

CHAPTER 12

Left in Limbo

The Fight for Temporary Protected Status and the Illiberal Effects of Liberal Policymaking

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In December 1990, El Rescate, an organization that provided social and legal services to Central Americans in Los Angeles, threw a Christmas party for families in the community. There was much to celebrate. Less than a month earlier, President George H. W. Bush had signed into law legislation providing Temporary Protected Status (TPS), including work authorization and relief from deportation for up to eighteen months, to Salvadorans who had lived in the United States continuously since September 19, 1990.¹ Advocacy groups had tirelessly—and unsuccessfully—lobbied for TPS for years. When Congress passed the act, Frank Sharry, director of the National Immigration, Refugee, and Citizenship Forum, described people as “stunned, shocked and thrilled.”²

Representative Joe Moakley, a Massachusetts Democrat and the proud sponsor of the TPS provision, was among those rejoicing. Though he couldn’t make it to the Christmas party, he sent a statement for actors Edward James Olmos and Esai Morales to read in English and Spanish. “The New Year will begin with the much fought for and needed recognition that the Salvadoran community here in the United States are refugees fleeing generalized violence of civil-war and thus deserve our protection,” Moakley wrote. “The struggle to secure protective status for Salvadorans has been a long and difficult one, but the courage and commitment of your community both here and in El Salvador . . . has always served to guide me and fuel my work for reforms in immigration and foreign policy.” TPS was “a fitting Christmas gift.”³

Moakley’s assessment of TPS’s impact was only partially accurate. The new status certainly did have immediate and long-term benefits. The day after Bush signed the law, some immigration judges began granting stays of deportation to Salvadorans, even though the provision didn’t go into effect until January 1991.⁴ In the years and decades ahead, TPS

would shield hundreds of thousands of people from removal, becoming a policy that liberal Democrats championed and fought to defend.

Yet, right after Congress created TPS, potential beneficiaries found themselves in the difficult position of needing to choose, in the words of an El Rescate lawyer, “between continuing to live with the security they have known as undocumented refugees or to venture into a system historically hostile to their plight.”⁵ And, over time, as TPS became a fixture of the US immigration system, it left an increasing number of people in a precarious, prolonged state of limbo. In 2001, Óscar Chacón, then head of the DC-based Salvadoran National Network, called for an end to the “‘temporary’ nightmare that separates families and keeps a permanent cloud of fear over so many Central Americans.”⁶ A few years later, Salvadoran activist and educator Roberto Lovato described TPS recipients as being “on a legal and emotional roller coaster, not knowing if [they] will be deported or legalized, because no president has kept the promise to end the legal purgatory that ‘temporary’ legalization became.”⁷ This remains true today. TPS has now existed for more than three decades, during which time Salvadoran beneficiaries have lived with the ever-present threat that US authorities could terminate the program and seek to expel them. TPS for Salvadorans has been set to expire more than two dozen times and has ended more than once, only to be reinstated later.

This chapter traces the decades-long history of the fight for a provision that has offered crucial protections to Salvadorans and others, while also exacting considerable material costs and psychological violence on them over time. I show how Joe Moakley, a provincial, liberal congressman from a Catholic family, became a leader in the Central American solidarity movement, and I examine the long-term illiberal effects of the bargain he struck to defend Salvadorans.

The history of TPS offers important insights into the relationship between liberal policymakers and left-wing activists since the 1960s and into how both play instrumental, often intertwined roles in bringing about political change. The durable legacy of the Vietnam War profoundly shaped the politics of the leftists and liberals who forged alliances throughout the 1980s to challenge the Reagan administration’s conservative agenda. The seeds of Central American solidarity organizations, including local groups in Moakley’s district, such as the Jamaica Plain Committee on Central America (JPCOCA), can be found in the antiwar movement of the 1960s. And after Vietnam, liberal Democrats like Moakley became increasingly skeptical of Cold War approaches to US foreign policy and embraced the turn, spurred by President Jimmy Carter, to protecting people’s human rights.⁸

But the story of TPS also exposes the limits of liberal policymaking to ensure the well-being, equality, and human rights of all. This reality only became clearer in the years and decades after its enactment, as New Democrats increasingly employed technocratic modes of governance that often hurt, rather than helped, the most marginalized. Throughout the 1980s, Central Americans fleeing civil wars sought permanent legal status in the United States through asylum. The Reagan administration, for its part, consistently refused to recognize Salvadorans as refugees, largely because of Cold War geopolitics and the fact that the US government had sent billions of dollars in aid to the right-wing Salvadoran government people were fleeing. Temporary protection emerged as a politically viable middle ground. However, when Moakley forced recalcitrant Senate Republicans and the Bush administration to include TPS in the Immigration Act of 1990, the possibility of Salvadorans receiving asylum became more remote, pointing to the compromises and contradictions inherent to the liberal legislative process. Soon, Central American refugees and their allies found themselves fighting just to defend these imperfect half measures, arguably making it more challenging to achieve the ultimate goal of winning permanent protection.

Historians have written extensively about immigration policy and the so-called immigrant experience. Many classic works framed migration as a linear process in which people left their countries of origin, settled in the United States, and made new lives for themselves.⁹ Other studies have focused on how laws, the growth of the bureaucratic state, and the hardening of borders during the twentieth century have changed the country by controlling who can enter and who can remain.¹⁰ Yet, many migrants' experiences have been defined by neither assimilation and integration nor exclusion and deportation. In recent decades, liberal US immigration policies and a deep-seated belief in technocratic proceduralism have produced widespread liminal legality that now shapes the lives and defines the precarious subjectivities of millions of people—from asylum seekers and applicants for permanent residence or citizenship waiting as their cases wind their way through labyrinthine bureaucracies, to individuals with provisional protections such as TPS or Deferred Action for Childhood Arrivals (DACA) that could be stripped away at a moment's notice.¹¹ Since 1965, the combination of technocratic liberal statecraft and conservative intransigence have created an expanding number of tenuous legal statuses that provide contingent rights but little-to-no hope of ever gaining full citizenship.

TPS offers a paradigmatic example of these dynamics. Although most studies of TPS focus on its implementation, we should not take its existence for granted. Understanding how the provision came into being

requires us to grapple with the intersecting histories of the Salvadoran civil war of the 1980s, US politics and policies during the last decade of the Cold War, asylum seekers' fight for permanent legal status in the United States, the influence of religion in politics, and the roles grass-roots organizers and legislative entrepreneurs play in bringing about transformative change. Our story begins in neither San Salvador nor Washington, DC, but in Boston.

A Politician of and for the People

John Joseph Moakley was an unlikely champion for Salvadoran refugees. Born in 1927 to an Irish American father and an Italian American mother, Moakley, the oldest of three brothers, grew up during the Great Depression in an apartment over a hardware store in the South Boston projects. The family lived just down the street from the Bulgers, including sons William, or Billy, the future president of the Massachusetts Senate, and James Joseph, or Whitey, the future gangster and FBI informant. Moakley trained to be a sheet metal worker in high school, but dropped out at age fifteen and forged papers so that he could enlist in the US Navy and serve in World War II. After the war, he returned to school, then became involved in local and state politics while earning a law degree from Suffolk University at night. He won a seat in the US House of Representatives in 1972, beating incumbent Louise Day Hicks, and represented Massachusetts' 9th District for the next twenty-eight years, rising to become chairman of the House Rules Committee. Both the New Deal and the Great Society influenced Moakley, who believed that government played an important role in bettering people's lives. However, he was far from a social liberal on some issues, including his opposition to school integration through busing. Above all, he cared about and concentrated his energies on serving his constituents. Moakley was, in his own words, "strictly a bread and butter democrat, domestic type. A foreign affair to me," the congressman from Southie quipped, "was going to East Boston and getting an Italian sandwich."¹²

Although the link is perhaps not immediately apparent, Moakley's upbringing in a white working-class family from South Boston helps explain his later involvement in El Salvador and advocacy on behalf of Salvadoran refugees. He was a fighter, both literally and figuratively. Known as the "Boston Bull" during his days as a light heavyweight boxer, Moakley liked to tell a story from his childhood about driving in the neighborhood one day with his father when they came across a scuffle between two kids, one much larger than the other. His father stopped the car and told him to intervene on behalf of the smaller child. Young

Joe got out of the car and beat up the bigger kid, later crediting this experience as contributing to a lifelong hatred of bullies. By the 1980s, that hatred extended to the Salvadoran government officials and military authorities (and their backers in the United States) responsible for murdering innocent civilians and even clergy.¹³

Moakley's Catholic upbringing and the strong presence of the Church in Boston also played a role in why he first spoke out about El Salvador. By the early 1980s, the Salvadoran government had come to view Catholic clergy as subversives aligned with the poor and the Frente Farabundo Martí para la Liberación Nacional (FMLN). "Be a patriot, kill a priest" became a common slogan on the Salvadoran right. On March 24, 1980, a gunman assassinated Archbishop Óscar Romero, a figure beloved by the poor and despised by the powerful, while he celebrated mass in the chapel of a San Salvador hospital. He was not the first priest to be killed in the country. Fewer than nine months later, a group of Salvadoran National Guardsmen acting on "orders from above" raped and murdered nuns Ita Ford, Maura Clarke, and Dorothy Kazel, and lay missionary Jean Donovan—all US citizens.¹⁴

The horrific killings of the four churchwomen shocked people in the United States and led then-president Jimmy Carter to suspend military aid to El Salvador. The Reagan administration reversed that decision. Jeane Kirkpatrick, who would soon become Reagan's ambassador to the United Nations, went as far as to imply that the women themselves, rather than the Salvadoran government, might have been to blame. "The nuns were not just nuns; they were political activists" who supported the FMLN, she told a reporter a couple of weeks after their murder.¹⁵

Such acts and sentiments did not sit well with Moakley, who came from a place where people treated clergy with reverence. He took to the floor of the House of Representatives on December 8, 1981, less than a week after the one-year anniversary of the brutal crimes against the slain churchwomen. "What has the Salvadoran Government done to right this gross injustice?" he asked, before denouncing the Reagan administration's failure to act and decision to increase military aid to El Salvador. "The four women who were murdered in El Salvador were carrying out their religious convictions of aiding the poor and helpless. Let us remember them for their courage and determination in carrying the banner for social justice. And let us have the foresight and common-sense to not let their deaths have been in vain."¹⁶

Yet the Salvadoran military and right-wing death squads continued to kidnap, rape, torture, and kill. Just three days after Moakley's speech, Salvadoran soldiers in the US-trained Atlacatl Battalion murdered nearly a thousand innocent men, women, and children in and around the village

of El Mozote in the eastern province of Morazán. Journalists for the *New York Times* and *Washington Post* traveled to El Mozote and reported on the massacre in January 1982, but the Reagan administration dismissed their stories as propaganda and sent \$81 million in additional military support plus another \$100 million in economic aid to the Salvadoran government.¹⁷ Moakley denounced the decision. “By militarily propping up a regime that oppressed and terrorizes its people, we, too, are contributing to that oppression.” He signed onto a congressional resolution to suspend all US military aid to El Salvador and sent a letter to President Reagan. “The parallels between our involvement in Vietnam and our present policy toward El Salvador are uncanny,” he wrote. “I am fearful that in the not too distant future we will see the first American soldier come home from El Salvador in a coffin.”¹⁸

Reagan paid no mind to Moakley’s warning. Jim McGovern, Moakley’s then-aide and a future Massachusetts congressman, later explained why. The administration viewed Central America as a “fight between the United States and the Soviet Union” in which “the revolutionary currents in El Salvador were somehow . . . masterminded in Havana or in the Kremlin.” However, McGovern pointed out what a generation of Cold War liberals had learned from the war in Vietnam: “You can’t export revolution like you export a foreign car or something.” The Salvadoran civil war stemmed from a combination of long-standing problems, including poverty, inequality, impunity, and violence. Rather than addressing these underlying issues, the United States “just shoveled all this military aid down there,” McGovern continued. Instead of siding with the campesinos, students, Catholic Church, organized labor, or opposition political parties, “we sided with the most antidemocratic force in El Salvador: the armed forces.” The United States stood “with some of the biggest creeps of the hemisphere, and we did so because we were under the illusion that we were fighting communism.”¹⁹

Ongoing US support in the face of such blatant, widespread human rights violations emboldened the Salvadoran military to continue to kill at will. By the end of 1982, Salvadoran security forces and allied paramilitary groups had murdered at least 33,473 people, disappeared 1,874 more, and forced hundreds of thousands to flee the country and seek refuge elsewhere within a period of just three years.²⁰

The Reagan administration’s policies toward El Salvador and Central America outraged many people, including several of Moakley’s young, liberal, college-educated constituents who pushed him to act. Salvadoran refugees also shared their testimonies directly with the congressman, which deeply disturbed and moved him. He proved receptive to such pressure from below. Whereas his mentor, legendary House

Speaker Tip O'Neill, liked to say that "all politics is local," Moakley "took that one step further," according to McGovern. "For him, all politics was personal. He responded to individual requests. He was moved most by someone's personal story."²¹ During his first years in Congress, Moakley traveled around his district in a Winnebago, publicizing his itinerary in advance and warmly greeting people who lined up to speak with him, to share their problems, and to request his assistance. After retiring the Winnebago, he visited the post office in each town in his district at least once a year, installed himself in the manager's office, and continued his open-door policy.²² Such an approach stood in stark contrast to modes of constituent relations—relying on pollsters and consultants, "activating" voters along nationally salient partisan lines—that New Democrats would embrace in the years ahead.

Moakley's brand of retail politics played a critical role in him becoming a leading figure in the fight for TPS. In mid-December 1982, the Jamaica Plain Committee on Central America (JPCOCA), whose members had come of age during the mass anti-Vietnam War protests of the late 1960s, organized a group of nine activists, clergy, and community leaders to send a letter to the congressman requesting a meeting about US policy in Central America. They also planned strategic visits to his post office forums and packed the lines with people who shared their concerns. A month later, in late January 1983, a handful of the signatories—Felix Arroyo of the Massachusetts Latin American Brotherhood; Ed Crotty of Citizens for Participation in Political Action; Miguel Satut, the Executive Director of Oficina Hispana; and Carol Pryor and Virginia Vogel Zanger of JPCOCA—met with Moakley in his Boston office and gave him a petition signed by 450 local residents calling for stopping US military aid to the region. They also planned to push him to take a stronger public stance on El Salvador. After reviewing his record, however, they realized that Moakley was already on their side of the issues, including ending US aid to repressive Central American governments. Still, they hoped Moakley would commit to one of four action items included in an advocacy statement drafted by Oxfam America. Number three caught Moakley's attention: "to provide extended voluntary departure status and political asylum for Salvadoran and Guatemalan refugees in the United States until circumstances permit their safe repatriation."²³

Moakley's most engaged colleagues on Central America focused their energies on US policy toward the region, rather than on the domestic consequences of the conflicts. Taking up the refugee issue made sense for the bread-and-butter congressman from Southie, since it meant helping people in his district who lived in fear and under threat of deportation

to a place where the military killed priests and nuns with impunity. In the years ahead, fighting on behalf of Salvadoran refugees became key to Moakley's local constituent services and dedication to protecting international human rights.²⁴

The Fight to Protect Salvadoran Refugees

Soon after the meeting with the activists, Moakley began organizing. He and his staff drafted a letter to Reagan's secretary of state, George Schultz, and attorney general, William French Smith, urging them to temporarily halt deportations of Salvadorans "until such time as it is safe for them to return to their homeland." They also circulated a "Dear Colleague" letter in hopes of rallying widespread support in the Democrat-controlled House of Representatives.²⁵ Jim McGovern took the lead. Born and raised in Worcester, McGovern was only twenty-three years old when he became a driving force behind Moakley's efforts to protect Central American refugees. One JPCOCA activist doubted that the congressman would have taken up the issue without his young legislative aide's encouragement. McGovern conducted original research about the challenges Salvadoran refugees faced in the United States, gathered signatures from other members of Congress, met with constituents, and made clear that nothing would happen without significant, sustained political pressure from below. JPCOCA members responded by contacting local and national media and reaching out to advocacy groups across the country, including Church World Services, the Committee in Solidarity with the People of El Salvador, the Washington Office on Latin America, Interreligious Task Force, the American Friends Service Committee, and the National Immigration, Refugee, and Citizenship Forum. Their collective efforts raised awareness about the issue among politicians and the public. When Moakley sent the letter to Schultz and Smith at the end of April 1983, a bipartisan group of eighty-eight members of Congress had signed on.²⁶

The Reagan administration, committed to Cold War geopolitics, rebuffed Moakley's campaign. Schultz claimed that granting extended voluntary departure to Salvadorans would spur additional unauthorized migration. He also argued that people could seek refuge in the countries they passed through before arriving in the United States. Such reasoning didn't sit well with Moakley. "The vast majority of Salvadoran refugees are not economic aliens, but persons who have been displaced by violence. It is no easy journey to the United States, and there is no reason to believe that allowing Extended Voluntary Departure will make that journey easier, or encourage more people to take it," he and a colleague

argued. Moreover, “to suggest that Salvadorans seek shelter in the already overcrowded refugee camps expanding throughout Central America is an abdication of our responsibility to those refugees presently in the United States.”²⁷

The executive branch’s unwillingness to act led Moakley to seek a legislative solution. During four consecutive congressional sessions in the 1980s he and Senator Dennis DeConcini (D-AZ) introduced and advocated for bills to temporarily protect Salvadorans from deportation and, in turn, political violence and civil unrest in El Salvador.²⁸ Central American social-service and legal-aid organizations such as El Rescate and the Central American Refugee Center (CARECEN), formed in the early 1980s in response to the growing refugee crisis, kept pressure on the legislators. And national lobby groups such as the American Civil Liberties Union; Church World Service; National Immigration, Refugee, and Citizenship Forum; and the National Council on La Raza activated their networks and pushed Congress to pass the Moakley-DeConcini bills.²⁹

Providing people with some form of safe haven became more urgent over time, since Salvadorans had little-to-no chance of winning asylum. Although authorities technically adjudicated asylum cases on an individual basis, US foreign relations influenced their decisions. People fleeing so-called enemy (which often meant Communist) governments received the highest approval rates, while those fleeing right-wing anti-Communist regimes had the lowest. From June 1983 to September 1989, US authorities approved just 2.5 percent of Salvadoran asylum cases—compared to 72.6 percent for the Soviet Union, 61.5 percent for Iran, and 41.8 percent from China.³⁰ By the middle of the decade, some immigration lawyers simply stopped encouraging Central Americans to apply.³¹ Moakley joined refugees and their allies in denouncing the biased asylum adjudication system. He also pointed out that, since 1960, the United States had granted extended voluntary departure fifteen times to people from countries he believed were “comparable to El Salvador.”³²

The Reagan administration and Republicans in Congress remained unmoved, offering divergent, specious explanations for their repeated opposition to the Moakley-DeConcini bills. One argument centered on the misleading claim that the proposed legislation failed to protect Salvadoran nationals from war-related violence, since it only applied to people in the United States and “ignore[d] nationals of other violence affected countries.” A second argument, reiterated by numerous officials, reasoned that under US law “generalized conditions of poverty and civil unrest do not entitle people who leave their homelands to settle here.”

Adherents of this view, including Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs Laura J. Dietrich, warned that “if this were our test, half the 100 million people living between the Rio Grande and Panama would meet it, as would hundreds of millions more people in other parts of the world.”³³ “Where and on what basis do you draw the line?” Senator Alan Simpson (R-WY) asked during a 1987 congressional hearing. “Should we then grant this extraordinary grace to Afghanistan, Sudan, Mozambique, Angola, Cambodia, Iran, Iraq, Lebanon?” Although Simpson claimed to understand the impulse to want to help people in need, he insisted that “the citizens of the United States would find it indigestible.”³⁴ A third argument, which seemingly overlooked the frequent use of extended voluntary departure for other countries, claimed that the Massachusetts congressman’s proposals undermined the nation’s immigration laws. Alan Nelson, commissioner of the INS, went as far as to say that Moakley’s bill would leave the Refugee Act of 1980 “emasculated.”³⁵

Even in the face of such staunch opposition, Moakley never stopped fighting. But by the late 1980s, his patience with the Reagan administration and his congressional colleagues was wearing thin. “I am tired of the double talk, I am tired of the politics and I am tired of the games,” he wrote in a statement embodying former president Jimmy Carter’s call to center people’s human rights when crafting policy. “The bottom line on this issue is the protection of human life. And, quite frankly, it is unconscionable that this administration and this Congress have yet to offer protection to these refugees.”³⁶ In 1987, the House passed Moakley’s bill, which would have shielded Salvadorans and Nicaraguans from deportation, but the legislation died in the Senate. Moakley had failed for a third time.

Two crucial things happened in 1989 that presented Moakley with an opportunity to finally break the congressional impasse. In June, he became chairman of the House Rules Committee after the previous chair, eighty-eight-year-old Claude Pepper (D-FL), died. This influential position gave Moakley the power to determine which bills made it to the House floor for votes—a power he would soon leverage to great effect.³⁷ Then, on November 16, 1989, just weeks after Moakley introduced the latest version of his bill and only days after the FLMN launched its “final offensive,” six Jesuit priests were brutally murdered at the Universidad Centroamericana in San Salvador, along with their housekeeper and her daughter. The killings sparked outrage and reignited debates about US support of the Salvadoran government and military. Moakley chaired a special congressional task force to investigate the murders and conducted extensive fact-finding missions. He also

co-sponsored legislation to cut US military aid to El Salvador in half. "Enough is enough," he declared during the floor debate. "The time to act has come."³⁸

Moakley's role on the task force and renewed attention to widespread human rights abuses and military impunity in El Salvador helped him make the case to protect people seeking refuge from state-sponsored violence. As Frank Sharry, president of the National Immigration, Refugee, and Citizenship Forum, told asylum advocates at the time, Moakley's "gloves are off." In October 1990, members of the two houses met in conference committee to hammer out a final version of an immigration bill that included temporary protected status for Salvadorans. Influential senators from both parties opposed the provision halting deportations, but Moakley put his foot down. His colleagues knew that, as chairman of the House Rules Committee, he had the power to kill the bill, though some questioned whether he actually would. The senators called a recess and conferred with President Bush. When they returned, they agreed to offer Salvadorans temporary protected status for eighteen months. The provision became law when President Bush signed the Immigration Act of 1990.³⁹

Moakley had played hardball and won. He understood how legislative politics worked and used his position as chairman of a powerful committee to great effect. "The one difference [between TPS and other bills] is that someone able to carry out threats maintained an interest," said Michael Meyers, staff member of the Senate Subcommittee on Immigration and Refugee Affairs. Moakley "never gave up, though it took eight years. When everybody else was willing to give up, he did not."⁴⁰ TPS also never would have been created if not for the broad coalition of activists, advocates, and Central American solidarity groups that engaged in sustained organizing. "You needed a person on the inside to really do the work and have the commitment," JPCOCA activist Virginia Zanger later explained. "And you needed the pressure from the outside, to give him the excuse to move forward with it."⁴¹ Her comment underscored how much TPS's passage depended not only on the movement's inside-outside strategy, but also on the mutual dependency of left activists and liberal policymakers to achieve change, particularly within the constrained political landscape of the post-1960s era.

The Challenges of Implementing TPS

The creation of temporary protected status represented a significant political victory for hundreds of thousands of Salvadorans and their allies. Rossana Pérez, a Salvadoran refugee who came to Los Angeles

in 1983 after her husband was disappeared and she herself spent ten months in prison, later described TPS as a cornerstone for the community. "People were feeling safer, and the idea of going back to El Salvador was at kind of a distance."⁴² Yet, implementing the program proved challenging, and over time, many came to question its long-term impact and legacy.

Even in the short term, not everyone greeted TPS with unbridled enthusiasm. Many Salvadorans worried about what would happen if the attorney general failed to extend TPS after eighteen months. The idea of voluntarily providing information about where they lived and worked, which the Immigration and Naturalization Service (INS) could later use to apprehend them, concerned potential beneficiaries.⁴³ One woman told sociologist Cecilia Menjívar, who interviewed Salvadorans living in the United States in the early 1990s, that "once the INS obtained your name and address, you were practically signing your own deportation orders."⁴⁴ People had good reason to distrust US authorities, given the Reagan and Bush administrations' ongoing support of the right-wing Salvadoran government and the years of INS harassment they had experienced since arriving in the United States. Although the possibility of gaining a liminal legal status offered a glimmer of hope to some Salvadorans, Central American service organizations urged people to "proceed with caution and consider well the benefits and risks."⁴⁵ Few people registered for TPS at first. "What stuck in people's mind[s]," according to then-CARECEN executive director Madeline Janis, "was deportation, deportation, deportation."⁴⁶

Moakley and his Democratic colleagues in Congress may have won the battle to create TPS, but the Republican-controlled executive branch decided how to implement it. As a result, prohibitively high registration fees discouraged people from applying. During the eighteen-month grant period, the INS required Salvadorans to reregister every six months, each time filling out several forms and paying fees for TPS and work authorization. The total cost for an individual came to \$405 (\$940 today), which meant that a family of four would need to come up with as much as \$1,620 (more than \$3,750 today). Outraged advocates claimed that excessive government fees threatened to undermine the entire program. Joe Moakley and Dennis DeConcini, the congressional sponsors of TPS, began lobbying the INS before the law went into effect in hopes of keeping fees down. "Registration for TPS was intended to be a simple, efficient, one-step process in which the registrants receive work authorization at the time of registration," DeConcini wrote to INS Commissioner Gene McNary. "In addition, the cost of registration and obtaining work permission was intended to be reasonable." INS officials

blamed the high fees on Congress, since the legislation specified that the beneficiaries, rather than taxpayers, would cover the costs of the program. However, the substantial fees stood out even more—and pointed to the executive branch’s politicized singling out of Salvadorans—when considered alongside the fact that officials only charged \$50 to Kuwaitis, Libyans, Somalis, and people from other countries who registered for TPS under the general provision. For Guillermo Rodezno, the executive director of El Rescate, the INS’s requirements for Salvadorans undermined the “good intentions” of the legislation.⁴⁷

All the while, and despite these considerable challenges, a broad coalition of refugees and their allies fought to protect Central Americans. They won a significant victory in the courts just weeks after TPS started. At the end of January 1991, the US District Court for the Northern District of California approved a settlement in *American Baptist Churches v. Thornburgh* (ABC), a class-action lawsuit originally filed in 1985 by more than eighty religious, refugee, and legal-aid organizations that challenged the US government’s systemic discrimination against Salvadorans and Guatemalan asylum seekers. The landmark settlement provided new asylum hearings to hundreds of thousands of people and offered work authorization and protection from deportation to individuals with pending cases. It also specified that any Salvadoran who registered for TPS would qualify for a new asylum hearing under ABC. This stipulation, in turn, led activists to re-evaluate their tepid stance on TPS. “We think now that [TPS] is a good opportunity,” Rodezno told a reporter. “One, two or three more years of protection could make a big difference to someone.”⁴⁸

Although the ABC settlement may have alleviated some people’s fears of being deported after TPS ended, most Salvadorans remained hesitant or unable to take advantage of these new legal protections. Only thirty-three thousand of the three hundred to five hundred thousand eligible beneficiaries had applied by early April, halfway through the six-month registration period. And just eighty-five thousand people had registered by late June, despite dozens of local and national groups redoubling their outreach efforts and a lawsuit pushing the INS to lower the TPS registration fee to \$255 per person (\$587 today). At the same time, advocates had been working with Moakley on a bill to extend the registration deadline to midnight on October 31, 1991. They succeeded. During the next four months, El Rescate, CARECEN, and other Central American social-service and legal-aid organizations worked tirelessly to help more than a hundred thousand additional people apply. One of them was Gloria Argueta, a seventeen-year-old high school student who had lived in Los Angeles with her family for three years and registered two days before

the cutoff. “I waited until now because I didn’t have the money to apply,” she said. “I’m a little afraid. This could have been a trick to deport us all, but I think it’s a good deal.”⁴⁹

Living in Limbo

What would happen to the nearly two hundred thousand Salvadorans with TPS when the program expired on June 30, 1992? Ongoing uncertainty fed people’s fears, especially since most beneficiaries had lived in the United States for years by that point and had no plans of leaving. The January 1992 Salvadoran peace agreement marked an end to the twelve-year civil war, but it also raised questions about whether and for how long US authorities would allow TPS beneficiaries to remain in the country. Around the same time, Salvadorans who renewed their six-month work permits received notices from the INS about their impending deportation. As people frantically sought out information about the fate of TPS, the executive branch’s decision to postpone any announcement about the program’s future until late spring only heightened anxiety levels.⁵⁰

Refugee advocates and politicians in El Salvador and the United States urged the administration of George H. W. Bush to act, for both humanitarian and geopolitical reasons. Mass deportations, they warned, would have a devastating impact on individuals and families, in addition to threatening El Salvador’s political and economic stability just as the nation began to rebuild. “Sending back so many people is like sending a bomb,” said Jorge Ruiz, El Rescate’s TPS coordinator. “If the President of the United States wishes to ensure peace in El Salvador, the best way to demonstrate his dedication is to extend TPS.” Salvadoran president Alfredo Cristiani wrote a personal plea to his US counterpart, and Moakley wrote to Attorney General William P. Barr and Secretary of State James A. Baker, asking the administration to renew TPS for another eighteen months. Doing so would “reassure the Government of El Salvador” and “calm the fears of refugees in the United States.”⁵¹

For four months, Bush failed to respond to activists’ calls, further amplifying TPS beneficiaries’ feelings of uncertainty. The administration’s plans only became clear in mid-May, when President Cristiani revealed them, unexpectedly, during a press conference in San Salvador. The United States would extend work authorization and protections from deportation for Salvadorans for another year, until June 30, 1993—but not under TPS. Instead, the Bush administration created a new program: Deferred Enforced Departure (DED). Although the rhetorical shift from an initiative focused on protecting people to one

ensuring that they leave seemed ominous, DED resembled TPS in substance. It also served to extend people's asylum benefits under *ABC*. To apply for DED, Salvadorans who qualified had to fill out additional paperwork and pay \$60 (more than \$133 today). Salvadoran TPS holders and their advocates had succeeded in winning another twelve months of legal protections.⁵²

Any relief people felt did not last long. With the new expiration date fast approaching, anxieties returned as Salvadorans, with support from the service and advocacy groups that had become essential to their cause, organized yet again to extend DED. This pattern became a familiar one, and Salvadorans found themselves living in a precarious, prolonged state of limbo. They had to fight *ad infinitum* to maintain the tenuous legal status that allowed them to remain in the country but did not provide a pathway to citizenship. They had to consistently navigate complex government bureaucracies, grasp technical and often confusing policies, keep track of ever-changing application deadlines and expiration dates, and come up with the money to pay significant fees—all while being keenly aware that their presence in the country depended on the whims of whomever occupied the White House.

In May 1993, Bill Clinton extended DED for eighteen months. Amid rising anti-immigrant sentiment, he refused to do so a second time. “They can’t deport all of us who are here, can they?” asked a twenty-five-year-old woman who worked in a warehouse in Orange County, California. After DED expired, on December 31, 1994, most Salvadorans’ only option to maintain some kind of legal status was to apply for asylum under *ABC*. But by the time the INS started hearing people’s cases, in April 1997, the landscape of immigration politics had shifted. The previous year, Clinton had signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, a draconian law drafted by Republicans and supported by law-and-order Democrats that drastically restricted relief from deportation. This act, along with the militarization of the border, expansion of immigration detention, and crackdown on asylum seekers, marked a punitive turn in US immigration policy ushered in—and furthered in the years ahead—by both Democrats and Republicans. Activists, meanwhile, continued to organize and won an important victory in November 1997, when the Nicaraguan Adjustment and Central American Relief Act restored the rights of some Salvadorans (and Guatemalans) to apply for suspension of removal. Many people did not qualify, though, and remained in a liminal status. Their liminality reflects the limits of liberal policymaking to ensure the well-being of all people. Indeed, the Clinton administration’s technocratic and pragmatic mode of governing harmed rather than helped many of the most

TABLE 12.1. Tracing Temporary Protected Status for Salvadorans

1. 11/29/1990	President George H. W. Bush signs the Immigration Act of 1990, creating TPS
2. 1/1/1991	TPS goes into effect (18 months)
3. 1/31/1991	ABC settlement; Salvadorans in US as of 9/19/1990 can apply for asylum; people with TPS can apply after status expires
4. 6/30/1992	DED replaces TPS for Salvadorans (12 months)
5. 6/8/1993	DED extension (18 months)
6. 12/31/1994	DED terminated; work authorization extended until 9/30/1995; Salvadorans must apply for asylum under ABC
7. 1/31/1996	Extended deadline to apply for asylum under ABC for those with DED/work permits. Extended early August 1995, instead of ending 9/30/1995. In late August, INS also announced an automatic extension of work permits until 1/31/1996, avoiding a four-month gap between asylum deadline and work authorization
8. 4/30/1996	Late December 1995, INS announces three-month extension of work permits while people seek asylum. But the deadline for filing for asylum is still 1/31/1996, creating confusion
9. 9/10/1996	TPS for Salvadorans removed from 1990 Act (Sec. 303)
10. 9/30/1996	President Bill Clinton signs the Illegal Immigration Reform and Immigrant Responsibility Act, repealing suspension of deportation as means of relief from removal, in addition to dramatically expanding the number and types of deportable offenses
11. 11/19/1997	President Bill Clinton signs the Nicaraguan Adjustment and Central American Relief Act (NACARA), offering amnesty to some Nicaraguans and reinstating suspension of deportation for certain Salvadorans and Guatemalans
12. 3/9/2001	George W. Bush announces new TPS designation for Salvadorans after two massive earthquakes and a powerful aftershock in January and February (18 months)
13. 7/11/2002	TPS extension (12 months)
14. 7/16/2003	TPS extension (18 months)
15. 1/7/2005	TPS extension (18 months)
16. 6/15/2006	TPS extension (12 months)
17. 8/21/2007	TPS extension (18 months)
18. 10/1/2008	TPS extension (18 months)
19. 7/9/2010	TPS extension (18 months)
20. 1/11/2012	TPS extension (18 months)
21. 5/30/2013	TPS extension (18 months)
22. 1/7/2015	TPS extension (18 months)
23. 7/8/2016	TPS extension (18 months)
24. 1/18/2018	President Donald J. Trump announces the termination of TPS for El Salvador, Haiti, Nicaragua, and Sudan, effective 9/9/2018

25. 10/3/2018	A judge in the Northern District of California issues an injunction in <i>Ramos v. Nielsen</i> , blocking Trump's attempt to end TPS
26. 10/31/2018	Continuation of TPS in compliance with <i>Ramos v. Nielsen</i> injunction (6 months, through 4/2/2019)
27. 3/1/2019	Continuation of TPS in compliance with <i>Ramos v. Nielsen</i> injunction (9 months, through 1/2/2020)
28. 11/4/2019	Continuation of TPS in compliance with <i>Ramos v. Nielsen</i> injunction (12 months, through 1/4/2021)
29. 12/9/2020	Continuation of TPS in compliance with <i>Ramos v. Nielsen</i> injunction (9 months, through 10/4/2021)
30. 9/10/2021	Continuation of TPS in compliance with <i>Ramos v. Nielsen</i> injunction (15 months, through 12/31/2022)
31. 11/10/2022	Continuation of TPS in compliance with <i>Ramos v. Nielsen</i> injunction (18 months, through 6/30/2024)
32. 6/21/2023	President Joe Biden's DHS rescinds President Trump's termination of TPS for Salvadorans and issues an extension (18 months, through 3/9/2025)

Source: *Federal Register* 1990–2023; compiled by author

vulnerable. It was not until March 2001, after Clinton left office, that the United States redesignated El Salvador for TPS—only because two powerful earthquakes struck the nation and displaced more than one million people. Since then, Democratic and Republican presidents have extended TPS for Salvadorans nearly twenty times.⁵³

However, TPS has become a highly polarized political issue in recent years, particularly after President Donald J. Trump attempted to end it in 2018. Had he succeeded, more than 402,000 people, including around two hundred thousand Salvadorans, many of them long-term residents, would have faced removal. Democrats, by contrast, defended TPS and denounced Trump's cruelty. In June 2023, President Joe Biden rescinded his predecessor's termination order and extended protections for Salvadorans through March 9, 2025. But Democrats have not spoken out about the costs of living in liminality. The material and psychological toll TPS has exacted over time amounts to what sociologists Cecilia Menjivar and Leisy Abrego have described as a form of legal violence. Neither liberal nor conservative politicians have addressed this violence, let alone pushed for a permanent solution to the seemingly endless limbo in which some Salvadorans have been trapped for more than three decades.⁵⁴

The long-term negative effects of TPS are undeniable. So is the fact that TPS's creation in 1990 was a major victory for Salvadorans in the

United States and all who fought to protect them from the uncertain fates awaiting them back in El Salvador if deported. TPS would not exist if not for the persistent pressure from below that refugees and solidarity activists applied throughout the 1980s. Nor would it exist without Joe Moakley, a receptive and dogged ally in Congress. TPS's early advocates could not foresee the various factors that would shape the provision's history in the decades ahead. Yet the benefit of hindsight and careful historical analysis illuminate these contingencies and underscore the often-fraught compromises inherent to liberal policymaking, especially since the 1960s.

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Chapter Twelve

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Chapter Thirteen

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