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Temporary Protection, Enduring Contradiction: The Contested and Contradictory Meanings of Temporary Immigration Status

Miranda Cady Hallett

In the construction of immigration status categories in law and social practice, the power of the nation-state to define migrants' status is pervasive but far from absolute. In this article, I examine the conditioned legality known as Temporary Protected Status (TPS) in US immigration law through a discussion of legal structures, historical frames, local discourses, and Salvadoran migrants' lived experiences with liminal legality in rural Arkansas in the first decade of the twenty-first century. I argue that migration policy, though fraught with ambiguity and contradiction (see Coutin 2007; Coutin and Yngvesson 2008), functions both to reproduce and to mask the benefits to the nation-state from the ambiguous inclusion and simultaneous exclusion of migrant workers. In spite of the efficacious ways immigration policies discipline and constrain, within these limits migrants, legal practitioners, and others respond as critical agents to the policy structures shaping their lives.

TPS is like a gift from God.

Roy Petty, Immigration Attorney, March 2008

The TPS, the guest worker programs, they are the perfect way to keep people in a second-class status. This may sound harsh, but it's really like a form of slavery.

Ana Hart, Tyson Community Outreach Coordinator, March 2007

INTRODUCTION

A small but growing number of transnational migrants live and work in the United States under the auspices of temporary visas, which permit work and residency, but fail to provide the opportunity to acquire full citizenship status. Worker visas, such as those distributed under the H2-A program, have grown from less than 10,000 a year in 1992 to

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1 over 50,000 in fiscal year 2011 (Bruno 2012, 5). Relatively novel status possibilities such
2 as the TPS program likewise define the legality of more than 300,000 foreign nationals
3 hailing from seven different countries of origin; by far the largest number are migrants
4 originating from El Salvador (Wasem and Ester 2011, 4).¹ As comprehensive immigra-
5 tion reform proposals are debated in the early twenty-first century, the possibility of
6 greater numbers of guest workers is continually on the table. In this article, I explore the
7 political, economic, and sociocultural meanings of the TPS program, as the alleged
8 benefit shapes the lives and experiences of Salvadorans living in rural Arkansas. Whether
9 TPS is a benefit is a matter of debate on the ground, as the divergent statements with
10 which I open this article suggest. While the status usually shields recipients from
11 deportation² and usually provides them with a legitimate work permit card,³ it also
12 subjects migrants to what Cecilia Menjivar (2006) has called *liminal legality*. TPS makes
13 migrants more susceptible to visibility and surveillance, constrains their mobility, disci-
14 plines their working lives, and subjects them to an indefinite state of temporariness.⁴

15 To approach the complex symbolic and social implications of TPS, I use mixed
16 methods of discourse and legal statute analysis juxtaposed with ethnographic research
17 and unstructured interviews with Salvadoran migrants and legal practitioners in Arkan-
18 sas. Relying on these data, I argue that three basic contradictions shape the TPS
19 program. The first involves ambiguity in the framing of the history and purpose of the
20 program. Although the initial TPS program in 1991 came about as the result of
21 mobilization and activism on the part of Salvadorans and entailed the states' partial
22 recognition of the disastrous results of US foreign policy in El Salvador, the twenty-
23 first-century manifestation of the benefit has a distinct framing as a humanitarian aid
24 project. The second concern is the way TPS simultaneously fosters inclusion and
25 exclusion. While providing migrants with legal papers in the form of a valid work
26 permit, migrants with TPS are defined as nonimmigrants and their files and records can
27 be used to deport them upon termination of the program. Finally, I explore the ways the
28 program overall enables the state to reconcile contradictory tensions in the era of
29 neoliberal restructuring. Simultaneously responding to labor market demands through
30 the partial inclusion of temporary workers and responding to nativist anxieties over
31 political and cultural sovereignty through their partial exclusion, the TPS program, like
32 other ambiguous legal statuses, helps the nation-state mediate these contradictions.
33

34
35 1. TPS, as discussed in greater detail later, is specifically linked historically to the legal and moral
36 claims exerted on the US government by Salvadoran activists in the 1980s who asserted that their
37 displacement due to El Salvador's civil war was the responsibility of US military aid to government death
38 squads. Although the program is currently framed as a humanitarian benefit extended to its recipients,
39 nonetheless the eligibility of various countries' nationals for refuge under the program reflects historical links
40 to US foreign policy interventions: El Salvador, Haiti, Honduras, Nicaragua, Somalia, the Sudan, and Syria.

41 2. In their research on deportees in El Salvador, two colleagues found that at least one young man with
42 TPS was rounded up in a workplace raid and deported to El Salvador. Throughout his detainment, he
43 insisted that he had a work permit and refused to sign the paper giving his permission for voluntary removal.
44 According to his testimony, five officers restrained him physically while another applied electric shock to his
45 hands so he would unclench his fists. This officer inked his fingerprints and pressed them down on the paper
46 (María Candelaria Navas and Elsa Ramos, personal communication, May 30, 2008).

47 3. Although often the renewed card will arrive long after the expiration date of the previous one.

48 4. While other scholars have coined terms to refer to the status itself—such as twilight status
49 (Motomura 2008) or legal limbo (Mountz et al. 2002)—this concept refers specifically to the condition of
50 social and spatial constraint experienced by migrants who live under the status.

1 Throughout the article, I explore how migrants respond as critical agents to the
 2 contradictions and ambiguities described above. They negotiate the cultural and legal
 3 minefield of liminal status, both its pragmatics and its semiotics. In migrants' own
 4 narratives, the program is often critiqued for its political and symbolic ramifications as
 5 well as the partialities of its benefits. Migrants negotiate both the symbolic meanings
 6 (gift, debt, right, privilege, the morality of eligibility) and the practical functioning
 7 (biometrics, fees, efficiency of processing, mobility) of the TPS status in their readings
 8 of the policy and its flaws. While some legal practitioners view the status as a blessing
 9 or a gift—and some migrants rhetorically push the boundaries of the status to broaden
 10 their claims to belonging—as a whole, migrants are critical of its exclusionary elements
 11 and of the ways TPS subjects their lives to discipline and constraint.

12 In this analysis, I take discourses emerging from a particular time and place—
 13 northwestern Arkansas in the mid-2000s—as a point of entry for a broader exploration
 14 of the possible ideological, structural, and social implications of temporary legalities in
 15 immigration policy. However, the significance of this analysis does not end with the
 16 limits of temporary legal status programs, which account for a minimal number of
 17 migrants in comparison to legal permanent residency and unauthorized status. Else-
 18 where, scholars have argued for the significance of many other forms of liminal legality
 19 and qualified citizenship (see Ong 1999; Calavita 2005; Sadowski-Smith 2009) and
 20 demonstrated that such graduated forms of alienation and citizenship resonate in the
 21 present neoliberal era (Motomura 2008; Kretsedemas 2009; Cacho 2012). Here, I argue
 22 that the ambiguities highlighted through a focus on liminal legality reveal dynamics and
 23 contradictions that pervade citizenship law—fundamental tensions in the way the state
 24 treats legal persons—which remain occluded in other legal forms.

25 In arguing for these broader implications, I also build on recent scholarship theo-
 26 rizing contemporary immigration law as a system of legal violence (Menjívar and
 27 Ábrego 2012), research on the political economy of migration policy (Massey, Durand,
 28 and Malone 2002; Mize and Swords 2010), and the insights of legal anthropologist
 29 Susan Coutin regarding the ambiguity of immigration law and status as a contested
 30 social process (1998, 2000, 2007, 2011). Contributing to the work of these theorists, the
 31 analysis presented here highlights the critical voices of migrants as they contest and
 32 interpret TPS, concluding that the nexus of migrant agency and status ambiguity
 33 reveals dynamics beyond the particular program and migrant community involved.
 34 Migrant voices are presented in juxtaposition to an analysis of the nation-state's
 35 framing ideology in order both to point out the limits of such hegemonic constructions
 36 of legal policy regimes and to highlight how law's threshold is “both bounded and
 37 limitless” (Coutin and Yngvesson 2008, 2).

38 39 **BACKGROUND: LITERATURE, SETTING, AND METHODS**

40 **Theorizing the Technologies of Immigrant Exclusion**

41
42
43 Historically, immigration and naturalization laws and exclusionary policies have
 44 been central to the construction of racial categories in the United States and the
 45 policing of boundaries of national belonging, as well as the construction of racialized

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1 labor systems (Haney López 1996; Le Espiritu 2000; Ngai 2005; Mize and Swords 2010).
2 This continues to be the case in the contemporary moment. My approach here is
3 simultaneously attentive to the fluidity and flexibility of law (Coutin 2000, 2007, 2011)
4 and the way law as a technology of governance and “enframing” forecloses certain ways
5 of knowing while enshrining a particular narrative as truth and particular subjectivities
6 as valid and nameable (Coutin and Yngvesson 2008, 2–3). This foreclosure of multiple
7 and ambiguous semiotic meanings reinforces the function of immigration in terms of
8 political economy: law constructs racialized legal-social hierarchies that reproduce and
9 fulfill the needs of segmented labor markets (Le Espiritu 2000; Massey, Durand, and
10 Malone 2002).

11 As numerous other scholars have documented, legality is not a choice made by
12 migrants, nor a quality of their personhood; rather, it is a set of categories, disciplines,
13 and practices produced by laws and legal institutions and imposed on migrants and
14 migrant bodies (Calavita 1998; De Genova 2005; Ngai 2005). What Cecilia Menjívar
15 (2006) calls *liminal legality* helps construct racialized and stratified social positions that
16 articulate with local and national communities of belonging. The state’s production of
17 categories of migrants, of which the TPS is only one example, constitutes some groups
18 of migrants as a laboring lower class within a hierarchy of citizenship, utilizing state
19 policy to articulate migrants within social and economic regimes.⁵

20 Although previous immigration law regimes and state responses to transnational
21 migration have shifted over time, they nonetheless consistently structure and enable
22 labor exploitation of Latin American and other migrants—especially through the
23 construction of categories of indefinitely liminal legality (Mize and Swords 2010; Paret
24 forthcoming). In this vein, TPS helps to bind and mediate the gaps and confluences
25 between labor market demands, xenophobia and social exclusion, and the need for a
26 public enactment of state sovereignty through surveillance, documentation, and the
27 apparent tidiness of statutory distinctions. Within migrants’ lives, the inherent contra-
28 dictions within these policies and status categories are deeply felt and highly visible,
29 causing a heightened legal consciousness with diverse critical and ideological responses.

30 The fundamental importance of this structural dynamic has been well-documented
31 by other scholars;⁶ however, my analysis here also emphasizes the important role of
32 discourse in the cultural construction of meanings and ideologies that both reproduce
33 and contest the order of the neoliberal nation-state, an order that mediates challenges
34 and contradictions based in global fluidity and popular perceptions of insecurity. By
35 highlighting throughout the voices and agency of Salvadoran migrants and legal prac-
36 titioners, even in the constrained political context of rural Arkansas, this material
37 demonstrates how everyday agents reframe and contest the meanings of the TPS
38 program. Their responses highlight the already-present gaps and contradictions in
39

40
41 5. It is worth noting that Sadowski-Smith (2009) suggests that, symbolically, scholarship on the
42 subordination of migrants risks reifying these migrants’ identities as centered on hard work—with problem-
43 atic racializing and essentializing implications.

44 6. Some (Massey, Durand, and Malone 2002; Massey 2008a) describe this as a relatively stable system
45 of building an underclass—not denying the presence of exploitative dynamics, but subsuming them in a
46 functionalist reading—while others (Ngai 2004; Mize and Swords 2010) foreground the inhumane and 5
47 manipulative aspects of guest worker programs and other legal exclusions, aligning their intellectual work
48 with the efforts of activists and advocates for a more just system.

1 temporariness as a technology of law (Coutin and Yngvesson 2008, 2). Overall, the case
 2 of TPS demonstrates another way that in the contemporary moment “exceptions” to
 3 law—such as the concept of temporariness itself—are no longer used simply to suspend
 4 law, but are employed as structured lacunae within the law itself (Agamben 2005;
 5 Kretsedemas 2009, 61). In other words, the apparent simplicity of the statutes in the
 6 *Federal Register*, laid out in black and white, belie the way in which the very ambiguity
 7 of the program serves as a release valve for the irresolvable contradictions inherent in
 8 immigration policy: contradictions between state authority and global flows as well as
 9 blurred boundaries between conditions of sociolegal inclusion and sociolegal exclusion.

10 Though unauthorized migrants are often referred to as undocumented, migration
 11 scholars have worked to reframe the social and cultural dimension of this legal condi-
 12 tion as *deportability* (De Genova 2002) rather than lack of documentation. In truth,
 13 most migrants’ lives involve significant forms of documentation, or the construction of
 14 an official *paperreality* (Dery 1998) establishing the identity of a person and tracking their
 15 activities and locations through institutional texts. This set of documents constructing
 16 a bureaucratic reality for migrants’ identities, proving and producing their presence in
 17 the eyes of state officials, can range from immigration paperwork to tax records, student
 18 records, or police reports. The paperreality of migrants accumulates and forms a set of
 19 resources or liabilities that may be invoked when facing the immigration court system.

20 Despite the usual binary analysis and comparison of so-called undocumented
 21 migrants with legally authorized immigrants, there are also numerous other legal sta-
 22 tuses that do not fit neatly in either category. The arcane and ambiguous eligibility
 23 requirements for each particular legal program, with their mix of technical and moral
 24 claims required, make immigration policy a labyrinthine mystery to most of those who
 25 are impacted by it. Hiroshi Motomura (2008, 2048) calls these liminal status categories
 26 “twilight statuses,” arguing that they help construct implicitly racialized hierarchies of
 27 citizenship, framing differential access to rights (see also Massey and Bartley 2005;
 28 Menjívar 2006).

29 The technocratic opacity of these twilight statuses, as well as the murky ambiguity
 30 of the immigration law system as a whole, is navigated on behalf of their clients by the
 31 lawyers, notaries, and others that practice law (Lakhani 2014). At times, practitioners
 32 invoke the sleight of hand required in navigating law as a part of their professional
 33 magic while attempting to negotiate this ambiguous field—Sarah Lakhani mentions
 34 one who refers explicitly to the required documentation as the *papel mágico* or magic
 35 paper. Migrants unsure of their status and potential status in relation to the law seek out
 36 the magical promise of papers, or legal identity documents, by appealing to these
 37 practitioners, seeking certainty through their claims, and enacting the requisite bureau-
 38 cratic rituals of paperwork. Nonetheless, even those who acquire *papeles* in the form of
 39 a temporary work permit or even a green card often find that the elevation of status
 40 acquired by means of such artifacts is dubious at best. Some are able to acquire
 41 temporary work permits, only to find that these tie them to particular employers, have
 42 an expiration date upon which they may be deported, or may require biometric surveil-
 43 lance by the state.

44 In my own fieldwork, both experts in immigration law and clients seeking immi-
 45 gration policy status adjustments, frequently referred to as “benefits,” often describe the
 46 legal code, as well as the bureaucratic system implementing immigration law, as an

over-rationalized bureaucratic iron cage. They use such terms as “confusing,” “arcane,” and “labyrinthine,” as well as asserting that the system is “outdated” or “archaic.” The latter claim regarding the temporal datedness of the system ironically fails to recognize how the dysfunctions of the shifting system are in reality quite contemporary, flexible, and responsive, forming the cutting edge of legal violence for those subjected to these forms of liminal legality and graduated sovereignty (see Ong 2006; Kretsedemas 2009). The complexity of the system and the difficulty for many of finding a route to permanent residency are undeniable, contributing to a vibrant market in false identity documents or *papeles chuecos* (dirty papers) and subjecting residents within the national territory to varying regimes of management and discipline.

Liminally Legal in Arkansas: Setting and Methods

Danville, Arkansas, the primary site of my 2005–2008 ethnographic fieldwork, is a quiet and sleepy town with a population of around 2,400 residents located approximately halfway between Little Rock and Fort Smith in central western Arkansas. About half the households in town are headed by Latin American migrants who have relocated to the region within the past ten to twenty years (see Table 1 for recent US Census data). Yell County, of which Danville is the county seat, is located in a rural area in the Ouachita Mountains. It is a dry county, where the sale of alcohol is legally prohibited, and conservative evangelical churches as well as the leadership of the local poultry industry dominate local political life. During the time of my research, the town of Danville was home to two large poultry processing plants employing around 1,500 people in the small town.

While the chicken processing industry is especially dense in Yell County, the economic landscape of the entire northwestern half of Arkansas is dominated by poultry agribusiness. Home to the corporate headquarters of Tyson Foods, the largest meat

TABLE 1.
Growth of the Latino population in Yell County, with Comparative Figures from the Town of Danville, and the State of Arkansas

Yell County	Total Population 1990	Total Population 2000	Growth Rate 1990–2000	Total Population 2010	Growth Rate 2000–2010
Total population	17,759	21,139	+19%	22,185	+5%
Hispanic/Latino	177	2,691	+1420%	4,230	+57%
Salvadoran	11	348	+3064%	n/a	n/a
Foreign born	n/a	2,147	n/a	2,728	+27%
Danville total	1,588	2,392	+51%	2,409	+<1%
Hispanic/Latino	34	1,040	+2,959%	1,268	+22%
Arkansas total	2,350,725	2,673,400	+14%	2,915,918	+9%
Hispanic/Latino	19,876	86,866	+337%	186,050	+114%
Salvadoran	n/a	3,471	n/a	n/a	n/a

Source: Data drawn from the US Census (www.usfactfinder.gov).

1 producer in the world, a great number of Arkansans are caught up in the vertical
 2 production chains by raising, catching, slaughtering, disassembling, or processing the
 3 birds. Since John Tyson began the business in the 1930s, it has grown to be the nation's
 4 broiler capital, overtaking and surpassing earlier geographic centers like the Delmarva
 5 Peninsula and parts of North Carolina (Striffler 2005).

6 Concerning not only the conditions of legality experienced by migrants, but also
 7 the intersection of these conditions with the local political economy and labor man-
 8 agement regimes, my 2006–2008 fieldwork research was multisited and my inquiry
 9 covered diverse themes. The methods centered on a practice of participant observation
 10 in a wide range of settings: churches, homes, and restaurants where Salvadoran migrants
 11 meet to socialize, and special events such as *quinceañeras*, birthday parties, and Palm
 12 Sunday processions. I also observed workers' rights educational meetings, labor com-
 13 plaint interviews, day-to-day interactions in the Northwest Arkansas Workers' Rights
 14 Center, numerous public or corporate events that dealt with immigration, such as Tyson
 15 diversity programs, university forums, and public town hall meetings. In addition to
 16 this, I conducted extensive open-ended interviews with more than forty individuals in
 17 Arkansas and many others in El Salvador as I accompanied one migrant back home and
 18 met with family members of several others who could not leave Arkansas. While many
 19 of the statements quoted herein come from the open-ended interviews, a great number
 20 also come from informal conversations and the entire analysis is informed by my own
 21 experiences as a participant observer.⁷

22 Throughout the research, my areas of analytical focus included legal status issues,
 23 labor disciplining and labor rights claims, corporate politics in relation to migration
 24 flows, the formation of local, national, and transnational identities, sending and receiv-
 25 ing states' articulation with migrant communities, and transforming racial formations in
 26 Arkansas, particularly in rural areas of high migration. The open-ended, subjective, and
 27 free-form nature of the research methods enabled a complex and holistic approach to
 28 understanding the mutual constitution of legal status, labor production regimes, trans-
 29 national and national identities, and racial formations. While the unique localities of
 30 my data collection shape the results, nonetheless this approach led to insights that can
 31 be generative for theorizing citizenship and law more broadly, as well as comprehending
 32 the experiences of migrants in new immigrant destinations (Massey 2008b; Marrow
 33 2011), especially in the South.

34 In new sites of Latino settlement, such as Arkansas and other southern and
 35 midwestern towns, many locally-born residents conceptually collapse all Latinos into
 36 the category "illegal Mexicans" regardless of their national origin or legal status.
 37 Although an estimated 51 percent of the foreign born in Arkansas were undocumented
 38 around the time of my fieldwork (Capps et al. 2007), public and media discourses in
 39 Arkansas regarding immigration generally glossed over internal differences of status or
 40 origin and classed the issue of immigration as the "problem" of "illegals." Under these
 41 conditions, legality not only references formal status, but also indicates a site of social
 42 production where perceptions of law and legal categories structure social conditions.
 43 These conditions of socially constructed illegality are partially built through racialized
 44

45
 46 7. In conjunction with my participant observation, I also worked as an educator and advocate for the
 47 Northwest Arkansas Workers Justice Center from 2006–2007.

TABLE 2.
Labor Force Data for Foreign-Born and Latino Populations in Arkansas, with
Growth in Numbers of Workers from 1990–2010

Arkansas	1990	2010	Percent of Labor Force 2010	Percent of Workers in Manufacturing	Percent of Workers in Construction	Percent of Workers in Agriculture
Total number of workers	944,800	1,169,400	100	N/A	N/A	N/A
Foreign-born workers	12,700	77,100	6.6	12.8	15.9	9.2
Latino workers	8,500	72,500	6.2	9.5	15.1	6.8

Source: Compiled using data from Capps et al. (2013).

and nationalist perceptions of Otherness and illegitimate presence.⁸ These legal categories are linked to a social and economic structure that implies high labor participation rates for transnational migrants in Arkansas, as well as segregating recent migrants in relatively low-wage and high-risk industries such as poultry processing, agriculture, and construction (see Table 2).

At the same time, migrants themselves are engaged in a process of constructing, negotiating, and claiming complex configurations of identity and connection to particular places—a process that is fraught with the potential of deportation and displacement. The seemingly disparate areas of inquiry in my analysis are intertwined, on the ground, in a relatively coherent and highly racialized political economic system of inequality—a system that depends as much on its ideological fault lines and lacunae as on its structural base in legal codes and the mode of production.

ANALYSIS AND DISCUSSION

Defined Deportability: The Contradictory Structure of TPS

If persons living in the United States are under deportation orders, they can apply for a cancellation of removal based on meeting certain requirements for eligibility, including good character and length of continuous stay in the United States. TPS can be understood as a kind of collective yet temporary cancellation of removal. The granting of TPS hinges on the documentation of conditions of instability in the home country. Unlike refugee status, which hinges on individuals' evidence that they personally are at risk should they return to their countries, TPS is a blanket form of deporta-

8. One of the state-level political representatives stated privately that “the problem” was “Hispanics,” rather than “illegal immigration.” His sentiments were echoed by several other whites in informal conversation whose opposition to migration was based around a sense that “they”—meaning people of Mexican or Central American origin—“have no business being here.” This representative’s private comment followed immediately on the heels of a public panel in which he framed “the problem” in terms of migration and the rule of law.

1 tion relief applying to all nationals of a particular country that is currently experiencing
2 “extreme poverty, deprivation, violence, and the dislocation brought on by famines or
3 natural disasters” (Wasem and Ester 2011, 1).

4 Under the status, migrants are under deportation proceedings but cannot currently
5 be deported. They are technically defined as nonimmigrants to the United States: “an
6 alien is considered as being in, and maintaining, lawful status as a non-immigrant during
7 the period in which the alien is registered under TPS” (Immigration Act 1990,
8 § 1254a(f)(1)). The legal statement of permission that allows the migrant worker to be
9 in the United States (and provides him or her with identification in the form of a work
10 permit) also classifies this worker as a nonimmigrant and provides no path to residency
11 or citizenship. More than legally scaffolding the social inclusion of such migrants where
12 they are living, it simply temporarily censures their removal. This status has the
13 “discursive utility of making immigrants appear to be temporary” (Bailey et al. 2002,
14 127) although in practice many have been resident in the United States for many years,
15 or even several decades. This is the structured lacuna of liminal legality: while in
16 practice the condition can be indefinite—a permanent part of one’s sociolegal
17 existence—it is explicitly framed as temporary.

18 Discourse about TPS, from the level of the statute down to the speech of legal
19 experts, links the program to humanitarian commitments on the part of the United
20 States as an exemplary nation-state. Frank Head, the director of Catholic Charities
21 Immigration Services in Springdale, Arkansas, describes the status this way:

22
23 There is a status in immigration called TPS or Temporary Protected Status. First of
24 all in immigration, we divide everything between immigrants and non-immigrants.
25 There are ways to be in the US legally with either one of those categories. An
26 example of a non-immigrant is a tourist. It means you are here legally for a specified
27 amount of time but [you] are not an immigrant. There’s an alphabet soup of visas
28 that allow you to be here as a non-immigrant: A, B, C, D, J, M, N, V, all the way
29 to Z. . . . One of these is a TPS. This is granted to countries that have suffered a
30 natural disaster—[a] tsunami, an earthquake, a tornado, a hurricane, or some sort
31 of man-made disaster be it war or some facsimile thereof. *We allow people who are*
32 *here undocumented, who come from a country where the conditions are such that to send*
33 *them back would be inhumane, that Congress decrees these people are allowed to stay for*
34 *a specified amount of time. While Catholic Charities applauds that the government does*
35 *this and it’s a very important way of not forcing people back into intolerable situations, in*
36 *practice it’s an awkward system because it’s always for a very short amount of time, in*
37 *cases one-year breaks or two years. . . . In terms of El Salvador that [TPS recipients]*
38 *is by far the majority of the Salvadorans that are undocumented. (Frank Head,*
39 *personal communication, April 14, 2008, emphasis added)*

40
41 As Mr. Head’s comment suggests, the status of temporary worker is not necessarily
42 understood in contrast with the undocumented condition, socially read as illegality, and
43 in fact he himself frames the status simultaneously as a humanitarian program and as a
44 subset of illegality—in other words, a type of liminal, undocumented status. Section
45 1254a(f)(1) of the 1990 Immigration Act states “the alien shall *not* be considered to be
46 permanently residing in the United States under color of law” (emphasis added). TPS
47 is a quasi-documented state (Miyares et al. 2003) that allows Salvadorans to remain in
48 the United States, purportedly due to the ongoing situation of insecurity in El Salvador.

1 The statutes describing the TPS benefit also provide for the continuous biometric
2 surveillance of recipients as well as their eventual deportation when the program comes
3 to an end. Section 1254a(e) of the TPS statutes states that “the period of such status
4 shall not be counted as a period of physical presence in the United States for purposes
5 of section 1229b (a) of this title,” indicating that the time that the migrant spends in
6 the United States does not count as residency applying toward eligibility for cancella-
7 tion of removal. Cancellation of removal is available to undocumented migrants who
8 can prove at their deportation hearing that they have maintained at least ten years
9 continuous residency in the country. This means that a migrant detained under depor-
10 tation proceedings after ten years of working without any legal documents would have
11 more legal remedies available to him or her, all else equal, than another migrant who
12 had been working for ten years with a TPS work permit.

13 The TPS recognizes the legal presence and legitimacy of recipients as workers, but
14 officially effaces other aspects of their personhood. One of the requirements of the status
15 is that recipients must “maintain continuous physical presence in the United States”
16 (*Federal Register* 2006, vol. 71, no. 115, 34639). The statutes require migrants to ask
17 permission from the attorney general if they wish to travel out of country. They may
18 ironically be less mobile than their friends and colleagues with no papers; because they
19 are registered with the Department of Homeland Security, they fear traveling in viola-
20 tion of their work visa and thus potentially losing the card that permits them to work
21 legally. As one informant said to me:

22
23 I can’t go back. That is, I am welcome to go back, I just have no assurance that they
24 will let me back in the country; it would be at the discretion of the person at the
25 point of entry. I haven’t seen my parents since I came here to study journalism in
26 2000. When the TPS came out I was able to stay and find a job, but now I can’t go
27 back to visit. (“Mario,” personal communication, February 2007)

28
29 TPS recipients are prevented from fully settling in the United States by the always-
30 imminent termination of their work permits, yet prevented from returning to El Sal-
31 vador by the restrictions on those permits—although, perversely, the entire length of
32 their immobilization in the country is not legally recognized as a time of residency. In
33 many cases, the awkward and unworkable system of renewal even fails to provide
34 migrants with the elusive *papeles*, the physical documentation that verifies their legiti-
35 macy as workers and residents:

36
37 The only benefit you get from this really is a work permit. A work permit is
38 different from a green card. A green card specifies permanent residency, you can be
39 here forever till you die: you never have to do anything except renew that card. A
40 work permit is something that says you’re here for a certain amount of time, usually
41 one year or two, and try again later, re-apply when this runs out. The catch is that
42 the machinery for approving the reapplications is so overburdened that they are
43 frequently—or almost always—stuck in between where the card has run out but
44 their renewal hasn’t been approved yet, caught in this limbo where nobody can
45 prove that they are legally or not legally here, well technically there are with
46 immigration because it’s pending, but they have no permit to work. (Frank Head,
47 personal communication, April 14, 2008)

1 In some cases, migrants with perfectly valid working papers are displaced from their jobs
 2 due to a backlog in processing. If they can afford to retain an attorney, a letter from an
 3 immigration lawyer explaining the situation and providing copies of the renewal
 4 receipts may save them from dismissal, but in other cases, and especially in the past five
 5 years as employers have become increasingly fearful of running afoul of Immigration and
 6 Customs Enforcement, TPS holders are fired while their unauthorized coworkers may
 7 maintain their jobs. Human resources offices are happy to accept any document that
 8 appears on its face to be genuine, which is the requirement that legally applies to
 9 employers. False or stolen documents generally have no expiration date, while the work
 10 permit card carried by Salvadorans with TPS—copied by employers for their I-9 files—
 11 contains the date of expiration of the worker’s legitimate presence on its face, opening
 12 employers who continue to employ them to liability.

13 Nonetheless, TPS is for many an appreciated status—or a coveted one, depending
 14 on whether or not they are eligible. It provides a real legal harbor from some of the
 15 anxieties of deportability. It allows for legitimate work, as one informant said:

16
 17 Right up until now I don’t regret [coming to the United States]. I had TPS back in
 18 the 90s and until now. With that paper, you can work wherever just like you were
 19 legal. (“Graciela,” personal communication, July 21, 2007)

20
 21 As this informant indicates, the possession of TPS allows some migrants to feel and
 22 proceed “just like” they were legal. Many Salvadorans interpret and frame TPS as a form
 23 of legalization, even though they still lack residency. As Susan Coutin notes:

24
 25 The fact that immigrants often refer to work permits simply as *permisos* (permits)
 26 rather than *permisos de trabajo* (work permits) creates ambiguity regarding what the
 27 permit is for and suggests that *permisos* entitle their holders not only to work but to
 28 remain in the United States. (2000, 60)

29
 30 While the director of Catholic Charities Immigration Services called TPS a form of
 31 undocumented status, another lawyer sees it as a type of legalization:

32
 33 El Salvador, Honduras, and Nicaragua are lucky their nationals have TPS at the
 34 moment. If they didn’t, yes a lot more of them would be being deported at the
 35 moment. Many whose asylum claims, pending after 10 years or so, are now being
 36 denied have the opportunity to change their status to TPS. That saves them from
 37 being deported. Yes, it is a political tool as the U.S. never has really acknowledged
 38 these people as the legitimate refugees that they were when fleeing from the Civil
 39 Wars. TPS is temporary, but it is a legal status. I’m sure they would rather be legal
 40 than illegal. (Mariana Collins Romero, personal communication, July 2, 2007)

41
 42 This ambiguity regarding the legal status offered by TPS is only a manifestation of the
 43 perplexing nature of legality in the practice of US immigration and citizenship law. As
 44 Coutin explains in *Nations of Emigrants*:

45
 46 In drawing attention to gaps between immigration as a conceptual system and as a
 47 social reality, I do not mean to suggest that if we revise our immigration categories

1 or make some policy adjustments, then these gaps would be closed. Rather, I argue
 2 that the immigration system *creates* the very disjunctures that seem to undermine
 3 it and that, moreover, these disjunctures can be key to the immigration system's
 4 coherence. (2007, 5)

6 Far from being *sui generis* within the structuring and practice of immigration law,
 7 therefore, the statutory discourse and legal structures of TPS highlight the crucial
 8 lacuna at the heart of the structure—the exception foundational to the enactment and
 9 functioning of this particular law. It highlights the dialectic between absolutist notions
 10 of legality and the subtle constructions of validity and worth entailed by law as a social
 11 process, revealing the mutability of law and the disjunctive entanglement of legal
 12 structures with historical and social realities.

14 **Salvadoran Agency Recast as US Altruism: The Hidden History of TPS**

16 The role of Salvadorans' agency and the multifaceted meaning of TPS is rooted in
 17 the program's contested historical origins: originally, the legal establishment of TPS,
 18 followed by the construction of another nonimmigrant status called Deferred Enforced
 19 Departure, was a hard-won victory for Salvadoran diplomats and representatives of the
 20 states' interests, alongside the work of migrant activist networks and their allies in the
 21 United States (Coutin 1998, 2000, 2007). The original framing of TPS in 1991 hinged
 22 on a recognition of the difficulties of returning to Central America due to the turmoil
 23 and insecurity of civil war, thus serving as a kind of proxy for the refugee status the state
 24 refused to grant Salvadorans and Guatemalans.⁹ TPS was a legal compromise intended
 25 to mitigate the controversial political disaster of US military intervention in Central
 26 America and respond to political pressures from both Salvadoran diplomacy and inter-
 27 nal dissidence. TPS status in the early 1990s was only an eighteen-month program,
 28 though beneficiaries became eligible to apply for DED, Deferred Enforced Departure,
 29 when the program ended—another program that emerged specifically to address the
 30 scandal of displaced Central Americans (Coutin 2007). The 1997 Nicaraguan Adjust-
 31 ment and Central American Relief Act eventually provided various pathways to legal
 32 permanent residency and a possibility of citizenship for many of the Salvadorans who
 33 had utilized TPS initially (Coutin 1998, 2007).

34 In many ways, TPS status was a political compromise responding to the tension
 35 between the needs of refugees from Central America and the US government's unwill-
 36 ingness to admit the failures and abuses of its own foreign policy through the granting
 37 of asylum, mediated by the increasing public scandal of those foreign policy choices. By
 38 recognizing Guatemalans and Salvadorans as legitimate refugees under existing laws,
 39 the state would have thrown into question the legitimacy of its formative financial

40 9. The US granting of refugee status to Central Americans in the 1980s was a highly political matter.
 41 Nicaraguans were generally accepted as refugees due to their claims to repression by a socialist government,
 42 while Salvadorans and Guatemalans, fleeing from state violence by regimes supported by the United States,
 43 were denied their applications for refugee status (González 2000, 131). As Hamilton and Stoltz Chinchilla
 44 state, "as immigrants from 'friendly' countries fighting 'communist subversion,' Salvadorans and Guatema-
 45 lans could not be welcomed as refugees or entitled to asylum" (2001, 53).
 46

1 support for the repressive Salvadoran state during the war (Mahler 1995, 30; González
2 2000, 131). Investigations by the UN Truth Commission after the Chapultepec Peace
3 Accords of 1992 found that the Salvadoran state and affiliated death squads, supported
4 by US military aid, were responsible for over 80 percent of the human rights abuses
5 documented during the twelve-year conflict.

6 Salvadoran migrants' struggles to be recognized as refugees were often not only
7 motivated by their desire to legalize, but also by the wish to raise these kinds of
8 questions about US foreign policy in Central America. However, with the passage of
9 time, these status benefits have been increasingly depoliticized and their origins in US
10 imperialism occluded. US foreign policy in El Salvador, at least tangentially related to
11 the TPS rationale in 1991, is delinked from the contemporary frame of "natural disaster
12 relief." While the historical context remains important in the memory of many Salva-
13 dorans, officially TPS is represented as a humanitarian gesture on the part of the US
14 government.

15 In January and February 2001, two major earthquakes ravaged central El Salvador.
16 Mudslides buried vast suburban areas of the capital and during the months of tremors
17 following, many people slept outside their homes in spite of the ever-present threat of
18 gang violence. In the aftermath of this natural disaster, both activists and Salvadoran
19 politicians wasted no time in seeking a special recognition for Salvadoran migrants
20 working in the United States under the TPS program. The Salvadoran government
21 submitted a formal request to be considered for TPS on January 17, four days after the
22 first earthquake. On March 19 of the same year, the Attorney General gave notice in
23 the US *Federal Register* that Salvadorans in the United States would again be eligible for
24 this status, this time due to the depoliticized or allegedly natural disaster of the earth-
25 quakes rather than the overtly political disaster of civil war.

26 Within Salvadoran political contexts, government officials who pressed for the
27 reinstatement of TPS presented it as a diplomatic victory. However, these victories
28 can be a double-edged sword within a global context where the geographies of disas-
29 ter and aid often reproduce splits of privilege and subalternity, casting the countries
30 of the global North as saving the countries of the global South. When disaster is
31 naturalized in certain geographic spaces, the peoples associated with those national or
32 regional zones can also be stigmatized as perpetual victims, not as potential or actual
33 citizens.¹⁰

34 Postcolonial theorists have argued that mechanisms of aid and asylum that are
35 deployed by states serve the interests of the donor state first and foremost. In *The*
36 *Postcolonial Politics of Development*, Ilan Kapoor (2008) argues that although aid is
37 performed by powerful nations as a kind of benevolent gift, it is really a form of gift.
38 The gift of aid, whether charity, development, or the safe harbor offered by a status
39 like TPS, is tainted by the self-interest of the giver. Rather than reducing inequalities,
40 Kapoor argues, these relationships reinforce hierarchies between haves and have-nots
41

42
43
44 10. As the resistance of Katrina victims to being characterized as refugees makes evident, there is a
45 symbolic opposition within popular discourse between those who are *citizens*, who are entitled to the state's
46 protection along with various benefits and privileges, and *humanitarian recipients* of aid or asylum, who are
47 defined symbolically as dependent victims whose support is contingent on the benevolence of the state.
48 While this is not always in fit with the formality of legal statutes, this social construction circulates and
exerts a powerful hold on the imaginary of national belonging.

1 and produce a sense of obligation on the part of recipients without substantively
2 improving their situation of economic need. Aid as grift allows wealthier nations to
3 reinforce their sense of superiority by performing rituals of generosity and wealth,
4 while increasing their political power through the attachment of conditions to aid—
5 often neoliberal economic policy requirements that will benefit the core nation in the
6 end.

7 The enactment of benevolence through the gift also ritually fixes and defines a
8 specific historical relation between donor and recipient. TPS served as a kind of proxy
9 for asylee status. But while asylum statutes appeal to international codes emphasizing
10 the right of the refugee and asylee to safe harbor, and the obligation of the state to
11 provide it, the benefit of TPS is represented as a benevolent gift rather than an
12 obligation. Although individual asylees must prove they have special reason to fear,
13 while TPS applies in blanket fashion to all nationals of a particular country—another
14 example of the ironies and ambiguities of these status systems—nonetheless asylum is
15 rhetorically a rights-based claim while TPS is symbolically a humanitarian gesture
16 granted. The notion of gifts given rather than rights protected ratifies a certain histori-
17 cal relationship. The gift is freely given, but requires reciprocity and gratitude on the
18 part of the recipient, while the fulfillment of a right implies that the motivating factor
19 is a foundational obligation on the part of the state.

20 In the case of asylum for Salvadorans and other Central Americans who came to
21 the United States in the 1980s, recognition of asylum status as a right protected could
22 imply an act of restitution for systematic oppression, a recognition of the state's respon-
23 sibility for both violence and displacement. The granting of TPS to those legally framed
24 as unauthorized nonimmigrants on the basis of the inhumanity of sending them back to
25 naturalized conditions of disaster, on the other hand, reinforces the idea that the United
26 States is a benevolent entity, caring and generous even with those who violated the
27 country's territorial sovereignty. This interpretation of the program is extant among
28 many who enroll in it, as well as legal practitioners, such as the lawyer who stated the
29 following:

31 My personal opinion, those fortunate enough to have TPS should consider them-
32 selves lucky they have had it now for so many years. Many others just wish they
33 could have any kind of *permiso*. I think their complaints are unfounded. Instead
34 they should be grateful the government has allowed them this political tool in
35 order to continue having *permisos*. (Immigration lawyer in central Arkansas, per-
36 sonal communication, July 2, 2007)

37
38 The circulation of a discourse of gift and gratitude on the ground ensures that these
39 notions have life beyond the formal rationale of the statute. In addition to the frame of
40 gift and gratitude, the language around TPS frames the program as a response to
41 disastrous conditions in El Salvador. By rhetorically reinforcing the notion of El Sal-
42 vador as a backward place of perpetual disaster, insecurity, and danger, this US policy
43 forms part of a broader set of historical and contemporary discourses that constitute the
44 receiving nation-state's exceptionalism as a civilized safe haven. At the same time, in
45 contrast to refugee and asylee status, TPS-holding migrants are given no opportunity to
46 become fully enfranchised citizens in this safe haven. In short, the phenomenon of

1 Temporary Protected Status allows the US government the best of both worlds: rhe-
 2 torically reproducing the notion of the United States as a site of safety and opportunity,
 3 benevolently giving refuge to unfortunates from a purportedly unlivable third world,
 4 while also allowing for the continued labor exploitation and social marginalization of
 5 migrants.

6 7 **Life with an Expiration Date: Living and Critiquing the Temporary Life**

8
9 Salvadorans living this condition of liminal legality under TPS in Arkansas spoke
 10 of the program from multiple angles, acknowledging the multifaceted and ambiguous
 11 way the status affects their social and working lives. Many Salvadorans appreciate the
 12 TPS program and to an extent perceive what it provides as, indeed, a type of benefit.
 13 Most with TPS status feel great relief that they do not have to fear being discovered by
 14 immigration officials to the same degree they would as unauthorized migrants, or even
 15 moral pride that their work permit makes them legitimate as local residents. Those with
 16 professional training (such as in journalism) may be able to work jobs in their profession
 17 as long as employers can accept the instability of the status, while undocumented
 18 persons with similar training work under the table in construction, work as wait-staff,
 19 start informal businesses, or use false papers and make themselves invisible in the
 20 disassembly lines of chicken processing plants. However, those who live with liminal
 21 legality also do not hesitate to criticize the indignities and inadequacies of the program.
 22 When I told one Salvadoran man I was writing a paper on TPS, he joked: “Tell them
 23 they make us renew too often. And they make us give our fingerprints every year! Do
 24 they think we are smuggling in new fingers?” (“Gerardo,” personal communication,
 25 February 2007). Others express the same resentment at the invasive nature of TPS
 26 eligibility requirements and biometrics.

27 Some Salvadorans who are eligible for TPS do not choose to enroll for various
 28 reasons. This can be because they are not aware of their eligibility, because they are
 29 suspicious of state bureaucracies and hesitant to make themselves visible through the
 30 application process, or because they choose clandestinity over the liminal legality (and
 31 permanent surveillance) of TPS. This is a testament to the problematic nature of TPS
 32 as perceived by Salvadoran migrant interviewees. While migrants who are undocu-
 33 mented avoid all contact with ICE officials, those with TPS must be in contact with
 34 them on a yearly basis to renew their permits, even reporting for biometrics or person-
 35 ally identifying body measurements. This includes fingerprinting, which makes many
 36 Salvadorans exceedingly nervous. Gerardo, who bridled at the idea that he would have
 37 to submit to fingerprinting every year, noted accurately that such a practice is a means
 38 of state control: “They do this so they know who and where we are.” Indeed, it is
 39 delineated in the TPS statutes that such information could be used when TPS is
 40 withdrawn to round up and deport those who had work permits under the program:
 41 “DHS [the Department of Homeland Security] has made clear that information it
 42 collects when an alien registers for TPS may be used to institute exclusion or deporta-
 43 tion proceedings upon the denial, withdrawal, or expiration of TPS” (Wasem and Ester
 44 2011, 2–3). The necropolitics of the Department of Homeland Security’s militarized
 45 border enforcement (Márquez 2010) are complemented by the biopolitics of US

1 Citizenship and Immigration Services (US-CIS) registration processes, which entail the
2 extensive and frequent taking of biometric records.¹¹

3 Some migrants comment that TPS does not go far enough as a benefit, and the
4 United States owes Salvadorans special treatment given the long and close political
5 entanglement between El Salvador and the United States. For a few, this means the
6 compliance and collaboration of the Salvadoran government with US foreign policy
7 goals, such as signing the Central American Free Trade Agreement or the provision of
8 soldiers to the 2003 war in Iraq:

9
10 I think that they should give us certain consideration because El Salvador is the
11 only country in all of Latin America that supports the US war in Iraq. We sent
12 troops, and it makes me proud to see that. And we have always supported the US.
13 But I think the politicians should see that we did something for them, now they
14 should do something for us. (“Yessica,” personal communication, November 2006)

15
16 Other interviewees emphasize that the United States had some responsibility to Sal-
17 vadorans due to the US role in fomenting the Salvadoran civil war:

18
19 I don’t understand why the government doesn’t extend something special to
20 Salvadorans, because El Salvador suffered a war that was practically agitated by the
21 United States. So they owe us something for that, and more than a temporary
22 permission. (“Camilo,” personal communication, March 9, 2008)

23
24 These migrants critique the framing of TPS as “gift,” arguing that the awarding of TPS
25 is a poor restitution to Salvadorans for the US role in the decades of war and economic
26 disaster in their country or for the ways in which the Salvadoran state has for the past
27 thirty years complied closely with US foreign policy goals. Through their own narra-
28 tives, migrants on the ground contest the cultural logic of the TPS as an unqualified act
29 of humanitarian largesse.

30 A few Salvadorans emphasize the state’s obligation to migrants, specifically citing
31 historical relations between El Salvador and the United States, but it is far more
32 common for migrants to emphasize their own moral worth as a reason for US-CIS to
33 grant them residency. They express frustration at the difficulty of constantly renewing
34 permits, while others who they frame as less deserving possess better options or oppor-
35 tunities. One man who attempted to renew had his application misfiled by a notary and
36 lost his job at Petit Jean Poultry in Danville. He used the occasion to reflect on the
37 absurdity of the entire system, arguing that the standards failed to reward those who
38 merit it:

39
40
41 11. While this acknowledgment—even foregrounding—of the punitive aspects of the program may
42 appear to contradict the discursive framing of TPS as a benevolent and humanitarian migrant program
43 offering relief, these two discourses are deployed within both the statutes themselves and congressional
44 research and commentary, without any apparent distress regarding the two-fold implications. In this way, the
45 coupling of punitive deportation and national security discourse with celebratory discourse regarding the
46 exceptionalism of the United States as a haven and magnet for migration here form a strong parallel with
47 the contradictions and tensions in broader discourses about immigration in the United States.

1 The government doesn't make any sense. I see people that are drunks, drug addicts,
2 make all kinds of trouble, and they get residency easily. While others who only
3 work, behave themselves, they are good people, and they don't give them any-
4 thing. It's hard for them even to get a temporary residency. ("Ricardo" September
5 23, 2007)

6
7 Similarly, the grandchildren of another Salvadoran migrant, *doña* Magdalena, were irate
8 when they realized how long their grandmother had been in the United States without
9 being recognized with legal residency. Upon encountering some letters that Magda had
10 from their mother, sent from El Salvador when she was a child, they expressed their
11 frustration. They could not understand why "criminals" could be citizens, but not their
12 grandmother, who had spent "so many years working hard, paying taxes, and doing
13 everything possible to get ahead." The boy, Carlitos, promised to write a long letter to
14 the US-CIS explaining everything about his grandmother's suffering during the war as
15 well as sacrifices and hard work in the United States. These children, along with
16 Ricardo and a number of other informants, espouse a meritocratic view of citizenship
17 and social belonging. Discursively constructing Salvadoran migrants as superior within
18 a moral hierarchy of value, they argue that those who fulfill values of work and
19 contribution should be rewarded and enfranchised, not "criminals" or "drunks," and in
20 the process reproduce discourses of criminality as delimiting the moral boundaries of
21 citizenship (cf. Cacho 2012).

22 In addition to contesting the rationale and the hidden political meanings of TPS,
23 Salvadoran migrants argue that TPS is more a condition of exclusion and insecurity, a
24 tenuous form of legality that could be taken away at any moment, rather than a benefit
25 granting security. One woman I spoke with had been working with a TPS card from
26 2001–2006, but her most recent petition for renewal was denied. She does not under-
27 stand why:

28
29 They tell me that they don't have enough proof that I am really from El Salvador.
30 I don't understand—I sent them my birth certificate. They were satisfied before. It
31 seems like things are going backwards for us. ("Yessica," personal communication,
32 November 2006)

33
34 In this context, it is understandable that some may choose to continue to work in a
35 clandestine fashion rather than announcing their presence to the Department of Home-
36 land Security. Many informants expressed a feeling of exasperation with both the
37 convoluted processes of immigration law and the proliferation of false document
38 markets:

39
40 The law punishes honest people and benefits liars. The father of my children says
41 I should get *papeles chuecos* [false papers], that there are *buenos chuecos* [good fakes].
42 I am not going to put my fingerprints on a false document. I think it's all craziness.
43 They are selling Salvadoran birth certificates to Mexicans now, with their names
44 on them. Before, Salvadorans used to try to pass for Mexican so they could be
45 deported to Mexico instead of El Salvador, but now the Mexicans pass themselves
46 off as Salvadorans in order to get a work permit. I say it's a total mess. ("Soledad,"
47 personal communication, March 25, 2007)

1 In light of Yessica's testimony above, it may be that the standards for documentation
 2 under TPS are becoming more stringent as new markets develop around falsification of
 3 documents, including markets for Salvadoran birth certificates. The state creates the
 4 demand for *papeles chuecos*, then casts a wide net for identity theft offenders—a net that
 5 catches some whose papers are valid, not *chuecos*, and nets consumers of false documents
 6 as well as those entrepreneurs who traffic in identities.

8 CONCLUSION: TPS, STATE IDEOLOGY, AND LEGAL AMBIGUITY 9 UNDER NEOLIBERAL REGIMES

10 While TPS has been seen as a benefit for migrant workers by many legal practi-
 11 tioners and activists—and migrants themselves acknowledge the partial advantages—in
 12 this analysis I have emphasized the ways that TPS both produces and mediates conflicts
 13 between economic forces, political discourses, and dynamics of social exclusion and
 14 inclusion, all while failing to provide migrants with a path toward citizenship or
 15 meaningful social and territorial belonging. As with other temporary work status pro-
 16 grams before it (Le Espiritu 2000; Mize and Swords 2010), TPS performs practical work
 17 for the state and corporations, providing them with a relatively docile and legally
 18 immobilized population. Simultaneously, these legal forms help construct the nation-
 19 state as orderly and sovereign in a moment of alarmism regarding the integrity and
 20 security of nations and their relations to territory and population. The condition of
 21 liminal legality impels a greater degree of clandestine behavior and social isolation for
 22 migrants (Bailey et al. 2002; De Genova 2005), thus contributing to the social divisions
 23 that underpin cultural narratives and images portraying immigrants as an external
 24 threat to the nation.
 25

26 To add historical insult to legal injury, the program is set up to deny and deflect
 27 state responsibility for the displacement of Salvadorans and the legitimate claims many
 28 have to asylum. The discursive structure of the legal program and its deployment
 29 following the earthquakes reinforces US exceptionalism, performing a kind of humani-
 30 tarian grift that contributes to Salvadorans' subordination and marginalization. By
 31 narrating the United States as source of refuge for those displaced by natural disaster,
 32 TPS contributes to a notion of the United States as, in Nicholas de Genova's words, the
 33 "self-anointed refuge of liberty and opportunity" (2002, 421)—and a notion of El
 34 Salvador as a perpetually disaster-ridden land.

35 Finally, the invasive and unwieldy practice of frequent renewal and biometric
 36 measurements doubly subjects TPS recipients to state authority. The practices of state
 37 and corporate surveillance required by temporary permit programs may make things
 38 worse for migrants. TPS recipients have their years of residency, time that would
 39 otherwise be providing tools for them eventually to combat an order of deportation,
 40 legally effaced.

41 Temporary Protected Status is multifaceted and ambiguous, both in semiotic and
 42 pragmatic terms. While on the one hand TPS represents a political victory for Salva-
 43 doran transnational migrants and their allies and while migrants can strategically
 44 deploy their status "as if" they were legal, as a state response to the demands of the
 45 migrant community it also serves the purposes of the nation-state: it circumscribes and

1 reinscribes the racialized boundaries of national belonging by subordinating the ben-
 2 eficiaries to indefinite liminal legality. It legitimizes the state's actions as it constructs
 3 stratified systems of low-wage labor and social exclusion and provides few structural
 4 benefits to migrants along with its fees, biometric requirements, and bureaucratic delays.

5 Simultaneously symbolically reinforcing the idea of the United States as a benevo-
 6 lent force in the world and placating the nativist lobby by keeping migrants unenfran-
 7 chised and supposedly temporary, the TPS is a flexible technology subjecting migrants
 8 through temporariness and in the process contingently resolving several political prob-
 9 lems. Although TPS permits many Salvadorans to avoid deportation, it also imposes
 10 tremendous constraints on their mobility and transnational practices: Salvadorans are
 11 constrained from returning to their country to visit because they fear return trips will be
 12 seen as evidence that migration is a personal choice rather than a necessity due to the
 13 situation of instability in El Salvador, yet they are also prevented from settling by the
 14 always-imminent termination of their work permits. As others have noted, "Salvador-
 15 ans in temporary status programs have been immobilized in a limbo of spatial, temporal,
 16 economic, social, political and psychological dimensions" (Miyares et al. 2003, 79).
 17 This singular legal condition must be understood in its full ramifications, social as well
 18 as statutory:
 19

20 Although permanent temporariness springs from the fact that many immigrants
 21 now live and work under TPS, it is more than a static thing imposed upon
 22 individuals and groups by legal means. Indeed, as permanent temporariness is
 23 actively resisted, and as it creeps into all the nooks and crannies of Salvadoran
 24 daily life, we regard it as a way of being, a kind of space of action. We thus interpret
 25 permanent temporariness as exerting disciplining power over bodies, families, and
 26 social fields. (Bailey et al. 2002, 139)
 27

28 I would suggest that this "permanent temporariness," though quite specific to Salvador-
 29 ans' legal situation, involves dynamics of discipline and exclusion that have also been
 30 faced by migrants more broadly. In other words, the ambiguous and occluded subjection
 31 and disciplining entailed by liminal legality is not limited to TPS or HB visa status, but
 32 represents a broader and ongoing technology of citizenship law that is made visible in
 33 this particular instance.

34 Through an understanding of Salvadorans' TPS status as a structural form of
 35 differential exclusion, we can see its continuity with other partial forms of migrant
 36 incorporation, even beyond other guest-worker provisions such as the H2 visas and the
 37 bracero programs. Rather than seeing TPS as a way of being and legal frame that is
 38 radically different from other ways of managing and disciplining migrants, I would
 39 propose that the formality of liminal legality can reveal similar dynamics of constraint
 40 and exclusion that remain implicit in other situations. Ethnographic work on the
 41 experience of temporariness (and on migrants' discourses of resistance to state attempts
 42 at appropriation and disciplining) can reveal the dynamics of agency in diverse forms
 43 and conditions of ambiguous legal status, graduated forms of citizenship, social con-
 44 structions of some persons as "out of place." Such research can also illuminate the ways
 45 these stratifications lead to limited access to rights in everyday life.

46 Temporary workers remain politically disenfranchised and often socially margin-
 47 alized and their sense of ownership and stability is contingent and fragile. By bringing

1 the qualities of undocumented experience into the open and documenting them as
 2 legitimate and state ratified, temporary work permit programs such as TPS make explicit
 3 the relations of power and labor management that remain implicit in the clandestine
 4 practices around fully unauthorized status and deportability, as well as the racialized
 5 social and legal processes constraining full access to civil rights for legal permanent
 6 residents and citizens of color.

7 While the creation and expansion of temporary worker programs may briefly
 8 reconcile the symbolic, social, political, and economic contradictions that the nation-
 9 state negotiates in an era of neoliberal globalization, it will not resolve the problematic
 10 conditions of life for migrants and may, in fact, create a semipermanent underclass of
 11 disciplined temporary persons, their personhood constrained by a permanent liminal
 12 legality. This type of immigration policy is a way for neoliberalism and the ideology of
 13 the nation-state system to work hand in hand and for the historical and economic
 14 entanglement of sending and receiving countries to be occluded. Although migrants
 15 may express resistance to the indignities, surveillance, and insecurity of TPS through
 16 their expressions of agency, they nonetheless live a structural, symbolic, and social
 17 condition in which they are legally recognized as workers, but effaced as full persons.

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3 4 **STATUTES CITED**

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