

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JOSE G. BATRES-JURADO,)
DELIA BENITEZ,)
JUDYS GARCIA,)
ADALI RODRIGUEZ-AREVALO,)
MARIO FLORES,)
DAVID GARCIA,)
MARIA A. RAMOS-CRUZ,)
EVER O. BENITEZ,)
MARIO A. MARTINEZ,)
MARIA RIVAS-GUERRA,)
ERCILIA REYES,)
RUDY MIRANDA,)
ZENIA D. CANALES,)
AMADEO HERNANDEZ-MARTINEZ,)
JOSE R. VASQUEZ-PONCE,)
EVELIN ALVAREZ,)
KERIN A. RIVERA,)
SANDRA PORTILLO,)
MOISES PAZ-PORTILLO,)
SAUL A. VASQUEZ,)
GABRIELA SANABRIA,)



Civil Action No.: _____

ELIDA REYES-BARAHONA,)

RONALD CACERES,)

CARLOS BUSTILLO-BONILLA,)

DELMA BENITEZ,)

PEDRO A. SILVA-MEMBRENO)

Plaintiffs)

v.)

TOM RIDGE, SECRETARY,)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY,)

EDUARDO AGUIRRE, DIRECTOR,)
BUREAU OF CITIZENSHIP AND)
IMMIGRATION SERVICES,)

and)

PAUL NOVAK, DIRECTOR,)
VERMONT DISTRICT, BUREAU OF)
CITIZENSHIP AND IMMIGRATION)
SERVICES)

Defendants)

COMPLAINT FOR MANDAMUS

INTRODUCTION

1. This civil action is brought to compel Defendants and those acting under them to perform duties required of them by laws, regulations and policies to promptly restore Plaintiffs' Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254, or in the alternative to allow them to re-register for TPS.

2. Plaintiffs have been severely damaged by the Defendants' arbitrary revocation of their TPS status because of Defendants' confusing and misleading guidance regarding required annual TPS registration, and Defendants' have further failed to act in accordance with their duties under the law that notices shall be provided in a form and language that Defendants can understand. Plaintiffs assert rights to relief jointly, severally, and from claims arising from the same transactions or occurrences with questions of law and fact common to all; namely, revocation of their TPS status directly resulting from misleading guidance promulgated by Defendants. Plaintiffs are persons ". . . adversely affected or aggrieved by agency action" within the meaning of 5 U.S.C. §702 and, as guaranteed by the statutes, "entitled to judicial review thereof."
3. Defendants' refusal to renew Plaintiffs' TPS status is, as a matter of law, arbitrary, unreasonable and not in accordance with law. Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. 701 et seq., are unlawfully withholding or unreasonably denying action on Plaintiffs immigration matters and have failed to carry out functions delegated to them by law with regard to Plaintiffs' cases.
4. Plaintiffs have exhausted all administrative remedies available under Section 336 of Title 8, Code of Federal Regulations by submitting requests for status renewal and explaining their legitimate reasons for failure to meet their annual deadline for TPS registration to the Defendant agency.

5. Plaintiffs are entitled to Mandamus relief because (1) their claims are clear and certain, (2) the duties owed to them by the Defendants are ministerial and so plainly prescribed as to be free from doubt, and (3) adequate alternative remedies are not available. *Yu v. Brown*, 36 F. Supp.2d 922, 933-934 (D. New Mexico 1999).

STATEMENT OF THE CASE

6. This is a proceeding brought by individual El Salvadoran immigrants who were granted Temporary Protected Status (TPS) under the provisions of 8 U.S.C. 1254 of the Immigration and Nationality Act (INA).
7. TPS is an immigration status granted by the Attorney General, pursuant to 8 U.S.C. 1254, to aliens who are nationals of a foreign state in which there is an ongoing armed conflict or in which there exist extraordinary and temporary conditions that prevent the aliens from returning to their country in safety. Immigrants granted TPS are not removable from the United States during the period in which such status is in effect. 8 U.S.C. 1254 (a)(1)(A).
8. The Attorney General is also required to authorize aliens granted TPS to engage in employment in the United States and provide such aliens with “employment authorized” endorsement or other appropriate work permit. 8 U.S.C. 1254 (a)(1)(B).
9. The provisions of 8 U.S.C. 1254 (a)(2), entitled “Duration of work authorization,”

- state that, “Work authorization provided under this section shall be effective **throughout the period** the alien is in temporary protected status under this section.” (Emphasis added). This paragraph says nothing about work authorization being effective beyond the period that the alien is in temporary protected status as has been the result of Defendants’ conflicting guidance.
10. According to 8 U.S.C. 1254 (a)(3)(D), “Notices under this paragraph shall be provided in a form and language that the alien can understand.”
 11. Aliens granted TPS are required to register annually with the Bureau of Citizenship and Immigration Services (BCIS) (formerly with the Attorney General/Immigration and Naturalization Service). Per 8 U.S.C. 1254 (c)(3)(C), the TPS shall be withdrawn, “if the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status . . .” In this case, Plaintiffs’ TPS was withdrawn by Defendants because of Plaintiffs’ alleged failure to re-register for TPS on or before the deadline of November 12, 2002.
 12. Plaintiffs’ failure to re-register by the November 12, 2002 deadline was a direct result of bad faith actions by Defendants’ who promulgated misleading and confusing guidance concerning the annual re-registration period.
 13. Specifically, Defendants publicized to Plaintiffs that the El Salvador TPS Employment Authorization Document (EAD) validity period was extended from September 9, 2002 to March 9, 2003. This extension of the EAD, published in English only (not the Plaintiffs’ native language of Spanish) and unaccompanied by clear guidance required by 8 U.S.C. 1254 (a)(3)(D)s on the annual TPS re-

registration requirement, misled Plaintiffs to believe that they did not have to re-register for TPS until March 9, 2003 since TPS re-registration and renewal of TPS EAD's have traditionally been inextricably linked to the same date in previous years and in consonance with 8 U.S.C. 1254 regarding the effective periods of work authorizations.

14. Plaintiffs, upon learning of the correct registration period, nevertheless attempted to register for TPS by providing good cause for their delay in accordance with 8 CFR 244.14 (b)(1), citing the misleading guidance regarding the TPS EAD extension. Plaintiffs' attempts to re-register were denied by the Defendants as being untimely since they were made beyond the thirty days allowed by the INA. Defendants have repeatedly refused to acknowledge that their directions concerning TPS EAD extension was misleading and confusing to Plaintiffs.
15. Defendants' intentional promulgation of misleading guidance concerning TPS registration and their subsequent refusal to accept Plaintiff's attempts to register with legitimate explanations for the delay (because of EAD extension confusion) have caused harm to Plaintiffs, who have now lost their TPS status, are unable to legally engage in employment, and are deemed subject to removal (deportation) from the United States in violation of the spirit of the TPS laws and regulations.
16. Defendants publication of misleading guidance regarding TPS re-registration and failure to accept Plaintiffs' delayed registration constitute tortious intentional/negligent misrepresentation cognizable under the Federal Tort Claims Act, an alternative to Mandamus relief for Plaintiffs. Moreover, Defendants' actions have violated Plaintiffs' rights to Due Process under the Fifth and Fourteenth

Amendments to the United States Constitution, as well Congressional intent for the protection of immigrants in accordance with 8 U.S.C. 1254.

17. Plaintiffs seek judgmental, declaratory and injunctive relief with respect to the Defendants' actions. Specifically, Plaintiffs seek a judgment that Defendants actions are in violation of Defendants' duties under 8 U.S.C. 1254, in violation of Plaintiffs' Constitutional rights to be afforded due process of law and Congressional intent for the protection of El Salvadoran aliens in accordance with 8 U.S.C. 1254. Furthermore, Plaintiffs seek declaratory relief restoring their El Salvadoran TPS status and injunctive relief to prohibit Defendants from commencing removal actions pending restoral of their status.

JURISDICTION

18. This court has jurisdiction over the present action pursuant to 8 U.S.C.S. §1329 of the Immigration and Nationality Act, providing for jurisdiction of this court over actions arising under said Act; 28 U.S.C. §1331 (Federal Question Jurisdiction) and 28 U.S.C. §1361, regarding an action to compel an officer of the United States to perform his duty. Jurisdiction is also conferred by 5 U.S.C. §701, 5 U.S.C. §702, 5 U.S.C. §704 (Administrative Procedures Act) *et seq.* and 28 U.S.C. 2201 (Declaratory Judgment Act). Relief is requested pursuant to said statutes.

VENUE

19. 28 U.S.C. Section 1391 (e), as amended, provides that in a civil action in which each defendant is an officer or employee of the United States or any agency

thereof acting in his official capacity, or under color of legal authority, or any agency of the United States, the action may be brought in any judicial district in which a defendant in the action resides. Plaintiffs are residents of the Eastern District of Virginia, and Defendant BCIS is an agency, which operates within this district.

THE PARTIES

20. Jose G. Batres-Jurado, Delia Benitez, Judys Garcia, Adali Rodriguez-Arevalo, Mario Flores, David Garcia, Maria A. Ramos-Cruz, Ever O. Benitez, Mario A. Martinez, Maria Rivas-Guerra, Ercilia Reyes, Rudy Miranda, Zenia D. Canales, Amadeo Hernandez-Martinez, Jose R. Vasquez-Ponce, Evelin Alvarez, Kerin A. Rivera, Sandra Portillo, Moises Paz-Portillo, Saul A. Vasquez, Gabriela Sanabria, Elida Reyes-Barahona, Ronald Caceres, Carlos Bustillo-Bonilla, Delma Benitez, and Pedro A. Silva-Membreno.

All above-named parties to this action are natives of El Salvador who applied for TPS and received EADs with expiration dates in March 2003. All named parties reasonably believed their EADs were extended along with TPS since the basis of EAD was TPS. All named parties never received any notification in English or Spanish with their EADs.

21. Defendant Thomas Ridge is Secretary of the Department of Homeland Security of the United States, and this action is brought against him in his official capacity. He is generally charged with litigation and enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to

subordinate employees of the Department of Homeland Security. 8 U.S.C. 1103

(a).

22. Defendant Eduardo Aguirre is Director of the Bureau of Citizenship and Immigration Services (BCIS), United States Department of Homeland Security generally charged with supervisory authority over all operations in the BCIS, responsible for processing and decision making regarding TPS actions.
23. Defendant District Director Paul Novak is an official of the Bureau of Citizenship and Immigration Services (BCIS), United States Department of Homeland Security generally charged with supervisory authority over all operations in the BCIS within his District (Vermont), responsible for processing and decision making regarding TPS actions, with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B). Defendant District Director is the official with whom Plaintiffs' immigration actions were properly filed.

CLAIMS

24. Defendants' intentional promulgation of misleading guidance concerning TPS registration and their subsequent refusal to accept Plaintiff's attempts to register with legitimate explanations for the delay (because of EAD extension confusion) have caused harm to Plaintiffs, who have now lost their TPS status and employment, are deemed subject to removal (deportation) from the United States.
25. Defendants' publication of misleading guidance regarding TPS re-registration and

- failure to accept Plaintiffs' delayed registration constitute tortious intentional/negligent misrepresentation cognizable under the Federal Tort Claims Act.
- Defendants' tortious acts have directly and proximately caused emotional, mental, and financial harm to Plaintiffs whose jobs/sources of livelihood have been jeopardized by loss of immigration status and who now live in constant fear of deportation.
- 26.** Defendants' actions have violated Plaintiffs' rights to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution by publicizing misleading guidance on registration procedures and then failing to consider their explanations for late registration resulting from that misleading guidance.
- 27.** Defendants actions have violated both the letter and the spirit of 8 U.S.C. 1254 which governs TPS, and is intended to afford refuge and protection to those aliens who cannot return to their native countries in safety.
- 28.** Defendants owe Plaintiffs the duty to promulgate clear and understandable guidance concerning TPS procedures and to renew TPS for those persons who have registered late as a direct result of guidance which was misleading and unclear.
- 29.** Plaintiffs have exhausted any and all administrative remedies that exist. No other remedy exists for Plaintiffs to resolve Defendants' delay.
- 30.** Plaintiffs have been forced to retain the services of an attorney to pursue the instant action because of Defendants' denials of action on their respective cases.

PRAYER

WHEREFORE, in view of the facts and arguments herein, Plaintiffs pray that this Honorable Court enter an order:

1. Declaring that Defendants actions are in violation of Congressional intent and Defendants' duties under 8 U.S.C. 1254;
2. Finding that Defendants have violated Plaintiffs' Constitutional rights to be afforded due process of law by promulgating misleading guidance regarding TPS registration, arbitrarily revoking their TPS status, and denying Plaintiff's attempts to obtain TPS reinstatement following the registration period;
3. Directing Defendants to restore Plaintiffs' El Salvadoran TPS status or allowing them to re-register for TPS;
4. Prohibiting Defendants from commencing removal actions against Plaintiffs pending restoral of their TPS status.
5. Awarding Plaintiffs reasonable attorney fees; and
6. Granting such other relief at law and in equity as justice requires.

Respectfully Submitted,

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703-796-0801

CERTIFICATE OF SERVICE

I hereby certify that I have this _____ day of _____, 2003 caused to be served a copy of the foregoing and attached document in the above-cited case on the following parties via first class mail, delivery at the following address:

Tom Ridge
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Department of Homeland Security
Washington, D.C. 20536

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