



**McDowell Foundation
Final Report
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1. Background on *Moreno v. Nielsen*

Moreno v. Nielsen, No. 1:18-cv-01135 (E.D.N.Y.), challenges a U.S. Citizenship and Immigration Services' (USCIS) policy that unlawfully blocks otherwise eligible noncitizens with Temporary Protected Status (TPS) from gaining lawful permanent (LPR) status. The case was filed on behalf of a putative class of TPS holders who, but for this policy, are eligible to become lawful permanent residents (LPR) through sponsorship by a qualifying U.S. citizen or lawful permanent resident family member or a U.S. employer.

TPS provides a temporary haven for noncitizens living in the United States when natural disasters or civil strife in their home countries render it unsafe for them to return. While holding TPS, a noncitizen is in a lawful, though non-permanent status, authorized to work, and protected from deportation. Most TPS holders have held this status for upwards of two decades and, consequently, have established deep roots in the United States. Because TPS is not a permanent status, many of these individuals take steps to gain LPR status (a "green card") through relationships they have established during their long years in the United States.

Hundreds, if not thousands, of TPS holders are blocked from becoming LPRs solely due to USCIS's unlawful policy, challenged in this lawsuit. The policy states that TPS holders who entered the United States without inspection cannot demonstrate that they were "inspected and admitted or paroled" into the United States, a requirement to adjust to LPR status. However, as the Sixth and Ninth Circuits have both held, the plain language of the TPS statute itself deems a grant of TPS to qualify as an inspection and admission for purposes of adjustment of status. The Eleventh Circuit has held the opposite. USCIS applies its policy everywhere except within the Sixth and Ninth Circuits. As a result, whether these TPS holders will be able to remain with family and community depends on the arbitrariness of where they reside. The Council's goal in filing this suit was to overturn the policy as applied in the jurisdiction of the nine courts of appeals that have not ruled on the issue.

2. Report on Case Developments During the Grant Year

As detailed in the semi-annual report submitted on March 29, 2019, Plaintiffs' motion for class certification and cross motion for summary judgment had been pending for a number of months at the start of the grant year. In an effort to move the case more quickly, we filed a motion for a preliminary injunction with supporting [brief](#) on November 16, 2018, and, after the

government's response, a reply [brief](#). In January 2019, we filed a Motion for a Temporary Restraining Order or, in the Alternative, for Preliminary Injunction on behalf of lead Plaintiff, Amado Moreno, who was facing a lay-off from his job of 17 years. The court denied the request for a temporary restraining order on February 15 and asked for supplemental briefing on Mr. Moreno's standing to sue, which we submitted on February 22.

Since the interim report, we have been awaiting a decision on the pending motions for preliminary relief and/or full disposition of the case. On July 2, we submitted a letter brief to the court which notified the court of recent decision on the issue from the U.S. District Court for the District of Minnesota.

Revised Strategy for Reaching Our Goal

As noted above, our goal for this suit was to challenge the legality of USCIS' policy in the jurisdictions of the nine Courts of Appeals where it is applied. While we have waited for the court in *Moreno* to rule on our pending motions, TPS holders have filed individual lawsuits challenging the application of the policy in their own cases in, [inter alia](#), Minnesota, Texas, and New Jersey. We have been advising the attorneys in these cases and following their progress. To date, all district courts have ruled in favor of the TPS holders, finding that their grant of TPS must be deemed an "admission" for purposes of eligibility for adjustment of status. The government has now appealed three of these individual cases to the Courts of Appeals for the Third, Fifth and Eighth Circuits. In August and September, we will submit [amicus curiae](#) briefs in support of the TPS holders in all three cases. We are hopeful that, if one or more of these circuit courts rules favorably, it will prompt a decision from the court in *Moreno*. Even without such a ruling in *Moreno*, however, favorable decisions by these Courts of Appeals will benefit thousands of TPS holders and significantly reduce the number of states within which USCIS can apply its detrimental policy.

Our focus for the remainder of the grant period and the months beyond that, then, will be twofold:

- 1) Continue litigating *Moreno*. If the court ultimately rules favorably, will we need to monitor USCIS' implementation of the decision. If the court denies our motion for summary judgment, we will file an immediate appeal. If the court denies either our motion for class certification or our motion for a preliminary injunction, we will consider filing an interlocutory appeal;
- 2) Continue supporting individual lawsuits throughout the country and filing [amicus curiae](#) briefs in all cases that are appealed to a Court of Appeals, while simultaneously waiting for a decision in *Moreno*. Either strategy, individually or in combination, will move us towards our end goal: striking down USCIS' unlawful policy as applied within the jurisdictions of nine Courts of Appeals.