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Ninth Circuit Decision Allows The End Of The Temporary Protected Status Program

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Highlights

Ninth Circuit reversed a federal judge's order preserving temporary immigration protections from El Salvador, Haiti, Sudan, and Nicaragua.

The Trump administration has agreed to maintain the protections until at least March 5, 2021, for people from five of the affected countries and until November 2021 for people from El Salvador.

The plaintiffs have indicated that they are likely to seek en banc review from the Ninth Circuit.

In a 2-1 split this week, the United States Court of Appeals for the Ninth Circuit reversed a federal judge's order preserving temporary immigration protections from El Salvador, Haiti, Sudan, and Nicaragua. The Sept. 14 ruling found that President Trump's administration acted within its authority to end the temporary protected status (TPS) program, after a California federal judge initially blocked the termination.

The congressionally created humanitarian program, signed into law by President George H.W. Bush in 1990, allows the Secretary of Homeland Security to designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely,

or in certain circumstances, where the country is unable to handle the return of its nationals adequately. Individuals who are granted TPS are not removable from the United States, can obtain an employment authorization document, and may be granted travel authorization. TPS does not lead to lawful permanent resident status.

The Ninth Circuit's decision could take away TPS for approximately 400,000 immigrants. These individuals could then be deported, since the termination of TPS would no longer protect them from removal by the Department of Homeland Security officials. In its decision, the panel of judges said that the Department of Homeland Security has full and unreviewable discretion to evaluate a country's conditions and determine if the country continues to be eligible for TPS. The Trump administration has argued that the conditions that placed El Salvador, Haiti, Sudan, and Nicaragua on the list of TPS countries have long since been gone and that allowing them to remain on the list has essentially given individuals from these countries permanent legal status.

A separate injunction issued by a New York federal court to preserve TPS for Haitians is currently pending before the Second Circuit. TPS terminations for Honduras and Nepal are being challenged in a separate case, which was placed on hold pending the outcome of this case.

The Trump administration has agreed to maintain the protections until at least March 5, 2021, for people from five of the affected countries and until November 2021 for people from El Salvador.

An attorney for the plaintiffs has stated that they will likely ask the decision be reconsidered by an 11-judge panel hearing the case en banc. The case could ultimately go to the Supreme Court for review. They could also ask the Supreme Court to take up the matter. This could all be moot if Vice President Joe Biden is elected in the November presidential election, as Biden has vowed to continue the TPS program if he is elected president.