

POLICY & ADVOCACY REPORT

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Temporary Protected Status is Not a Permanent Fix, But a Necessary Life-Saving Tool for Some Black Immigrants

Asylum is an immigration protection for immigrants who have been persecuted on account of their race, religion, nationality, political opinion, or membership in a particular social group. People granted asylum in the United States are eligible to apply for lawful permanent residence after one year, allowing them to stay in the country permanently. Asylum is a life-saving protection for immigrants fleeing extreme danger in their home countries.

The asylum process is rigorous; over the past four years, more asylum applications were denied than granted.[1] Applicants must tell their stories many times and corroborate them with supporting evidence. While all asylum seekers face these hurdles, Black asylum seekers must overcome additional barriers. As described below, these barriers include racism in American policing that leads to immigration consequences and economic disadvantage. As a result, not only are some Black immigrants denied asylum or other relief, but some do not even get the chance to apply.

While asylum has failed some Black immigrants, there is another way to provide them immediate safety: expand Temporary Protected Status (TPS). TPS is a temporary protection that allows people from a designated country to remain in the United States while conditions in their home country make safe return impossible. A country can be designated for TPS if it is experiencing ongoing armed conflict, natural disaster, or other extraordinary and temporary conditions. TPS allows its beneficiaries to stay and legally work in the United States during the designation period. The TPS application process is quicker, less complex, less expensive, and less prone to arbiters' biases than asylum. Although it is not a perfect fix, TPS can provide immediate life-saving relief to some Black immigrants.

Racism in Policing and the “Prison to ICE to Deportation” Pipeline

Although Black immigrants commit crime at similar rates to other immigrant populations, they are significantly more likely to be detained and deported on criminal grounds. While only 7% of U.S. immigrants are Black, they make up 20% of those facing deportation based on a criminal conviction.[2] This is in part due to racial profiling in American policing; Black people in the United States are arrested at 2.5 times the rate of Whites despite similar criminal activity rates.[3] Once immigrants are entangled in the criminal justice system, they are often flagged by ICE as well.[4] This process creates a “jail to ICE detention to deportation” pipeline that disproportionately targets Black immigrants.[5] Racist policing therefore contributes to racism in the immigration system.

Interaction with the criminal justice system can not only trigger deportation proceedings, but it can also bar immigrants from obtaining asylum. Even though asylum is meant to be a life-saving protection for migrants who face persecution if deported, an applicant who would otherwise qualify can still be barred and deported if the applicant has certain criminal convictions.[6]

Although there are criminal bars to obtaining TPS as well, having TPS can protect a person from the “prison to ICE” pipeline, as TPS holders cannot be detained in ICE detention centers based on their immigration status.[7] In communities where the police and ICE work together, police may use minor traffic stops as a pretext to question people about their immigration status and turn them over to ICE.[8] Since TPS holders are legally present in the United States, having TPS can be a small but useful defense against ICE, especially for those who have been denied or cannot afford to apply for asylum and may be undocumented.

Financial Barriers to Asylum

The average income of Black immigrant households is \$4,200 less per year than that of other immigrants.[9] Black immigrants suffer from the highest unemployment rate amongst immigrant groups, and Black immigrant women make 8-10% less than White US-born women. [10] A 2019 study by the American Sociological Association found that African immigrants are more likely to be overeducated for the jobs they hold than other immigrants, and thus experience large wage penalties relative to their qualifications.[11]

The financial discrimination Black immigrants face in the workforce puts them at a disadvantage in their immigration cases. While asylum applications are free, hiring a lawyer is not; it can cost thousands of dollars to hire a lawyer for your case. And although it is possible to apply for asylum without one, having an attorney increases an asylum-seeker's chances of success fivefold.[12] A lawyer is not the only expense needed in some cases; detained immigrants incur great costs to bond out of ICE detention. And because Black immigrants are more likely to be arrested and charged with crimes due to discriminatory policing, they are also disproportionately detained by ICE and forced to pay higher bonds for their release. The immigration advocacy organization RAICES found that Black Haitian immigrants must pay over \$16,000 on average to bond out of immigration detention, compared to \$10,500 for non-Black immigrants.[13]

Given the costs of obtaining asylum, Black immigrants are doubly disadvantaged in that they are less likely to have the money to afford relief, and they are also expected to pay more for their freedom. In contrast to asylum, which is legally complex, applying for TPS is relatively straightforward. The application (including a work authorization document) can cost up to \$545, but given the comparative simplicity of the process, a lawyer is often not needed beyond the filing.[14]

Temporary Protected Status as a Way Forward

Although the immigration system has failed Black immigrants in many respects, TPS offers a quick and easily accessible temporary solution to save Black lives. TPS allows anyone from a designated country to apply for and get TPS so long as they meet certain background check and residency requirements. The use of TPS acknowledges the dangers many Black immigrants face upon deportation. It provides protection to a broader range of people than asylum does, costs less, and can protect against some of the racial biases in the criminal justice system.

The Biden Administration should expand its use of TPS to protect Black immigrants, and Congress should create legal pathways for TPS holders to gain lawful permanent residence. In particular, the administration should grant TPS for Mauritania, Cameroon, Sierra Leone, and the Democratic Republic of the Congo, and redesignate TPS for Haiti, Somalia, South Sudan, and Sudan. All of these Black-majority countries are experiencing volatile and life-threatening conditions that make safe return impossible. Many nationals of these countries have either applied for asylum and been denied, or never had the chance to apply. While TPS cannot solve the many complex issues in the immigration system, it can provide relief to Black immigrants whose lives would be in danger if they were deported.

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United States Issue Updates

- **Biden Administration Reverses and Revises FY 2021 Presidential Refugee Admissions Determination to 62,500**

On Monday, May 3, the Biden Administration announced an FY 2021 Presidential Determination for refugee admissions of 62,500. In a statement, President Biden indicated that “given the ongoing unforeseen emergency refugee situation, I now determine, consistent with my Administration’s prior consultation with the Congress, that raising the number of admissions permissible for FY 2021 to 62,500 is justified by grave humanitarian concerns and is otherwise in the national interest.” This action followed significant pressure from Members of Congress and the refugee advocacy community to revise the Administration’s April 16 Determination, which altered regional allocations while maintaining a refugee admissions threshold of 15,000. The revised FY 2021 regional allocations are: 22,000 for Africa; 6,000 for East Asia; 4,000 for Europe and Central Asia; 5,000 for Latin America and the Caribbean; 13,000 for the Near East and South Asia; and 12,500 for an unallocated reserve. To read the Presidential memorandum, [click here.](#)

- **DHS Limits Immigration Enforcement in and near Courthouses**

On Tuesday, April 27, the Department of Homeland Security (DHS) announced new guidelines for its agencies Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). The guidelines restrict agents from pursuing civil immigration infractions in or near courthouses. Similar restrictions were lifted under the prior administration, leading many—including judges and prosecutors—to believe in a chilling effect, in which immigrants were unwilling to come to court or work cooperatively with law enforcement even in matters unrelated to immigration. Under the new guidelines, regular immigration-enforcement actions may only occur at courthouses if they (1) involve a national security matter, (2) present an imminent risk of death, violence, or physical harm to any person, (3) involve “hot pursuit” of an individual who poses a threat to public safety, or (4) present an imminent risk of destruction of evidence material to a criminal case. To read the announcement from DHS, [click here.](#)

- **Administration Nominates Sheriff Ed Gonzalez as Director of ICE**

On Tuesday, April 27, the Biden Administration announced the nomination of Ed Gonzalez as Director of ICE, which is charged with arresting, detaining, and deporting immigrants, among other duties. Since 2016, Gonzalez has been the elected Sheriff of Harris County, Texas, which is the most populous county in Texas and includes the city of Houston. In April 2017, Gonzalez withdrew Houston and other cities in Harris County from a controversial agreement with ICE that used local deputies to identify undocumented immigrants for deportation, known as 287(g). To read the nomination announcement, [click here.](#)

- **Supreme Court Clarifies Rules on the “Notice to Appear” in Immigration Proceedings**

On Thursday, April 29, the Supreme Court issued a 6-3 decision in the case of *Niz-Chavez v. Garland*, with Justice Neil Gorsuch writing for the majority. The ruling holds that a “Notice to Appear” (NTA) must be a single document rather than a combination of documents, and that requirements imposed by Congress must appear in that single document for the NTA to be valid per the text of 8 U.S.C. 1229(b)(1). “If men must turn square corners when they deal with the government,” Justice Gorsuch wrote, “it cannot be too much for the government to turn square corners when it deals with them.” The ruling complements the Supreme Court’s similar ruling in the 2018 case *Pereira v. Sessions*. To read the ruling, [click here.](#)

United States Issue Updates (Cont'd)

- **Biden Administration Announces \$310 Million in Aid for Central American Countries**

On Monday, April 26, the Biden Administration announced that \$310 million in funds for both humanitarian relief and to address food security concerns would be disbursed to the Central American countries of El Salvador, Guatemala, and Honduras. The largest portion of the funds, sent by USAID, will be used to “mitigate the impact of recurrent drought, food shortages, and the ongoing COVID-19 pandemic,” as part of the funds earmarked for the purposes of humanitarian relief. Overall, \$255 million is to be spent on humanitarian relief, while \$55 million is to be spent to address food insecurity. Overall, this action ties into the Administration’s focus on both mitigating the long-term root causes of migration, and on the more short-term crisis of the COVID-19 pandemic. To read the announcement, [click here](#).

- **Justice Department Ends Restrictions on Funding for Sanctuary Cities**

On Wednesday, April 28, the Department of Justice issued an implementation memorandum that allows cities and localities to receive Edward Byrne Memorial Justice Assistance Grants (Byrne JAG). The Byrne JAG program provides a total of \$250 million to local, regional, and state criminal justice agencies. The April 28 memo followed an earlier memo on April 14, issued by Attorney General Merrick Garland, which had instructed the Justice Department to implement Executive Order 13993 from President Biden that overturned Executive Order 13768, which had required cities and localities to cooperate with ICE in order to receive Byrne JAG funding. To read President Biden’s Executive Order, [click here](#).

- **DHS Biometrics Rule to be Withdrawn**

On Friday, May 7, the Biden Administration published a Federal Register notice that formally withdraws a proposed rule to increase the use of biometrics in immigration processing as part of a “continual vetting process” for immigrants. The withdrawn rule had been proposed by the Trump Administration on September 11, 2020. The Federal Register notice justified the withdrawal after “[h]aving reviewed the public comments received in response to the NPRM in light of Executive Order 14012.” Executive Order 14012, issued on February 2 of this year, directs the whole of the federal government to develop “welcoming strategies that promote integration, inclusion, and citizenship” of immigrants. To read President Biden’s executive order 14012, [click here](#); to read the Federal Register notice of withdrawal, [click here](#).

Around the World in International Migration

• Thousands Flee Taliban Offensive

Thousands of Afghans have fled their homes in response to fighting that erupted between the Taliban and government forces last week. Most have sought refuge in Lashkar Gah, a city in the southwest of the country, but many still have not found shelter and are in urgent need of assistance.

The fighting began when Taliban forces attacked Afghan military locations in an apparent response to the United States' failure to withdraw all troops by a May 1 deadline. The Afghan Defense Ministry reports that at least 100 Taliban fighters were killed, but it is unclear how many others were killed or injured. Critics of the U.S. decision to withdraw have been concerned about a Taliban takeover or even a new civil war.

• Concerns Rise that Tigrayans are Being Ethnically Cleansed

Tigrayans across Ethiopia are being targeted by security forces, arbitrarily arrested, and fired from their jobs, and have even had their bank accounts frozen. While Prime Minister Abiy Ahmed claims that the government is fighting the armed Tigray People's Liberation Front (TPLF) group and not the Tigrayan people, the Attorney General stated that the "TPLF had a huge network in Addis, so we had to err on the side of caution," and that "innocent people might be caught up in this situation." International concern is growing that the government is orchestrating ethnic cleansing against Tigrayans. More than 60,000 Tigrayans have fled across the border to Sudan since November of 2020, and some former Tigrayan peacekeepers have sought asylum in South Sudan.

• Myanmar's Military Expands Campaign of Violence, Ignores International Advice

Despite a five-point consensus reached by the Association of Southeast Asian Nations (ASEAN) last month to end the violence in Myanmar, Myanmar's military now says it will not invite another ASEAN delegation until it can establish "stability" in the country. International observers worry that for the military, gaining "stability" will mean cracking down with more violence and more human rights violations against civilians. Protests against the military takeover have occurred almost daily in the capital city. The military has responded with lethal force, killing over 700 people and detaining almost 4,000. The military has called the protestors and members of small ethnic armed groups "terrorists." Bombings have become commonplace both in rural borderlands and in larger cities. The U.S.-based human rights coalition Campaign 4 Burma is now pressing the United Nations to step in and advocating for a global arms embargo against the military.

• Malawi Backtracks on Refugee Integration, Orders Refugees Back to Camp

Malawi has made a sudden decision to order thousands of refugees who have long been integrated into Malawian society back into a single refugee camp. Although the camp was initially built to house only 14,000 refugees, it now hosts almost 50,000. The decision to force more refugees into the camp has sparked protest amongst the refugees, many of whom are fully integrated, have run businesses outside the camps for years, and have even married Malawian citizens. Although the United Nations High Commissioner for Refugees (UNHCR) states that the decision is technically in line with the country's refugee laws, the relocation could have "serious human rights implications."

Some government officials have said the decision was meant as a protection measure in relation to a recent insurgency across the border in Mozambique, but one human rights activist believes the move has more to do with complaints from local businesspeople about competition from the refugees. Refugees, human rights activists, and UNHCR are all calling on Malawi to reconsider.



Policy & Advocacy Wins

- On April 29, Sen. Jeff Merkley (D-OR) introduced the Freedom for Families Act, which limits the use of family detention for asylum seekers and strengthens the child protection measures of the Flores Settlement Agreement. USCRI consulted on the update of the bill for the current Congress and has endorsed the bill.
- On April 27, the Office of Refugee Resettlement (ORR) adopted two temporary technical changes suggested by USCRI, regarding the care of unaccompanied children. The changes pertain to the timeline for training new hires at shelters and to staff-child ratios when state and federal requirements contradict each other.

Upcoming Meetings & Events

Facebook Live Series on Unaccompanied Children- May 13

On Thursday, May 13 at 2:00 PM EST, USCRI will host its first in a five-part series documenting the journey of unaccompanied children through the U.S. immigration system. The first session will be a discussion with USCRI's Shelter Director, Elcy Valdez. To tune in, [click here.](#)

From Here Documentary Screening- May 20

On Thursday, May 20 at 9:00 PM EST, Mosaic America and the San Jose Museum of Art will screen the new documentary "From Here," a story of immigrants living in the United States and Germany and dealing with racism and the fight for citizenship. For more information and to register, [click here.](#)

Immigration Matters: Movements, Strategies, and Vision for a Progressive Future- May 20

On Thursday, May 20 at 1:00 PM EST, join top immigration experts for a discussion of the new book "Immigration Matters," and learn how to build a just system where immigrants and refugees can thrive. For more information and to register, [click here.](#)

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If you have any questions or comments, please contact the Policy and Advocacy Division at policy@uscrimail.org.