

# Keep Haitians' Status Suit, 17 States Tell NY Court

By [Chris Villani](#)

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Law360, Boston (September 19, 2018, 6:32 PM EDT) -- A group of 17 states and the District of Columbia filed an amicus brief in New York federal court Wednesday backing a legal challenge to a decision by President Donald Trump and the [U.S. Department of Homeland Security](#) to end temporary protected status for Haitians.

Haitians have had TPS — a legal status provided to foreign nationals when their countries of origin are unsafe and cannot handle their return — in the United States since a devastating earthquake hit the Caribbean nation in 2010. The Trump administration wants to end that status on July 22, 2019, a move that has prompted a lawsuit led by the National Immigration Project of the National Lawyers Guild and others on behalf of 10 Haitian TPS beneficiaries. The states argue the lawsuit should not be dismissed.

“Haitian TPS holders are nurses, roofers, pastors, chefs, bus drivers, teachers, landscapers, and child care providers,” the brief states. “They are homeowners, business owners, union members, class presidents, and civic leaders. They are our neighbors, co-workers, family members, and friends.”

The states pushed back against a Department of Homeland Security argument that the case should be dismissed on jurisdictional grounds. The government claims the only way to review these cases is in a court of appeals, but the brief argues that is impractical, since these types of constitutional claims would mean the only method of review for the affected Haitians would be an appeal during their removal proceedings. So, in effect, the only way to trigger an appeal would be for someone to voluntarily surrender for removal proceedings, the states argue.

In addition, the Department of Homeland Security has only said this “may” be a route for judicial review, according to the states.

“Even putting aside defendants’ obvious hedging as to whether this ‘alternative’ actually exists, it would be severely underinclusive, providing no forum for individuals who are never placed in removal proceedings, or for institutional or organizational plaintiffs to raise a claim of constitutional injury,” the states argue.

The mere announcement of the termination of TPS has already caused anxiety and confusion within the Haitian community, the brief says, as people worry about being sent back to a country that still does not have the means to take them.

“Many TPS holders would presumably be deported or otherwise have no choice but to leave; others would go into the shadows; all would lose the right to remain legally in the United States and support themselves and their families under the terms of TPS,” the brief states. “The result would be harm to the welfare of TPS

holders and their families, shuttered businesses, labor shortages, empty church pews, and strain on public and private social services.”

In addition to families being torn apart, as many TPS recipients have married American citizens, terminating the status would have a negative impact on the economy, the states argue, especially in the hospitality and food industries. They project a loss of \$2.7 billion in gross domestic product due to lost earnings and decreased industry outputs, a loss of more than \$428 million in Social Security and Medicare contributions, and almost \$60 million in employers’ turnover costs, the brief argues.

The nonprofit group of lawyers who filed the suit in New York’s Eastern District claims **a racial animus** is behind the administration’s policy. The **decision to end TPS**, according to the suit, will affect the lives of more than 50,000 Haitian nationals who have been in the U.S. since the 2010 earthquake, and their 27,000 U.S. citizen children.

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

A **similar suit** was filed earlier this year in Massachusetts on behalf of immigrants from Haiti and two other countries, El Salvador and Honduras, who also lost temporary protected status.

The states backing the Haitian TPS recipients are Massachusetts, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Virginia and Washington along with the District of Columbia.

"We are grateful that a powerful coalition of attorneys generals from 17 states recognize and appreciate the many important contributions of TPS holders to this nation’s fabric and economy," said Sejal Zota of the National Immigration Project. "It is our hope that the plaintiffs — 10 courageous individuals, Haïti Liberté and Family Action Network Movement Inc. — will prevail in challenging this unlawful decision. However, as poignantly demonstrated by the states’ brief, the decision is 'already inflicting broad and systemic harm on the public' and on families who are preparing to sell their homes, businesses and in some cases leave their children."

A DHS representative did not immediately respond to requests for comment Wednesday afternoon.

The Haitian immigrants are represented by Sejal Zota and Elizabeth Simpson of the National Immigration Project, 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](#).

The government is represented by Joseph Anthony Marutollo of the [U.S. Attorney's Office](#) for the Eastern

District of New York.

The amici are represented by Jonathan B. Miller, assistant attorney general for the commonwealth of Massachusetts.

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.