

Trump Can't End Protections For Haitian Refugees In TPS Suit

By **Mike LaSusa**

Law360 (April 11, 2019, 10:31 PM EDT) -- A New York federal judge on Thursday halted the Trump administration's revocation of temporary immigration protections for some 59,000 Haitians living in the U.S. since a 2010 earthquake, saying a group of refugees that sued over the move is likely to win its case.

U.S. District Judge William Kuntz said Thursday that the refugees had presented solid evidence that the 2017 decision to end temporary protected status, or TPS, for Haitians violated the Administrative Procedure Act as well as the Fifth Amendment's equal protection clause.

The refugees had "proffered significant evidence based on hard facts the government's decision was pretextual," suggesting the Department of Homeland Security and the State Department "reverse engineered the TPS process with the principal aim of 'getting to no,'" Judge Kuntz said.

The judge said the refugees had put forth evidence that then-acting Homeland Security Secretary Elaine Duke "decided to terminate TPS for Haiti for the sake of 'agenda adherence' to the 'America first' platform, without regard to her consideration of country conditions under the TPS statute, and that the White House extensively pressured her [to] terminate TPS for Haiti."

Judge Kuntz also said the plaintiffs, 10 people and two organizations, had convincingly argued that "at the very least, there are serious questions going to the merits" of their equal protection claim.

"Specifically, the evidence suggests the secretary was influenced by the White House and White House policy to ignore statutory guidelines, contort data, and disregard objective reason to reach a predetermined decision to terminate TPS and abate the presence of non-white immigrants in the country," the judge said.

Beneficiaries of the TPS program have claimed the decision to end it was driven by Trump's alleged racism toward Haitians; he has reportedly called the country a "shithole" and said its inhabitants "all have AIDS."

Judge Kuntz said that until the merits of the case are finally decided, he would put a nationwide block on the move to end TPS for Haitians.

"Because the secretary's decision had a nationwide effect — so too should any relief directed at that decision," the judge said

Plaintiffs attorney Ira Kurzban of Kurzban Kurzban Tetzeli & Pratt PA told Law360 on Thursday that Judge Kuntz's 145-page opinion was "a sweeping indictment of illegal conduct at the highest levels of the Trump administration."

The government did not respond to requests for comment.

Some 59,000 Haitians have been protected from deportation since a massive earthquake struck the island nation in 2010, killing an estimated 100,000 people or more and reducing thousands of homes and other buildings to rubble, including hospitals and the National Palace. A cholera outbreak made the situation even worse, and TPS was extended at regular intervals until 2017.

Similar suits have been launched seeking to preserve temporary protected status for people from other countries, including El Salvador, Nicaragua and Sudan.

The Haitians represented by Ira Kurzban and Kevin Gregg of Kurzban Kurzban Tetzeli & Pratt PA, Howard Roin, Geoffrey Pipoly, Christopher Houpt and Miriam Nemetz of Mayer Brown, and Sejal Zota of the National Immigration Project of the National Lawyers Guild.

The government is represented by Joseph Marutollo and James Cho of the U.S. Attorney's Office for the Eastern District of New York.

The case is Saget et al. v. Trump et al., case number 1:18-cv-01599, in U.S. District Court for the Eastern District of New York.

--Additional reporting by Jack Newsham. Editing by Connor Relyea.