

United States Senate

WASHINGTON, DC 20510

July 22, 2019

COMMITTEES:

APPROPRIATIONS

FOREIGN RELATIONS

SELECT COMMITTEE ON INTELLIGENCE

SMALL BUSINESS AND ENTREPRENEURSHIP

SPECIAL COMMITTEE ON AGING

The Honorable Kevin McAleenan
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, D.C. 20528

RECEIVED

By ESEC at 12:54 pm, Jul 22, 2019

Dear Acting Secretary McAleenan:

As you know, conditions in Haiti remain volatile as the government and people have yet to fully recover from a series of natural disasters and an intervening public health epidemic causing extraordinary conditions for the government and the people of Haiti. Accordingly, I encourage you to reconsider the termination of Temporary Protected Status (TPS) for Haiti and request that, subject to all applicable laws, regulations, and court orders, you grant a new, 18-month TPS designation for Haiti.

Under the Immigration and Nationality Act, the Secretary of the Department of Homeland Security – in consultation with the State Department – may designate a country for TPS under several specific scenarios, including an environmental disaster that substantially disrupts living conditions or “extraordinary and temporary conditions” that prevent nationals from safely returning. Both such scenarios continue to apply to Haiti.

On November 20, 2017, the Department of Homeland Security announced that TPS for Haiti would terminate on July 22, 2019. Subsequently, two federal district courts issued preliminary injunctions effectively prohibiting the termination of the program pending further court orders. Therefore, Haitian TPS holders’ status will remain unchanged unless, and until, the preliminary injunction is reversed.

Understanding that the issue is subject to ongoing litigation, I write to ensure that you are aware of the ongoing conditions on the ground in Haiti. Since 2010, the United States has designated Haiti for TPS, recognizing the island country’s perilous conditions as a result of a historic 7.0 magnitude earthquake that caused massive structural damage and considerable loss of life, a subsequent cholera epidemic, and Hurricane Matthew in 2016. In addition, the Haitian National Police remains ill equipped to confront ongoing security challenges following the United Nations’ diminished presence in 2017. As the United Nations’ mission to support the police ends in October and elections for the parliament come due, the conditions could worsen even more.

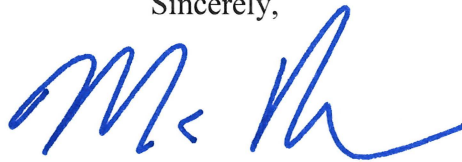
During my recent visit to Haiti, it was clear to me that the country is unable to absorb a large number of returnees at this time. New Haitian leadership has provided the United States with a renewed opportunity to empower its people to advance our shared principles of freedom and democracy and to ultimately rebuild a stronger and even more resilient Haiti. We must

remain committed to those principles and stand with our neighbors in Haiti as they tackle their challenges.

As Chairman of the Senate Foreign Relations Subcommittee on the Western Hemisphere and as a member of the Senate Appropriations Committee, I will continue to strongly support U.S. initiatives that promote good governance and security, combat poverty and health epidemics, and advance economic opportunities for the people of Haiti.

I look forward to the opportunity to discuss this important matter with you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Rubio', with a stylized flourish at the end.

Marco Rubio
U.S. Senator



**U.S. Citizenship
and Immigration
Services**

August 2, 2019

The Honorable Marco Rubio
United States Senate
Washington, DC 20510

Dear Senator Rubio:

Thank you for your July 22, 2019 letter. Acting Secretary McAleenan asked that I respond on his behalf.

I appreciate your concern for the situation in Haiti and your interest in its possible designation for Temporary Protected Status (TPS). The Secretary of Homeland Security may designate a country for TPS and extend or terminate a country's existing TPS designation based upon specific statutory criteria. *See* Immigration and Nationality Act (INA) § 244(b). Because TPS is discretionary, even if the Secretary determines that conditions meet one or more of the statutory criteria for TPS, he or she may still decline to designate the country. U.S. Citizenship and Immigration Services (USCIS) is principally responsible for advising the Secretary on TPS issues and implementing the program.

As you are aware, in its October 3, 2018 order, the U.S. District Court for the Northern District of California enjoined the Department of Homeland Security (DHS) from implementing and enforcing the termination of TPS for El Salvador, Haiti, Nicaragua, and Sudan pending further resolution of the case. As required by the court, DHS announced in the Federal Register and on the USCIS website that the terminations of TPS for El Salvador, Haiti, Nicaragua, and Sudan will not go into effect. The order requires DHS to continue the validity of documentation showing lawful status and work authorization for affected, eligible TPS beneficiaries from these countries. Beneficiaries under these TPS designations will retain their TPS while the preliminary injunction remains in effect, provided that an individual's TPS is not withdrawn under INA § 244(c)(3) or 8 CFR 244.14 because of individual ineligibility. To date, USCIS has published two Federal Register notices announcing actions to ensure compliance with the court order.

I would further note that a separation of powers concern has arisen with TPS generally. As long as courts continue to displace executive branch authority to terminate TPS status, it makes a decision to exercise the discretion in the first place considerably more complicated and more akin to a permanent status, rather than temporary.

In addition, there may be other immigration relief measures available to Haitian nationals affected by the current conditions in Haiti. Information on these options can be found at www.uscis.gov/humanitarian/special-situations.

The Honorable Marco Rubio
Page 2

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized with a large "K" and a cursive "C" followed by a Roman numeral "II".

Ken Cuccinelli II
Acting Director