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From: Sejal Zota
Sent: Monday, May 14, 2018 3:55 PM
To: 'szota@nipnlg.org'
Subject: FW: SFRC MEMO: Trump Administration's Decision to End TPS Designations for El Salvador, Honduras, and Haiti Ignored Risks to U.S. National Security and Safety of More Than 400,000 People

From: Pachon, Juan (Foreign Relations)
Sent: Friday, May 11, 2018 12:07 PM
Subject: MEMO: Trump Administration's Decision to End TPS Designations for El Salvador, Honduras, and Haiti Ignored Risks to U.S. National Security and Safety of More Than 400,000 People

TO: Interested Parties
FROM: Senate Foreign Relations Committee Democratic Staff
DATE: May 11, 2018
RE: Trump Administration's Decision to End TPS Designations for El Salvador, Honduras, and Haiti Ignored Risks to U.S. National Security and Safety of More Than 400,000 People

“I am concerned that then-Secretary Tillerson recommended that the Department of Homeland Security (DHS) terminate the TPS designations for El Salvador, Haiti, and Honduras in deliberate disregard of the counsel and expertise of State Department officials in Washington and at the U.S. Embassies in all three countries.”

“Then-Secretary Tillerson issued his recommendation [...] despite several strong warnings that doing so would harm U.S. national security and [...] that the governments of El Salvador, Haiti, and Honduras [...] could not guarantee the safety and well-being of TPS beneficiaries returning to their country of origin, nor the U.S.-citizen children that would be traveling with them.”

- **Senator Bob Menendez**, Ranking Member of the Senate Foreign Relations Committee, in his [May 4, 2018 letter to the Government Accountability Office](#)

SUMMARY

Based on an investigation by Senate Foreign Relations Committee (SFRC) Democratic Staff, the Washington Post released an extensive report on how [Trump Administration officials ignored warnings from U.S. diplomats](#) about ending the Temporary Protected Status (TPS) designations for El Salvador, Haiti, and Honduras.

Over multiple months, SFRC Democratic Staff conducted a comprehensive in-person review of the Department of State's role in the termination of the TPS designations for El Salvador, Haiti, and Honduras, including the examination of the following unclassified documents:

- An October 31, 2017 letter from then-Secretary of State Rex Tillerson to then-Acting Secretary of Homeland Security Elaine Duke, which contained his recommendations on TPS;

- Department of State Recommendations Regarding TPS for El Salvador, Haiti, and Honduras, which accompanied then-Secretary Tillerson’s October 31, 2017 letter; and
- Diplomatic cables from the U.S. Embassies in El Salvador, Haiti, and Honduras related to the Embassies’ recommendations regarding TPS designations (Cable numbers: San Salvador 860, dated July 7, 2017; Port-au-Prince 2744, dated August 3, 2017; and Tegucigalpa 618, dated June 29, 2017).

SFRC Democratic Staff determined that then-Secretary Tillerson’s recommendation that the Department of Homeland Security (DHS) should terminate the TPS designations for El Salvador, Haiti, and Honduras was the result of an overtly political process. That process deliberately disregarded the counsel and expertise of officials at the State Department and the U.S. Embassies in all three countries, which uniformly argued for an extension of the TPS designations. SFRC Democratic Staff also determined that the White House Domestic Policy Council sought repeatedly to influence the decision-making processes at the State Department and DHS in order to ensure a pre-determined outcome: the termination of TPS designations for all three countries.

Moreover, in issuing his recommendation to terminate the TPS designations for El Salvador, Haiti and Honduras, then-Secretary Tillerson ignored a body of evidence about the negative consequences for U.S. national security and risks to the physical safety of TPS beneficiaries and the U.S.-citizen children that may accompany them to their country of origin.

In the aftermath of the Washington Post report, former U.S. Ambassadors further [cautioned about the perils of ending TPS](#) designations for these countries, and leading independent experts highlighted [the reckless nature and cruel consequences of the Administration’s decision](#).

The U.S. Congress cannot ignore these conclusions, which demand bipartisan action.

Secretary of State Pompeo must reexamine his predecessor’s flawed decision and issue a new recommendation that properly addresses the risks to U.S. national security and the safety of TPS beneficiaries and their U.S.-citizen children.

MAIN CONCLUSIONS

- In his October 31, 2017 letter recommending termination of the TPS designations for El Salvador and Honduras, then-Secretary Tillerson observed that the decision would likely prompt a “backlash” towards the United States and “undermine” U.S. foreign policy objectives in Central America.
- Then-Secretary Tillerson also stated in his October 31, 2017 letter that ending the TPS designations for El Salvador and Honduras may lead to “retaliatory actions” by both governments that would be counter to U.S. national security interests, including a potential reduction in bilateral cooperation to address narcotics trafficking and the illicit activities of criminal gangs, such as MS-13.
- In the Department of State Recommendations Regarding TPS for El Salvador, Haiti and Honduras, the State Department maintained that all three governments lacked sufficient capacity to repatriate tens of thousands of individuals and therefore would not be able to guarantee the safety of returning citizens and their accompanying U.S.-citizen children.
- The Department of State Recommendations Regarding TPS for El Salvador and Honduras assessed that the prevalence of violence and lack of economic opportunities in both countries would leave some repatriated TPS beneficiaries and their accompanying U.S.-citizen children vulnerable to recruitment to criminal gangs, such as MS-13, or other forms of illicit employment.

- In the Department of State Recommendations Regarding TPS for El Salvador and the diplomatic cable from the U.S. Embassy in El Salvador, the State Department and the U.S. Embassy asserted that limited government capacity, the prevalence of violence, and limited economic opportunities meant that repatriating more than 190,000 TPS beneficiaries – who may be accompanied by more than 200,000 U.S.-citizen children – would likely accelerate “illegal immigration” to the United States.
- The Department of State Recommendations for El Salvador, Haiti, and Honduras stated that it would not be contrary to U.S. national interests to allow TPS beneficiaries from all three countries to remain in the United States.
- In diplomatic cables, officials at the U.S. Embassies in El Salvador, Haiti, and Honduras all stated that it would be in the “U.S. national interest” to renew the TPS designations for their respective countries.
- In a diplomatic cable, officials from the U.S. Embassy in Haiti observed that repatriating tens of thousands of TPS beneficiaries would pose challenges to the Haitian National Police’s ability to guarantee security throughout the country.
- In a diplomatic cable, officials from the U.S. Embassy in El Salvador maintained that ending the TPS designation could lead to a response by the Government of El Salvador that undermines bilateral efforts to address transnational criminal organizations and criminal gangs such as MS-13.
- Then-Secretary Tillerson’s recommendation in his October 31, 2017 letter to terminate the TPS designations for El Salvador, Haiti, and Honduras disregarded the recommendations of the U.S. Embassies in each country, as well as assessments by the State Department and the three U.S. Embassies regarding the likely challenges for U.S. national security and the risks to the safety of TPS beneficiaries returning to their country of origin with accompanying U.S.-citizen children.
- The White House Domestic Policy Council sought to repeatedly influence the decision-making processes at the State Department and DHS in order to ensure a pre-determined outcome that would advance the Administration’s political agenda on immigration.

STATUTORY AUTHORITY FOR TPS

| Country | Individuals with TPS ^[1] | # of U.S.-citizen children of TPS Beneficiaries ^[2] |
|--------------|-------------------------------------|--|
| El Salvador | 262,526 | 192,700 |
| Haiti | 58,557 | 53,500 |
| Honduras | 86,031 | 27,000 |
| Total | 407,114 | 273,200 |

Data provided to the Congressional Research Service by U.S. Citizen and Immigration Services as of October 2017 indicates that more than 400,000 people from El Salvador, Haiti and Honduras were beneficiaries of TPS. Estimates by the Center for Migration Studies show that TPS beneficiaries from the three countries have more than 270,000 U.S.-citizen children. This combined total underscores the human impact of the Trump Administration’s flawed decision and marks a departure from longstanding interpretation of U.S. statute.

Since 1990, federal immigration law has provided a statutory mechanism by which aliens present in the United States from countries facing armed conflict, natural disaster, or other extraordinary conditions can temporarily

remain and work in the United States. Under Section 244 of the INA, DHS in consultation with the State Department may designate a country for TPS on one of the following grounds^[3]:

- There is an ongoing armed conflict that prevents the safe return of nationals from that country;
- There has been an environmental disaster in the country (such as an earthquake, flood, drought, or epidemic) that substantially disrupts living conditions in the area affected; the country is unable to adequately handle the return of alien nationals; and the country has officially requested TPS designation; or
- There are "extraordinary and temporary conditions" in the foreign country that prevent alien nationals from safely returning (unless the agency finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States).

Under the TPS statute, the Secretary must periodically re-evaluate country designations. At least 60 days before a particular designation expires, the Secretary must “review the conditions in the foreign state... for which a designation is in effect” and determine whether the country still meets the conditions for TPS.^[4] This periodic-review requirement also entails consultations with appropriate government agencies and publication of notice in the Federal Register.

Although TPS, by its terms, is a temporary designation, DHS has repeatedly extended TPS designations in many instances. Under both Republican and Democratic Administrations, TPS designations have been regularly extended based on a holistic assessment of the countries’ ability to repatriate and reabsorb their citizens. Under previous Administrations, DHS regularly considered intervening natural disasters, conflicts, and other serious social or economic problems as relevant factors when deciding whether to continue or instead terminate a TPS designation.

However, under the Trump Administration, DHS has adopted a new and strict interpretation of the statute governing TPS. The Administration argues that TPS can only be renewed if “conditions upon which the country’s original designation was based” with “an assessment of whether those originating conditions continue to exist.”^[5] This interpretation resulted in the termination of TPS designations for El Salvador, Haiti, and Honduras.

This Administration’s termination of TPS for El Salvador, Haiti and Honduras is arguably contrary to a clear reading of the statute and drastically departs from past practice by various Administrations that considered a variety of factors and conditions that partially existed or did not exist at the time of the original TPS designation when extending TPS. The interpretation of the TPS statute by this Administration is extremely troubling and highly suspect given the Administration’s anti-immigrant policies.

^[1] Congressional Research Service, *Temporary Protected Status: Overview and Current Issues* (Jan. 17, 2018)

[2] Center for Migration Studies, *A Statistical and Demographic Profile of the U.S. Temporary Protected Status Populations from El Salvador, Honduras, and Haiti* (August 2017) available at <http://cmsny.org/publications/jmhs-tps-elsalvador-honduras-haiti/>

[3] 8 U.S.C. §1254a(b)(1).

[4] 8 U.S.C. §1254a(b)(3).

[5] U.S. Department of Homeland Security, *Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for El Salvador* (Jan. 8, 2018) available at <https://www.dhs.gov/news/2018/05/04/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>; U.S. Department of Homeland Security, *Acting Secretary Elaine Duke Announcement On Temporary Protected Status for Haiti* (Nov. 20, 2017) available at <https://www.dhs.gov/news/2017/11/20/acting-secretary-elaine-duke-announcement-temporary-protected-status-haiti>