

# EXHIBIT 45

PRE-DECISIONAL / DELIBERATIVE

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director (MS 2000)  
Washington, DC 20529-2000



U.S. Citizenship  
and Immigration  
Services

November 3, 2017

DECISION

MEMORANDUM FOR THE SECRETARY

FROM:

L. Francis Cissna  
Director

A handwritten signature in blue ink, appearing to read "LFC", is written over the printed name and title of the Director.

SUBJECT:

Haiti's Designation for Temporary Protected Status

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**Purpose:** Haiti's existing designation for Temporary Protected Status (TPS) will expire on January 22, 2018. At least 60 days before the expiration of a TPS designation, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in a country designated for TPS to determine whether the conditions supporting the designation continue to be met. If the Secretary determines that the country no longer meets the statutory conditions for designation, she shall terminate the designation. If the Secretary does not determine, however, that the conditions for designation are no longer met, the TPS designation will be extended for 6 months, or in the Secretary's discretion, 12 or 18 months.<sup>1</sup>

U.S. Citizenship and Immigration Services (USCIS) has completed a review of the conditions in Haiti and is presenting options and a recommendation for your consideration. In summary, USCIS assesses that Haiti has made significant progress in recovering from the 2010 earthquake and no longer continues to experience the extraordinary and temporary conditions that formed the basis of Haiti's designation and redesignation of TPS. Accordingly, USCIS recommends that you terminate Haiti's TPS designation.

As part of the review process, USCIS has consulted with the Department of State (DOS). Secretary Tillerson has assessed the conditions in Haiti and recommends that you terminate Haiti's TPS designation, with a delayed effective date of 18 months.

**Haiti's TPS Designation:** Following the devastating magnitude 7.0 earthquake that struck Haiti on January 12, 2010, former Secretary Napolitano designated Haiti for TPS on January 21, 2010, due to extraordinary and temporary conditions resulting from the earthquake.<sup>2</sup> The designation

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<sup>1</sup> See Immigration and Nationality Act (INA) § 244(b)(3)(A-C), 8 U.S.C. § 1254a(b)(3)(A-C); see also Attachment A: Temporary Protected Status Legal Authority.

<sup>2</sup> See Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (Jan. 21, 2010).

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was based on extraordinary and temporary conditions<sup>3</sup> rather than environmental disaster<sup>4</sup> because the Haitian government had not requested designation for TPS—a statutory requirement for a designation based on an environmental disaster.

The reasons provided for Haiti's designation for TPS in the Federal Register at the time of the initial 2010 designation included the 7.0 magnitude earthquake that "destroyed most of the capital city;" the "substantial" death toll; that "one third of Haiti's population" was affected by the earthquake; that "concrete homes [had] collapsed and hospitals [were] overflowing with victims;" the destruction of many government buildings, including the Presidential Palace; the "severely affected" critical infrastructure, including electricity, water, telephone, roads, the airport, hospitals, and schools; scarcity of food, water, and fuel. At the time, the Secretary estimated that there would be between 100,000 and 200,000 nationals of Haiti who would be eligible for TPS.

The Secretary then extended the existing designation and redesignated Haiti for TPS on May 19, 2011.<sup>5</sup> The reasons provided for Haiti's 2011 redesignation and extension of TPS in the Federal Register included that the 2010 earthquake remained responsible for more than one million Haitians left homeless or living in 1,300 internally displaced persons (IDP) camps that were "crowded and vulnerable to flooding, crime (including gender-based violence), and disease;" and the cholera outbreak. Additionally, the notice reiterated the high death toll and large number of persons affected by the 2010 earthquake, and the large number of buildings destroyed by the earthquake. At the time, the Secretary estimated that approximately 10,000 additional individuals would be eligible for TPS under the redesignation.

Haiti's designation has been extended four times since the 2011 redesignation. On May 24, 2017, former Secretary Kelly extended Haiti's TPS designation for a limited period of 6 months, with strong public messaging to the Haitian community to prepare for their return to their homeland.<sup>6</sup>

To be eligible for TPS under Haiti's designation, along with meeting the other eligibility requirements, individuals must have continuously resided in the United States since January 12, 2011, and have been continuously physically present in the United States since July 23, 2011. There are approximately 58,700 Haitian TPS beneficiaries.<sup>7</sup> Of the 46,000 re-registration applications USCIS estimated it would receive for the recent six-month extension, USCIS has received approximately 40,000 to date. Based on these statistics, USCIS estimates the filing of approximately 40,000 re-registration applications if Haiti's designation for TPS is extended.

<sup>3</sup> INA § 244(b)(1)(C).

<sup>4</sup> INA § 244(b)(1)(B).

<sup>5</sup> See Extension and Redesignation of Haiti for Temporary Protected Status, 76 Fed. Reg. 29,000 (May 19, 2011).

<sup>6</sup> See Extension of the Designation of Haiti for Temporary Protected Status, 82 Fed. Reg. 23,830 (May 24, 2017).

<sup>7</sup> This total represents all individuals who have been granted TPS since Haiti's designation in 2010, and who have not had their TPS withdrawn. Individuals may not re-register for a variety of reasons, including adjustment to another valid immigration status, departure from the United States, or no longer being eligible for TPS. As a result, the number of beneficiaries that USCIS expects to file for re-registration for TPS is lower than the total number of current beneficiaries.

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**Current Country Conditions:** USCIS has conducted an in-depth review of conditions in Haiti. The full report, upon which USCIS' assessment and recommendation are based, can be found in Attachment B. In summary, Haiti has made significant progress in recovering from the 2010 earthquake, and no longer continues to meet the conditions for designation.

Haiti is the poorest country in the western hemisphere, but it had enormous problems long before, and unrelated to, the 2010 earthquake. While lingering effects of the 2010 earthquake remain in housing, infrastructure, damage to the economy, health, sanitation services, security risks, and emergency response capacity, Haiti has made significant progress in addressing issues specific to the earthquake. The number of IDPs from the earthquake has continued to decline. Since July 2010, 98% of the sites for IDPs have closed, and only approximately 38,000 of the estimated 2 million Haitians who lost their homes in the earthquake are still living in camps as of June 2017. For those who do remain in these camps, gender-based violence continues to be a serious concern, and a lack of personal security is pervasive, but neither is a post-earthquake phenomenon.

Additionally, the withdrawal of the United Nation's peacekeeping mission (MINUSTAH) has gone smoothly, reflecting increased confidence in Haiti's ability to conduct its own policing. On October 16, 2017, it was replaced by a successor operation (MINUJUSTH), a police-only force, that will focus on strengthening rule of law; supporting and further developing the National Police; and engaging in human rights monitoring, reporting, and analysis.

Haiti successfully completed its presidential election in February 2017. The 2010 earthquake destroyed key government infrastructure, including dozens of primary federal buildings. The Supreme Court of Justice is already reconstructed and operational and President Moïse is marshalling plans for Haiti's continued recovery and redevelopment. In April 2017, President Moïse announced a project to rebuild Haiti's National Palace, but reconstruction has not yet commenced.

Following the earthquake that struck Haiti in January 2010, U.S. Immigration and Customs Enforcement (ICE) ceased removing Haitians to Haiti. In 2011, ICE resumed the removal of Haitians on a limited basis – specifically, those who had final orders of removal and had been convicted of a serious crime. On September 22, 2016, former Secretary of Homeland Security, Jeh Johnson, announced that DHS would resume removals of Haitian nationals in accordance with ICE's existing enforcement priorities. Secretary Johnson's announcement included the following rationale for the resumption of removals: "[T]he situation in Haiti has improved sufficiently to permit the U.S. government to remove Haitian nationals on a more regular basis, consistent with the practice for nationals from other nations." In total, ICE has removed over 1,100 Haitians from fiscal years 2014-2016 (382 in 2014, 433 in 2015, and 310 in 2016).

Annual GDP growth following the 2010 earthquake has been erratic, but predominantly positive, ranging from as low as -5.5% (2010) to as high as 5.5% (2011), and averaging 1.9% over the period.

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Year	GDP growth (annual %)
2005	1.805
2006	2.249
2007	3.343
2008	0.844
2009	3.083
2010	-5.498
2011	5.524
2012	2.885
2013	4.234
2014	2.797
2015	1.185
2016	1.4

In May 2017, an estimated 5.8 million people (over 50 percent of the population) suffered from food insecurity, as compared to 3.2 million in September 2016. The deterioration in food security is the consequence of Hurricane Matthew's severe impact on southwest Haiti. Food insecurity is expected to be further impacted by Hurricane Irma, which struck Haiti in September. Haiti's weak public health system has grappled with a cholera epidemic that began in 2010 in the aftermath of the earthquake, but cholera is currently at its lowest level since the outbreak started. Currently, Haiti's food insecurity problems seem related to tropical storms and a drought rather than from lingering effects of the 2010 earthquake.

Options

Your options include the following actions:

1) *Extend Haiti's Designation for TPS*

As described above, USCIS has concluded that the specific extraordinary and temporary conditions stemming from the 2010 earthquake which caused Haiti to be initially designated for TPS and to be redesignated in 2011 have been largely ameliorated. Haitian nationals may safely return to Haiti as evidenced by DHS's decision to resume removals to Haiti in 2016. Additionally, it is not in the national interest to extend a TPS designation when the specific extraordinary and temporary conditions giving rise to a TPS designation no longer exist. Haiti was initially designated for TPS in 2010 as a result of the damage caused by a major earthquake. The review of conditions in Haiti indicates that significant progress has been made in reconstruction and recovery efforts and Haiti's current challenges cannot be directly tied to the 2010 earthquake.

Although USCIS assesses otherwise, under the TPS statute, if you determine that those extraordinary and temporary conditions caused by the 2010 earthquake and the 2011 redesignation continue to exist, you must extend the TPS designation for an additional period of 6, 12, or 18 months. Should the decision be made to extend based upon these subsequent challenges hindering recovery, from a USCIS operational perspective, extension periods of less than 18 months are

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challenging given the significant workload and timeframes involved in receiving and adjudicating re-registration applications and issuing new employment authorization documents.

2) *Terminate Haiti's Designation for TPS*

If you determine that Haiti no longer continues to meet the statutory requirements for its TPS designation, you must terminate TPS for Haiti. Upon the termination of TPS, former beneficiaries without another immigration status or authorization to remain would no longer have permission to work and remain in the United States. They may, however, apply for any other immigration benefits for which they may be otherwise eligible (e.g., asylum, lawful permanent residence, or nonimmigrant status). As explained above, USCIS assesses that termination is warranted because extraordinary and temporary conditions preventing Haitians from returning in safety no longer exist. Any current issues in Haiti are unrelated to the 2010 earthquake.

If you decide to terminate Haiti's designation, you may determine the appropriate effective date of the termination. In doing so, you have the option to provide for an orderly transition period (e.g., 6, 12, or 18 months) after which TPS documentation will end. Although former Secretary Kelly put current Haitian TPS beneficiaries on notice that the status could be subsequently terminated when he authorized the 6-month extension, a delay of the effective date would provide those beneficiaries without any other immigration status a reasonable amount of time following the announcement of termination of the designation to plan and prepare for their departure from the United States. Note that the effective date of termination may not be earlier than 60 days after the date the *Federal Register* notice announcing the termination is published or, if later, the expiration of the most recent previous extension.

3) *Redesignate Haiti for TPS*

In addition to making a decision to terminate or extend Haiti's TPS designation, you could also consider redesignating the country for TPS. A decision to redesignate a country for TPS, unlike termination or extension, is entirely at your discretion; if the statutory conditions are met, you may, but do not have to, redesignate a country for TPS. The most significant recent event that could be considered in support of a redesignation is the destruction caused by Hurricane Matthew in October of 2016, but USCIS is not recommending redesignating Haiti for TPS on that basis as any extraordinary and temporary conditions that may have resulted from that event do not currently prevent Haitian nationals from returning to their country in safety.

4) *No Decision/Automatic Extension*

Upon review of the assessment, you could also choose not to make a determination about whether Haiti's TPS designation should be extended or terminated at this time. If you do not make a decision at least 60 days prior to its expiration date, by statute, its period of designation will be automatically extended for 6 additional months (or, in your discretion, a period of 12 or 18 months). You could affirmatively choose not to make a decision about whether the conditions supporting Haiti's designation continue to be met and announce the automatic extension of 6 (or 12 or 18) months, noting that the Secretary will then review conditions prior to the expiration of that extension.

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**Timeliness:** You are required to provide timely notice of whether existing TPS designations will be extended or terminated through publication in the *Federal Register*.<sup>8</sup> Your earliest decision will facilitate publication of notice in the *Federal Register* sufficiently in advance of the January 22, 2018 expiration of Haiti's designation, providing predictability and clarity to Haitian nationals with TPS and their employers. By statute, if you do not make a decision at least 60 days before the expiration of the current designation (i.e., by November 23, 2017), then Haiti's designation will automatically be extended for a minimum of 6 months.<sup>9</sup>

**Recommendation:** Upon consideration of all of the factors, USCIS recommends that you terminate Haiti's existing designation for TPS based on the extraordinary and temporary conditions resulting from or following the 2010 earthquake. If you decide to terminate, USCIS recommends terminating with an effective date delayed by 6, 12, or 18 months to permit an orderly transition.

**Decision:**

1. Extend: Extend Haiti's existing designation for (circle one):

6 months

12 months

18 months

Approve/date \_\_\_\_\_

2. Terminate: Terminate Haiti's designation with an orderly transition period of (circle one or specify period):

6 months

12 months

18 months

Other \_\_\_\_\_

Approve/date 11/20/17

3. Redesignate: Extend Haiti's existing designation and simultaneously redesignate Haiti:

Specify duration of redesignation (6-18 months): \_\_\_\_\_

Specify continuous residence date for eligibility under redesignation (currently January 12, 2011): \_\_\_\_\_

Approve/date \_\_\_\_\_

<sup>8</sup> See INA § 244(b)(3)(A).

<sup>9</sup> See INA § 244(b)(3)(A), (C).

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4. *No Decision/Automatic Extension: Delay a decision on Haiti's designation, resulting in an extension of (circle one):*

6 months

12 months

18 months

Approve/date \_\_\_\_\_

**Attachments:**

Attachment A: Temporary Protected Status Legal Authority

Attachment B: USCIS RAIO Research Unit Report on Conditions in Haiti

Attachment C: DOS Recommendations