

February 17, 2021

The Honorable Joseph R. Biden  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue NW  
Washington, D.C. 20016

**RE: REQUEST FOR TEMPORARY PROTECTED STATUS FOR MEXICO**

Dear President Biden and Secretary Mayorkas:

The undersigned 128 local, regional, and national organizations write to request that you use your authority to issue designations of Temporary Protected Status (TPS) to roughly 4.9 million undocumented immigrants from Mexico. We respectfully request that the Secretary of the U.S. Department of Homeland Security (DHS) designate Mexico for TPS in consultation with the State Department and U.S. Citizenship and Immigration Services (USCIS), especially in light of the ongoing risk to Deferred Action for Childhood Arrivals.<sup>1</sup> TPS would provide employment authorization and protection from deportation for millions of undocumented people in the United States and provide significant incentive for Congress to subsequently provide an eventual legislative roadmap to citizenship. As you know, the Secretary has *substantial* discretion to designate countries for TPS, and Congress explicitly stated that an “epidemic” is an acceptable ground for designation in addition to “extraordinary and temporary” conditions<sup>2</sup> and did not limit the use of TPS through a numerical ceiling. Such a designation would also likely be largely immune from many judicial challenges, as Congress also established a bar for most legal challenges. Indeed, nearly 50 legal experts sent you a letter stating that your administration has the legal and statutory authority to utilize TPS for Mexico.<sup>3</sup>

It will likely take a significant amount of time to undo the Trump administration’s harmful immigration policies, and many efforts may be delayed by the courts. In the meantime, your administration has the legal authority to protect significant number of undocumented people who cannot return to Mexico safely under current conditions. The Trump administration cruelly and boldly wielded its executive authority on immigration against immigrant communities, and your administration has the opportunity to use that power boldly to help immigrants instead. A broad use of TPS has the potential to serve as a “down payment” toward more permanent reform. In the past, temporary executive relief has often strengthened, not undermined, efforts to achieve more lasting immigration reform. The Obama administration’s creation of the DACA program and strong support of TPS preceded the passage of the American Dream and Promise Act of 2019 (H.R.6) in the House of Representatives. Similarly, the use of Deferred Enforced Departure (DED) established a roadmap for the eventual passage of Liberian Refugee Immigration Fairness.

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<sup>1</sup> Maria Sacchetti, *Biden Has Promised to Protect ‘Dreamers,’ but DACA Court Challenges Loom*, Wash. Post (Dec. 2, 2020, 8:00 AM), <https://www.washingtonpost.com/politics/2020/12/02/biden-daca-dreamers/>.

<sup>2</sup> Immigration and Nationality Act § 244(b), 8 U.S.C.A. § 1254a(b) (West 2021).

<sup>3</sup> Letter from 48 Legal Experts to Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security (Feb. 9, 2021), available at [https://drive.google.com/file/d/13X9Q2f\\_nHDFMXrHetwluwErk8x6eptJv/view?usp=sharing](https://drive.google.com/file/d/13X9Q2f_nHDFMXrHetwluwErk8x6eptJv/view?usp=sharing).

## I. TEMPORARY PROTECTED STATUS

Established by Congress in 1990, TPS represents a congressional delegation of power to the executive to address emergent humanitarian crises.<sup>4</sup> TPS is a temporary form of humanitarian relief that provides short-term protection from deportation and permission to work for immigrants whose country is not safe for return.<sup>5</sup> The statute authorizes the DHS Secretary to designate a country for TPS if the Secretary finds that there is: (a) “an ongoing armed conflict” where deporting immigrants would “pose a serious threat to their personal safety;” (b) an “earthquake, flood, drought, epidemic, or other environmental disaster” that leads a foreign government to request TPS during recovery; or (c) “extraordinary and temporary conditions” prevent immigrants from safely returning.<sup>6</sup> TPS designation is up to the discretion of the DHS Secretary, who may determine if qualifying conditions exist in any given country to cover any number of nationals for that country, as there is no numerical cap on TPS grants.<sup>7</sup> Congress also wrote into the statute a bar prohibiting non-constitutional challenges regarding the Secretary’s designation, termination, and extension of TPS, meaning the statute disallows most legal challenges, including those that were successful against previous, large-scale immigration relief initiatives, such as expanded DACA and Deferred Action for Parents of Americans (DAPA) programs.<sup>8</sup>

Conservative estimates put the count of undocumented immigrants from Mexico at approximately 4.9 million people, or nearly half of all the undocumented people in the United States.<sup>9</sup> Additionally, there are nearly 520,000 active DACA recipients from Mexico that may also soon need protection, pending litigation that may lead to the end of DACA. These individuals and their families deserve the opportunity to participate fully in American life without the fear of being deported to dangerous conditions.

## II. COVID-19 PANDEMIC AS GROUNDS FOR TPS

Notably, the law establishing TPS specifically lists examples of natural disasters as grounds for TPS, including an “epidemic,” and also provides for designation if “extraordinary and temporary” conditions exist.<sup>10</sup> The COVID-19 arguably satisfies either of these grounds. The COVID-19 pandemic has currently infected over 106 million people across the world, leading to over 2.3 million deaths globally.<sup>11</sup> Mexico has over 1.9 million recorded cases with over 166,000 deaths, though experts say that both numbers are likely an undercount as many Mexicans choose to fight the virus at home to avoid the neglected hospital system.<sup>12</sup> Even with the

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<sup>4</sup> Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 5029, available at <https://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg4978.pdf>.

<sup>5</sup> Immigration and Nationality Act § 244.

<sup>6</sup> *Id.* §§ (b)(1)(A)–(C).

<sup>7</sup> *See id.* § 244.

<sup>8</sup> 5 U.S.C. § 702 (2020); *Texas v. United States*, 86 F. Supp. 3d 591, 615 (S.D. Tex.), *aff’d*, 809 F.3d 134, 152 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *aff’d by an equally divided court* 579 U.S. \_\_\_\_ (2016).

<sup>9</sup> Jeffrey S. Passel & D’Vera Cohn, *Mexicans Decline to Less Than Half the U.S. Unauthorized Immigrant Population for the First Time*, Pew Research Center (June 12, 2019), <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>.

<sup>10</sup> Immigration and Nationality Act §§ (b)(1)(B), (C).

<sup>11</sup> Coronavirus Disease (COVID-19) Pandemic, World Health Org., <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> (last visited Feb. 9, 2021).

<sup>12</sup> *Coronavirus (COVID-19)*, Google News,

[https://news.google.com/covid19/map?hl=en-US&mid=%2Fm%2Fob90\\_r&gl=US&ceid=US%3Aen](https://news.google.com/covid19/map?hl=en-US&mid=%2Fm%2Fob90_r&gl=US&ceid=US%3Aen) (last visited Feb. 9, 2021); Natalie Kitroeff & Paulina Villegas, *‘It’s Not the Virus’: Mexico’s Broken Hospitals Become Killers, Too*, N.Y. Times (May 28, 2020), <https://www.nytimes.com/2020/05/28/world/americas/virus-mexico-doctors.html>.

undercount, Mexico is leading the world in COVID-19 mortality rate of 8.6 percent, significantly higher than the United States' 1.7 percent rate.<sup>13</sup>

As of December 2020, the U.S. Centers for Disease Control and Prevention has designated Mexico at the highest Level 4 risk and urges people to “avoid all travel to Mexico” due to a “very high” risk of COVID-19 and limited medical resources.<sup>14</sup> A winter surge in cases is sending states back into the highest levels of lockdown.<sup>15</sup> COVID-19 has served as both a public health crisis and a catalyst to existing troubles in Mexico, including a struggling economy, high crime rates, civil unrest, and increased poverty.<sup>16</sup> Mexico has only secured enough vaccine doses to vaccinate around 17 million citizens, or only 13 percent of the country’s population of 126 million, and still faces significant obstacles to vaccinating all its people.<sup>17</sup>

### III. CONCLUSION

In light of the above, we respectfully ask that your administration designate Mexico for TPS on the basis of COVID-19. Such a designation would serve as a “bridge” for millions of people and their families who have built a life in the United States until a more permanent solution from Congress emerges. If you have any questions regarding this letter, please do not hesitate to contact [jose@masadc.com](mailto:jose@masadc.com).

Sincerely,

#### National Organizations

African Communities Together  
Alianza Americas  
Alianza Nacional de Campesinas  
American Federation of Teachers (AFT)  
Asylum Seeker Advocacy Project  
AsylumConnect  
Black LGBTQ+ Migrant Project (BLMP)  
Cameroon American Council  
CASA  
CASA in Action  
Center for Disability Rights

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<sup>13</sup> *Mortality Analyses*, Johns Hopkins U. & Med., <https://coronavirus.jhu.edu/data/mortality> (last updated Feb. 9, 2021).

<sup>14</sup> COVID-19 in Mexico, Ctrs. for Disease Ctrl. & Prev’n, <https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-mexico> (last updated Dec. 2, 2020).

<sup>15</sup> See Reuters Staff, *Second Mexican State to Enter Highest Coronavirus Alert Level*, Reuters (Nov. 6, 2020, 8:16 PM), <https://www.reuters.com/article/us-health-coronavirus-mexico/second-mexican-state-to-enter-highest-coronavirus-alert-level-idUSKBN27No11>; see also COVID-19 Information for U.S. Citizens in Mexico, U.S. Embassy & Consulates in Mexico, <https://mx.usembassy.gov/u-s-citizen-services/covid-19-information/> (last visited Dec. 16, 2020).

<sup>16</sup> See Mariana Campero & Linnea Sandin, *The Covid-19 Pandemic Threatens Mexico’s Economy*, Ctr. for Strategic & Int’l Stud. (June 17, 2020), <https://www.csis.org/analysis/covid-19-pandemic-threatens-mexicos-economy>. See also James Fredrick, *If Coronavirus Doesn’t Kill Me, Hunger Will’: Mexico’s Poor Bear Brunt Of Pandemic*, Nat’l Pub. Radio (July 30, 2020, 2:28 PM), <https://www.npr.org/2020/07/30/895698797/if-coronavirus-doesn-t-kill-me-hunger-will-mexico-s-poor-bear-brunt-of-pandemic>.

<sup>17</sup> Ass’d Press, *Mexico to Launch COVID-19 Vaccinations This Month*, ABC News (Dec. 8, 2020, 3:54 PM), <https://abcnews.go.com/Health/wireStory/mexico-launch-covid-19-vaccinations-month-74606597>; *Frequently Asked Questions about COVID-19 Vaccination*, Ctrs. for Disease Ctrl. & Prev’n, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html> (last updated Dec. 13, 2020). While Mexico has purchased 34.4 million doses, all but one vaccine currently undergoing Phase 3 trials in the United States require two doses per individual.

Coalition on Human Needs  
Community Change Action  
Congregation of Sisters of St. Agnes  
Doctors for America - Immigrant Health Justice Working Group  
Dominican Sisters of Sparkill  
Episcopal Network for Economic Justice (ENEJ)  
Fair Immigration Reform Movement (FIRM)  
Fellowship of Reconciliation (FOR-USA)  
Fellowship Southwest  
Franciscan Action Network  
Grey Nuns of the Sacred Heart  
Haitian Bridge Alliance  
Hispanic Federation  
Immigrant Legal Resource Center  
International American Relief Society IARS  
Lawyers for Good Government (L4GG)  
Leadership Conference of Women Religious  
League of Women Voters of the United States  
Local Progress  
Maryknoll Office for Global Concerns  
National Association of Social Workers  
National Immigrant Justice Center  
National Immigration Litigation Alliance  
National Korean American Service & Education Consortium (NAKASEC)  
National Network for Arab American Communities  
National Network for Immigrant and Refugee Rights  
National Organization for Women  
National Partnership for New Americans  
Network in Solidarity with the People of Guatemala (NISGUA)  
North American Climate, Conservation and Environment (NACCE)  
Our Lady of Victory Missionary Sisters  
Planned Parenthood Federation of America  
Presidents' Alliance on Higher Education and Immigration  
Provincial Council Clerics of St. Viator (Viatorians)  
Shiloh Restoration Church, Inc.  
Sisters of Charity, BVM  
Sisters of Mercy of the Americas - Justice Team  
Sisters of Notre Dame of the United States  
Sisters of St. Francis of Philadelphia and St. Aloysius Church in Spokane  
Sisters of the Holy Spirit and Mary Immaculate  
South Asian Americans Leading Together (SAALT)  
Southeast Asia Resource Action Center  
The Jus Semper Global Alliance  
Unitarian Universalist Service Committee  
United We Dream  
Win Without War

**State and Local Organizations**

Advocate Visitors with Immigrants in Detention  
AGS Immigrant Center, Inc.  
Alianza Sacramento

American Friends Service Committee, Colorado  
Black Immigrant Collective (BIC)  
Border Crit Institute  
Buen Vecino  
Cabrini Immigrant Services of NYC  
Caminando Juntos - Presentation Sisters Hispanic Ministry  
Campaign for Immigrant Detention Reform (CIDR)  
Central American Resource Center of Northern California - CARECENSF  
Centro de Comunidad y Justicia  
Church of Our Saviour/La Iglesia de Nuestro Salvador  
Coalition for Humane Immigrant Rights (CHIRLA)  
Colectivo de Mujeres Transnacionales  
Connecticut Shoreline Indivisible  
Convencion Bautista Hispana de Texas  
Cooperative Baptist Fellowship of Texas  
Durango Unido en Chicago  
Education and Leadership Foundation  
Faith Communities Organized for Sanctuary  
Franciscans for Justice  
Greater Cleveland Immigrant Support Network  
Haitian Americans United, Inc.  
Heights Friends of Immigrants  
Immaculate Heart Community Immigration Commission  
Immigrant Legal Advocacy Project  
Immigrant Legal Center of Boulder County  
Immigration Working Group of the Southwestern Pennsylvania Synod  
Indivisible Chicago - South Side  
Interfaith Council for Peace & Justice  
InterReligious Task Force on Central America and Colombia (IRTF Cleveland)  
Jewish Voice for Peace, Atlanta chapter  
Justice Committee Albany Province Sisters of St. Joseph  
Latin American Coalition  
Latino Pastoral Action Center & Sanctuary Church  
Legal Aid Justice Center  
Make the Road NY  
Migrant and Immigrant Community Action Project  
Motivation Motivates  
NC Conference of the United Methodist Church  
Northern Illinois Justice for Our Neighbors  
Ohio Immigrant Alliance  
Oregon Fellowship of Reconciliation  
Pennsylvania Council of Churches  
Pennsylvania Immigration and Citizenship Coalition  
Presentation Sisters of Aberdeen SD  
Quetzal Enterprises  
Raleigh Immigrant Community, Inc.  
Reedley Social Services, Inc.  
Rian Immigrant Center  
Rural & Migrant Ministry  
San Bernardino Community Service Center  
SIREN (Services, Immigrant Rights and Education Network)

Sisters of Charity of New York  
Sisters of Saint Joseph of Chestnut Hill, Philadelphia, PA  
Sisters of St. Dominic of Blauvelt, New York  
Sisters of St. Francis-Dubuque  
Sisters of St. Joseph of Carondelet, LA Province  
Sisters of St. Joseph of Orange  
Sisters of the Presentation, Dubuque, Iowa  
St. Stephen Lutheran Church  
STEP UP! Sacramento  
True Alliance Center, Inc.  
University of Maryland Carey Immigration Clinic  
University YMCA New American Welcome Center  
Venezuelans and Immigrants Aid (VIA)  
Wayne Action for Racial Equality  
WESPAC Foundation, Inc.  
Wilco Justice Alliance (Williamson County, TX)  
Wind of the Spirit Immigrant Resource Center