

**To: Katherine Telford, Matthew King**  
**From: Jill Marie Bussey**  
**Date: August 6, 2018**  
**RE: IRREGULARITIES AND PROCEDURAL ERRORS IN TPS IMPLEMENTATION**

This memo summarizes irregularities and errors in Temporary Protected Status, or TPS, implementation post-decision observed by the Catholic Legal Immigration Network, Inc., or CLINIC, during the Trump administration.

**I. Delays in publication of Federal Register Notices following TPS decisions**

The law requires, “At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state” DHS “shall provide on a *timely basis* for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation...in the Federal Register.”<sup>1</sup> (emphasis added).

Previous administrations, both Republican and Democrat, have published Federal Register Notices on the decision date, as is required by the statute. Several of these TPS determinations were announced and published weeks prior to the 60-day statutory deadline. CLINIC has learned that some senior officials within the administration have taken the position that the statutory requirement is met when an *internal* DHS decision is made 60 days prior to expiration dates and notifying impacted parties and the public can come at a later time. This is incongruous with the concept of timely notice and the consequences of the administration’s new interpretation of the statute are being felt by already-vulnerable TPS communities.

In addition to the added stress and confusion of not having a Federal Register Notice opening the re-registration period at the time of the TPS determination announcements, delays have affected TPS holders’ ability to maintain employment authorization, driver’s licenses, access to bank accounts, etc. These delays have also created fertile ground for fraud and those engaged in the unauthorized practice of law to take advantage of TPS holders.

With the exception of Secretary Kelly’s first decision to extend TPS for Haiti, the failure to timely publish Federal Register Notices has spanned across all of the administration’s decisions:

Country	Decision date	FRN publication date	Time elapsed (days)
Sudan	Sept. 3, 2017	Oct. 11, 2017	38 days
South Sudan	Sept. 3, 2017	Sept. 21, 2017	18 days
Honduras	Nov. 6, 2017	Dec. 15, 2017	39 days
Nicaragua	Nov. 6, 2017	Dec. 15, 2017	39 days
Haiti	Nov. 23, 2017	Jan. 18, 2018	56 days
El Salvador	Jan. 8, 2018	Jan. 18, 2018	10 days

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<sup>1</sup> INA §244 (b)(3)(A).

Syria	Jan. 30, 2018	March 5, 2018	34 days
Nepal	April 25, 2018	May 22, 2018	37 days
Honduras	May 4, 2018	June 5, 2018	32 days
Yemen	July 5, 2018	N/A	*32 days as of Aug. 6, 2018

## II. Error in Haiti TPS Federal Register Notice

The Haiti Federal Register Notice, published nearly two months after the decision date, contained a serious error affecting employment authorization for an estimated 14,000 people. The impact was magnified due to the lateness of the notice, coming just days before peoples' work authorization was set to expire. This left employers uncertain if they could legally keep their TPS holder employees on payroll. Once alerted, USCIS issued a supplemental memo on their webpage.<sup>2</sup> It remains unclear whether this supplemental memo is sufficient for employment reverification (Form I-9) purposes and if it will cause eligible TPS holders issues in the future if they apply for an adjustment of status. As of July 19, 2018, USCIS has not published a supplemental notice in the Federal Register to correct this error.

## III. Recent Situation: Haiti TPS processing backlog consequences

Haitian TPS holders who timely re-registered during the most recent Haiti re-registration period (from January 18, 2018 to March 19, 2018, corresponding to the Federal Register Notice terminating TPS for Haiti) received a 180-day automatic extension of their work authorization, through July 21, 2018.<sup>3</sup> On July 16, 2018, CLINIC contacted USCIS officials to alert them to a significant population of Haitian TPS re-registrants, whose cases remained pending with USCIS and were facing imminent loss of employment. USCIS confirmed that not all Haitian TPS re-registration applications filed during the re-registration period had been processed as of July 19, 2018. This meant that without a supplemental automatic work authorization extension for these cases, applicants would lose their ability to work on July 21, 2018. This would result in applicants losing valuable income, their jobs, their ability to drive legally (as a valid employment authorization document is required in some states), etc.

Although CLINIC urged USCIS to issue another Federal Register Notice to officially and automatically extend work authorization for applicants with pending cases, USCIS decided to issue individual Notices of Continued Evidence of Work Authorization and to post a notice on its website. Unfortunately, the Notices were not mailed by USCIS until either the day before or two days after the TPS work authorization was set to expire. Thus, TPS applicants who had properly re-registered within the timeframe and paid the USCIS filing fee of \$495 for the extension of their work authorization were left waiting for official documentation of their continued, work authorized status until the U.S. Postal Service delivered their Notices. CLINIC later learned through Congressional contacts that this issue affected nearly 5,000 Haitian TPS holders.

<sup>2</sup> Re-Registration Period Now Open for Haitians with Temporary Protected Status, USCIS, [www.uscis.gov/news/re-registration-period-now-open-haitians-temporary-protected-status](http://www.uscis.gov/news/re-registration-period-now-open-haitians-temporary-protected-status).

<sup>3</sup> 83 Fed. Reg. 2648 (Jan. 18, 2018), [www.federalregister.gov/documents/2018/01/18/2018-00886/termination-of-the-designation-of-haiti-for-temporary-protected-status](http://www.federalregister.gov/documents/2018/01/18/2018-00886/termination-of-the-designation-of-haiti-for-temporary-protected-status).

With USCIS application processing times at all time highs, it is imperative that TPS determinations are both announced *and* published in the Federal Register as early as possible. Based on information found on USCIS' website, the average processing timeframe for an application for work authorization (Form I-765) is approximately five - six months. Adding the TPS re-registration period of 60 days, DHS should calculate backward to a minimum deadline date in which a Federal Register Notice must be published for there to be an orderly and fair process for TPS applicants to fully avail themselves of the protection being offered under the law. In the case of Haiti, if the Haiti TPS decision was published in the Federal Register on the same day of the public announcement in November 2017, it is highly likely the majority of their applications would have been processed before running up against the 180-day auto extension deadline. This may have avoided the harm to Haitian TPS applicants, their employers and the costly time and resources spent by USCIS and the private sector trying to address a foreseeable problem. The lessons learned in this situation must be analyzed and applied as Honduran TPS applicants will likely be in the same situation in the near future.

#### IV. USCIS social media errors regarding TPS

Advocates have observed several incidences of incorrect information being distributed through USCIS social media.

1. **Incorrect re-registration date.** The deadline to re-register was Feb. 13, 2018. Anyone who relied on this and submitted on Feb. 14 would have been beyond the re-registration window.



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Reminder: The deadline to re-register Temporary Protected Status for Honduras and Nicaragua is Feb. 14. We must RECEIVE your re-registration before Feb. 14.

6:00 PM - 5 Feb 2018

2. **Error regarding opening of re-registration period for El Salvador.** This post from Feb. 2, 2018 states that instructions for re-registering for TPS for El Salvador were not yet available. In fact, the Federal Register with the instructions about the 60-day re-registration period was published on Jan. 18, 2018. This error would lead people to believe the 60-day clock was not yet running.



## U.S. Citizenship and Immigration Services

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Instructions about re-registering for TPS EI Salvador and TPS Syria aren't yet available. Be cautious of people asking for money or offering to help you file before USCIS updates official re-registration information here.



U.S. Citizenship and Immigration Services

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### Temporary Protected Status

Temporary Protected Status