

No. 20-315

IN THE
Supreme Court of the United States

JOSE SANTOS SANCHEZ, ET AL.,
Petitioners,

v.

ALEJANDRO N. MAYORKAS, SECRETARY OF HOMELAND
SECURITY, ET AL.,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

**BRIEF OF AMICI CURIAE 22 CITIES AND
COUNTIES IN SUPPORT OF PETITIONERS**

MARGARET L. CARTER
Counsel of Record
DANIEL R. SUVOR
O'MELVENY & MYERS LLP
400 South Hope Street
18th Floor
Los Angeles, CA 90071
mcarter@omm.com
dsuvor@omm.com
(213) 430-6000

*Counsel for Amicus Curiae
County of Los Angeles, Calif.*

Additional Counsel for Amici Listed in Appendix

QUESTION PRESENTED

Whether, under 8 U.S.C. § 1254a(f)(4), a grant of Temporary Protected Status authorizes eligible noncitizens to obtain lawful-permanent-resident status under 8 U.S.C. § 1255.

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INTERESTS OF AMICI CURIAE¹

Amici Curiae comprise 22 cities and counties.² They span every corner of the country: from urban metropolises and industrial centers to smaller communities and agricultural hubs. They include some of the most populous and diverse cities and counties in the United States, as well as jurisdictions of more modest size. Together, amici represent a broad cross-section of American communities and a wide spectrum of economic, political, and cultural perspectives. Individuals of every race, ethnicity, nationality, culture, and creed call amici home.

Although far from homogenous, amici share a common interest in building prosperous, healthy, and civically engaged communities. Immigrants from all around the world, along with more than 400,000 Temporary Protected Status (“TPS”) recipients, play integral roles in amici’s communities. These individuals have started families, developed careers, built homes, and invested their dreams in this country.

The government’s interpretation of the TPS statute, 8 U.S.C. § 1254a(f)(4),³ would prevent most TPS

¹ The parties have consented in writing to the filing of this brief. *See* Sup. Ct. R. 37.3(a). No party’s counsel authored this brief in whole or in part, and no person or entity other than amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See* Sup. Ct. R. 37.6.

² A complete list of amici is provided as Appendix A.

³ Unless otherwise indicated, all references to a standalone statutory section refer to the Immigration & Nationality Act, 8 U.S.C. §§ 1101, *et seq.*

holders from adjusting status without first leaving the United States and returning to the unsafe countries they fled. The result not only deprives individual TPS holders of the opportunity to attain lawful permanent residence and even citizenship, but also harms all residents in amici's communities. Lawful permanent residence—and its corresponding pathway to citizenship—brings with it a host of societally advantageous benefits, including increased education, higher earnings, better healthcare access, and deeper civic engagement. When TPS holders are denied the opportunity to adjust status, amici's communities lose out too, unable to reap these financial, health, civic, and cultural rewards.

As our country's history proves, the collective success of amici's communities depends on the contributions of all their residents—TPS holders included. Their ability to qualify as lawful permanent residents and naturalize as citizens will drive amici's future growth and prosperity. Amici therefore have a strong interest in ensuring that TPS recipients with otherwise valid claims for adjusting status are permitted to do so.

SUMMARY OF THE ARGUMENT

More than 411,000 TPS recipients live in the United States today, many of them deeply integrated into the fabric of amici’s communities—buying homes, growing families, pursuing higher education, developing careers, engaging civically, and contributing economically. The government’s interpretation of 8 U.S.C. § 1254a(f)(4), which effectively bars the majority of TPS holders from adjusting status, tears at that fabric. It is also unlawful and inconsistent with the Immigration and Nationality Act (“INA”).

Requiring TPS holders to return to dangerous conditions in their home countries in order to become lawful permanent residents is an undue burden that would severely harm them and their communities. Lawful permanent residence brings with it a host of benefits, including better educational, economic, and health outcomes. These benefits only multiply when lawful permanent residents naturalize. And these contributions directly invigorate amici’s communities, making those communities stronger, wealthier, and healthier. Yet the government urges the Court to adopt an interpretation of the TPS statute that would deprive TPS holders and amici’s communities of these invaluable opportunities.

The government’s interpretation of the TPS statute is also irreconcilable with the text, structure, and purpose of the INA.

First, a straightforward reading of the INA makes plain that eligible TPS recipients can adjust status under section 1255. Section 1254a(f)(4) provides that TPS recipients are “considered” “as being in” “lawful

status as a nonimmigrant” “for purposes of adjustment of status under section 1255.” In other words, the INA directs TPS recipients to be treated as nonimmigrants when they apply to adjust status—and nonimmigrants are necessarily inspected and admitted. Because TPS recipients are “inspected and admitted” for purposes of section 1255(a), they are eligible for adjustment of status if they meet the other statutory requirements. The structure of the Act reinforces this plain reading.

Second, the government’s strained reading would frustrate the central purpose of the TPS regime and cause serious harm to amici’s communities. The government’s interpretation would require most TPS holders hoping to adjust status to first return to their native countries—the same countries that Congress and the Department of Homeland Security (“DHS”) Secretary have already deemed unsafe—and wait years or even decades for approval of their visa petitions before returning to their homes in the United States. Many of amici’s residents would lose the support and care of a family member for an indeterminate time, while suffering the uncertainty and worry of knowing their loved one faces danger in an unsafe country. And amici’s communities would be deprived of valuable contributing members. This cannot have been Congress’s intent when it drafted the TPS statute—which was designed precisely to spare individuals from returning to calamitous circumstances and to encourage them to integrate into American communities.

ARGUMENT

I. THE GOVERNMENT'S INTERPRETATION WOULD PREVENT MOST TPS HOLDERS FROM ADJUSTING STATUS AND WOULD HARM AMICI'S COMMUNITIES.

Amici recognize and value TPS recipients as vital, longstanding members of their communities. Eliminating adjustment of status for TPS recipients who initially entered the United States without authorization—the overwhelming majority of all TPS holders—forecloses the opportunities associated with lawful permanent residence, including long-term membership in American society and a pathway to citizenship. Lawful permanent residence and the prospect of citizenship confer important individual benefits, including higher earnings, greater investment in education and training, and better access to healthcare. These enhanced individual outcomes inure to the benefit of all residents and make amici's communities better—wealthier, stronger, and healthier. If most TPS recipients are unable to adjust status, they, their families, and their communities will suffer.

A. TPS Recipients Are Deeply Integrated Into Amici's Communities.

Some 411,000 individuals living in communities across the United States have received TPS protection.⁴ Most TPS holders are long-term residents of the United States; the majority have lived in this

⁴*Temporary Protected Status: Overview and Current Issues*, Congressional Research Service 5 (Oct. 2020), <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

country for over two decades.⁵ Many of these long-term TPS holders arrived in the United States at very young ages.⁶ Gege Baptiste, for instance, is a Haitian TPS recipient who arrived in the United States when she was just two.⁷ Despite knowing only the United States as home, Ms. Baptiste does not enjoy the same benefits of U.S. citizenship as her two younger U.S.-born sisters.⁸

⁵ *Overcoming the Odds: The Contributions of DACA-Eligible Immigrants and TPS Holders to the U.S. Economy*, New American Economy Research Fund (June 3, 2019), https://research.newamericaneconomy.org/report/overcoming-the-odds-to-the-u-s-economy/#_ftnref8 (citing Patricia Guadalupe, *Immigrants Protected in U.S. for Decades Face Another Year of Uncertainty*, NBC News (December 28, 2018); *Temporary Protected Status Designated Country: Honduras*, U.S. Citizenship and Immigration Services, March 27, 2019, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras>).

⁶ For instance, between 20–30% of TPS holders from El Salvador, Honduras, and Haiti—who together account for 93% of all TPS holders—were younger than 15 when they arrived. Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 55 *J. on Migration & Human Security* 577 (2017), <https://journals.sagepub.com/doi/pdf/10.1177/233150241700500302>.

⁷ Mya Jaradat, *What Happens When Someone Spends Decades in America Legally on “Temporary” Status?*, Desert News, (Sept. 27, 2020), <https://www.deseret.com/indepth/2020/9/27/21364980/haitian-college-university-students-tps-holders-federal-financial-aid>.

⁸ *Id.*

TPS holders nevertheless have established rich lives in amici’s communities. Many TPS holders have built families in the United States: TPS holders from El Salvador, Honduras, and Haiti care for over 279,000 U.S.-citizen children⁹—such as Ms. Baptiste’s sisters—and between 5–10% of TPS holders are married to U.S. citizens or lawful permanent residents.¹⁰ These familial connections result in tangible roots too: A survey of TPS holders found that over 30% owned their home.¹¹

TPS holders’ strong ties to their communities bring vital economic and public welfare contributions. For example, many TPS holders are essential workers. Their roles in the healthcare, grocery, and food distribution and delivery industries have buoyed our economies—and protected and comforted our most vulnerable neighbors—during the enormous hardship caused by the COVID-19 pandemic.¹² Óscar Cedillo,

⁹ Leila Schochet & Nicole Prchal Svajlenka, *How Ending TPS Will Hurt U.S.-Citizen Children*, Ctr. for Am. Progress (Feb. 11, 2019), <https://www.americanprogress.org/issues/immigration/reports/2019/02/11/466022/ending-tps-will-hurt-u-s-citizen-children/>.

¹⁰ Warren & Kerwin, *supra* n.6.

¹¹ Cecilia Mejívar, PhD, *Temporary Protected Status in the United States: The Experiences of Honduran and Salvadoran Immigrants* 19 (May 2017), http://ipsr.ku.edu/migration/pdf/TPS_Report.pdf.

¹² Nicole Prchal Svajlenka & Tom Jawetz, *A Demographic Profile of TPS Holders Providing Essential Services During the Coronavirus Crisis*, Ctr. for Am. Progress (Apr. 14, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/>

a TPS recipient from Honduras, works on the front lines as a janitor at Kaiser Permanente clinics in Montgomery County, Maryland.¹³ Throughout the pandemic, he has risked his health to keep hospitals safe and clean.¹⁴ Many TPS holders work alongside Mr. Cedillo at hospitals, medical facilities, and other critical service providers.¹⁵

TPS holders also help drive amici's economies. In 2017, TPS holders paid \$654 million in state and local taxes.¹⁶ And over 50,000 TPS holders from El Salvador, Honduras, and Haiti have pursued higher education, setting themselves on a path to higher earnings and even greater economic contributions.¹⁷ Jennifer Mendez is a TPS recipient whose parents worked long hours, paid taxes, and built a stable life in the United States.¹⁸ Now, Ms. Mendez is paying her way to a degree from the University of Maryland with two part-time jobs and a small scholarship.¹⁹ She is on track

14/483167/demographic-profile-tps-holders-providing-essential-services-coronavirus-crisis/.

¹³ Christine Condon, *Maryland Sen. Van Hollen Pushes for Federal Protection for Immigrant Workers During Coronavirus Pandemic*, The Baltimore Sun (July 16, 2020), <https://www.baltimoresun.com/politics/bs-md-pol-immigrants-tps-covid-19-van-hollen-20200716-q3lhtlqxhrgfhgdm7atxxw27si-story.html>.

¹⁴ *Id.*

¹⁵ Svajlenka & Jawetz, *supra* n.12.

¹⁶ *Overcoming the Odds*, *supra* n.5.

¹⁷ Warren & Kerwin, *supra* n.6.

¹⁸ *Overcoming the Odds*, *supra* n.5.

¹⁹ *Id.*

to become a physician assistant for underserved communities.²⁰

The experiences of Ms. Mendez and her family reflect broader data—TPS holders are key contributors to the labor force. In 2017, the labor force participation rate among all TPS recipients topped 94.1%,²¹ compared to just 63% for the U.S.-born population.²² TPS recipients also demonstrate higher rates of entrepreneurship than their U.S.-born neighbors.²³ In 2010, for example, 1,500 Haitian TPS recipients moved to Mount Olive, North Carolina, where they purchased vacant homes, filled difficult jobs, and started retail businesses and restaurants that breathed new life into the small agricultural town.²⁴

TPS holders also actively participate in civic life. A recent study found that 30% of TPS holders are active in neighborhood associations, schools, and other groups, compared to about 25% for the entire U.S.

²⁰ *Id.*

²¹ *Id.*

²² Warren & Kerwin, *supra* n.6.

²³ *Overcoming the Odds*, *supra* n.5.

²⁴ Damian Paletta, *Haitian Immigrants Revived America's Turkey Town. This Thanksgiving Together Might Be Their Last*, *The Wash. Post* (Nov. 20, 2018), https://www.washingtonpost.com/business/economy/haitian-immigrants-revived-americas-turkey-town-this-thanksgiving-together-might-be-their-last/2018/11/20/7cb258d0-e78f-11e8-b8dc-66cca409c180_story.html.

population.²⁵ And 20% of TPS holders volunteer their time for community service.²⁶

Local communities such as amici know these contributions well. Indeed, the U.S. Conference of Mayors has recognized TPS residents as “integral members of our neighborhoods, workplaces, religious communities, schools, and health care institutions.”²⁷

B. Amici’s Communities Would Suffer Serious Harm If Most TPS Recipients Were Effectively Ineligible For Adjustment Of Status.

As they rebuild their lives in the United States, many TPS recipients become eligible for adjustment of status—typically through marriage, family ties, or employer sponsorship.²⁸ But because the majority of TPS recipients initially entered the United States

²⁵ Mejívar, *supra* n.11.

²⁶ *Id.* at 20.

²⁷ Letter from U.S. Conference of Mayors to Hon. Elaine C. Duke, Acting Secretary of Homeland Security and Hon. Rex W. Tillerson, Secretary of State (Nov. 10, 2017), https://www.uscis.gov/sites/default/files/document/foia/TPS_Haiti_-_Mitchell.pdf.

²⁸ For example, the 94% of working TPS holders could be eligible for employment-based visas. Directory of Visa Categories, U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html>. TPS holders who parent nearly 300,000 U.S. citizens could be eligible to receive IR-5 visas when a child reaches 21 years old. *Id.* And TPS holders married to U.S. citizens or lawful permanent residents could be eligible to receive IR-1 or CR-1 visas. *Id.*

without authorization,²⁹ the government’s interpretation of section 1254a(f)(4) would effectively prevent most TPS recipients from adjusting status, unless they first returned to the unsafe countries they fled. That rule would deny TPS recipients the substantial financial, educational, and health benefits associated with lawful permanent residence. It would also deny them the possibility of naturalization and its accompanying benefits. And it would deny amici the community benefits associated with these more permanent statuses.

1. *Lawful Permanent Residence Improves Educational, Financial, And Health Outcomes.*

Lawful permanent residence promotes higher education and skills training. Indeed, in one study, 21% of lawful permanent residents obtained post-high school educations, compared to just 12% of noncitizens without lawful permanent residence.³⁰ In Seat-

²⁹ According to the American Immigration Council, the “vast majority” of Salvadorans with TPS, who constitute over 60% of TPS recipients, initially entered the country without authorization. Geneva Sands, *What you need to know about Temporary Protected Status*, ABC News (Jan. 9, 2018), <https://abcnews.go.com/Politics/temporary-protected-status/story?id=52233615>. Similarly, “significantly more” than 50% of the 1,800 TPS clients of one organization entered without inspection, and the majority of the 500 TPS clients of another organization entered without inspection. Exs. I, J, Am. Mtn. for Class Cert., *Moreno v. Nielsen*, Case No. 18-1135 (E.D.N.Y. July 20, 2018).

³⁰ Alexander N. Ortega, PhD. et al., *Health Care Access and Physical and Behavioral Health Among Undocumented Latinos in California*, 56 *Med. Care* 919, 921 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6226215/>.

tle, for example, 49% of immigrants with lawful permanent residence have attended two years of college or more.³¹ These outcomes are unsurprising: lawful permanent residence confers access to important educational benefits, including federal financial aid, not available to other noncitizens, including TPS holders.³² More higher education leads in turn to increased earnings—individuals with even some college education earn 12% more than those with only a high school degree.³³

Lawful permanent residence also enables better access to healthcare and improved health outcomes. A comparison of insurance rates of TPS recipients from El Salvador, Honduras, and Haiti found that just 53% of the TPS recipients had health insurance,³⁴ compared to 60% of lawful permanent residents.³⁵

³¹ Maria E. Enchautegui and Linda Giannarelli, *The Economic Impact of Naturalization on Immigrants and Cities*, Urban Inst. 12 (Dec. 2015), <https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf>.

³² See Who Gets Aid, U.S. Dep't of Educ., <https://studentaid.gov/understand-aid/eligibility>; see also *Overcoming the Odds*, *supra* n.5.

³³ Tim Stobierski, *Average Salary by Education Level: The Value of a College Degree*, Northwestern Univ. (June 2, 2020), <https://www.northeastern.edu/bachelors-completion/news/average-salary-by-education-level/>.

³⁴ Data Tables, Ctr. for Migration Studies, <https://cmsny.org/tpstablesbystate/>.

³⁵ Randy Capps et al., Migration Policy Inst., A Demographic Socioeconomic, and Health Coverage Profile of Unauthorized Im-

When individuals have health insurance, they are more likely to seek care, promoting better health and better health outcomes.³⁶ By contrast, individuals without health insurance are less likely to receive preventative care and regular outpatient care.³⁷ As one study found: “The consequences can be severe, particularly when preventable conditions or chronic diseases go undetected.”³⁸ As a result, individuals without health insurance are more likely to be hospitalized for avoidable health problems and to experience declines in their overall health.³⁹

2. *Lawful Permanent Residence Opens A Pathway To Citizenship And A Host Of Additional Benefits.*

Preventing eligible TPS recipients from adjusting status also deprives them of the valuable benefits from later naturalizing. For TPS recipients, lawful permanent residence is the only pathway to U.S. citizenship,⁴⁰ which likewise affords better educational

migrants in the United States 7 (May 2013), https://www.migrationpolicy.org/sites/default/files/publications/CIRbrief-Profile-Unauthorized_1.pdf.

³⁶ Jennifer Tolbert et al., *Key Facts about the Uninsured Population*, Henry J. Kaiser Family Found. (Nov. 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 10 Steps to Naturalization, U.S. Citizenship & Immigr. Services, <https://www.uscis.gov/citizenship/learn-about-citizenship/10-steps-to-naturalization>; Naturalization Eligibility Worksheet

and employment opportunities, higher earnings and economic outcomes, and increased access to healthcare.

Naturalized citizens have even better economic outcomes than lawful permanent residents. In one study, 34% of naturalized citizens achieved a post-high school education, compared to 21% of lawful permanent residents.⁴¹ Naturalized citizens also have access to a broader range of employers and employment opportunities⁴²—and, unsurprisingly, higher employment rates.⁴³ These improved education and employment opportunities translate into better economic outcomes. Naturalized citizens earn 50–70% more than noncitizens.⁴⁴

Naturalized citizens also enjoy even better access to health insurance and are more likely to take advantage of preventative care. Eighty-three percent of naturalized citizens have health insurance.⁴⁵ In a 2018 study, 78% of naturalized citizens saw a doctor within the previous year.⁴⁶ When individuals seek

Instructions, U.S. Citizenship & Immigr. Services, <https://www.uscis.gov/sites/default/files/document/guides/M-480.pdf>.

⁴¹ Ortega, *supra* n.30.

⁴² See Enchautegui & Giannarelli, *supra* n.31 at 5.

⁴³ Madeleine Sumpton & Sarah Flamm, Migration Policy Inst., *The Economic Value of Citizenship for Immigrants in the United States 12* (2012), <https://www.migrationpolicy.org/research/economic-value-citizenship>.

⁴⁴ *Id.* at 11.

⁴⁵ Capps, *supra* n.35.

⁴⁶ Ortega, *supra* n.30 at 922.

regular primary care, they have better health outcomes.⁴⁷

3. *Adjustment Of Status Directly Benefits TPS Recipients' Communities.*

When more of amici's residents become lawful permanent residents and naturalized citizens, amici also reap the benefits—communities and the economy grow, state and local tax revenues soar, reliance on public benefits and associated costs falls, public health improves, and civic engagement increases. By contrast, limiting most TPS recipients' ability to adjust status denies amici the opportunity to build stronger communities.

Amici's communities prosper when more residents gain the educational and employment benefits associated with lawful permanent residence and naturalization.⁴⁸ High educational attainment and skill level—which lawful permanent residence and naturalization promote, *see supra* Parts I.B.1 and I.B.2—are consistent predictors of a city's growth and prosperity.⁴⁹ The same is true for the higher incomes that lawful permanent residents and naturalized citizens

⁴⁷ Barbara Starfield et al., *Contributions of Primary Care to Health Systems and Health*, 83 *Milbank Q.* 457 (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2690145/>.

⁴⁸ *See supra* Parts I.B.1 and I.B.2.

⁴⁹ *See* Edward L. Glaeser and Jesse M. Shapiro, The Brookings Institution, *City Growth and the 2000 Census: Which Places Grew, and Why* (May 2001), <https://www.brookings.edu/wp-content/uploads/2016/06/whygrowth.pdf>; *see also* Ortega, *supra* n.30.

earn:⁵⁰ Cities with higher median household incomes grow faster than cities with lower median household incomes.⁵¹

More naturalization likewise increases amici's revenues. For every \$1 increase in income that a newly naturalized citizen experiences, the result is at least a \$1.17 increase in GDP.⁵² One study of 21 cities found that if all eligible immigrants naturalized, they would increase tax revenues by \$2.03 billion.⁵³ In just the City of Los Angeles alone, it would result in \$364 million in increased tax revenue.⁵⁴ And in New York City, annual tax revenues would rise by \$789 million.⁵⁵

Naturalization also results in increased property tax payments, a significant component of amici's revenues. Families headed by naturalized citizens have higher rates of homeownership. Sixty-six percent of naturalized citizens are homeowners, compared to

⁵⁰ Stobierski, *supra* n.33; Sumpton & Flamm, *supra* n.43 at 11.

⁵¹ Glaeser & Shapiro, *supra* n.49.

⁵² Manuel Pastor & Justin Scoggins, Ctr. for the Study of Immigrant Integration, The Economic Benefits of Naturalization for Immigrants and the Economy 20 (2012), https://dornsife.usc.edu/assets/sites/731/docs/citizen_gain_web.pdf.

⁵³ Enchautegui & Giannarelli, *supra* n.31 at 21.

⁵⁴ *Id.* at 22.

⁵⁵ *Id.*

34% of noncitizens⁵⁶ and 30% of TPS holders.⁵⁷ The study of 21 cities found that if all immigrants eligible to naturalize in those cities did so, it could produce 45,000 new homeowners.⁵⁸

Amici also spend less to provide local public benefits to lawful permanent residents and naturalized citizens. In 2012, 16% of noncitizens lived below the poverty line, compared to just 6% of naturalized citizens.⁵⁹ More naturalization leads to higher wages, which can decrease the cost of government programs in the aggregate and over the long run. In New York City, for example, if all eligible immigrants naturalized, public benefits costs would decrease \$34 million.⁶⁰

Healthier residents also reduce amici's healthcare costs. For example, as California's uninsured rate decreased from 16.4% in 2013 to 8.5% in 2015, the cost of providing uncompensated care at hospitals shrank from \$20.5 billion to \$6.7 billion, a decrease of 67%.⁶¹

⁵⁶ Cities for Citizenship, *America is Home: How Individuals, Families, Cities and Counties Benefit by Investing in Citizenship* 5 (2018), <https://partnershipfornewamericans.org/wp-content/uploads/2018/11/C4CReport2018FINAL.pdf>.

⁵⁷ Mejívar, *supra* n.11.

⁵⁸ Enchautegui & Giannarelli, *supra* n.31 at 2.

⁵⁹ Pastor & Scoggins, *supra* n.52 at 7.

⁶⁰ *Id.* at 23.

⁶¹ Letter from Xavier Becerra, Attorney General, to Director Mick Mulvaney and Administrator Neomi Rao of the Office of Management and Budget (May 10, 2018).

But it is not just costs; amici's communities directly benefit from the improved healthcare access associated with lawful permanent residence and naturalization. *See supra* Parts I.B.1 and I.B.2. Better access to preventative medical care can limit the spread of disease, lowering the risk of epidemics and other public health catastrophes. Amici rely on residents to seek primary care and participate in public health initiatives and policies to keep their communities healthy. Amici do so because it works: Amici's public health departments, including the Los Angeles County Department of Public Health, have previously succeeded in controlling outbreaks of diseases such as hepatitis A, measles, and tuberculosis by ensuring that members of the community engage with healthcare professionals and participate in preventative health programs.⁶² When individuals use preventative care and low-cost vaccines, the incidence of communicable disease declines.⁶³

Naturalization and lawful permanent residence also benefit amici's civic and community life. Lawful permanent residents enjoy certain opportunities to participate politically that other noncitizens, like TPS recipients, do not enjoy. For example, lawful perma-

⁶² Decl. of Barbara Ferrer at 5-6, ¶¶ 14-17, *California v. U.S. Dep't of Homeland Sec.*, Case No. 4:19-CV-04975-PJH (N.D. Cal. 2019), Doc. No. 18-3.

⁶³ *Id.* at 5, ¶ 14.

ment residents are permitted to make campaign contributions in state elections in certain states, like California and New York.⁶⁴

And when immigrants become citizens, they are more likely to integrate and engage with their communities, to the benefit of all residents. Naturalization confers on immigrants the opportunity to form stronger ties to their communities, including through the right to vote, ability to serve on a jury, and greater sense of belonging.⁶⁵

Indeed, aside from voting (which is, of course, unavailable to noncitizens), naturalized citizens participate in political discourse in their communities at greater rates than noncitizens.⁶⁶ November 2013 data showed that 6% of naturalized citizens had contacted or visited elected officials to express their opinions, while only 2% of noncitizens had done so.⁶⁷ Naturalized citizens were also twice as likely as noncitizens to have boycotted a product or service because of the company's social or political values (7.2% versus 3.4%), and were more likely to express their political

⁶⁴ Cal. Gov't Code § 85320(d) (California); Frequently Asked Questions, N.Y. State Bd. of Elections, <https://www.elections.ny.gov/CampaignFinanceFAQ.html#:~:text=Only%20citizens%20of%20the%20United,contribution%20and%20report%20the%20refund> (New York).

⁶⁵ *See generally* The Nat'l Acads., *The Integration of Immigrants into American Society* 159-205 (Mary C. Waters and Marisa Gerstein Pineau eds., 2015), https://www.nap.edu/read/21746/chapter/6#chapter04_pz198-8.

⁶⁶ *Id.* at 184.

⁶⁷ *Id.*

views online (22% for naturalized citizens versus 17% for noncitizens).⁶⁸

Limiting most eligible TPS recipients' ability to adjust status would deny amici these opportunities to build better, stronger, wealthier, healthier, and more engaged communities.

II. PETITIONERS' INTERPRETATION OF THE TPS STATUTE IS CORRECT.

Amici agree with Petitioners that the TPS statute designates TPS recipients as lawful nonimmigrants for purposes of adjustment of status.⁶⁹ Section 1254a(f)(4) mandates that “for purposes of adjustment of status under section 1255,” TPS recipients “shall be considered as being in, and maintaining, *lawful status as a nonimmigrant*.” 8 U.S.C. § 1254a(f)(4) (emphasis added). That provision unambiguously references section 1255's mechanism for adjustment of status and directs the government to treat TPS recipients like lawful nonimmigrants in that context.

The government nevertheless urges the Court to hold that a TPS recipient who initially entered the country without authorization is ineligible for adjustment of status unless that recipient leaves the country and the safety that TPS status provides. That interpretation of section 1254a(f)(4) would effectively prevent most eligible TPS recipients from adjusting status, and thus deprive those individuals and amici's

⁶⁸ *Id.*

⁶⁹ Amici concur in all the arguments put forth by Petitioners, including those not discussed in this brief.

communities of the invaluable benefits that accompany lawful permanent residence and naturalization.

The Court should reject that interpretation for two reasons. *First*, the text and structure of the INA demonstrate that eligible TPS recipients can adjust status, regardless of how they entered. *Second*, the government’s interpretation cannot be reconciled with the purpose of the TPS regime, which aims to afford safety and security to those living in nations torn by war, wrought by natural disaster, or plagued by unrest and instability. The undue burden on TPS recipients and the harm that local communities such as amici would suffer confirms that Congress cannot have intended that result.

A. The INA Makes Plain That Eligible TPS Recipients Can Adjust Status Under Section 1255.

1. *TPS Recipients Are Considered “Inspected And Admitted” For Purposes Of Adjusting Status.*

“[A]ny question of statutory interpretation . . . begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). A straightforward reading of the TPS statute shows that TPS recipients are treated as inspected and admitted for purposes of adjusting status under section 1255.

Under section 1254a(f)(4), TPS recipients “shall be considered as being in, and maintaining, lawful status as a nonimmigrant” “for purposes of adjustment of status under section 1255.” 8 U.S.C. § 1254a(f)(4). That language expressly refers to the adjustment-of-

status statute, section 1255, and places TPS recipients on equal footing with those in “lawful status as a nonimmigrant” for purposes of adjustment of status under that section.

Throughout the INA, Congress made clear that a person in lawful nonimmigrant status is necessarily “inspected and admitted.” To become a lawful nonimmigrant, an immigrant must be admitted; to be admitted, an immigrant must be inspected. Indeed, the INA consistently refers to nonimmigrants as “admitted” and to the grant of nonimmigrant status as an “admission.” See *id.* § 1184(a)(1) (governing the “[a]dmission of nonimmigrants” and providing that “*admission* to the United States of any alien as a *nonimmigrant* shall be for such time and under such conditions as the Attorney General may by regulations prescribe”); *id.* § 1182(d)(1) (“alien’s *admission* as a nonimmigrant”), *id.* § 1184(g)(4) (“the period of authorized *admission* as such a nonimmigrant”), *id.* § 1187(a)(7) (“the conditions of any previous *admission* as such a nonimmigrant”) (emphases added). Indeed, to “be[] in” any of the INA’s “nonimmigrant” classifications, an individual must be admitted. See *id.* § 1184(a)(1); 8 C.F.R. § 214.1(a)(3); 8 U.S.C. §§ 1101(a)(13)(A)-(15). And “inspection,” in turn, is a necessary condition of “admission.” All “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); see also *id.* § 1101(a)(13)(A) (defining “admission” as lawful entry “after inspection”).

Admission and inspection are thus essential prerequisites to lawful nonimmigrant status. By “consider[ing]” TPS recipients to be in “lawful status” as

“nonimmigrant[s]” “for purposes of an adjustment of status under section 1255,” section 1254a(f)(4) necessarily contemplates that TPS recipients are considered “inspected and admitted” for purposes of adjusting status.

2. *The Structure Of The INA Reinforces The Plain Meaning Of Section 1254a(f)(4).*

This Court has instructed that “identical words used in different parts of the same act are intended to have the same meaning.” *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (internal quotation marks omitted). Here, the benefits-conferring language of section 1254a(f)(4) parallels the title of section 1255, which provides for “[a]djustment of status of nonimmigrant to that of person admitted for permanent residence.” The mirror-image language signals that Congress intended that all eligible TPS recipients, regardless of their method of entry, would be able to make use of the adjustment-of-status statute “via their treatment as lawful nonimmigrants.” *Ramirez v. Brown*, 852 F.3d 954, 961 (9th Cir. 2017).

The neighboring provisions in subsection (f) further support Petitioners’ interpretation. Section 1254a(f) is titled “Benefits and status during period of temporary protected status,” and it is undisputed that sections 1254a(f)(1)–(3) apply to all TPS recipients. The most natural reading of section 1254a(f)(4) is that it also applies to *all* TPS recipients. *Almendarez–Torres v. United States*, 523 U.S. 224, 234 (1998) (“[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.” (internal quotation marks and citation omitted)). Had Congress

intended section 1254a(f)(4) to confer a benefit only to the limited class of TPS recipients who initially were admitted to the country with nonimmigrant status, it would presumably have said so. *See United States v. Atl. Rsch. Corp.*, 551 U.S. 128, 135–36 (2007) (statute should not be construed to “destroy the symmetry” of “adjacent” subsections).

Moreover, section 1254a(f)(4) considers TPS recipients “as being in, and maintaining, lawful status as a nonimmigrant” not just for purposes of section 1255, but also “for purposes of . . . change of status under section 1258.” Section 1258, in turn, allows the DHS Secretary to “authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status.” 8 U.S.C. § 1258(a). Tracking the language in the two provisions, section 1254a(f)(4) thus equates “being in . . . lawful status as a nonimmigrant” with section 1258(a)’s being “lawfully admitted . . . as a nonimmigrant.” That equivalence indicates that a TPS recipient is considered “admitted” for purposes of *both* statutory provisions—section 1255 and section 1258—cited in section 1254a(f)(4). *See Hall v. United States*, 566 U.S. 506, 516–19 (2012) (“[I]dential words and phrases within the same statute should normally be given the same meaning.”).

Importantly, the rigorous application and approval process for obtaining TPS status is akin to the usual admission process for nonimmigrants. Like individuals who seek nonimmigrant status, *see* 8 U.S.C. § 1184(b); 8 C.F.R. §§ 212.1, 235.1(f)(1), individuals

who seek TPS must (1) establish that they meet the identity and citizenship requirements, *see* 8 U.S.C. § 1254a(a)(1), (c)(1)(A); 8 C.F.R. § 244.9(a); (2) demonstrate eligibility to be admitted to the United States, *compare* 8 U.S.C. § 1182(a), (d)(11)–(12), (g)–(i); 8 C.F.R. §§ 212.7, 214.1(a)(3)(i), *with* 8 U.S.C. § 1254a(c)(1)(A)(iii), (c)(2)(A); 8 C.F.R. §§ 244.2(d), 244.3; and (3) in certain circumstances, sit for an interview with United States Citizenship and Immigration Services officials, *compare* 8 U.S.C. § 1184(a)(1), (b); 8 C.F.R. § 214.11(d)(6), *with* 8 U.S.C. § 1254a(a)(3)(A); 8 C.F.R. §§ 244.8, 244.10(b). The similarities between the TPS application process and the nonimmigrant admission process further confirm that Congress did not intend to require TPS holders seeking to adjust status to re-prove their admissions.

3. *The Government’s Position Is At Odds With The INA’s Text And Structure.*

The government’s contrary reading—that TPS status allows an individual to “maintain . . . lawful status” for purposes of satisfying one threshold requirement for adjustment of status, 8 U.S.C. § 1255(c)(2), but does not satisfy a separate requirement that the individual be “inspected and admitted” into the United States, *id.* § 1255(a)—cannot be reconciled with the text or structure of the INA.

The government’s proposed interpretation would arbitrarily cabin section 1254a(f)(4)’s application to only a subset of TPS holders. By its terms, the limitation in section 1255(c)(2) applies only to individuals seeking adjustment of status based on employment or the immigration status of non-immediate relatives. *See* 8 U.S.C. § 1255(c)(2). Under the government’s

reading, the benefit conferred by section 1254a(f)(4) would apply only to a subset of individuals seeking adjustment of status based on their employment or on the immigration status of non-immediate relatives. For all other TPS recipients—including individuals seeking adjustment based on the status of an *immediate* relative, such as the very common situation of a TPS holder who marries a U.S. citizen or lawful permanent resident—section 1254a(f)(4) would have no effect. That cannot be the case. *Torres v. Lynch*, 136 S. Ct. 1619, 1630 (2016) (rejecting interpretation of INA provision that would “significantly restrict” the statute’s “force and effect” “in an utterly random manner”).

Reading section 1254a(f)(4) as so limited would be especially peculiar because there is no textual indication that Congress intended this result. The text of section 1254a(f)(4) does not limit itself to one particular subsection of section 1255; instead, it purports to apply broadly “for purposes of adjustment of status under section 1255”—i.e., the entire adjustment-of-status statute. Had Congress intended to refer only to section 1255(c)(2), it could have easily done so. *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1070 (2018).

The government incorrectly asserts that the concept of “admission” is constrained by section 1101(a)(13)(A), which contemplates something like passage into the United States at a designated port of entry. But that reading ignores the entire point of section 1254a(f)(4), which “considers” TPS recipients to be nonimmigrants and thus admitted. And

other provisions of the INA make clear that “admission” is not limited to physical entry. The adjustment-of-status provision itself uses “admission” in a manner inconsistent with the port-of-entry definition in section 1101(a)(13)(A): Section 1255(b) states that “the Attorney General shall record the alien’s lawful admission for permanent residence” on the date the adjustment application is approved, not the date of entry through an official port. Indeed, the Board of Immigration Appeals has recognized that immigrants can be admitted without meeting the requirements set forth in section 1101(a)(13)(A). *See, e.g., Matter of Alyazji*, 25 I. & N. Dec. 397, 399 (2011) (holding that immigrants who enter the United States without permission but who later adjust status qualify as “admitted”).

The government is also wrong that Petitioners’ reading would throw open the floodgates, allowing every TPS recipient to adjust status to become a lawful permanent resident. Being “inspected and admitted” is only one of many requirements to adjust status. An applicant must also (1) make an application for adjustment, (2) be eligible to receive an immigrant visa and be admissible to the United States for permanent residence, and (3) have an immigrant visa immediately available at the time of applying for adjustment of status. *See* 8 U.S.C. § 1255(a). To be eligible to receive an immigrant visa for adjustment-of-status purposes, a TPS holder must have either an employer sponsor or a sponsoring U.S. citizen spouse or qualifying family member.⁷⁰ Not all TPS recipients meet

⁷⁰ Directory of Visa Categories, *supra* n.28.

these requirements, even if they have resided in the United States for years.

B. The Government’s Reading Cannot Be Reconciled With The Central Purpose Of The TPS Regime.

Petitioners’ interpretation is consistent with the TPS statute’s animating purpose: to afford humanitarian relief and protection for vulnerable individuals who require shelter and safety from unstable and exigent circumstances in their native countries. The government’s reading disregards this fundamental purpose and threatens irreparable individual and communal harm. This cannot be the proper construction of the TPS statute.

In addition to a statute’s context and structure, this “Court often looks to history and purpose to divine the meaning of language.” *Gundy v. United States*, 139 S. Ct. 2116, 2126 (2019) (internal quotations and alterations omitted). The language of a statute should be construed so that it is consistent “with the statute’s basic purpose.” *Barber v. Thomas*, 560 U.S. 474, 483 (2010).

Congress designed the TPS statute to provide a haven to those who cannot safely return to their home countries. Under the statute, individuals are eligible for TPS status if the DHS Secretary designates their home countries as unsafe. 8 U.S.C. § 1254a(a). The statute provides that a country will be designated only in limited circumstances, such as national disasters, armed conflicts, or other extraordinary and temporary circumstances that make safe return impossible. *Id.* § 1254a(b). To accomplish this purpose, the

TPS statute creates a safe harbor and authorizes recipients to work in the United States to support themselves throughout their stay. *See, e.g., id.* § 1254a(d)(1), (e), (f). Recipients also have the ability to travel outside the United States. *Id.* § 1254a(f)(3). This conferral of benefits along with lawful status underscores the TPS regime’s central goal of allowing TPS recipients to remain in the safety of the United States and to integrate into American society.

Allowing TPS recipients with an independent, valid basis for lawful permanent residence to adjust status from within the safety of the United States is consistent with this basic purpose. By contrast, the government’s view eviscerates the central purpose of the TPS regime, requiring TPS recipients who could otherwise adjust status to leave the safety of the United States and return to countries that the DHS Secretary has deemed unsafe.

Indeed, the government’s interpretation would send TPS recipients into dangerous situations for extended periods, uprooting them from their families, employers who rely on them, and amici’s communities. Individuals who apply for visas abroad have no control over the processing time for their visa applications.⁷¹ TPS recipients could languish in an unsafe

⁷¹ Visa Bulletin For February 2021, U.S. Dep’t of State (Jan. 11, 2021), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-february-2021.html>; *see also* Visa Appointment Wait Times, U.S. Dep’t of State, (last visited Feb. 26, 2021), <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html> (noting that the wait time for a visa interview “can change weekly and is based on actual incoming workload and staffing”).

country, separated from their spouses, families, and employers, for years or even decades. For TPS recipients returning to any of the TPS-designated countries, the wait is over 14 years for certain family-based visas. And for TPS recipients returning to El Salvador or Honduras, there is almost a three-year wait for certain employment-based visas. In some cases, TPS recipients who leave the United States and attempt to obtain a visa abroad may be barred completely from reentry for an extended period of time. *See, e.g.*, 8 U.S.C. § 1182(a)(9)(B)(i) (deeming inadmissible aliens who were unlawfully present in the United States under certain circumstances). The end result will be “a waste of energy, time, government resources, and . . . negative effects on [a TPS recipient’s] family.” *Flores v. U.S. Citizenship & Immigration Servs.*, 718 F.3d 548, 555–56 (6th Cir. 2013). These effects will be suffered not only by TPS recipients, but also by amici’s communities. *See supra* Part I.B.3.

Such effects cannot be reconciled with the central purpose of the TPS regime—or Congress’s actions since passing the TPS statute. When Congress initially enacted the TPS statute in 1990, it granted only 18 months of lawful status to residents of El Salvador.⁷² But in the 30 years since its passage, TPS status has been extended to residents of 19 countries,

⁷² Claire Bergeron, *Temporary Protected Status After 25 Years: Addressing the Challenge of Long-Term “Temporary” Residents and Strengthening a Centerpiece of US Humanitarian Protection*, 2 J. on Migration and Human Security 22, 28 (2014), <https://journals.sagepub.com/doi/pdf/10.1177/233150241400200103>.

with eight currently designated.⁷³ TPS status also has been regularly renewed far beyond the initial grant of 18 months for hundreds of thousands of recipients.⁷⁴ These grants have allowed TPS holders to build rich lives in the United States and form deep ties to their communities.⁷⁵ *See supra* Part I. Congress has not amended the TPS statute to revoke the Attorney General’s power to either designate countries for TPS protection or to renew a designation. Congress also has rejected amendments to TPS that would have encouraged repatriation.⁷⁶ These actions run directly contrary to an interpretation that would require TPS recipients who apply for adjustment of status to return to their still unsafe countries and risk their lives, the livelihoods of their spouses, families, and employers, and the continued stability of their communities.

CONCLUSION

For the foregoing reasons and the reasons set forth in Petitioners’ brief, amici urge this Court to reverse the decision below.

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⁷³ *Id.* at 26.

⁷⁴ *Id.* at 29.

⁷⁵ *Id.* at 26–28.

⁷⁶ *Id.* at 28.

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Respectfully submitted,

MARGARET L. CARTER
DANIEL R. SUVOR
O'MELVENY & MYERS LLP
400 South Hope Street
18th Floor
Los Angeles, CA 90071
(213) 430-6000
mcarter@omm.com
dsuvor@omm.com

*Counsel for Amicus Curiae
County of Los Angeles, Calif.*

*Additional Counsel Listed in
Appendix*

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APPENDIX A

LIST OF AMICI CURIAE

MARGARET L. CARTER DANIEL R. SUVOR O'MELVENY & MYERS LLP 400 South Hope Street 18th Floor Los Angeles, CA 90071 <i>Counsel for Amicus Curiae County of Los Angeles, Cali- fornia</i>	LESLIE J. GIRARD <i>County Counsel</i> 168 West Alisal Street, 3rd Floor Salinas, CA 93901 <i>Counsel for Amicus Curiae County of Monterey, Califor- nia</i>
DONNA R. ZIEGLER <i>County Counsel</i> 1221 Oak Street Oakland, CA 94612 <i>Counsel for Amicus Curiae County of Alameda, Califor- nia</i>	JAMES E. JOHNSON <i>Corporation Counsel</i> 100 Church Street New York, NY 10007 <i>Counsel for Amicus Curiae City of New York, New York</i>
ESTEBAN A. AGUILAR, JR. <i>City Attorney</i> P.O. Box 2248 Albuquerque, NM 87103 <i>Counsel for Amicus Curiae City of Albuquerque, New Mexico</i>	BARBARA J. PARKER <i>City Attorney</i> One Frank H. Ogawa Plaza, 6th Floor Oakland, CA 94612 <i>Counsel for Amicus Curiae City of Oakland, California</i>

FARIMAH FAIZ BROWN
City Attorney
2180 Milvia Street,
Fourth Floor
Berkeley, CA 94704

Counsel for Amicus Curiae
City of Berkeley, California

CELIA MEZA
Acting Corporation
Counsel
2 North LaSalle Street,
Suite 580
Chicago, IL 60602

Counsel for Amicus Curiae
City of Chicago, Illinois

JESSICA M. SCHELLER
Chief; Advice, Business
& Complex Litigation
Division
500 Richard J. Daley
Center
Chicago, IL 60602

Counsel for Amicus Curiae
County of Cook, Illinois

SUSANA ALCALA WOOD
City Attorney
915 I Street, Fourth Floor
Sacramento, CA 95814

Counsel for Amicus Curiae
City of Sacramento, California

LYNDSEY M. OLSON
City Attorney
15 West Kellogg Boulevard,
Suite 400
Saint Paul, MN 55102

Counsel for Amicus Curiae
City of Saint Paul, Minnesota

MARA W. ELLIOTT
City Attorney
1200 Third Avenue,
Suite 1620
San Diego, CA 92101

Counsel for Amicus Curiae
City of San Diego, California

CHRISTOPHER J. CASO
City Attorney
 1500 Marilla Street,
 Room 7DN
 Dallas, TX 75201

Counsel for Amicus Curiae
City of Dallas, Texas

BARBARA J. DOSECK
City Attorney
 101 West Third Street
 P.O. Box 22
 Dayton, OH 45401

Counsel for Amicus Curiae
City of Dayton, Ohio

CRYSTAL BARNES
Acting City Solicitor
 20 Korean Veterans
 Plaza, Room 204
 Holyoke, MA 01040

Counsel for Amicus Curiae
City of Holyoke, Massachu-
setts

DENNIS J. HERRERA
City Attorney
 City Hall Room 234
 One Dr. Carlton B.
 Goodlett Place
 San Francisco, CA 94102

Counsel for Amicus Curiae
City and County of San Fran-
cisco, California

GEORGE S. CARDONA
Interim City Attorney
 1685 Main Street,
 Room 310
 Santa Monica, CA 90401

Counsel for Amicus Curiae
City of Santa Monica, Califor-
nia

PETER S. HOLMES
City Attorney
 701 Fifth Avenue,
 Suite 2050
 Seattle, WA 98104

Counsel for Amicus Curiae
City of Seattle, Washington

ARTURO G. MICHEL
City Attorney
900 Bagby, 4th Floor
Houston, TX 77002

Counsel for Amicus Curiae
City of Houston, Texas

JAMES R. ROWADER, JR.
City Attorney
City Hall, Room 210
350 South Fifth Street
Minneapolis, MN 55415

Counsel for Amicus Curiae
City of Minneapolis, Minne-
sota

FRANCIS X. WRIGHT, JR.
City Solicitor
93 Highland Avenue
Somerville, MA 02143

Counsel for Amicus Curiae
City of Somerville, Massachu-
setts

WILLIAM C. FOSBRE
City Attorney
747 Market Street,
Room 1120
Tacoma, WA 98402

Counsel for Amicus Curiae
City of Tacoma, Washington