

United States Senate

WASHINGTON, DC 20510

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May 8, 2018

The Honorable Kirstjen Nielsen
Secretary
Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, DC 20528

The Honorable Lee Francis Cissna
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue N.W.
Washington, DC 20529

Dear Secretary Nielsen and Director Cissna:

We write concerning newly released United States Citizenship and Immigration Services (USCIS) documents that raise serious questions about the integrity of the Department of Homeland Security's (DHS) justification for terminating Temporary Protected Status (TPS) for Haiti.

TPS was first extended to Haiti in January 2010, several days after a catastrophic, magnitude 7.0 earthquake devastated the country. The disaster caused billions of dollars in infrastructure damages and losses, claimed more than 220,000 lives, and displaced more than 1.5 million people. At the time of the initial TPS designation, then-DHS Secretary Janet Napolitano called the earthquake "a disaster of historic proportions."¹ Until as recently as May 2017, DHS continually renewed and extended TPS for eligible Haitian nationals, recognizing the "extraordinary and temporary conditions" that persist in Haiti as a result of the 2010 earthquake.²

The November 2017 decision to terminate Haiti's TPS designation marked a stunning reversal of this assessment of the conditions in Haiti. The decision also resulted in a lawsuit under the Freedom of Information Act against DHS and other parties seeking records to "shed light on the legality of the termination, the reasons for the termination, and the adequacy of the review of relevant conditions."³ Documents that DHS recently produced in the litigation are deeply troubling and raise suspicions that the termination of TPS for Haiti was unjustified and politically motivated.

For example, an internal USCIS report entitled "TPS Considerations: Haiti (October 2017)" states that "[m]any of the conditions prompting the original January 2010 TPS designation persist, and the country remains vulnerable to external shocks and internal fragility."⁴ The report

¹ Press Release, Department of Homeland Security, Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals (Jan. 15, 2010), <https://www.dhs.gov/news/2010/01/15/secretary-napolitano-temporary-protected-status-tps-haitian-nationals>.

² <https://www.federalregister.gov/documents/2017/05/24/2017-10749/extension-of-the-designation-of-haiti-for-temporary-protected-status>.

³ *National Immigration Project of the National Lawyers Guild v. DHS*, 18-cv-00659, Compl. For Decl. and Inj. Relief ¶ 1 (S.D.N.Y. Jan. 25, 2018).

⁴ U.S. Citizenship and Immigration Services, *TPS Considerations: Haiti (October 2017)*, https://www.nationalimmigrationproject.org/PDFs/practitioners/our_lit/impact_litigation/2018_16Apr_foia-tps-haiti.pdf at 41.

goes on to explain that “Haiti has also experienced various setbacks that have impeded its recovery, including a cholera epidemic and the impact of Hurricane Matthew—the latter of which struck Haiti in October 2016 and “severely worsened the pre-existing humanitarian situation” in the country.”⁵ And the report further notes that “food insecurity, internal displacement, an influx of returnees from the Dominican Republic, the persistence of cholera, and the lingering impact of various natural disasters” continue to impede Haiti’s recovery.⁶ The report concludes that Haiti currently is “unable to adequately respond to a wide range of persistent humanitarian needs” and characterizes the island nation’s recovery as a “tragic pattern of ‘one step forward, two steps back.’”⁷

Yet, in a November 3, 2017 memorandum to then-Acting DHS Secretary Duke entitled “Haiti’s Designation for Temporary Protected Status,” Director Cissna wrote: “In summary, Haiti has made significant progress in recovering from the 2010 earthquake, and no longer continues to meet the conditions for designation,”⁸ citing the internal USCIS report as the basis for his assessment. In the same recommendation memorandum, Director Cissna further ignored his own agency’s report, arguing that significant progress has been made in response to the earthquake, and citing the withdrawal of U.N. peacekeepers, the completion of the 2017 presidential election, low levels of cholera, and the increased closure of camps for internally displaced persons.⁹ DHS later used those justifications in its termination notice published in the Federal Register.¹⁰

At best, the discrepancies between the internal USCIS report and the deliberative memorandum reveal that the memorandum is based on a mistaken reading of the report; at worst, they reveal that the Administration is intentionally distorting the TPS-renewal assessment for political purposes. Either way, the documents reflect a callous disregard for how this TPS decision affects the approximately 58,000 Haitians set to lose protections. Moreover, in light of the president’s widely reported offensive comments about Haiti and African nations being “s***hole countries,”¹¹ these documents raise serious questions regarding whether the Administration’s decision to terminate Haiti’s TPS was based on the conditions in Haiti — as required by law — or whether the decision resulted from broader political concerns, including an animus towards the country and its nationals.

⁵ *Id.* (internal quotation marks and citation omitted).

⁶ *Id.*

⁷ *Id.* at 58 (internal quotation marks and citation omitted).

⁸ L. Francis Cissna, Director, USCIS, Memorandum for the Secretary, U.S. Department of Homeland Security. (Nov. 3, 2017),

https://www.nationalimmigrationproject.org/PDFs/practitioners/our_lit/impact_litigation/2018_16Apr_foia-tps-haiti.pdf at 36.

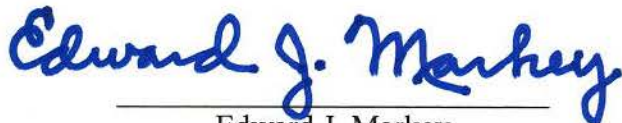
⁹ *Id.* at 36-37.

¹⁰ <https://www.federalregister.gov/documents/2018/01/18/2018-00886/termination-of-the-designation-of-haiti-for-temporary-protected-status>

¹¹ Julie Hirschfeld Davis, Sheryl Gay Stolberg, & Thomas Kaplan, *Trump Alarms Lawmakers With Disparaging Words for Haiti and Africa*, (Jan. 11, 2018), <https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html>.

Accordingly, we ask that, by May 31, 2018, you provide in writing (1) a detailed factual basis for the determination that Haiti no longer meets the conditions for TPS designation and (2) the reason(s) for the disparities between the October 2017 USCIS report and Director Cissna's assessment in his November 3, 2017 memorandum. We also ask that you immediately commit to a reconsideration of the termination of Haiti's TPS designation based on the facts and the law.

Sincerely,



Edward J. Markey
United States Senator



Kirsten Gillibrand
United States Senator



Mazie K. Hirono
United States Senator



Patrick Leahy
United States Senator



Chris Van Hollen
United States Senator



Elizabeth Warren
United States Senator



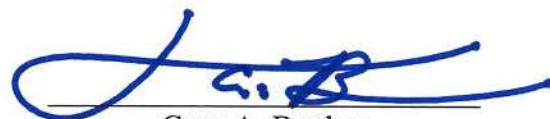
Robert Menendez
United States Senator



Bill Nelson
United States Senator




Tina Smith
United States Senator



Cory A. Booker
United States Senator



Dianne Feinstein
United States Senator



Richard J. Durbin
United States Senator



U.S. Citizenship
and Immigration
Services

June 11, 2018

The Honorable Edward J. Markey
United States Senate
Washington, DC 20510

Dear Senator Markey:

Thank you for your May 8, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

The Secretary of Homeland Security's authority to designate a country for Temporary Protected Status (TPS) and to extend or terminate a country's existing designation is based upon specific statutory criteria. *See* Immigration and Nationality Act (INA) § 244(b). U.S. Citizenship and Immigration Services (USCIS) is principally responsible for advising the Secretary on TPS issues and implementing the program.

Prior to the current expiration date for an existing TPS designation, the Secretary of Homeland Security reviews conditions in the foreign country and, after consultation with other appropriate federal agencies, determines whether the statutory conditions for TPS continue to be met. Under the INA, if the Secretary determines that the conditions for designation continue to be met with respect to a given country, the Secretary extends the designation. But if the Secretary determines that the conditions are no longer met with respect to that country, she is required to terminate the designation. Additional information regarding TPS designations is available in the *Federal Register* and on the USCIS website. Recent TPS decisions are the subject of ongoing litigation; therefore, we are unable to comment further.

Thank you again for your letter and your interest in this important matter. The co-signers of your letter will receive separate, identical responses. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink that reads "L. Francis Cissna".

L. Francis Cissna
Director