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Haiti Tragedy Raises Important Immigration Issues for the United States

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As the world community responds to the devastation caused by the January 12, 2010, earthquake in Haiti — which left an estimated 200,000 people dead and 1.5 million homeless — the role of immigration policy has emerged as a central consideration of the relief and reconstruction efforts.

A number of policy proposals emerged quickly after the disaster, including measures aimed at temporarily halting the repatriation of unauthorized Haitians and proposals to increase the flow of Haitian immigrants to countries such as the United States and Canada. In the United States in particular, the discussion over immigration relief for Haitians has rekindled larger debates over the role of immigration in economic development, and the impact of humanitarian crises on existing immigration laws.

The United States is home to approximately 535,000 Haitian immigrants, the largest concentration of Haitians in any country outside of Haiti. A day after the earthquake, Homeland Security Secretary Janet Napolitano announced that the United States would temporarily suspend all deportations to Haiti in light of the country's widespread destruction.

On January 15, the Department of Homeland Security (DHS) announced that it would grant certain Haitian nationals in the United States temporary legal status and permission to work, a designation known as Temporary Protected Status (TPS). Since 1990, the United States has granted TPS to certain immigrants who cannot safely return to their home countries as a result of armed conflict or environmental disaster.

As the status is granted only in the context of a severe humanitarian crisis, and is thus intended to be temporary, TPS does not provide a pathway to permanent resident status. In addition to Haiti, five other countries are currently designated for TPS: El Salvador, Honduras, Nicaragua, Somalia, and Sudan.

To qualify for the Haitian TPS, an applicant must show that he or she is a Haitian national who was residing in the United States as of January 12, 2010. DHS will grant TPS to both unauthorized Haitians and to Haitians whose authorized status in the United States is about to expire. Haitians who were not present in the United States as of the date of the earthquake are not eligible. Potential applicants who have been convicted of one felony or two misdemeanor offenses are disqualified.

Recipients of TPS will receive work permits valid for 18 months, as well as temporary protection against deportation. They will also be able to request permission to travel abroad and return to the United States. In order to expedite the process, US Citizenship and Immigration Services (USCIS) has indicated that it will place Haitian TPS applications on a fast track, issuing work permits to applicants within 90 days, and that it will waive the \$470 filing fee for applicants who are unable to pay. DHS estimates that between 100,000 and 200,000 Haitians are eligible to apply for TPS, although some experts estimate a significantly lower number, somewhere in the neighborhood of 70,000.

Immigrant advocates and policy experts have noted that the relatively high fee for TPS applications, along with the expense of retaining legal counsel, could prevent many qualified applicants from filing. To help ease the financial burden, bar associations, law firms, and immigrant defense organizations nationwide have organized pro bono TPS clinics and outreach efforts, offering free legal services to Haitian applicants. Some

experts have also recommended the creation of a revolving loan fund to help applicants pay the filing fee.

DHS has cautioned potential TPS applicants to be wary of possible immigration scams, issuing a press release that warns applicants to avoid going to immigration "consultants" or "notarios" who are not authorized to file immigration applications or provide legal counsel.

The quick designation of TPS just three days after the earthquake was widely lauded. Politicians on both sides of the aisle noted that the earthquake was exactly the type of disaster that should qualify a country for TPS.

Haitian community leaders and advocates, many of whom had been pushing for a TPS designation for Haiti since the country was ravaged by Tropical Storm Jeanne in 2004, similarly praised the announcement. Advocates have also noted that the quick response to the Haitian earthquake marked a departure from previous US policies toward Haitian refugees in the 1980s and 1990s, which mandated the interdiction of all Haitian migrants found at sea and the detention of arriving Haitian asylum seekers.

Proponents of TPS have also noted that granting unauthorized Haitians permission to live and work in the United States will enable more Haitian expatriates to send money back to Haiti at a time when it is most needed, increasing their ability to participate in recovery and rebuilding efforts.

For the past several years, money remitted from the United States to Haiti by private individuals has provided critical economic support to the impoverished nation. Experts estimate that remittances from the United States made up the vast majority of the roughly \$1.9 billion total formal and informal remittances to Haiti in 2009. According to Inter-American Development Bank estimates, remittances to Haiti constituted one-third of the country's gross domestic product (GDP) in 2009, and were 50 to 100 percent greater than the total amount of foreign government aid Haiti received.

In another immigration policy change, DHS announced that it would grant humanitarian parole to orphaned Haitian children who, as of the date of the earthquake, had already been formally adopted or were in the process of being adopted by American families. The parole will allow these adopted orphans to enter the United States before all formal processing of their cases is completed.

In addition, on January 15, 2010, USCIS Director Alejandro Mayorkas issued new field guidance directing officers to look favorably upon applications to extend or change immigration status filed by Haitians present in the United States, and allow most Haitian nationals currently in the United States with valid tourist or business (B1/B2) visas to extend their status for an additional six months. The memo also gives USCIS officers the authority to grant work authorization to Haitian students present in the United States on "F" student visas.

Some legislators have also begun to push for special treatment for Haitian nationals who are the beneficiaries of immigration petitions filed by relatives who are US citizens or lawful permanent residents.

On February 4, US Senators Kirsten Gillibrand (D-NY) and Robert Menendez (D-NJ), along with Representative Yvette D. Clarke (D-NY) announced their intention to introduce legislation that would allow Haitian nationals who already have approved immigrant visa petitions to immediately enter the United States. Under current immigration law, beneficiaries of immigrant visa petitions are generally not allowed to enter until their visa numbers are reached in the waiting line for numerically limited visa categories — a process that can take years or even decades for some categories of immigrants.

Others have pressed the Obama administration to admit greater numbers of Haitian immigrants overall, arguing that allowing more Haitians to leave Haiti and come to the United States would free up scarce resources in Haiti and increase the amount of remittances sent back to the country. Many experts believe that in moments of humanitarian crisis, remittances are more stable forms of economic assistance than foreign investments and governmental aid. On January 25, Secretary of State Hillary Clinton indicated that US officials would consider a policy allowing more Haitians to immigrate to the United States, although she did not specify the details of such a plan.

But while recent efforts to ease immigration requirements for Haitian orphans and suspend deportations to Haiti have generally been met with little political resistance, some advocacy groups have expressed concerns that DHS will continue to renew Haitian TPS indefinitely. They note that TPS designations for other countries, such as Honduras and Nicaragua, have been continuously renewed since the 1990s — long after the natural disasters that first prompted the designations had ended.

Others have voiced opposition to any increase in the number of Haitian immigrants allowed into the United States, arguing that their admission will increase competition for jobs at a time of protracted recession.

- Read Homeland Security Secretary Napolitano's **announcement granting TPS to Haitians** in the United States.
- Read the **DHS press release** announcing the suspension of deportations to Haiti.
- Read the **USCIS press release** warning TPS applicants of immigration scams.
- Read the **press release from Senators Gillibrand and Menendez** on their plan to introduce legislation to allow Haitians with pending immigrant visa applications to enter the United States.
- Read MPI's **Spotlight on Haitian Immigrants in the United States**.

Policy Beat in Brief

New Final Rule for H-2A Workers. New regulations for the H-2A visa program restore many aspects of the program the Bush administration changed during its final weeks in office in December 2008. The program, which allows employers to petition for foreign-born seasonal agricultural workers, will use the pre-2009 formula for calculating the hourly wage rate, bring back the role of state workforce agencies in monitoring the H-2A program, and require employers to provide contracts to H-2A participants before the workers enter the United States. Unions praised the new rules, while growers groups argued that the rules would be excessively burdensome for employers.

- Read the text of the **final rule**.
- Read more about the H-2A worker program in the **December 2008 Policy Beat**.

Supreme Court Ruling on Motions to Reopen. The US Supreme Court held that federal appeals courts do have the authority to review decisions made by the Board of Immigration Appeals (BIA) on motions to reopen deportation cases. In *Kucana v. Holder*, the Supreme Court, in a unanimous decision, reversed a decision made by the US Court of Appeals for the Seventh Circuit, which stated that it did not have jurisdiction to review the BIA denial of a motion to reopen, because federal regulations state that decisions on motions to reopen are "within the discretion" of BIA. In reversing the Seventh Circuit's decision, the Supreme Court held that while the federal regulations may have limited the court's authority to review an agency decision, the statute had not curtailed that power. The court also noted the longstanding history of judicial review of administrative rulings.

- Read the **Supreme Court's decision** in *Kucana v. Holder*.

Review of SBInet. Homeland Security Secretary Janet Napolitano announced that she had ordered a department-wide review of SBInet, the technological component of the Secure Border Initiative (SBI). DHS announced the start of the SBInet project, more commonly known as the "virtual fence," in 2005. The system is made up of cameras, ground and aerial sensors, radars, and integrated technology, and is intended to help secure the border and prevent illegal immigration. In announcing the review, Napolitano stated that she had found unacceptable delays in the program's implementation plan. DHS has requested \$574 million in funding for SBI in fiscal year (FY) 2011, \$158.3 million (20 percent) less funding than was allocated to the program in FY 2010.

- Read US Customs and Border Protection's **fact sheets** on SBInet.
- Read the Government Accountability Office's **September 2009 report** on delays in the SBInet program.
- Read the DHS **proposed FY 2011 budget**.
- Read more about delays in the implementation of the SBInet program in the **March 2008 Policy Beat**.

Department of State Reversal on Visa for Swiss Muslim Scholar. The Department of State (DOS) reversed its position and announced that it would allow Tariq Ramadan, a prominent Swiss Muslim scholar, to reapply for a visa to the United States. In 2004, Ramadan's US visa was revoked, after DOS alleged that he had given money to a

charitable organization that supported Hamas, which the US government has designated as a terrorist organization. Following Ramadan's visa denial, a coalition of academic organizations sued the US government, arguing that their First Amendment rights to hear Ramadan's views were violated when DOS denied his visa to enter the United States in order to speak at their academic conference.

- Read more about the Tariq Ramadan case in the [August 2009 Policy Beat](#).
- Read the [DOS announcement](#) about Tariq Ramadan being allowed to reapply for a visa.

ESTA Program Takes Effect. All visitors to the United States who enter the country visa-free through the Visa Waiver Program (VWP) are now required to submit their biographic and passport information online in advance of their trips, through the Electronic System for Travel Authorization (ESTA). The program screens prospective traveler information against security watchlists in order to determine whether a traveler is cleared for travel to the United States. ESTA participants who are deemed "authorized" will be immediately cleared for travel to the United States for up to two years.

- Read [DHS's fact sheet](#) on the ESTA program.
- Read the [DOS announcement](#) that ESTA screening is required for visitors to the United States from countries participating in the Visa Waiver Program.

Military Suspends Visa Pilot Program. The Department of Defense announced that it would stop enrolling immigrants in the Military Accessions Vital to National Interest (MAVNI) pilot program one month earlier than expected. The program allowed enrollment in the armed forces for immigrants with special language skills or medical training as long as they had been in valid immigration status in the United States for two or more years. The pilot was initially intended to end in December 2009, but received a 60-day extension. Since the program was established in February 2009, more than 1,000 immigrants have enrolled.

- Read more about the Military Accessions Vital to National Interest Program in the [April 2009 Policy Beat](#).

Spike in Unauthorized Chinese Immigrants in Arizona. The number of Chinese immigrants who were apprehended in Arizona while attempting to enter the United States illegally increased tenfold between FY 2008 and FY 2009, according to US Customs and Border Protection (CBP). Border Patrol agents stopped 332 Chinese nationals trying to enter the United States illegally in 2009, a significant increase from the 30 apprehensions in 2008. In explaining the new trend, observers noted an increase in coordination between Chinese organized-crime groups and border smuggling organizations.

- Read more about the smuggling of Chinese immigrants in this [article](#) from the *New York Times*.

SSA Fails to Use E-Verify for Own Employees. An audit report released by the Social Security Administration (SSA) Inspector General found that in 2008 and 2009, SSA failed to use the E-Verify system to confirm the work eligibility of 19 percent of the agency's new hires, and it did not complete timely verifications for 49 percent of new hires. E-Verify is the federally administered online database that allows employers to check whether new employees are authorized to work by checking the employees' biographic information against federal databases. SSA's high failure rate has attracted attention because SSA is the government agency whose database is used by employers to determine whether new hires are authorized for employment.

- Read the [SSA Audit Findings](#).
- Read more about E-Verify in the [July 2009 Policy Beat](#).

State and Local Policy Beat in Brief

Funding for Immigrant Health Care in Massachusetts. Massachusetts Governor Deval Patrick announced that he would request an additional \$75 million in funding for health insurance benefits for legal immigrants in his budget proposal for FY 2011. Last June, state lawmakers slashed funding for immigrants enrolled in Commonwealth Care, the state's subsidized health insurance program for low-income residents. In proposing to restore some of the cut funding, the Patrick administration estimated that the increase would allow up to 8,000 additional immigrants to enroll in the health insurance program.

- Read the [summary](#) of the Massachusetts proposed 2011 budget.

- Read more about the Massachusetts health care law and funding for immigrants in the [August 2009 Policy Beat](#).
- Visit the MPI Data Hub for the latest stats on immigrants in [Massachusetts](#) and for the [State Responses to Immigration](#) data tool.

Enforcement of Immigration Law in Maricopa County, AZ. Maricopa County Sheriff Joe Arpaio told media outlets that he would continue to conduct immigration raids despite losing authorization from the federal government to do so. In October 2009, Immigration and Customs Enforcement said it would renew Maricopa County's participation in the 287 (g) immigration enforcement program but that officers would only be allowed to question detained individuals about their immigration status. In announcing that his office would continue to arrest suspected unauthorized immigrants, Arpaio stated that he believes local officers have an "inherent right" to enforce federal immigration law and that the sheriff's department would train officers to screen unauthorized immigrants.

- Read more about the 287(g) agreements in the [August 2009 Policy Beat](#).
- Read MPI's [Spotlight on Immigration Enforcement in the United States](#).
- Visit the MPI Data Hub for the latest stats on immigrants in [Arizona](#) and for the [State Responses to Immigration](#) data tool.

Nebraska Lawsuit Over In-State Tuition. The Immigration Reform Law Institute (IRLI) filed a lawsuit against the Regents of the University of Nebraska, alleging that a 2006 Nebraska law that allows some unauthorized immigrants to pay in-state college tuition conflicts with federal law. Under the 2006 law, unauthorized immigrants may be eligible to pay in-state tuition at Nebraska state colleges if they graduated from a Nebraska high school, have lived in Nebraska for at least three years, and are actively pursuing or promise to pursue legal status.

- Read the [Nebraska statute](#) governing in-state tuition for some unauthorized immigrants.
- Read more about the in-state tuition debate in the MPI feature story [Unauthorized Youths and Higher Education: The Ongoing Debate](#).
- Visit the MPI Data Hub for the latest stats on immigrants in [Nebraska](#) and for the [State Responses to Immigration](#) data tool.

New York Lawsuit Against Immigration Consulting Agencies. New York Attorney General Andrew Cuomo filed a lawsuit against two New York immigration agencies charging they engaged in fraudulent business practices related to the provision of immigration assistance services. The suit alleges that the agencies engaged in the unauthorized practice of law, charged exorbitant fees, and defrauded immigrants by providing incorrect legal advice and filing applications for immigration benefits for ineligible applicants.

- Read the [complaint](#) in the New York lawsuit.
- Visit the MPI Data Hub for the latest stats on immigrants in [New York](#) and for the [State Responses to Immigration](#) data tool.

Dayton, OH, Police and Immigration Status. Dayton Police Chief Richard Biehl issued a new executive order instructing Dayton police officers to not ask crime victims or witnesses to crimes about their immigration status. The policy change is aimed at encouraging immigrant victims of crimes to call the police and enhancing cooperation in immigrant communities with law enforcement. The initiative is modeled after a recommendation put forth by the Major City Chiefs of Police.

- Visit the MPI Data Hub for the latest stats on immigrants in [Ohio](#) and for the [State Responses to Immigration](#) data tool.

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