

ICE stakeholder conference call
Post-earthquake issues related to Haitians and update on TPS
February 23, 2010

Meeting Notes

ICE efforts to date in Haiti: Matt King provided an overview as follows:

- Matt spent 20 days in Haiti
- ICE provided assistance:
 - Airport assessment – Area was “bedlam”: press, evacuees, jets, very little control, airport terminal was declared “unsafe”. ICE (40 officers and agents) established a screening station to expedite the process for those leaving Haiti with proper documentation. After 2 weeks, matters became much more orderly.
 - Aided in efforts to distribute water, food and medical supplies missions from the Embassy
 - Orphan escort – ICE became ultimately responsible for the Embassy’s mission for orphan escorts. Assisted in determining that process and applicants were legitimate through face-to-face screening, identifying genuine family members. ICE also undertook work regarding trafficking which included the Baptist missionaries.

TPS: The call then proceeded with a Q&A session as follows:

(1) How has ICE provided notice to all Haitians in ICE custody about TPS?

ICE response: A message went to all ICE field offices about TPS on January 25, 2010 to provide all Haitians held in custody with a copy of the press release, Federal Register notice and the forms required to apply for TPS. Haitians that have come into custody since the earthquake should have also been provided with this information.

(2) How many Haitians are in ICE custody?

ICE response: 475 but some have been detained post-earthquake.

(3) How has ICE provided notice to Haitians held in custody of the availability of legal assistance for TPS applications?

ICE response: The usual EOIR pro bono list would have gone out to the ICE field offices. A separate message was also circulated to ICE field offices advising them to reach out to community organizations and with a link to information regarding TPS. The message did not contain any specific detail about pro bono legal assistance.

(4) *Can ICE indicate where in the country Haitians are being held?*

ICE response: We do not have an official breakdown. They are held all over the country in all field offices.

(5) *How many Haitians held in custody may be TPS eligible/not eligible due to criminal convictions?*

ICE response: We cannot answer on TPS eligibility, however, the figures from January [2010] say that there are 470 Haitians held in custody. Of those, 400 have criminal convictions.

(6) *How many Haitians held in custody are pre final-order and how many are post final-order?*

ICE response: 169 are pre final-order, 299 are post final-order. We do not have sufficient information for the 2 other Haitian detainees.

(7) *Does ICE have any plans to begin removals to Haiti?*

ICE response: No.

(8) *Does ICE have any plans to release Haitians held in custody from detention?*

ICE response: We have no single plan. We are currently reviewing each detainee on a case-by-case basis. . Haitians are being detained as they come into custody – Some are going into proceedings, others have been released on an individual basis.

(9) *What criteria is ICE following in its decision to release a Haitian from custody?*

ICE response: Humanitarian grounds.

(10) *Does ICE have any guidelines for release on the basis of “humanitarian grounds”?*

ICE response: We have nothing further on this issue. It’s determined on a case-by-case basis. We can follow-up further about this issue later.

(11) *What guidance has ICE provided to trial counsel regarding policy to terminate proceedings?*

ICE response: We are not terminating proceedings, we are closing the cases administratively. Trial counsel are following the standard protocol in TPS cases. We provided this advice to trial counsel around the same time that DRO notified its field offices about informing Haitian detainees about the TPS process.

(12) *What is ICE’s policy for Haitians arriving by sea?*

ICE response: Nothing specifically.

(13) *But ICE is aware that at least one boat of Haitians has attempted to dock in the U.S.?*

ICE response: We are not in a position to comment on this issue. You may wish to direct this question to CBP or the Coast Guard.

(14) *Does ICE have any contingency plan for housing Haitians in Gitmo or Florida?*

ICE response: We have a contingency plan but we are not at liberty to disclose that plan. We can escalate this to DHS Policy and they can make a determination about whether they can disclose any further information.

(15) *Are there any refugees or immigrants [Haitian or otherwise] currently held in Guantanamo Bay?*

ICE response: Not that we are aware of, but we are not in a position to answer this question. We can direct your question to DHS Policy and get you a contact name.

(16) *Has there been any discussion at ICE headquarters about the review of Haitian detainees with final orders?*

ICE response: There has been no discussion about this issue. But we are reviewing all cases, including those with final orders. We are assessing them on a case-by-case basis.

(17) *Would you advise lawyers representing detainees with final orders against them to contact their respective deportation officer or is it safe to assume that each case is being looked at?*

ICE response: Do not assume that is the case, detainees should contact their deportation officer.

(18) *Can ICE provide a geographic breakdown of where Haitian detainees are being held?*

ICE response: We do not have an official breakdown, but we can give a general overview: Miami has the most Haitian detainees, then San Antonio and Boston, followed by New York, New Orleans, Philadelphia and Atlanta.

(19) *We are hearing that some onshore Haitian arrivals are being served with an NTA? What is happening with humanitarian parole?*

ICE response: You should direct this question to CBP. If they are issued humanitarian parole and it expires, they can apply for an extension from CBP. ICE has no unique policy for Haitians whose parole will expire. ICE will continue business as usual at this point

(20) *So, it's CBP issuing the NTAs not ICE?*

ICE response: That's correct. CBP issues the NTAs for arriving aliens.

- (21) *Which Haitians remain in detention? Who is not being paroled out?*
ICE response: We cannot answer that question.
- (22) *Of the 70 who are not criminals, why are they still being held?*
ICE response: Every case is being considered. It may well be a case where non-criminals have not been paroled because their release is contingent on a determination by the immigration judge. Release is not necessarily governed by ICE.
- (23) *What about parole on ROR? ICE also has the authority to parole detainees irrespective of immigration court proceedings*
ICE response: That is not permitted by the regulations.
- (24) *Can ICE give us any more information about the favorable exercise of prosecutorial discretion in respect of reopening TPS cases where there is a final order for removal?*
ICE response: Better to raise this question with the DHS Policy. There have not been any specific discussions regarding prosecutorial discretion with regards to Haiti.