does not pass, TPS holders will be continuously at risk of losing their status and being deported. Without a law considering them admissible, *Sanchez* will end their chances of ever adjusting to LPR status.³²⁸ TPS recipients' roots extend beyond themselves to their families.³²⁹ With over 273,000 United States children to TPS recipients, these U.S. citizen children would face serious risks if TPS is eliminated.³³⁰ They would either face separation from their parents or be forced to move to a foreign country, which can have detrimental effects on their cognitive and psychological well-being.³³¹ TPS holders are extremely valuable to our community and economy not to have the opportunity to adjust their status, regardless of whether they are inspected and admitted or not.³³²

VII. CONCLUSION

An examination of the *Sanchez* decision and its implications demonstrates the detrimental effects restricting TPS recipients from adjusting their status has on those individuals, their designated countries, and the United States. TPS holders pay federal, state, and local taxes, contribute tremendously to the GDP, and have a labor force competitive to that of U.S. residents and citizens. Yet, they cannot adjust to LPR because they entered the United States unlawfully. Like Maria in the introductory hypothetical, some of these immigrants have lived in the country their whole lives and have contributed immensely to the community. The United States should, in turn, allow them to adjust their status. There are several specific steps that the United States can take to remedy the damage caused by *Sanchez*. First, the United States should ratify the ICESCR. Second, the Biden administration should continue to push the U.S. Citizenship Act and get it on the calendar for the House to vote on it. Third, the Senate should overcome the ruling in *Sanchez* by passing the American Dream and Promise Act. Only then can Maria and

³²⁸ *Contra Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1815 (2021).

³²⁹ *TPS Holders Are Integral Members*, *supra* note 168.

³³⁰ *Id.*

³³¹ *Id.*

³³² *See id.*; *see also Sanchez*, 141 U.S. at 1815.

immigrants like her do what many others had the chance to do before *Sanchez*.