

Haitians' Protected Status Nixed Due To Racial Bias, Suit Says

By Kelly Knaub

Law360 (March 15, 2018, 5:49 PM EDT) -- A nonprofit group of lawyers who represent immigrants hit President Donald Trump and the U.S. Department of Homeland Security with a lawsuit in New York federal court Thursday challenging the decision to end temporary protected status for Haitians, saying the move was motivated by racial animus.

The National Immigration Project of the National Lawyers Guild and others filed the suit on behalf of 10 Haitian nationals who are beneficiaries of TPS, as well as Brooklyn-based Haitian newspaper *Haïti Liberté* and an affiliated organization, alleging the Trump administration's November announcement that it will terminate Haiti's TPS designation on July 22, 2019, is unlawful.

The decision, according to the suit, filed in New York's Eastern District, was inspired by racial animus toward Haitians by Trump and will affect the lives of more than 50,000 Haitian nationals and their 27,000 U.S. citizen children who have been in the U.S. since a devastating earthquake in 2010.

The complaint alleges that the decision violates the Administrative Procedure Act, the Regulatory Flexibility Act and the Fifth Amendment of the U.S. Constitution.

"The termination of Haitian TPS targets Haitians, and was motivated by racial and national origin animus toward Haitians," the complaint says. "Accordingly, the action violated plaintiffs' rights to equal protection of the laws."

In addition to the DHS and Trump, DHS Secretary Kirstjen Nielsen and Deputy DHS Secretary Elaine Duke are named as defendants in the complaint.

TPS shields immigrants from deportation to countries that are deemed unsafe because of natural disaster, civil war and other conditions. In November, then-acting DHS Secretary Duke said that the "extraordinary but temporary conditions" that made it difficult to stay in Haiti after the 2010 earthquake no longer exist, and that ending the TPS status for individuals from that country is required by law.

"The administration's about-face on TPS exposed their discriminatory agenda to reduce the number of Haitians in the United States and their disregard for the safety, security and due process rights of Haitians," Sejal Zota, legal director of the NIP, said in a statement Thursday.

NIP hit the DHS with a separate suit in January after the department failed to respond to the group's Freedom of Information Act request seeking agency records pertaining to its November decision.

It filed a complaint in New York federal court accusing DHS and the U.S. Department of State of failing to produce records in response to two FOIA requests, saying that timely disclosure was "critically important" in clarifying the "relevant conditions undergirding the termination of temporary protected status for Haiti."

The federal government was also hit by a suit filed by the NAACP in Maryland federal court in January, claiming the decision to cut off Haitian immigrants from TPS was discriminatory. The suit cites numerous racially charged comments allegedly made by Trump, including that Haitians "all have AIDS."

And in February, Boston-based immigrant advocacy group Centro Presente filed suit in Massachusetts federal court alleging that the Trump administration's decision to terminate TPS for immigrants from El Salvador and Haiti is unconstitutional and "tainted by racial animus." The group has asked the court to issue a declaratory judgment that the decisions to terminate the TPS designations for El Salvador and Haiti violate the Fifth Amendment as well as the Administrative Procedure Act, and are therefore void.

"Congress was clear when it provided the legal framework for asylum, including credible fear claims," DHS spokeswoman Katie Waldman told Law360. "That framework authorizes the detention of illegal aliens who claim credible fear, even if they initially satisfy the threshold screening. Additionally, Congress has authorized DHS to parole certain aliens into the United States, but our federal immigration officers make those parole determinations on a case-by-case basis."

A representative for the White House did not respond to a request for comment Thursday.

The plaintiffs are represented by Sejal Zota and Elizabeth Simpson of NIP, Ira J. Kurzban, Edward F. Ramos, Kevin Gregg and Celso Perez of Kurzban Kurzban Weinger Tetzeli & Pratt PA, and Christopher J. Houpt, Miriam Nemetz, Geoffrey M. Pipoly and Christopher J. Ferro of Mayer Brown LLP.

Counsel information for the federal government was not immediately available.

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

--Additional reporting by Kyle Jahner, Kat Greene, Kevin Penton, Steven Trader and Tiffany Hu. Editing by Aaron Pelc.

Update: This story has been updated to include a statement from a DHS spokeswoman.