



BHATTARAI v. NIELSEN: FREQUENTLY ASKED QUESTIONS

Note: This FAQ is meant to provide general information, not legal advice.

What is the Bhattarai case?

In February 2019, TPS holders from Honduras and Nepal and certain of their U.S. citizen children filed a lawsuit against the government (*Bhattarai v. Nielsen*). They argued that the TPS terminations for their countries were illegal. They made similar claims as the TPS holders in another case, *Ramos v. Nielsen*, which addressed TPS for Sudan, Nicaragua, Haiti, and El Salvador. For example, the *Bhattarai* plaintiffs argued that, in terminating TPS, the government did not follow the Administrative Procedure Act (“APA”) and acted out of racism in violation of the guarantee of equal protection under the U.S. constitution, among other claims. In *Ramos*, the court found substantial evidence supporting plaintiffs’ APA and equal protection claims and ordered the government to keep TPS in place for Sudan, Nicaragua, Haiti, and El Salvador until the case could be finally decided. The *Ramos* order is currently on appeal, and will likely be heard this summer.

On March 12, 2019, the parties to the *Bhattarai* case—that is, the TPS holders from Nepal, Honduras and the government—filed a joint stipulation, or agreement, asking the Court to temporarily halt the termination of TPS for Honduras and Nepal and pause further proceedings in *Bhattarai* until the *Ramos* appeal is decided.

I’m a TPS holder from Honduras or Nepal and I want to know:

How does the March 12, 2019 agreement affect my TPS status and work authorization?

- As long as you continue to meet the individual eligibility requirements for TPS (e.g. continuous presence in the US, no felony convictions, no convictions for two or more misdemeanors), your TPS status and work authorization will remain in effect until the *Ramos* appeal is decided.
- The Department of Homeland Security will announce a nine-month automatic extension of TPS status and work authorization for TPS holders from Nepal in the



Federal Register around May 10, 2019, which is approximately 45 days before June 24, 2019, the previously announced termination date for Nepal.

- If the Ramos order is still in effect, the Department of Homeland Security will announce a nine-month automatic extension of TPS status and work authorization for TPS holders from Honduras around November 21, 2019, which is approximately 45 days before January 5, 2020, the previously announced termination date for Honduras.
- Similar extensions will be announced every nine months for Nepal and Honduras, respectively, as long as the *Ramos* appeal continues, unless the appeals court makes a decision in *Ramos* that suggests the terminations of TPS for Nepal and Honduras should be treated differently than the terminations for the *Ramos* countries.
- *You will not have to file anything or pay for these extensions. They will be automatic.*

When will the Ramos appeal be decided?

A hearing on the *Ramos* appeal has not been scheduled yet. It is expected this summer. A decision could come any time after that. If neither side requests further review, the appeal ends there. Alternatively, the losing side in the appeal can ask the Ninth Circuit to rehear the case *en banc* (i.e. with a larger group of judges) or can ask the Supreme Court to hear the case. If that happens, the appeal continues until the Ninth Circuit and/or Supreme Court either refuse to hear the case or agree to hear it and issue a final decision. While there is no set timeline, this process could take up to two years. As long as an appeal of the Ramos case is pending, the government will not terminate TPS status for Nepal, Honduras, Sudan, Nicaragua, Haiti, and El Salvador.

What happens if the Ramos order is reversed?

If the Ramos order is reversed, the government could end TPS for Nepal and Honduras. But it has to give TPS holders at least 120 days from the “effective date” of the appeals court’s decision before it does. The “effective date” is *at least* 52 days after the appeals court announces its decision (or potentially longer, if either side asks for additional review).



That means if the Ramos order is reversed, TPS holders will keep their TPS status and employment authorization for at least approximately six months (120 days + 52 days) from the date the reversal is announced.

If the appeals court's decision in *Ramos* leaves open any possibility that the *Bhattarai* plaintiffs could still win their case, the *Bhattarai* case could be reopened in district court and plaintiffs could potentially ask for a new order preventing the government from ending TPS for Nepal or Honduras.

What happens if the *Ramos* order is upheld?

If the *Ramos* order is upheld, the *Bhattarai* litigation can resume in the district court. The government would have to keep TPS in place for Honduras and Nepal for approximately six months after a decision upholding the *Ramos* order. During that time, the *Bhattarai* plaintiffs could ask the court for a new order extending protections for TPS holders from Honduras and Nepal until the *Bhattarai* litigation is over.

What happens if the *Ramos* order is upheld but the appeals court says something that suggests the terminations of TPS for Nepal or Honduras should be treated differently?

If the appeals court's decision suggests that the terminations of TPS for Nepal and Honduras should be treated differently from the terminations of TPS for the *Ramos* countries, the government has reserved the right to ask the court to cancel the March 12, 2019 agreement. If that happens, TPS holders would keep their TPS status for at least 180 days from the date the court orders the agreement is cancelled. On the other hand, if the appeals court's decision in *Ramos* leaves open any possibility that *Bhattarai* plaintiffs could still win their case, the *Bhattarai* plaintiffs could potentially ask the court for a new order preventing the government from enforcing the TPS terminations for Nepal or Honduras.

Can the *Bhattarai* case win permanent status for TPS holders from Honduras and Nepal?

No. Only Congress can provide permanent status for TPS holders. The litigation can preserve TPS temporarily while the courts decide the case. But ultimately, the only relief the court can give is an order stopping the government from enforcing the previously announced terminations. The court cannot stop the government from terminating TPS again (provided the government follows the law in doing so). Nor can it make the government give permanent status to TPS holders.



RAMOS v. NIELSEN – FREQUENTLY ASKED QUESTIONS

Note: USCIS has published information about Ramos on its webpage, here: <https://www.uscis.gov/update-ramos-v-nielsen>. This FAQ is meant to provide general information, not legal advice.

What is the *Ramos* case?

In March 2018, TPS holders from Sudan, Nicaragua, Haiti, and El Salvador and their U.S. citizen children filed a lawsuit against the federal government ("*Ramos v. Nielsen*"). They argued that the TPS terminations for their countries were illegal. Among other things, they explained that the government did not follow the Administrative Procedure Act and acted out of racism in violation of the constitution. They asked the court to stop the government from putting the illegal terminations into effect.

On October 3, 2018 the court made a preliminary decision that the TPS holders were likely to win the case. The court ordered the government to make sure that TPS holders from Sudan, Nicaragua, Haiti, and El Salvador keep their TPS status and work authorization while the case comes to a final conclusion.

I'm a TPS Holder from Sudan, Nicaragua, Haiti, or Salvador and I want to know . . .

How does the *Ramos* order affect my TPS status and work authorization?

- As long as you continue to meet the individual eligibility requirements for TPS (e.g. continuous presence in the US, no felony convictions, no convictions for two or more misdemeanors), your TPS status and work authorization have been automatically extended through January 2, 2020.
- If the court's order is still in effect in December 2019, your TPS status and work authorization will be automatically extended again through October 2, 2020.
- Similar extensions will be announced every nine months as long as the court's order is in place.



- *You do not have to file anything or pay for this extension. It is automatic.*

My Employment Authorization Document is expired. How do I prove to my employer that I'm authorized to work?

You can show your employer a copy of your expired EAD along with the Federal Register Notice automatically extending your TPS status and work authorization. The Federal Register Notice explains that employers *must* accept your expired EAD and the Federal Register Notice as proof of work authorization.

If you would like an EAD with the new January 2, 2020 expiration date, you may apply for one by filing Form I-765 with USCIS and paying the fee or requesting a fee waiver.

My Employment Authorization Document and/or Form I-797 Notice of Approval is expired. How do I renew my drivers' license?

Each state has its own requirements for what you need to do to renew a drivers' license. If your state requires you to show that you have valid TPS status, you can do that by showing your expired EAD or Form I-797 along with a copy of the Federal Register Notice automatically extending your status.

I'm from Sudan, Nicaragua, Haiti, or El Salvador and I used to have TPS but I didn't renew. What can I do now?

If you had valid TPS up until the termination was announced (or, in the case of Haiti, up until the announcement of either the termination or the May 2017 extension) but did not re-register after that, you can apply for TPS now by filing Form I-821 with USCIS. You will have to show good cause for failing to re-register. A letter stating that you failed to re-register because you were confused or afraid due to the termination (or, in the case of Haiti, because of the May 2017 extension) should be enough to meet the good cause standard.

When will the *Ramos* appeal be decided?

A hearing on the *Ramos* appeal has not been scheduled yet. It is expected this summer. A decision could come any time after that. If neither side requests further review, the appeal ends there. Alternatively, the losing side in the appeal can ask the Ninth Circuit to rehear the



case *en banc* (i.e. with a larger group of judges) or can ask the Supreme Court to hear the case. If that happens, the appeal continues until the Ninth Circuit and/or Supreme Court either refuse to hear the case or agree to hear it and issue a final decision. While there is no set timeline, this process could take up to two years.

What happens if the *Ramos* order is reversed?

If the *Ramos* order is reversed, the government could end TPS for Sudan, Nicaragua, Haiti, and El Salvador. But it has to give TPS holders at least 120 days from the “effective date” of the appeals court’s decision before it does. The “effective date” is *at least* 52 days after the appeals court announces its decision (or potentially longer, if either side asks for additional review).

That means if the *Ramos* order is reversed, TPS holders will keep their TPS status and employment authorization for at least approximately six months (120 days + 52 days) from the date the reversal is announced. During this time, if the appeals court’s decision leaves open any possibility that the TPS terminations for Sudan, Nicaragua, Haiti, and El Salvador are still vulnerable to legal challenge, the *Ramos* case could be reopened in district court, and the plaintiffs could potentially ask for a new order stopping the government from ending TPS for their countries.

What happens if the *Ramos* order is upheld?

If the *Ramos* order is upheld, the case returns to the district court. The court’s order protecting TPS holders from Sudan, Nicaragua, Haiti and El Salvador would remain in place until the case comes to a final decision.

Can the *Ramos* case win permanent status for TPS holders from Honduras and Nepal?

No. Only Congress can provide permanent status for TPS holders. The litigation can preserve TPS temporarily while the courts decide the case. But ultimately, the only relief the court can give is an order stopping the government from enforcing the previously announced terminations. The court cannot stop the government from terminating TPS again (provided the government follows the law in doing so). Nor can it make the government give permanent status to TPS holders.