

Lives in the Balance:

Why TPS is Needed for Venezuela Now



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CATHOLIC LEGAL
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On the cover:

*A woman in the Netherlands holds a sign saying S.O.S. at a protest against
Venezuela's President Maduro.*



People wait in line at a public supermarket in Ciudad Bolivar after inflation triggers food rationing.

INTRODUCTION

Venezuela is facing a massive, escalating humanitarian crisis that includes state-sanctioned violence and persecution of civilians, severe food and medicine shortages, a collapsed economy and a large-scale exodus of people from the country.¹ There is a growing, bipartisan movement of support² for Venezuela to be designated for Temporary Protected Status, or TPS, including legislation in both the House³ and Senate,⁴ so that Venezuelan nationals in the U.S. are protected from deportation. In March 2019, more than 215 national, state and local organizations in the areas of immigration, civil rights, human rights, labor, faith and education sent a letter to then-Department of Homeland Security Secretary Kirstjen Nielsen calling for an immediate designation of TPS for Venezuela.⁵ Homeland Security sent a response in April 2019 stating that its decision to designate a country for TPS is “discretionary” and it

¹ *Venezuela: Continued impunity amid dismal human rights situation – UN report*, UN OFFICE OF THE HIGH COMMISSIONER ON HUMAN RIGHTS (June 22, 2018), www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23242&LangID=E; *Quick facts: Venezuela’s humanitarian crisis*, mercy corps (Feb. 15, 2019), www.mercycorps.org/articles/venezuela-crisis-quick-facts.

² Alex Daugherty, *Special envoy Elliott Abrams says TPS for Venezuelans is ‘under review’*, THE WASHINGTON POST (March 7, 2019), www.miamiherald.com/news/nation-world/world/americas/venezuela/article227211584.html.

³ H.R.549 - Venezuela TPS Act of 2019, www.congress.gov/bill/116th-congress/house-bill/549/all-info.

⁴ *Senators Propose Bill to Let Thousands of Venezuelans Remain in U.S.*, U.S. NEWS (Feb. 28, 2019), www.usnews.com/news/world/articles/2019-02-28/senators-propose-bill-to-let-thousands-of-venezuelans-remain-in-us.

⁵ 215+ *National, State, and Local Organizations Urge Administration to Designate Venezuela for Temporary Protected Status*, CLINIC (March 13, 2019), <https://cliniclegal.org/resources/215-national-state-and-local-organizations-urge-administration-designate-venezuela>.

is “monitoring conditions.”⁶ This report provides an overview of the law, current country conditions and reasons why Venezuela should immediately be designated for TPS as part of the United States response to this humanitarian disaster.

TPS: AN OVERVIEW OF THE LAW

TPS was established by Congress through the Immigration Act of 1990.⁷ TPS is intended to protect foreign nationals in the United States from being returned to their home country if it became unsafe during the time they were in the U.S. and would put them at risk of violence, disease or death.⁸ Under the law, the Secretary of the Department of Homeland Security, or DHS, may designate a country for TPS in three scenarios:⁹

1. Ongoing armed conflict that would pose serious threat to the personal safety of nationals;¹⁰
2. An environmental disaster or an epidemic and the foreign state is temporarily unable to adequately handle the return of its citizens and the foreign government has requested TPS for its nationals;¹¹ or
3. Other extraordinary and temporary conditions that prevent people from the country from safely returning home as long as it is not against the national interest of the United States to allow them to remain.¹²

Congress has also used its authority to designate a country for TPS.¹³

TPS may be designated or extended in six-month, 12-month or 18-month increments.¹⁴ At least 60 days before the end of a designation period, the secretary of DHS must review country conditions in consultation with appropriate government agencies, e.g., the State Department, and determine whether conditions warrant extension.¹⁵ The decision must be published on a timely basis in the Federal Register.¹⁶ Under the law, TPS may be extended as many times as necessary, as long as the dangerous country conditions continue.¹⁷ The DHS secretary also has the authority to redesignate a country for TPS in order to change or add the underlying grounds for a TPS designation and/or to move forward the date by which a person needed to be in the United States in order to apply for TPS.¹⁸

6 *DHS response to Venezuela TPS request*, CLINIC (April 15, 2019), <https://cliniclegal.org/resources/dhs-response-letter-requesting-tps-designation-venezuela>.

7 INA § 244.

8 Carla Argueta, *Temporary Protected Status: Current Immigration Policies and Issues*, CONGRESSIONAL RESEARCH SERVICE (Jan. 17, 2017), <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

9 INA §244 (b).

10 INA §244 (b)(1)(A).

11 INA §244 (b)(1)(B).

12 INA §244 (b)(1)(C).

13 Congress designated TPS for El Salvador in 1990. Jill Wilson, *Temporary Protected Status: Overview and Current Issues*, CONGRESSIONAL RESEARCH SERVICE (March 22, 2019), <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

14 INA §244 (b)(2)(B).

15 INA §244 (b)(3)(A).

16 *Id.*

17 *See generally* INA §244.

18 *Id.*

Nationals of a TPS-designated country and people without nationality who last lived in a TPS-designated country and who were physically in the United States when the designation was made and meet certain requirements may be eligible for TPS.¹⁹ If granted, recipients are temporarily protected from deportation and may receive work authorization to support themselves while they remain in the United States.²⁰ TPS does not provide a path to lawful permanent resident status or citizenship.²¹

GROUNDS FOR DESIGNATING VENEZUELA FOR TPS UNDER THE LAW

The secretary of Homeland Security or Congress should immediately designate Venezuela for TPS. Current conditions in Venezuela are so unsafe and unlivable that they would permit designation under two different grounds of the TPS statute: ongoing armed conflict that would pose a threat to personal safety²² and/or extraordinary and temporary conditions that prevent nationals from returning safely to the country.²³ In March 2019, President Trump announced the continuation of a state of national emergency in Venezuela, describing a “deepening crisis” and the “Government of Venezuela’s erosion of human rights guarantees; persecution of political opponents; curtailment of press freedoms; use of violence and human rights violations and abuses in response to antigovernment protests; and arbitrary arrest and detention of antigovernment protestors, as well as the exacerbating presence of significant government corruption.”²⁴ The U.S. State Department has issued the highest travel advisory on Venezuela stating: “Do not travel to Venezuela due to crime, civil unrest, poor health infrastructure, and arbitrary arrest and detention of U.S. citizens.”²⁵

CIVIL UNREST, VIOLENCE AND MASS EXODUS

Venezuela’s intense civil unrest began in 2013 with the death of President Hugo Chavez and Vice President Nicolas Maduro taking power, narrowly winning the election over the opposition party.²⁶ The opposition party challenged the legitimacy of the election results, sparking protests and the Maduro government’s violent suppression in response.²⁷ In May 2018, Maduro claimed victory in another

19 INA §244 (a)(1).

20 INA §244 (a)(1)(A); INA §244 (a)(1)(B).

21 *See generally* INA §244.

22 In the TPS context, “ongoing armed conflict” under INA §244 (a)(1)(A) refers to violence that would pose a serious threat to peoples’ safety if they were to be returned to the country. Facts and country conditions presented in this report that would underlie a designation of TPS under “ongoing armed conflict” are not to be understood or construed as validation, justification or support for U.S. or international military involvement in Venezuela.

23 INA §244 (b)(1)(A); INA §244 (b)(1)(C).

24 84 Fed. Reg. 8245 (March 7, 2019), www.federalregister.gov/documents/2019/03/07/2019-04253/continuation-of-the-national-emergency-with-respect-to-venezuela.

25 *Venezuela Travel Advisory*, U.S. STATE DEPARTMENT, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/venezuela-travel-advisory.html>.

26 Luc Cohen, *How Venezuela got here: a timeline of the political crisis*, REUTERS (Jan. 24, 2019), www.reuters.com/article/us-venezuela-politics-timeline/how-venezuela-got-here-a-timeline-of-the-political-crisis-idUSKCN1PJ03O.

27 *Id.*



Venezuelans watch Nicolas Maduro announce funeral plans for former president Hugo Chavez.

contested election, with the United States and other countries refusing to recognize the outcome.²⁸ In Jan. 2019, opposition party lawmaker Juan Guaido declared himself the legitimate president of Venezuela, with recognition from more than 50 nations, including neighboring countries and the United States.²⁹ Many countries took a more cautious approach, not recognizing Guaido as president but speaking out in favor of free and fair elections in Venezuela.³⁰ Both Guaido and Maduro claim to be the rightful president of Venezuela, and Maduro and military leaders continue to cling to power.³¹ Meanwhile, the International Contact Group, a coalition of European Union and Latin American states, work towards a peaceful and credibly negotiated electoral transition from the crisis.³²

The Maduro government's violent suppression of demonstrations are ongoing with at least 40 civilians killed in recent protests.³³ Arbitrary arrest, targeting of journalists, sexual abuse and other egregious acts

²⁸ *Id.*

²⁹ Luc Cohen, *How Venezuela got here: a timeline of the political crisis*, REUTERS (Jan. 24, 2019), www.reuters.com/article/us-venezuela-politics-timeline/how-venezuela-got-here-a-timeline-of-the-political-crisis-idUSKCN1PJ03O; Philip Reeves, *Venezuela's Maduro Faces Mounting Pressure To Quit, Yet He Persists*, NPR (March 25, 2019), www.npr.org/2019/03/25/706635580/venezuelas-maduro-faces-pressure-from-much-of-the-world-yet-he-persists.

³⁰ Tess Bridgeman, *A Dangerous Bet on Recognition in Venezuela*, JUST SECURITY (Jan. 25, 2019), www.justsecurity.org/62357/dangerous-bet-recognition-venezuela/.

³¹ Philip Reeves, *Venezuela's Maduro Faces Mounting Pressure To Quit, Yet He Persists*, NPR (March 25, 2019), www.npr.org/2019/03/25/706635580/venezuelas-maduro-faces-pressure-from-much-of-the-world-yet-he-persists.

³² Geoff Ramsey and David Smilde, *How the International Contact Group on Venezuela Can Advance a Path Out of Crisis*, WOLA (Feb. 7, 2019), www.wola.org/analysis/international-contact-group-venezuela-can-advance-path-crisis/.

³³ Vasco Cotovio and Emanuella Grinberg, *At least 40 Venezuelans have been killed in recent protests*, CNN (Jan. 29, 2019), www.cnn.com/2019/01/29/americas/venezuela-protests-deaths/index.html.



Police at a protest in Venezuela.

and torture at the hands of the government—including severe beatings, electric shocks and asphyxiation of detainees—are well documented and persistent.³⁴ Since 2014, Human Rights Watch reports that 12,500 people have been arrested by the Maduro government for participating in protests, being bystanders to protests, or in raids on homes without warrants.³⁵ These raids, conducted by Maduro’s secret police force, have resulted in the killing of civilians, in addition to arrests and detentions.³⁶

Since Maduro took power, Venezuela’s economy has collapsed.³⁷ Along with staggering hyperinflation, the economy shrunk more than 16 percent in both 2016 and 2017.³⁸ Economists believe it will take years to recover.³⁹ **Nearly 90 percent of Venezuelans live below the poverty line.**⁴⁰ The economic crisis, along with and related to the civil unrest, has led to devastating food and medicine shortages and a mass

34 *Venezuela: Arrests, Killings in Anti-Government Protests*, HUMAN RIGHTS WATCH (Jan. 25, 2019), www.hrw.org/news/2019/01/25/venezuela-arrests-killings-anti-government-protests; *Venezuela tortured military personnel accused of subversion: rights groups*, REUTERS (Jan. 9, 2019), www.reuters.com/article/us-venezuela-rights/venezuela-tortured-military-personnel-accused-of-subversion-rights-groups-idUSKCN1P3oBD.

35 *Venezuela Events of 2018*, HUMAN RIGHTS WATCH (2018), www.hrw.org/world-report/2019/country-chapters/venezuela.

36 Ana Vanessa Herrero and Nicholas Casey, *Maduro Turns to Special Police Force to Crush Dissent*, THE NEW YORK TIMES (Jan. 30, 2019), www.nytimes.com/2019/01/30/world/americas/venezuela-maduro-protests-faes.html.

37 Simon Constable, *Why Venezuela’s Economic Pain Could Last Through 2025*, FORBES (March 26, 2019), www.forbes.com/sites/simonconstable/2019/03/26/why-venezuelas-economic-pain-could-last-through-2025/#790672084779.

38 *Id.*

39 *Id.*

40 Stephania Taladrid, *Venezuela’s Food Crisis Reaches a Breaking Point*, THE NEW YORKER (Feb. 22, 2019), www.newyorker.com/news/news-desk/venezuelas-food-crisis-reaches-a-breaking-point.

exodus from the country.⁴¹ Meanwhile, certain U.S. sanctions, including oil sanctions, have served to exacerbate the economic crisis.⁴²

Arbitrary arrest, targeting of journalists, sexual abuse and other egregious acts and torture at the hands of the government—including severe beatings, electric shocks and asphyxiation of detainees—are well documented and persistent.

The United Nations High Commissioner for Refugees estimates that at least 3.4 million people have fled Venezuela since 2014, making it the largest refugee crisis in the Western Hemisphere.⁴³ In 2018, approximately 5,000 people fled Venezuela every day.⁴⁴

HUMANITARIAN CRISIS: FOOD AND HEALTHCARE SHORTAGES

Eighty percent of households in Venezuela are food insecure, with at least 17 percent of the country's children under age 5 suffering from moderate to severe malnutrition.⁴⁵ **One-third of the population is only able to eat one meal a day.**⁴⁶ **Some predict famine is on the horizon.**⁴⁷ In addition to widespread hunger, medicine and medical supplies are scarce.⁴⁸ The country's health care system is in "utter collapse."⁴⁹ Venezuelan hospitals do not have basic supplies like gauze, rubbing alcohol, latex gloves

41 Ruby Mellen, *What's going on in Venezuela?*, THE WASHINGTON POST (Feb. 25, 2019), www.washingtonpost.com/world/2019/02/25/venezuelas-political-crisis-is-getting-worse-heres-what-you-need-know/?utm_term=.6bb461525fa2 ; Ishaan Tharoor, *Venezuela's refugee exodus is the biggest crisis in the hemisphere*, THE WASHINGTON POST (Aug. 23, 2018), www.washingtonpost.com/world/2018/08/23/venezuelas-refugee-exodus-is-biggest-crisis-hemisphere/?utm_term=.doeb7a719far; *They have no medicine or food': Venezuela's healthcare crisis*, AL JAZEERA (Feb. 8, 2019), www.aljazeera.com/news/2019/02/medicine-food-venezuela-healthcare-crisis-190208085644270.html.

42 Anatoly Kurmanav and Clifford Krauss, *U.S. Sanctions Are Aimed at Venezuela's Oil. Its Citizens May Suffer First*, THE NEW YORK TIMES (Feb. 9, 2019), www.nytimes.com/2019/02/08/world/americas/venezuela-sanctions-maduro.html.

43 *Venezuelan outflow continues unabated, stands now at 3.4 million*, UNHCR AND IOM (Feb. 22, 2019), www.unhcr.org/news/press/2019/2/5c6fb2do4/venezuelan-outflow-continues-unabated-stands-34-million.html.

44 *Id.*

45 *Venezuela Events of 2018*, HUMAN RIGHTS WATCH, www.hrw.org/world-report/2019/country-chapters/venezuela.

46 Dayanna Palmar, *Hunger sparked by food shortages and hyperinflation is overwhelming hungry Venezuelans*, MIAMI HERALD (Jan. 6, 2019), www.miamiherald.com/news/nation-world/world/americas/venezuela/article223950330.html.

47 Mary Beth Sheridan and Mariana Zuñiga, *Venezuela has its electricity back, for now, but it's still on the verge of collapse*, THE WASHINGTON POST (March 21, 2019), www.washingtonpost.com/world/the_americas/venezuela-has-its-electricity-back-for-now-but-its-still-on-the-verge-of-collapse/2019/03/20/icbo060e-4986-11e9-8cfc-2c5d099c21e_story.html?utm_term=.foocfdo20438.

48 *'They have no medicine or food': Venezuela's healthcare crisis*, AL JAZEERA (Feb. 8, 2019), www.aljazeera.com/news/2019/02/medicine-food-venezuela-healthcare-crisis-190208085644270.html.

49 *Venezuela's Humanitarian Emergency: Large-scale UN response needed to address food and health crisis*, HUMAN RIGHTS WATCH (April 4, 2019), www.hrw.org/report/2019/04/04/venezuelas-humanitarian-emergency/large-scale-un-response-needed-address-health.

or soap to keep wards clean.⁵⁰ At least 22,000 doctors have fled Venezuela in the exodus.⁵¹ Half of the country's operating rooms are closed.⁵² **Seventy-one percent of emergency rooms cannot provide basic services, and 79 percent of hospitals do not have a reliable source of water.**⁵³

The United Nations High Commissioner for Refugees estimates that at least 3.4 million people have fled Venezuela since 2014, making it the largest refugee crisis in the Western Hemisphere. In 2018, approximately 5,000 people fled Venezuela every day.

Diseases that were virtually nonexistent in the country for years prior to Maduro have resurged.⁵⁴ Only a single case of measles was reported in Venezuela between 2008 and 2015; over 9,000 cases have been reported since June 2017.⁵⁵ Likewise, there were no cases of diphtheria documented between 2006 and 2015; however, more than 2,500 suspected cases have been reported since July 2016.⁵⁶ About 2.8 million people in Venezuela are in urgent need of healthcare.⁵⁷ Approximately 300,000 people are at risk of death from cancer, diabetes and HIV because they have not been able to access treatment and care for over a year.⁵⁸ In 2016, Venezuela's health ministry reported that maternal mortality rose by 65 percent and infant mortality rose by 30 percent over a single year.⁵⁹ Following these reports in 2016, Maduro fired the health minister and no reports have been issued by Maduro's government since.⁶⁰

Early 2019 has been marked with new waves of violence and suffering. In February, Maduro closed Venezuela's border in order to prevent massive amounts of life-saving humanitarian aid from being delivered to the Venezuelan people.⁶¹ In March, power grid failures led to widespread electricity blackouts, wreaking havoc.⁶²

50 Tom Phillips, *Venezuela crisis takes deadly toll on buckling health system*, THE GUARDIAN (Jan. 6, 2019), www.theguardian.com/world/2019/jan/06/venezuela-health-system-crisis-nicolas-maduro; *'They have no medicine or food': Venezuela's healthcare crisis*, AL JAZEERA (Feb. 8, 2019), www.aljazeera.com/news/2019/02/medicine-food-venezuela-healthcare-crisis-190208085644270.html.

51 Tom Phillips, *Venezuela crisis takes deadly toll on buckling health system*, THE GUARDIAN (Jan. 6, 2019), www.theguardian.com/world/2019/jan/06/venezuela-health-system-crisis-nicolas-maduro.

52 *Id.*

53 *Id.*

54 Julia Jones and Stefano Pozzebon, *Venezuela's health system is in worse condition than expected, survey finds*, CNN (March 28, 2019), www.cnn.com/2018/03/28/americas/venezuela-hospitals-report/index.html.

55 *Id.*

56 *Id.*

57 Anastasia Moloney, *U.N. urged to scale up aid as Venezuela crisis deepens*, REUTERS (April 4, 2019), www.reuters.com/article/us-venezuela-health-un/u-n-urged-to-scale-up-aid-as-venezuela-crisis-deepens-idUSKCN1RG2G4.

58 *Id.*

59 *Id.*

60 *Venezuela Events of 2018*, HUMAN RIGHTS WATCH (2018), www.hrw.org/world-report/2019/country-chapters/venezuela.

61 Nicholas Casey, *Maduro Closes Venezuela's Border With Brazil to Block Aid*, THE NEW YORK TIMES (Feb. 21, 2019), www.nytimes.com/2019/02/21/world/americas/venezuela-aid-block-brazil.html.

62 *'There is no life here': Venezuelans grapple with another massive blackout*, NBC (March 26, 2019), www.nbcnews.com/news/latino/



A Venezuelan man searches through garbage in search of food.

TPS FOR VENEZUELA IS BOTH A NECESSARY HUMANITARIAN RESPONSE AND IN THE U.S. NATIONAL INTEREST

Congress established TPS to provide life-saving protection to people who, if deported, would be at risk of harm or death.⁶³ It is a statutory embodiment of the international principle of *nonrefoulement*, a commitment that the United States will not return people to countries where their lives or freedom would be threatened.⁶⁴ This commitment, stemming from the aftermath of World War II, also underpins our refugee and asylum laws.⁶⁵

[venezuelans-survives-through-more-blackouts-hardships-n987596](#).

63 Jill Wilson, *Temporary Protected Status: Overview and Current Issues*, CONGRESSIONAL RESEARCH SERVICE (March 22, 2019), <https://fas.org/sgp/crs/homsec/RS20844.pdf>.

64 *Id.*

65 *Id.*

Attorneys report that deportations to Venezuela are continuing despite the dire conditions.⁶⁶ U.S. Immigration and Customs Enforcement deported 336 people to Venezuela in 2018, a 35 percent increase from 2017.⁶⁷

As of June 2018, at least 72,000 Venezuelans have pending asylum claims in the United States.⁶⁸ While some may ultimately receive protection through asylum, those who may not meet asylum requirements—as well as people in the U.S. on nonimmigrant visas and people who are undocumented—need TPS to keep them and their families out of harm’s way. Congress intentionally designed TPS to provide protection for these categories of people.

By protecting people’s lives, TPS serves key national and regional security interests, advances moral and strategic U.S. engagement with the international community and provides other benefits to the United States. In addition to protection from deportation, TPS provides recipients with temporary work authorization so they can support themselves and their families while they are in the United States. In general, TPS holders make great contributions to the U.S. economy, working in key industries such as construction and home health care and paying into the U.S. GDP, Social Security and Medicare.⁶⁹ TPS holders also send vital remittances to family and friends in home countries, providing unofficial foreign aid that allows people to meet their basic needs and helps stabilize countries and regions.⁷⁰

CONCLUSION

American principles, interfaith values and morality demand that the U.S. government take immediate action to ensure Venezuelan nationals in the United States are protected from the danger and widespread suffering of Venezuela’s mounting civil and humanitarian crisis. Our commitment as a nation and a people to protect and welcome those in need is why Congress created TPS and why we must use it now.

66 Catherine E. Shoichet, *Trump is sending humanitarian aid to Venezuela. Venezuelans in the US say they need help, too*, CNN (Feb. 20, 2019), www.cnn.com/2019/02/16/us/venezuelans-asylum/index.html.

67 *Id.*

68 *US: Offer Venezuelans in US Temporary Protection*, HUMAN RIGHTS WATCH (March 8, 2019), www.hrw.org/news/2019/03/08/us-offer-venezuelans-us-temporary-protection.

69 Robert Warren and Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, JOURNAL ON MIGRATION AND HUMAN SECURITY, Vol. 5 No. 3 (2017), <http://cmsny.org/publications/jmhs-tps-elsalvador-honduras-haiti/>; Amanda Baran, Jose Magana-Salgado and Tom K. Wong, *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders*, IMMIGRANT LEGAL RESOURCE CENTER (April 2017), <https://www.ilrc.org/report-tps-economic-cost>.

70 For e.g., Anna-Cat Brigida, *Intipuca: A town that relies on remittances braces for end of TPS*, AL JAZEERA (April 22, 2018), www.aljazeera.com/news/2018/04/intipuca-town-relies-remittances-braces-tps-180415081217131.html.



A man stands in the street following protests.

“

*I suffer for what is happening in
Venezuela. What is it that scares me?*

Bloodshed.

”

POPE FRANCIS

January 28, 2019

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CLINIC provides vital legal resources, guidance, and support to a network of more than 365 legal, community-based and Catholic immigration programs across the country. CLINIC affiliates are in 49 states, with about 2,300 attorneys and accredited representatives, who in turn assist hundreds of thousands of vulnerable and low-income immigrants each year. In addition to legal and program capacity building assistance, CLINIC conducts national-level administrative advocacy and provides state and local support to affiliates on the ground combating anti-immigrant legislation.



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