

Congress of the United States
Washington, DC 20515

December 4, 2018

John V. Kelly
Acting Inspector General
Office of Inspector General/MAIL STOP 0305
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305

Dear Acting Inspector General Kelly:

We write to request an immediate investigation into the various regulatory irregularities and potentially unlawful decisions stemming from the Department of Homeland Security's (DHS) decision to terminate Temporary Protected Status (TPS) for Sudan, Nicaragua, Nepal, Haiti, El Salvador, and Honduras. Under TPS, the Secretary of DHS issues employment authorization and protection from deportation for foreign nationals who cannot be safely returned to their home countries. We believe that DHS engaged in questionable, and potentially unlawful, conduct in the following areas with its decision to terminate TPS protections for over 315,000 people.

Inappropriate Decision Criteria

In a May 2018 letter to the Government Accountability Office from Senate Foreign Relations Committee Ranking Member Menendez, evidence released in litigation related to TPS, FOIA requests, and media reporting have revealed a pattern of DHS' politically-motivated decision-making process on TPS, falling outside of the bounds of the law. The Senate Foreign Relations Committee letter states that in the decisions to terminate TPS for Haiti, El Salvador, and Honduras, DHS deliberately ignored the advice of State Department counsel and experts who urged extension in order to protect U.S. national interests, including stability in the Northern Triangle, and to protect human lives, including the U.S. citizen children of TPS holders.

In addition to the Haiti, Honduras, and El Salvador decisions, advocates and litigators have also unearthed improper decision making in the Nicaragua and Sudan TPS terminations. In a USCIS email, staff were instructed to find "positive gems" to justify sending people back to war torn countries.

Regarding the recommendations to terminate TPS for the Sudan, a Department of Defense official stated that assessments were neither "factually accurate" nor "credible." In reviewing recommendations for the Sudan, soon-to-be-confirmed USCIS Director Cissna stated, "The memo reads like one person who strongly supports extending TPS for Sudan wrote everything up to the recommendation section, and then someone who opposes extension snuck up behind the

first guy, clubbed him over the head, pushed his senseless body out of the way, and finished the memo.”

Most recently, in *Ramos v. Nielsen*, a federal district court determined that the Secretary employed inappropriate decision criteria—including seeking information regarding the criminal history of TPS recipients, bowing to political pressure from the White House, and disregarding recommendations from long-time career employees.

Failure to Re-Designate Syria, Somalia, and Yemen

The DHS Secretary extended TPS for Syria, Somalia, South Sudan, and Yemen on the basis that it was too dangerous to return foreign nationals to these countries—but did not re-designate these countries for TPS. In the case of Syria and Yemen, the administration’s failure to re-designate was a break in the status quo of previous re-designations. Due to the failure to re-designate, thousands of foreign nationals who arrived after the original designation date were ineligible to apply for TPS, even though conditions in their home countries still warranted TPS.

Unreasonable Delays in Adjudication

Nationals from Haiti, El Salvador, and Syria experienced historic delays in adjudication of their re-registration applications for TPS, with delays affecting upwards of 20,000 Salvadorans; 4,500 Haitians; and 335 Syrians—all of whom applied in a timely manner and paid nearly \$500 in fees. To date, USCIS has failed to provide any explanation for these delays, which represent a departure from the agency’s prior ability to timely adjudicate TPS re-registration applications. These delays not only bred confusion but led to the termination of TPS holders by employers.

Reversals in Long Standing Policies

In response to the delays in adjudication, USCIS engaged in an untested and arbitrary process to extend employment authorization—the mailing of physical notices to affected individuals, instead of the historic agency process of utilizing Federal Register Notices (FRNs). As legal experts have noted, the physical notices not only represent an inefficient process that wastes taxpayer dollars but may be insufficient for the purposes of employment verification and violate the Administrative Procedures Act.

Publication Delays

Under the TPS statute, DHS must review current country conditions in countries whose nationals have been granted TPS 60 days prior to the expiration of such status. The statute also requires that the outcome of such review, including the decision to continue and/or redesignate or terminate such designation, with timely publication in the FR. Historically, both Republican and Democratic administrations have interpreted the timely notice requirement to mean publication in the FR at the time of the decision. In contrast, this administration has failed to timely publish FRNs for nearly all its decisions—with eight of twelve country condition decisions published a month or more after the required 60-day deadline for country condition review. Such delays are unacceptable and draws serious questions over the Administration’s ability to provide equal opportunity notice to all immigrants under the TPS program. Furthermore, these delays are arguably inconsistent with previous practices—and demonstrates a stark contrast to the spirit of the law’s requirement of “timely basis” for publication in the Register.

Publication Errors

The Haiti FRN, published nearly two months after the decision date, contained a serious error affecting employment authorization for an estimated 14,000 people. Once alerted, USCIS issued a supplemental memo on its webpage, but it is still unclear whether this supplemental memo is sufficient for employment verification purposes. As of November 26, 2018, USCIS has not published a supplemental notice in the Federal Register to correct this error.

Misinforming the Public


USCIS issued erroneous and incorrect information to the public regarding key TPS-related deadlines. In early February, USCIS, through its Twitter account, announced an incorrect deadline for TPS for Honduras and Nicaragua. Furthermore, on February 2, 2018, USCIS posted incorrect information that re-registration for El Salvador was not yet available, even though the 60-day period had already opened.

Given the inconsistencies and unclear methodologies employed by DHS regarding these terminations, we request that you undertake the following and publish your findings:

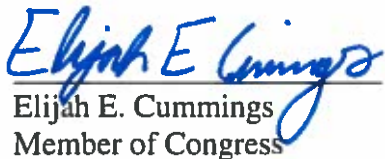
- (1) Investigate the above allegations of mismanagement, unlawful conduct, and violations of existing policy, regulation, or law;
- (2) Recommend appropriate disciplinary action for consideration by the DHS Secretary and USCIS Director for individuals involved in the above;
- (3) Recommend comprehensive policy, guidance, and training for consideration by the DHS Secretary and USCIS Director to prohibit the unlawful conduct from reoccurring in the future.

We appreciate your attention to these critical concerns and look forward to your prompt response.

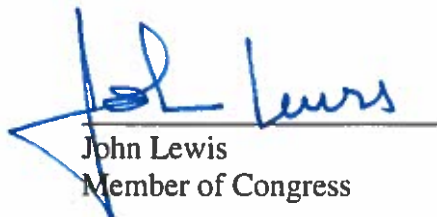
Sincerely,



Jimmy Gomez
Member of Congress



Elijah E. Cummings
Member of Congress



John Lewis
Member of Congress



Gwen Moore
Member of Congress



Betty McCollum
Member of Congress



Keith Ellison
Member of Congress



Adam Smith
Member of Congress



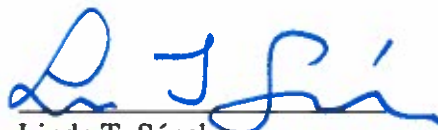
Nydia M. Velázquez
Member of Congress



Peter Welch
Member of Congress



Doris O. Matsui
Member of Congress



Linda T. Sánchez
Member of Congress



Alcee L. Hastings
Member of Congress




Jose E. Serrano
Member of Congress




Luis V. Gutiérrez
Member of Congress




Suzan DelBene
Member of Congress


John Yarmuth
Member of Congress


Alma S. Adams, Ph.D.
Member of Congress


Jamie Raskin
Member of Congress


Robert C. "Bobby" Scott
Member of Congress



Stephanie Murphy
Member of Congress


Mark Pocan
Member of Congress



David E. Price
Member of Congress


Gerald E. Connolly
Member of Congress


Albio Sires
Member of Congress


Marcia L. Fudge
Member of Congress


Nita M. Lowey
Member of Congress


Adam B. Schiff
Member of Congress



Debbie Dingell
Member of Congress



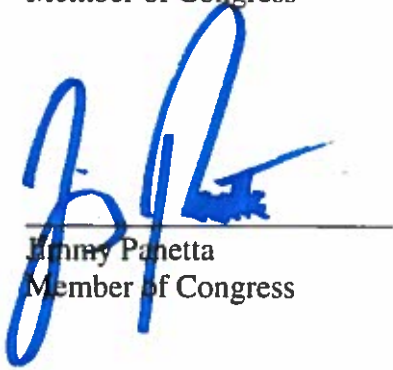
Alan Lowenthal
Member of Congress



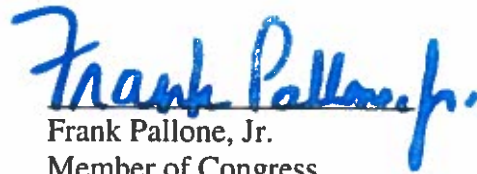
Salud Carbajal
Member of Congress



Dan Kildee
Member of Congress



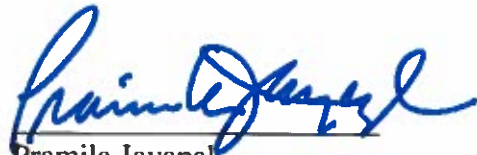
Jimmy Panetta
Member of Congress



Frank Pallone, Jr.
Member of Congress



Anna G. Eshoo
Member of Congress



Pramila Jayapal
Member of Congress

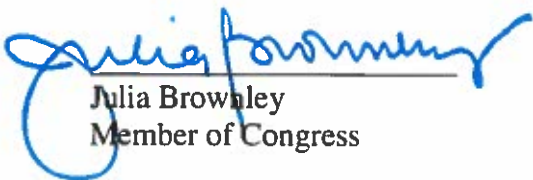


James P. McGovern
Member of Congress



M.C.

Ro Khanna
Member of Congress



Julia Brownley
Member of Congress



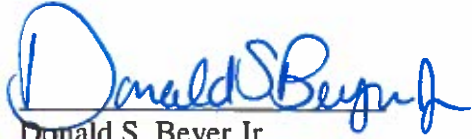
Joe Crowley
Member of Congress



J. Luis Correa
Member of Congress



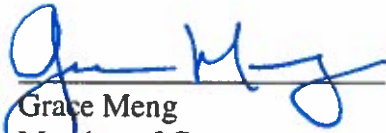
Debbie Wasserman Schultz
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Ruben Gallego
Member of Congress



Grace Meng
Member of Congress



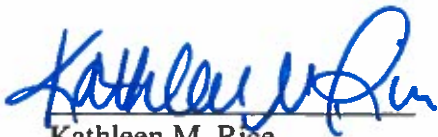
Zoe Lofgren
Member of Congress



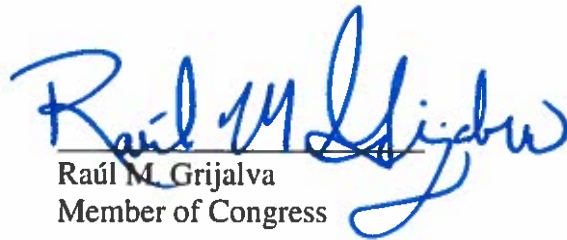
Seth Moulton
Member of Congress



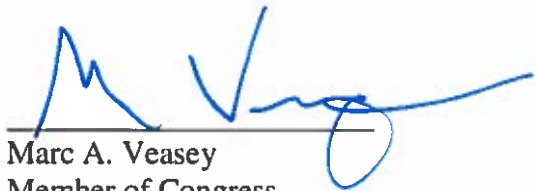
Darren Soto
Member of Congress



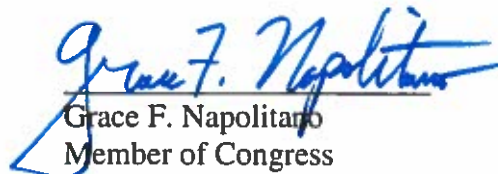
Kathleen M. Rice
Member of Congress



Raúl M. Grijalva
Member of Congress



Marc A. Veasey
Member of Congress



Grace F. Napolitano
Member of Congress



Frederica S. Wilson
Member of Congress



Mike Quigley
Member of Congress



Dina Titus
Member of Congress



Eleanor H. Norton
Member of Congress



Anthony Brown
Member of Congress



Diana DeGette
Member of Congress



Colleen Hanabusa
Member of Congress



Mike Thompson
Member of Congress



Rosa L. DeLauro
Member of Congress



Juan Vargas
Member of Congress



Joaquin Castro
Member of Congress



Nanette Barragan
Member of Congress



Adriano Espaillat
Member of Congress



Norma J. Torres
Member of Congress



Kathy Castor
Member of Congress



Yvette D. Clarke
Member of Congress



Jerrold Nadler
Member of Congress



Peter A. DeFazio
Member of Congress



Sheila Jackson Lee
Member of Congress



Bobby L. Rush
Member of Congress



Gregory W. Meeks
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Karen Bass
Member of Congress



David N. Cicilline
Member of Congress



André Carson
Member of Congress



Eliot L. Engel
Member of Congress



Jan Schakowsky
Member of Congress



Jim Costa
Member of Congress



Lucille Roybal-Allard
Member of Congress



Steve Cohen
Member of Congress



Judy Chu
Member of Congress



Mark Takano
Member of Congress