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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KELAN L. DAVIS, Chief Counsel and Staff Director
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October 30, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Elaine Duke
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Duke:

I am writing to ask that you ensure that your periodic review of the Temporary Protected Status (TPS) of currently designated countries is faithful to Congress's intent in establishing this law,¹ and that you continue to terminate designations for any countries that no longer satisfy the statutory requirements.² Although I support TPS under the right circumstances, I am very concerned with the way the program has evolved over the last three decades. We now have a program that permits several hundred thousand otherwise removable aliens to remain in the United States, where they are eligible to receive public benefits³ and are authorized for employment, permitting them to take jobs that might otherwise be filled by one of the 7.1 million unemployed Americans.⁴ I was encouraged by your recent announcement that Sudan will be terminated,⁵ having intermittently been designated for TPS since 1997, but some of the remaining "temporary" designations have been in effect for decades.⁶

As you know, the Immigration and Nationality Act (INA) gives you the authority to designate a country in order to confer TPS on its nationals if: there is ongoing armed conflict posing a serious threat to personal safety; the country requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions that prevent aliens from returning, provided that granting TPS is consistent

¹ See Immigration and Nationality Act (INA) §244.

² INA § 244(b) lists requirements for a country to be covered under TPS.

³ Dept. of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), *Public Charge*, available at <https://www.uscis.gov/greencard/public-charge>.

⁴ Dept. of Labor, Bureau of Labor Statistics, *The Employment Situation – August 2017*, available at <https://www.bls.gov/news.release/pdf/empst.pdf>.

⁵ Dept. of Homeland Security, USCIS, 82 Fed. Reg. 47228 (Oct. 11, 2017).

⁶ Honduras, for example, which is one of ten "temporarily" protected states, was originally designated on January 5, 1999, which designation was most recently extended to last until January 5, 2018. Somalia was first designated in 1991 and has twice been redesignated since.

with U.S. national interests.⁷ Once a country is designated, nationals already in the United States who qualify for TPS may apply for employment authorization and, as long as they are otherwise qualified, may work legally without fear of removal.⁸ Of course, criminals and those who present other threats to society may not qualify.⁹

As the name suggests, temporariness is a core element of TPS, but some populations have enjoyed this status for close to two decades. Currently designated countries, with the original year of designation, are: El Salvador (2001), Haiti (2010), Honduras (1999), Nepal (2015), Nicaragua (1999), Somalia (1991), Sudan (1997)¹⁰, South Sudan (2011), Syria (2012), and Yemen (2015).¹¹ The law requires that the Secretary of Homeland Security review country conditions to determine whether TPS is still warranted, at least sixty days before it expires.¹² TPS status for Guinea, Liberia, and Sierra Leone expired on May 21, 2017,¹³ and TPS for Haiti was recently extended so that affected Haitians in the U.S. have until January 18, 2018 to prepare for departure.¹⁴

Haiti's current designation demonstrates one of TPS's most counterproductive incentives: it benefits unauthorized immigrants already in the United States, but does little to help those suffering overseas. After Haiti was designated due to a devastating earthquake in 2010, more than 58,000 Haitians—most of them apparently economic migrants who were already present in the United States—registered for TPS, and they have been permitted to remain ever since.¹⁵ But in April of this year, USCIS Acting Director McCament recommended that Secretary Kelly end Haiti's TPS¹⁶ and DHS—noting that country conditions had significantly improved¹⁷—recommended that Haitians prepare to return to their home country.¹⁸ Given this improving

⁷ § 244(b).

⁸ § 244(f).

⁹ § 244(e).

¹⁰ TPS for Sudan is scheduled to terminate on November 2, 2017, taking effect—after a 12 month deferral to “provide for an orderly transition”—on November 2, 2018. Dept. of Homeland Security, USCIS, *Termination of the Designation of Sudan for Temporary Protected Status*, 82 FR 47230 (Oct. 11, 2017).

¹¹ USCIS, *Temporary Protected Status*, available at <https://www.uscis.gov/humanitarian/temporary-protected-status#Countries%20Currently%20Designated%20for%20TPS> [hereinafter USCIS TPS].

¹² § 244(b)(3).

¹³ USCIS, *Temporary Protected Status Designated Country: Guinea*, available at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-guinea>.

¹⁴ Charles, Jaqueline, *The countdown for Haitians with TPS has started. And that has many in Haiti worried*, Miami Herald (Aug. 4, 2017) available at <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article165471982.html>.

¹⁵ Schulz, Jennifer and Batalova, Jeanne, *Haitian Immigrants in the United States*, Migration Information Source (Aug. 2, 2017) available at <http://www.migrationpolicy.org/article/haitian-immigrants-united-states>; see also Gomez, Alan, *Trump immigration agency wants to kick 50,000 Haitians out of the USA*, USA TODAY (Apr. 20, 2017) available at <https://www.usatoday.com/story/news/world/2017/04/20/trump-agency-temporary-protection-haitians-united-states/100709428/>.

¹⁶ Memo from McCament, James W., Acting Dir. USCIS to Secretary Kelly (Apr. 10, 2017) available at https://drive.google.com/file/d/0B_6gbFPjV'DoxWTh2R2exc3dxLXc/edit.

¹⁷ Dept. of Homeland Security, USCIS, *Extension of the Designation of Haiti for Temporary Protected Status*, 82 FR 23830 (May 24, 2017).

¹⁸ Charles, Jaqueline, *Haitians Get 6 months of protection from deportation -- but told to prepare to leave U.S.*, Miami Herald (May 22, 2017), available at <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article151930167.html>.

trend, it seems that Haiti will benefit from a return of its productive citizens, which would also be consistent with Congressional intent in establishing the TPS designation.

State Department statistics suggest that several other countries may also be enjoying unnecessarily extended TPS. Nationals of several TPS countries travel freely to and from the United States, indicating that country conditions are not so dire as to prevent a return to the TPS country.¹⁹ For example, TPS for El Salvador, granted after earthquakes in 2001 and extended several times since, expires on March 9, 2018.²⁰ In 2016 alone, however, 51,474 non-immigrant visas were issued to nationals of El Salvador,²¹ and 50,496 nonimmigrant visas were issued in the capital city of San Salvador.²² TPS for Honduras and Nicaragua, first granted nearly 20 years ago (on January 5, 1999) and extended many times since, expires January 5, 2018.²³ In 2016, however, 54,411 nonimmigrant visas were issued to nationals of Honduras²⁴ (54,027 from the capital, Tegucigalpa²⁵), and 19,254 nonimmigrant visas were issued to nationals of Nicaragua²⁶ (18,550 from the capital, Managua²⁷).

In most cases a nonimmigrant visa applicant must prove, to the adjudicating consular officer's satisfaction, that the applicant intends to return to his or her "residence abroad" after traveling to the United States.²⁸ Although in some cases, the place of a "residence abroad" may not be the applicant's country of nationality, in most cases the two will be the same.²⁹ This means that in 2016 alone, U.S. government officials determined, on more than 100,000 separate occasions, that a national intended to return to one of these three countries that enjoy temporary protected status. It seems implicit in such consular determinations that the country appeared—from a consular post within the country itself—to be safe enough that the visa applicant's intent to return home was deemed credible. If nationals and U.S. government officials who live within

¹⁹ See generally U.S. Dept. of State, *Nonimmigrant Visas Issued by Nationality*, available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXVIII.pdf> [hereinafter Nationality Table].

²⁰ See USCIS, *TPS* available at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador>.

²¹ Nationality Table.

²² U.S. Dept. of State, *Nonimmigrant Visas Issued by Issuing Office*, available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIX.pdf> [hereinafter Issuing Office Table].

²³ See USCIS, *TPS* available at <https://www.uscis.gov/humanitarian/temporary-protected-status>.

²⁴ Nationality Table.

²⁵ Issuing Office Table.

²⁶ Nationality Table.

²⁷ Issuing Office Table.

²⁸ See U.S. Dept. of State Foreign Affairs Manual (FAM), 9 FAM 401.1-3(F) *Residence Abroad* available at https://fam.state.gov/fam/09FAM/09FAM040101.html#M401_1_3_E.

²⁹ In some cases, the country of origin may not be the same as the country of nationality. Although some of the El Salvadoran, Honduran, and Nicaraguan nationals who received nonimmigrant visas in 2016 may have applied at a consulate or embassy outside of their country of nationality, with the intent to return to a residence abroad in a country other than the TPS-protected country, the similarity between the number of visas issued to nationals and the number of visas issued from posts within the country suggests that there is at least a rough correlation between the two statistics. In short, it appears likely that *most* El Salvadoran nationals who apply for a U.S. nonimmigrant visa are applying *from within* El Salvador, and the same is true for Honduran and Nicaraguan nationals as well. Exact figures for the number of nationals traveling from within a particular country should be available from the Department of State.

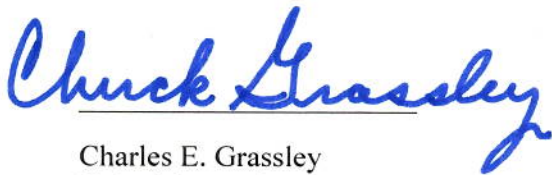
the country find it safe enough to return, why then have we as a government deemed the same country unsafe in the context of TPS?

I hope you will explore and pursue these long overdue opportunities to return populations of otherwise unauthorized immigrants to their homes, where they can be of most use. Given the number of upcoming TPS reviews and the size of the population shielded from removal by this program, I would appreciate additional information regarding how you intend to manage the problem. Specifically, I request that you respond to the following questions no later than November 10, 2017:

1. What steps do you take, and what sources do you consult, in conducting a periodic review of a country's Temporary Protected Status?
 - a. Several of the countries eligible for H-2B visas are also among those designated for Temporary Protected Status. Given that a nonimmigrant visa may only be issued if a consular officer determines that a visa applicant is not an intending immigrant, visa issuance suggests that a U.S. government official has determined that an applicant is likely to return to the country of origin. Does inclusion on the list of countries eligible for H-2B visas, or any other travel indicator, factor into your agency's TPS review?
2. Does your agency (or any of its components) collect information regarding the immigration status of a TPS applicant, at the time an application (or request for renewal) is submitted?
 - a. If the answer to question #2 is "yes," of those aliens who have been granted TPS in the past, what percentage were present in the United States without legal authorization to be here, at the time of application or request for renewal?
 - b. If the answer to question #2 is "no," please explain why your agency does not collect such information.
3. Once TPS is terminated, what steps does your agency take to ensure the departure of aliens previously shielded from removal by the TPS designation? Please describe all mechanisms (notices, removal, etc.) in detail.
 - a. Once an individual applies for TPS, USCIS is in possession of demographic and identifying information that permits the United States government to locate the individual. Is this information then used to assist in the removal of such aliens, once TPS for the country of nationality is terminated?

Thank you in advance for your cooperation with this request. If you have questions, please contact Brad Watts at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a prominent "C" and "G".

Charles E. Grassley
United States Senator

Cc: The Honorable Rex Tillerson
Secretary
U.S. Department of State