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**Memorandum**

October 18, 2004

**TO:** House Committee on the Judiciary  
Subcommittee on Immigration, Border Security, and Claims  
Attention: Nolan Rappaport

**FROM:** Ruth Ellen Wasem  
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Domestic Social Policy Division

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Specialist in Latin American Affairs  
Foreign Affairs, Defense and Trade Division

**SUBJECT: Temporary Protected Status Option for Haitians Affected by Tropical Storm Jeanne**

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This memorandum responds to your request for an analysis of the option of Temporary Protected Status (TPS) for Haitians affected by Tropical Storm Jeanne, as compared to other instances in which TPS has been granted as a result of natural disasters. TPS is blanket immigration relief that may be granted to foreign nationals in the United States under the following conditions: there is ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or, there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning, provided that granting TPS is consistent with U.S. national interests.

The memorandum begins with an overview of immigration law and policy as it pertains to TPS. Following that, we provide a discussion of when TPS has been granted in response to natural disasters. An analysis of data on the human toll experienced by selected countries following natural disasters opens the section on country conditions. The current conditions in Haiti are then described, with the analysis focusing on the extent that damage from Tropical Storm Jeanne exacerbated other problems in Haiti. The final portion of the memorandum is excerpted from the 1999 CRS Report 98-1030, *Central America: Reconstruction After Hurricane Mitch*, and summarizes damage caused by Hurricane Mitch to four countries that were considered for TPS at that time. This memorandum does not offer arguments favoring or opposing TPS for Haitians, but it does provide comparative data on factors that may be weighed in considering the option of TPS for Haitians.

# Immigration Law and Policy

## Background

The Immigration and Nationality Act (INA) provides that all aliens (i.e., persons who are not citizens or nationals of the United States) must enter pursuant to the INA. The major categories of aliens are immigrants, refugees and asylees (all admitted for or adjusted to legal permanent residence), and nonimmigrants (admitted for temporary reasons, e.g., students, tourists or business travelers). Aliens who lack proper authorization (i.e., illegal aliens) are generally of two kinds: those who entered the United States without inspection according to immigration procedures, or those who entered the United States on a temporary visa and have stayed beyond the expiration date of the visa. Unauthorized aliens of both kinds are subject to removal. According to the INA, a refugee or asylee is a person who is unwilling or unable to return to his country of nationality or habitual residence because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>1</sup>

The concept of “safe haven” covers those who may not meet the legal definition of refugee but are nonetheless fleeing potentially dangerous situations. Safe haven also assumes that the host country, in this instance the United States, is the first country in which the fleeing alien arrives safely, or is the country where the alien is temporarily residing when the unsafe conditions occur. Safe haven is implicitly temporary in nature because it is given prior to any decision on the long-term resolution of the alien’s status. It is also a form of blanket relief because it is premised on more generalized conditions of turmoil or deprivation in the country of origin, in contrast to the individual circumstances weighed in the case-by-case asylum process.

## Temporary Protected Status

TPS is the statutory embodiment of safe haven for those aliens who may not meet the legal definition of refugee or asylee but are nonetheless fleeing — or reluctant to return to — potentially dangerous situations. The INA specifies the circumstances under which TPS may be designated as follows:

(1) In general.-The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if (A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety; (B) the Attorney General finds that (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected, (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and (iii) the foreign state officially has requested designation under this subparagraph; or (C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General

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<sup>1</sup> §208 of INA [8 U.S.C. 1158]; § 241(b)(3) of INA [8 U.S.C. 1231]; and §101(a) of INA [8 U.S.C. 1101(a)(42)].

finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.<sup>2</sup>

The Secretary of Homeland Security, in consultation with the Secretary of State, can issue TPS for periods of six to 18 months and can extend these periods if conditions do not change in the designated country.<sup>3</sup> To obtain TPS, eligible aliens report to U.S. Citizenship and Immigration Services (USCIS), pay a processing fee, and receive registration documents and a work authorization. The major requirements for aliens seeking TPS are proof of eligibility (e.g., passport issued by designated country), continuous physical presence in the United States since the date TPS went into effect, timely registration, and otherwise admissible as an immigrant.

Aliens who receive TPS are not on an immigration track that leads to permanent residence or citizenship. The “temporary” nature of TPS is apparent in the regulation. The government has made clear that information it collects when an alien registers for TPS may be used to institute exclusion or deportation proceedings upon the denial, withdrawal or expiration of TPS.<sup>4</sup>

## **Other Blanket Forms of Relief**

Additionally, the Attorney General may provide, under certain conditions, discretionary relief from deportation so that aliens who have not been legally admitted to the United States may remain in this country either temporarily or permanently. The statutory authority cited by the agency for these discretionary procedures is generally that portion of immigration law that confers on the Attorney General the authority for general enforcement and the section of the law covering the authority for voluntary departure.<sup>5</sup> Such blanket relief is an exercise of the discretion of the Attorney General, and thus, the Secretaries of Homeland Security and of State need not be consulted. On December 23, 1997, President Clinton instructed the Attorney General to grant deferred enforced departure to Haitians for one year.<sup>6</sup>

## **TPS Due to Natural Disasters**

Aliens from Montserrat were the first granted TPS on the basis of a natural disaster, in this case a volcanic eruption. Effective on August 22, 1998, about 300 people were allowed to stay in the United States temporarily. Secretary of Homeland Security Tom Ridge announced on July 6, 2004, that TPS for Montserrat would not be extended again. The Administration stated that the termination is effective February 27, 2005.

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<sup>2</sup> §244 of INA [8 U.S.C. 1254a].

<sup>3</sup> Under the Homeland Security Act of 2002 (P.L. 107-296), the former Immigration and Naturalization Service was abolished and its functions transferred to the Department of Homeland Security (DHS). As a part of this transfer, the responsibility for administering TPS was transferred from the Attorney General in the Department of Justice to the Secretary of DHS. The INA has not been amended to reflect this transfer of responsibilities from the Attorney General to DHS. In practice, TPS is now administered by DHS’s U.S. Citizenship and Immigration Services.

<sup>4</sup> §244 of INA [8 U.S.C. 1254a]; 8 C.F.R. Part 244.

<sup>5</sup> §240 of INA [8 U.S.C. 1229a]; §240B [8 U.S.C. 1229c].

<sup>6</sup> CRS Report 98-270, *Immigration: Haitian Relief Issues and Legislation*, by Ruth Ellen Wasem.

In the aftermath of Hurricane Mitch, then-Attorney General Janet Reno announced on November 5, 1998, that she would temporarily suspend the deportation of aliens from El Salvador, Guatemala, Honduras, and Nicaragua. After Hurricane Mitch, Guatemalans and Salvadorans had their stays of removal extended for 60 days — until March 8, 1999. On December 30, 1998, Attorney General Reno designated TPS for Hondurans and Nicaraguans in the United States as of that date. The Clinton Administration maintained that Honduras and Nicaragua had such extraordinary displacement and damage from Hurricane Mitch as to warrant TPS. For both Nicaraguans and Hondurans, TPS was extended and is now scheduled to expire on January 5, 2005. According to the U.S. Citizenship and Immigration Services (USCIS), this extension of TPS covers an estimated 87,000 Hondurans and 6,000 Nicaraguans who already have TPS.

On February 13, 2001, Attorney General John Ashcroft granted TPS to Salvadorans following the two earthquakes that rocked El Salvador in January and February of that year. An official press release at the time stated: “... that the extent of death, displacement and damage in El Salvador has resulted in a substantial but temporary disruption of living conditions in El Salvador, such that the country is temporarily unable to handle adequately the return of nationals.”<sup>7</sup> USCIS has extended TPS, currently covering approximately 290,000 Salvadorans until March 9, 2005.

Some are now calling for Secretary Ridge to grant TPS to Haitians in the United States, citing the damage caused by Tropical Storm Jeanne. They maintain that Haiti temporarily cannot handle the return of nationals due to the environmental disaster and that there are extraordinary and temporary conditions in Haiti that prevent Haitians from returning safely. Others warn that any policy shift would prompt a mass exodus of Haitians, which in turn would divert and strain homeland security resources.<sup>8</sup>

## Country Conditions

As the INA makes clear, granting TPS is a subjective determination. There are no statutory formulas or thresholds, nor are there legal criteria under which TPS is mandatory. Comparing current conditions in Haiti to conditions in Central American countries following Hurricane Mitch in 1998 does provide an analytic perspective that may be helpful.

### Human Toll

Natural disasters are characterized by the loss of human life and the displacement of people. As **Table 1** indicates, Honduras sustained the most deaths — an estimated 6,500 — and largest number of displaced or homeless people as a result of Hurricane Mitch. Nicaraguan deaths were estimated at 3,800, with a range of 500,000 to 800,000 displaced by Hurricane Mitch. With over 3,000 reported deaths and an estimated 300,000 homeless, Haiti’s human toll from Tropical Storm Jeanne nearly approximates Nicaragua’s. Although El Salvador did not suffer as many deaths after the earthquakes in 2001 as Haiti has from

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<sup>7</sup> U.S. Department of Justice, “President Bush Announces El Salvador Designated For Temporary Protected Status Following Devastating Earthquakes,” press release, Mar. 2, 2001.

<sup>8</sup> For a fuller discussion, see CRS Report RS21349, *U.S. Immigration Policy on Haitian Migrants*, by Ruth Ellen Wasem.

Tropical Storm Jeanne, the estimated number of people displaced in El Salvador — 1,300,000 to 1,600,000 — is the largest of the countries selected for this comparison. The loss of human life experienced by El Salvador and Guatemala as a result of Hurricane Mitch was not as great as that of Haiti following Tropical Storm Jeanne; however, nationals from El Salvador and Guatemala were not given TPS at that time.<sup>9</sup>

**Table 1. Deaths and Displaced People in Selected Countries Considered for TPS Due to Natural Disasters**

TPS	Country	Population (millions)	Estimated deaths	Estimated displaced or homeless
<i>Hurricane Mitch (1998)</i>				
No	El Salvador	6.1	239	500,000
No	Guatemala	11.6	256	80,000
Yes	Honduras	6.2	6,500	up to 1,500,000
Yes	Nicaragua	4.5	3,800	500,000 to 800,000
<i>Earthquakes (2001)</i>				
Yes	El Salvador	6.5	1,259	1,300,000 to 1,600,000
<i>Hurricane Jeanne (2004)</i>				
	Haiti	8.0	3,006	300,000

**Source:** CRS compilation of data from U.S. Citizenship and Immigration Services, U.S. Agency for International Development, and Inter-American Development Bank.

Although death tolls and displaced people may be the most compelling and disturbing results of natural disasters such as hurricanes and earthquakes, the damage to infrastructure and the supply of food and water are also critical factors. While such destruction is difficult to quantify (and comparable cost estimates are not available for this particular comparison), they remain important considerations. The remainder of this memorandum synthesizes a range of assessments of the damage in these selected countries caused by Hurricane Mitch and Tropical Storm Jeanne.

## Damage to Haiti from Tropical Storm Jeanne

The damage done by Tropical Storm Jeanne was made worse by the cumulative effect of prior crises. Between February and October 2004, Haiti has faced a civil conflict, a flood disaster, and a powerful tropical storm. These crises have exacerbated the conditions of extreme poverty in Haiti, already the poorest nation in the Western Hemisphere. According to a report outlining a development strategy for Haiti by the interim government and international donors:

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<sup>9</sup> CRS compilation of data from U.S. Citizenship and Immigration Services, U.S. Agency for International Development, and Inter-American Development Bank Consultation Group for the Reconstruction of Central America.

**The socioeconomic situation in Haiti is alarming.** ... It is estimated that two thirds of the 8 million Haitians live under the poverty threshold. The life expectancy is 53 years; the infant mortality rate is 80 per 1,000; HIV/AIDS affects 5 percent of the population.... The political crisis, poor governance, and economic instability have increasingly exposed the population to the precariousness and inadequacy of traditional survival mechanisms.<sup>10</sup>

Political upheaval, criminal activity, and natural disasters have pushed up prices in an already weak economy. Most of the population lives on less than \$1 a day, with an annual per capita income of \$225. Economic growth has been stagnant since 2000, and chronic instability discourages investment.

**Civil Conflict.** Long-term political conflict escalated until armed rebellions around the country led to the departure of President Jean-Bertrand Aristide on February 29, 2004. An interim government has taken over, but ongoing violent protests by both sides continue, and security conditions are tenuous. Former soldiers have demanded restoration of the army, which had a long history of human rights abuses and was disbanded by Aristide in 1995. They have seized control of towns, assumed security responsibilities alongside local police, or expelled police officers in various parts of the country. Supporters of Aristide, demanding his return to office, began violent protests on September 30, 2004, the anniversary of the coup that removed Aristide from office in 1991. These have left at least 26 dead, including police officers who were decapitated. The Bush Administration condemned the violent “systematic campaign to destabilize the interim government and disrupt the efforts of the international community to assist the Haitian people” it says is being carried out by pro-Aristide armed gangs.<sup>11</sup> Both sides are heavily armed. The Haitian National Police are understaffed and under-equipped to maintain order.<sup>12</sup>

Halfway through its initial six-month authorization, the UN Stabilization Mission in Haiti has less than half the troops it was authorized to have, and is finding it difficult to carry out its mandate to establish law and order. Two UN peacekeepers have been wounded. In addition, the mission’s efforts have been diverted by the need to help protect and deliver emergency assistance following Haiti’s natural disasters.

**Flood Disaster.** On May 26, 2004, floods along the Haitian-Dominican Republic border led U.S. Ambassador to Haiti James Foley to declare a disaster. The official death toll in Haiti from the floods, as of June 6, was 1,191, and the number of missing was 1,484. Tens of thousands were displaced, and several hundred injured. Another approximately 1,600 people are missing and presumed dead. Thousands of homes were damaged or destroyed, with accompanying losses of crops and livestock.

**Tropical Storm Jeanne.** On September 21, 2004, the U.S. Ambassador again declared Haiti a disaster due to the magnitude of the effects of Tropical Storm Jeanne in

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<sup>10</sup> Republic of Haiti, United Nations, European Commission, World Bank, Inter-American Development Bank, *Interim Cooperation Framework, 2004-2006, Summary Report*, July 2004, p. xi. [bold emphasis in original]

<sup>11</sup> U.S. Department of State, *Violence in Haiti*, statement by Richard Boucher, Spokesman, Oct. 12, 2004.

<sup>12</sup> For fuller discussions, see CRS Report RL32294, *Haiti: Developments and U.S. Policy Since 1991 and Current Congressional Concerns*, by Maureen Taft-Morales; and CRS Report RS21751, *Humanitarian Crisis in Haiti: 2004*, by Rhoda Margesson.

Haiti's Artibonite and North-West departments. According to the Orlando Sentinel, "The four hurricanes that have hit Florida in six weeks didn't cause as much damage as a single tropical storm [Jeanne] did in Haiti."<sup>13</sup> Massive flooding caused by the storm left 3,006 people dead, and 300,000 homeless. An estimated 80% of crops were destroyed. Hardest hit was the city of Gonaives, 80% of which was flooded. Some 2,800 people died in Gonaives, and 160,000 people required food assistance there. Eighty percent of its population of 250,000 are homeless. Because the Haitian government lacks the institutional capacity to deal with the disaster, relief efforts are being handled principally by international personnel and funding.

**Long-Term Vulnerability.** The rains from the Tropical Storm were weaker in Haiti than in the Dominican Republic, yet the number of deaths and degree of damage done was much higher in Haiti. In Haiti, rapid urbanization, lack of land management, and reliance on charcoal for cooking have all contributed to vast deforestation, which in turn leaves Haiti extremely vulnerable to devastating mudslides in heavy rains. In the neighboring Dominican Republic, people rely on natural gas (rather than charcoal) to cook, and there is much less deforestation there.

According to the director of the U.N.'s International Secretariat of Disaster Reduction, Salvano Briceno, "vulnerabilities have been allowed to grow in Haiti to the extent that any natural hazard inevitably leads to great tragedy."<sup>14</sup> In addition to deforestation, Briceno says the lack of any early warning system in Haiti also leaves the population vulnerable to natural disasters.

## **Damage to Central America from Hurricane Mitch<sup>15</sup>**

Hurricane Mitch, which struck Central America between October 26 and November 5, 1998, was the most damaging storm to hit Central America in decades. According to U.S. satellite imagery systems, the storm affected 40% of the landmass of Honduras, Nicaragua, Guatemala, and El Salvador. Honduras suffered the most damage and loss of life. Nicaragua also suffered large losses. Guatemala, El Salvador, Belize, and Costa Rica suffered less damage. Deaths, injuries and loss of homes and infrastructure were the result of floods and mud slides made worse by years of environmentally destructive agricultural practices. Damage to infrastructure (roads, bridges, power and telephone systems, and public buildings) and destruction of crops and cropland will require long-term reconstruction. In all of the countries, clean water was scarce and disease from contaminated lakes, streams and flooded areas was an ongoing threat. (U.N. and U.S. medical personnel reported that no major outbreaks of disease occurred, and attributed this to special attention to disease control by the local governments and the relief agencies.)

**El Salvador.** El Salvador was affected by heavy rains, winds, and flooding as Tropical Storm Mitch passed through Honduras and Guatemala in late October and early November

<sup>13</sup> Jason Garcia, "Area's Haitian-Americans Seek Help for Homeland," *Orlando Sentinel*, Sept. 30, 2004.

<sup>14</sup> UN: *Haiti: Human disaster is preventable, says Chief of Disaster Reduction Secretariat*, UN statement at [[http://www.haiti-info.com/imprimer.php3?id\\_article=2612](http://www.haiti-info.com/imprimer.php3?id_article=2612)], Sept. 27, 2004.

<sup>15</sup> Excerpted from CRS Report 98-1030, *Central America: Reconstruction After Hurricane Mitch*, Lois McHugh, Coordinator, Oct. 12, 1999.

1998. According to AID reports, the government of El Salvador reported that 374 people died or were missing as a result primarily of flash floods. The government estimated in early November that 55,864 people had been displaced, with 10,372 houses damaged, but most of the displaced population returned home by November 24. Fifteen bridges, including three major bridges over the Lempa River, were destroyed, and the country's roads were seriously damaged. About 60% of the paved roads suffered some surface damage, and secondary roads suffered severe damage. Damage to agriculture was significant, particularly in basic grains, coffee, and sugarcane. Health issues were viewed as the most critical problems in El Salvador. The IDB Consultative Group for Reconstruction of Central America concluded that El Salvador sustained \$261.9 million in direct and indirect damage, with \$160.6 million in damage to productive sectors (mostly agriculture) and \$73.1 million in damage to infrastructure.<sup>16</sup>

**Guatemala.** Hurricane Mitch moved northwestward across Guatemala, causing heavy rains and severe flooding. According to AID damage reports, there were 268 deaths, 106,600 evacuees, and a total of 750,000 people affected, with over 22,600 homes destroyed or heavily damaged. In terms of infrastructure, 121 bridges were damaged or destroyed and 90 stretches of road were affected, although most were operable by mid-November. The longest lasting damage was to agricultural productive capacity, with the U.S. Embassy estimating in November that 95% of the nation's banana crop was decimated, 25-60% of the corn, bean, coffee, and sugar crops were destroyed, and 30% of the cattle herd was lost. The IDB Consultative Group for the Reconstruction of Central America concluded that Guatemala had suffered \$562.7 million in direct and indirect damage as a result of Hurricane Mitch, with \$387.5 million in damage to productive sectors (principally agriculture) and \$115.5 million in damage to infrastructure.<sup>17</sup>

**Honduras.** The Honduran government reported that, as a result of the hurricane, 6,500 persons were killed, 11,762 were injured, and around 1.9 million were affected by the storm. Reportedly some 70,000 houses were damaged and more than 92 bridges were destroyed and another 75 bridges were damaged. Damage to the country's export cash crops was severe, including most notably the banana industry which lost some 90% of its plants. In contrast, the country's domestic staple crops sustained less damage. Extensive flooding and wind damage were reported throughout the country.

According to the Inter-American Development Bank's Consultative Group for the Reconstruction of Central America, damage estimates for Honduras amounted to about \$3.6 billion (with almost \$2.2 billion in direct damage and \$1.5 billion in indirect damage). Some 56% of the total damage, \$2.1 billion, was concentrated in the country's productive sectors, including the agriculture, livestock, fisheries, and forestry sectors. Damage of infrastructure accounted for another 14%, or about \$512 million of the total damage. Damage in the social sectors of housing, health, and education accounted for 28% of the total, with housing accounting for the majority of the damage.<sup>18</sup>

**Nicaragua.** Hurricane Mitch inflicted most of its damage in Nicaragua with torrential rains that caused extensive floods and mudslides. The Hurricane left 3,800 people dead, in

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

Nicaragua. Many of these deaths were due to a large mudslide that engulfed 10 communities at the base of the Casitas Volcano when hurricane-driven rains filled the dormant volcano's lake until it burst through the volcano's sides. Across the country, 867,752 people were displaced, and more than 30,000 houses were either completely or partially destroyed. Damage from Hurricane Mitch totaled 44.4% of Nicaragua's GDP (Nicaragua's GDP for 1996 was \$2.3 billion), according to the Inter-American Development Bank Consultative Group for the Reconstruction of Central America (December 1998). Total damage was reported to be \$898 million. Damage to the social sectors (housing, health, and education) equaled \$239 million; to infrastructure (roads, bridges, railways, telecommunications) \$340 million; to the productive sectors (agriculture, fisheries and forestry, manufacturing, trade, restaurants and hotels) \$310 million; and to the environment, \$8.5 million. The hurricane damaged 30% of Nicaragua's banana crop.<sup>19</sup>

We hope that the analysis provided by the memorandum addresses your questions. If you have further questions about immigration law and policy on TPS, please contact Ruth Wasem at 7-7342. If you have further questions about country conditions in Haiti and other Latin American countries, please contact Maureen Taft-Morales at 7-7659.

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<sup>19</sup> Ibid.