



May 17, 2017

Sent via Email, facsimile and U.S. Certified Mail/Return Receipt

Karen Neuman, Chief FOIA Officer
U.S. Department of Homeland Security
The Privacy Office
245 Murray Lane SW, Stop 0655
Washington, D.C. 20528-0655
foia@hq.dhs.gov

Catrina Pavlik-Keenan
U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, D.C. 20536-5009
ice-foia@dhs.gov

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
uscis.foia@uscis.dhs.gov

Eric F. Stein, Acting Co-Director
Office of Information Programs and
Services
Building SA-2
U.S. Department of State
515 22nd Street, NW
Washington, D.C. 20522-8100
Fax: (202) 261-8579

Re: Expedited Request for Information under Freedom of Information Act (FOIA)

Dear FOIA Officer:

The UndocuBlack Network (“UndocuBlack”) and the National Immigration Law Center (“NILC”) together make this request for information under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, for records related to the extension or termination of Temporary Protected Status (“TPS”) for nationals of Haiti.

BACKGROUND

TPS for Haitian nationals is expected to expire on July 22, 2017, and the question of whether the Department of Homeland Security (“DHS”) will extend or renew TPS is one of significant public concern. According to media reports, 58,000 Haitians stand to lose TPS and would be forced to return to their ravaged homeland if the designation is withdrawn.¹ A TPS designation provides

¹ See AP Exclusive: US Digs for Evidence of Haiti Immigrant Crimes, New York Times (May 9, 2017), *available at* <https://www.nytimes.com/aponline/2017/05/09/us/politics/ap-us-immigration-protection-haiti.html>.

temporary protection from deportation, authorization to work, and the ability to travel with advance permission to individuals present in the United States at times of great natural disaster or civil strife in their home country.² Thirteen countries, including Haiti, are currently designated for TPS,³ and TPS was granted to seven other countries whose designation has since expired.⁴

UndocuBlack and NILC jointly make this request to better understand the DHS Secretary's decision to extend or withdraw the designation of TPS for nationals of Haiti. If Secretary John F. Kelly terminates this protection, tens of thousands of Haitians who have lived, worked, and gone to school in the United States for many years may be deported from the country they now call home and would be forced to relocate to a country that is still devastated by the 7.0 earthquake that struck Port-Au-Prince in 2010, which affected more than 3 million residents⁵ and resulted in an estimated 160,000 to 300,000 deaths,⁶ and more recently by Hurricane Matthew in 2016, which killed more than 1,000 Haitians and caused almost \$2 billion in damages.^{7,8,9}

Recent media reports indicate that, in advance of the deadline to provide notice of the extension or withdrawal of TPS for Haitian nationals, officials at DHS and United States Citizenship and Immigration Services ("USCIS") have sought information about criminal data and data on the use

² Temporary Protected Status, United States Citizenship and Immigration Services (last viewed on May 16, 2017), available at <https://www.uscis.gov/humanitarian/temporary-protected-status>. The TPS designation for three African countries—Guinea, Liberia, and Sierra Leone—expires on May 21, 2017.

³ *Id.*

⁴ Congressional Research Service, Temporary Protected Status: Current Immigration Policy and Issues, at 3-5, available at <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

⁵ Red Cross: 3M Haitians Affected by Quake, available at <http://www.cbsnews.com/news/red-cross-3m-haitians-affected-by-quake/>.

⁶ Mortality, crime and access to basic needs before and after the Haiti earthquake: a random survey of Port-au-Prince households, available at <http://www.tandfonline.com/doi/abs/10.1080/13623699.2010.535279>. Some estimates put the death toll at over 300,000 deaths. See AP Exclusive: US Digs for Evidence of Haiti Immigrant Crimes, New York Times (May 9, 2017), available at <https://www.nytimes.com/aponline/2017/05/09/us/politics/ap-us-immigration-protection-haiti.html>.

⁷ Hurricane Matthew Death Toll Tops 1,000 in Haiti, available at http://www.huffingtonpost.com/entry/hurricane-matthew-haiti_us_57fb6f06e4b0b6a43033bf0a.

⁸ Hurricane Matthew Damage Tally in Haiti Near \$2 BN, available at <https://www.yahoo.com/news/hurricane-matthew-damage-tally-haiti-nearly-2-bn-003708832.html>.

⁹ Honduras and Nicaragua have been designated TPS since 1998, and that status has been renewed several times. El Salvador has been designated TPS since 2001 after a series of earthquakes devastated the country. See Congressional Research Service, Temporary Protected Status: Current Immigration Policy and Issues, at 3, available at <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

of public benefits¹⁰ by Haitians with TPS.¹¹ These requests for criminal or public benefits information about an entire ethnic community are highly unorthodox, and it is unclear why such information would be relevant to the determination of whether to extend or withdraw the designation of TPS to nationals of Haiti. Normally, the decision to extend or withdraw TPS is based on whether conditions in the country have improved.¹²

RECORDS REQUESTED

NILC and UndocuBlack seek through this FOIA request the following records:¹³

1. All records regarding or relating to and including an April 10, 2017 memorandum from USCIS Acting Director James McCament recommending the expiration, termination, withdrawal, or any other form of cessation of TPS for nationals of Haiti.
2. All records regarding or relating to any recommendation made by any employee of the Department of Homeland Security (“DHS”), United States Citizenship and Immigration Services (“USCIS”), Immigration and Customs Enforcement (“ICE”), or the Department of State (“DOS”) for the extension or renewal of TPS for nationals of Haiti in advance of its scheduled expiration on July 22, 2017.
3. All records regarding or relating to any recommendation made by any employee of USCIS, DHS, ICE, or DOS for the expiration, termination, withdrawal, or any other form of cessation of TPS for nationals of Haiti in advance of its scheduled expiration on July 22, 2017.

¹⁰ Noncitizens’ eligibility for federal public benefits is governed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, and generally includes the following federal means-tested programs (though this list is not exhaustive): Supplemental Nutrition Assistance Program (SNAP, formerly food stamps), the Supplemental Security Income (SSI) program, Temporary Assistance for Needy Families (TANF) cash assistance, and Medicaid. Unauthorized immigrants are ineligible for most federal public benefits. *See* Congressional Research Service, Noncitizen Eligibility for Federal Public Assistance: Policy Overview at 1, available at <https://fas.org/sgp/crs/misc/RL33809.pdf>.

¹¹ *See* AP Exclusive: US Digs for Evidence of Haiti Immigrant Crimes, New York Times (May 9, 2017), available at <https://www.nytimes.com/aponline/2017/05/09/us/politics/ap-us-immigration-protection-haiti.html>.

¹² *Id.*

¹³ The term “records” as used herein includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to correspondence, including but not limited to intra-governmental correspondence, documents, data, videotapes, audio tapes, faxes, files, forms, e-mails, guidance, guidelines, evaluations, legal opinions, instructions, analyses, directives, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, questionnaires, studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or video tapes, or any other sub-regulatory guidance.

4. All records from January 1, 2017, to present regarding or relating to any inquiry, request, or demand for information made by Kathy Nuebel Kovarik, Chief of USCIS Office of Policy and Strategy, concerning the criminal history of nationals of Haiti with TPS, including but not limited to how often Haitians with TPS have been charged or convicted of crimes of any kind.
5. All records regarding or relating to any inquiry, request, or demand for information made by or to any employee of USCIS, DHS, ICE, or DOS concerning the criminal history of nationals of Haiti with TPS, including but not limited to how often Haitians with TPS have been charged or convicted of crimes of any kind.
6. All records regarding or relating to any effort made by any employee of USCIS, DHS, ICE, or DOS to respond to the inquiry or inquiries referenced in Requests #4 and 5, including but not limited to any data or information responsive to the inquiry and any policy, guidance, directives, training, and/or memoranda pertaining to the collection of such data or information.
7. All records regarding or relating to any inquiry, request, or demand for information made by Kathy Nuebel Kovarik, Chief of USCIS Office of Policy and Strategy, concerning whether, when, and how nationals of Haiti with TPS have used any type of public benefit.
8. All records regarding or relating to any inquiry, request, or demand for information made by or to any employee of USCIS, DHS, ICE, or DOS concerning whether, when, and how nationals of Haiti with TPS have used any type of public benefit.
9. All records regarding or relating to any effort made by any employee of USCIS, DHS, ICE, or DOS to respond to the inquiry or inquiries referenced in Requests #7 and 8, including but not limited to any data or information responsive to the inquiry and any policy, guidance, directives, training, and/or memoranda pertaining to the collection of such data or information.
10. All records regarding or relating to any inquiry, request, or demand made by Kathy Nuebel Kovarik, Chief of USCIS Office of Policy and Strategy, concerning any remittances or any other money or resources sent back to Haiti by nationals of Haiti with TPS.
11. All records regarding or relating to any inquiry, request, or demand for information made by or to any employee of USCIS, DHS, ICE, or DOS concerning any remittances or any other money or resources sent back to Haiti by nationals of Haiti with TPS.
12. All records regarding or relating to any effort made by any employee of USCIS, DHS, ICE, or DOS to respond to the inquiry or inquiries referenced in Requests # 10 and 11, including but not limited to any data or information responsive to the inquiry and any policy,

guidance, directives, training, and/or memoranda pertaining to the collection of such data or information.

13. All records regarding or relating to any inquiry, request, or demand made by Kathy Nuebel Kovarik, Chief of USCIS Office of Policy and Strategy, concerning any travel to or from Haiti by nationals of Haiti with TPS, including any grants of Advance Parole to Haitian nationals and any subsequent travel.
14. All records regarding or relating to any inquiry, request, or demand for information made by or to any employee of USCIS, DHS, ICE, or DOS concerning any travel to or from Haiti by nationals of Haiti with TPS, including any grants of Advance Parole to Haitian nationals and any subsequent travel.
15. All records regarding or relating to any effort made by any employee of USCIS, DHS, ICE, or DOS to respond to the inquiry or inquiries referenced in Requests # 13 and 14, including but not limited to any data or information responsive to the inquiry and any policy, guidance, directives, training, and/or memoranda pertaining to the collection of such data or information.
16. All records sent by or to Lee Francis Cissna, Director of Immigration Policy in the Office of Policy of the Department of Homeland Security, regarding or relating to TPS for nationals of Haiti, including but not limited to the extension, renewal, expiration, termination, withdrawal, or any other form of cessation of TPS for Haitian nationals.
17. All records sent by or to Lee Francis Cissna, Director of Immigration Policy in the Office of Policy of the Department of Homeland Security, regarding or relating to nationals of Haiti with TPS.
18. All records regarding any policy, guidance, directives, training, and/or memoranda issued since 2010 pertaining to the designation of TPS for the nationals of any country.
19. All records regarding any policy, guidance, directives, training, and/or memoranda issued since 2010 pertaining to the extension or renewal of eligibility for TPS for the nationals of any country.
20. All records regarding any policy, guidance, directives, training, and/or memoranda issued since 2010 pertaining to the criteria or process for determining an individual's eligibility for TPS.
21. All records regarding any policy, guidance, directives, training, and/or memoranda issued since 2010 pertaining to the consideration of an individual's criminal history in determining that individual's eligibility for TPS.

22. All records regarding any policy, guidance, directives, training, and/or memoranda issued since 2010 pertaining to the consideration of an individual's use of any public benefits in determining that individual's eligibility for TPS.
23. All records regarding any policy, guidance, directives, training, and/or memoranda issued since 2010 pertaining to the country conditions in Haiti and the use of this information in the determination of granting, extending, or withdrawing TPS for the nationals of Haiti.
24. All FOIA Search Staffing Sheets related to this FOIA request.

FEE WAIVER

UndocuBlack and NILC request a waiver of all costs pursuant to the public interest/benefit fee waiver established by 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Requester."). The public interest/benefit fee waiver provisions of the FOIA are to be "liberally construed" and are "consistently associated with requests from journalists, scholars, and non-profit interest groups who it was intended to benefit." See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of fee waivers for noncommercial requesters.'") (citation omitted).

NILC is a nonprofit national legal advocacy organization that engages in policy analysis, advocacy, education, and litigation to promote and advance the rights of low-income immigrants and their families. NILC serves as an important resource to a broad range of immigrant advocacy groups, community organizations, legal service organizations, and the public. As a part of its work, NILC disseminates information to the public through electronic newsletters, news alerts, issue briefs, trainings, and other educational and informational materials. In addition, NILC disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website (<http://www.nilc.org>). NILC's website receives approximately 4,100 visits per day, and many visitors actively download NILC's reports, brochures and fact sheets. NILC's email listserv has about 70,000 subscribers. NILC's Twitter account has over 51,000 followers.

The UndocuBlack Network is a multigenerational network of currently and formerly undocumented Black people that fosters kinships, facilitates access to resources, and contributes to transforming the realities of our people, so we are thriving and living our fullest lives. The Network believes that directly impacted people should be at the center of decisions impacting their lives. To that end, UndocuBlack focuses on building local infrastructure for organizing, creating and disseminating tools and resources for our communities, and fighting for full racial and migrant

justice in this country. UndocuBlack has current chapters in Los Angeles, New York, and the DC/MD/VA area, and multiple new chapters are in formation. For more information, please visit www.undocublack.org.

In short, NILC and UndocuBlack are exactly the type of organizations contemplated by Congress when it established the public interest/benefit fee waiver provisions of the FOIA. Moreover, the National Immigration Law Center is routinely granted fee waivers by government agencies. Some of the fee waivers granted by DHS include FOIA Requests CBP-2017-038274, 2016-HQFO-00400, 2013-HQFO-00730, 2013-HQFO-00907.

The records requested are not sought for commercial use, and NILC and UndocuBlack plan to disseminate the disclosed information to the public at no cost. *See* 6 C.F.R. § 5.11(k). Disclosure of the requested records is likely to contribute significantly to public understanding of the operations and activities of the government regarding its determinations on granting, extending, or withdrawing TPS for the nationals of certain countries. The requested information is of great interest to the public at large, and is not available in the public domain.

If the fee waiver request is denied, while reserving our right to appeal the denial, NILC and UndocuBlack will pay fees up to \$50. If fees are estimated to exceed this limit, please inform us.

EXPEDITED PROCESSING

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” by organizations “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, NILC and UndocuBlack expect a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(ii). Disclosure of information regarding the extension or termination of TPS for Haitian nationals is particularly urgent because TPS will expire on July 22, 2017, unless it is extended by DHS, and thousands of Haitian nationals could be forced to return to a devastated Haiti, where there is an imminent threat to their lives and physical safety. Dissemination of the requested information will benefit public discourse on an issue of significant national interest.

If this Request is denied in whole or in part, please provide a written explanation for that denial, including reference to the specific supporting statutory provisions. To the extent that any requested records are redacted, please redact only the necessary portions and immediately provide us with the remaining portions. If any records, or portions thereof are withheld, please state the exemption claimed and provide a list of the records being withheld.

Finally, without waiving any other appeal rights, NILC and UndocuBlack reserve the right to appeal a constructive denial of this Request as well as decisions to deny expedited processing, to withhold any information, to deny a waiver of fees, or to deny a limitation of processing fees.

NILC and UndocuBlack also reserve the right to challenge the adequacy of the search for responsive documents, the withholding of any documents, as well as any redactions in the materials produced in response to this Request.

I certify that the information contained in this request is true and correct to the best of my knowledge. *See* 6 C.F.R. § 5.5(d)(3).

If you have any questions, please contact me directly at (213) 674-2829 or via email huerta@nilc.org. Thank you in advance for your prompt response to this request.

Sincerely,

s/Alvaro M. Huerta

Alvaro M. Huerta

Staff Attorney

NATIONAL IMMIGRATION LAW CENTER

3435 Wilshire Boulevard, Suite 1600

Los Angeles, CA 90010

huerta@nilc.org

cc: U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
U.S. Immigration and Customs Enforcement
U.S. Department of State