

United States Senate

WASHINGTON, DC 20510

May 19, 2017

The Honorable John Kelly
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Ave, NW
Washington, D.C. 20528

Dear Secretary Kelly:

We write regarding the troubling news that your department has asked for information on the criminal history and public benefits use of Haitian nationals protected under Temporary Protected Status (TPS). Considering that you must make a decision on whether to extend TPS for eligible Haitians by May 22, we are concerned that you will use this information in your decision. Such analysis would be outside the statutory framework for deciding whether to extend TPS, and it would be a disturbing executive overreach.

As you know, the Associated Press published internal emails from Citizenship and Immigration Services showing that the agency asked for information on the criminal records and public benefit receipts of Haitians who had received TPS.¹ While department officials claimed that this information request is unrelated to the decision on whether to extend TPS, the timing of this information request suggests that this information is pretext to deny an extension of TPS. Further, this type of request fits into an alarming pattern of hostile behavior towards the immigrant community in general.

Under the law passed by Congress, TPS is granted when a foreign state is temporarily unable to accept the returns of their nationals and “there is an ongoing armed conflict within the state,” “there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state” or “there exist extraordinary and temporary conditions.”² Termination or renewal of TPS designation uses the same analytical framework.³ Any other considerations are not congressionally authorized and would create a new barrier not found in law.

¹ Alicia A. Caldwell. “AP Exclusive: US digs for evidence of Haiti immigrant crimes.” Associated Press, May 10, 2017. Accessed May 11, 2017. <https://apnews.com/740ed5b40ce84bb398c82c48884be616>

² 8 USC 1254a(b)(1)

³ 8 USC 1254a(b)(3)(B) and 8 USC 1254a(b)(3)(C)

Congress has already provided safeguards in statute against criminals using the TPS program because any foreign national that has been convicted of a felony or two or more misdemeanors within the United States is ineligible.⁴ Furthermore, multiple studies have confirmed that immigrants are less likely to commit crime than similarly situated individuals born in the United States.⁵ Congress also already addressed benefits use by allowing states to deem those with TPS ineligible for public assistance.⁶

The Department of Homeland Security should focus on the undeniable hardships that continue to affect Haiti in the decision to extend TPS. The country was devastated by the 2010 hurricane that caused over 200,000 deaths, injured over 300,000, displaced millions more,⁷ and caused an estimated \$7.8 billion in damages. An ensuing cholera outbreak then killed over 10,000 people and sickened more than 800,000.⁸ Hurricane Matthew further overwhelmed the country, affecting 2.1 million people, including nearly 900,000 children, and required humanitarian assistance for 1.4 million people.⁹ The newly elected President, Jovenel Moïse, also has stated that he supports the extension of TPS for Haitian nationals.¹⁰ Haiti's Foreign Minister Antonio Rodrigue also warned that returning so many nationals would hurt their recovery, while an extension would give the government more time to implement projects to improve the country. Haiti remains the poorest country in the Americas and one of the poorest countries in the world,¹¹ and the country is in no position to accept the return of 50,000 nationals currently protected under TPS.

We reiterate our strong belief that an extension of TPS for eligible Haitian nationals remains the only humane decision. Furthermore, we strongly believe that any attempt to expand your inquiry beyond whether conditions have improved in the foreign country are unsupported in the statutory

⁴ 8 USC 1254a(c)(2)(B)

⁵ Richard Perez-Pena. "Contrary to Trump's Claims, Immigrants Are Less Likely to Commit Crimes." New York Times, January 26, 2017. Accessed May 11, 2017. https://www.nytimes.com/2017/01/26/us/trump-illegal-immigrants-crime.html?_r=0

⁶ 8 USC 1254a(f)

⁷ Centers for Disease Control and Prevention. 2011. Accessed April 12, 2017. http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5951a1.htm?s_cid=mm5951a1_w.

⁸ Gladstone, Rick. "Lawmakers Urge John Kerry to Press U.N. for Haiti Cholera Response." The New York Times. July 29, 2016. Accessed April 12, 2017. http://www.nytimes.com/2016/06/30/world/americas/haiti-cholera-john-kerry-congress.html?_r=0.

⁹ Relief Web. "WFP Haiti Situation Report #41." March 3, 2017. Accessed April 12, 2017. <http://reliefweb.int/sites/reliefweb.int/files/resources/WFP%20Haiti%20Situation%20Report%20%2341%20%2803%20March%202017%29.pdf>

¹⁰ "L'administration Moïse-Lafontant 'favorable au renouvellement du TPS.'" Le Nouvelliste. May 3, 2017. Accessed May 15, 2017. <http://lenouvelliste.com/article/170687/ladministration-moise-lafontant-favorable-au-renouvellement-du-tps>


¹¹ World Bank Group. Last Updated April 11, 2017. Accessed April 12, 2017. <http://www.worldbank.org/en/country/haiti/overview>.

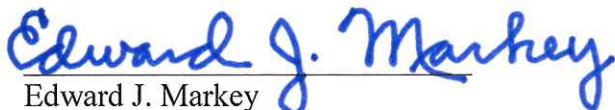
language and not authorized by Congress. We urge you to keep your review within the bounds dictated by Congress.

If you have any questions, please contact me or my Counsel, Andrew Geibel, at (202) 224-4744. Thank you for your prompt attention to this urgent matter.


Sincerely,


Robert Menendez
United States Senator


Ron Wyden
United States Senator


Edward J. Markey
United States Senator


Kirsten Gillibrand
United States Senator


Sherrod Brown
United States Senator