



**U.S. Immigration
and Customs
Enforcement**

Reevaluating the Custody Status of Haitian Nationals

On January 12, 2010, a 7.0 magnitude earthquake in Haiti resulted in the loss of many lives and significant damage to infrastructure. As a result, on January 13, 2010, ICE temporarily suspended all removals to Haiti.¹ On January 15, 2010, Secretary Napolitano announced the designation of Temporary Protected Status (TPS) for Haitian nationals who were in the United States as of January 12, 2010.

ICE will detain and pursue removal of Haitian nationals who arrive after January 12, 2010, and lack lawful status. In addition, ICE will reevaluate the custody status of Haitian nationals who are likely eligible for TPS and resume removals of Haitian nationals who are ineligible for TPS—recognizing the need to work closely with the Government of Haiti and likelihood of logistical impediments in the near term. In the event the logistical impediments remain for an extended period, additional guidance will be issued.

I. Reevaluating the Custody Status of Haitian Nationals

As of January 11, 2010, 528 Haitian nationals were in ICE custody, including 124 criminal aliens and 36 non-criminal aliens with final orders and 294 criminals and 74 non-criminal aliens not subject to a final order and in some form of proceeding. Additional information about the population of Haitian nationals in detention follows in Appendix A. In light of the possibility of TPS for some Haitians currently in our custody, field offices must review the cases in their area of responsibility and consider whether release is appropriate.

As a general matter, Haitian nationals who are not precluded from qualifying for TPS as a result of criminal convictions or other factors should be released from custody, absent a national security risk, history of human rights violations, danger to the community, gang affiliation, medical or mental health conditions affecting the viability of release, and any other such relevant factors. Similarly, Haitian nationals who appear to be eligible for TPS should not be supervised pursuant to the Alternatives to Detention (ATD) program. In addition, non-detained, non-criminal, and non-dangerous Haitian nationals who appear to be eligible for TPS and are currently supervised on forms of ATD should no longer be supervised through the ATD program. However, officers shall take steps to ensure awareness of the addresses and intended residences of all Haitian nationals granted TPS in order to enforce any final orders of removal when the TPS period expires.

Given the operational impediments to releasing all TPS-eligible Haitian nationals at once, ICE will prioritize the release of Haitian nationals in the first category below, followed by Haitian nationals in the second and third categories.

¹During August and September of 2008, Hurricanes Gustav and Ike struck Haiti. Following those hurricanes, removals to Haiti slowed substantially and almost exclusively involved Haitians with criminal convictions.

1. Non-criminal Haitian nationals who are subject to final orders of removal—with priority to those with the longest length of stay in ICE custody, to include those cases still in the statutory “removal period.” However, any individuals in this category who have been found either inadmissible under section 212(a)(3)(B) of the Immigration and Nationality Act (INA) or deportable under INA § 237(a)(4)(B) shall not be released under this guidance.
2. Non-criminal Haitian nationals who are not subject to final orders of removal—with priority to those with the longest length of stay in ICE custody. However, any individuals subject to mandatory detention under INA § 236(c) for having committed but not convicted of certain offenses should not be released pursuant to this guidance. Additionally, cases described in INA §§ 212(a)(3) and 237 (a)(4) shall not be released under this guidance.
3. Haitian nationals with criminal convictions that do not render them statutorily ineligible for TPS. However, any individuals subject to mandatory detention under INA § 236(c) for having committed but not convicted of certain offenses should not be released pursuant to this guidance. Additionally, cases described in INA §§ 212(a)(3) and 237 (a)(4) shall not be released under this guidance.

The review of cases of all Haitian nationals in custody shall be completed within two weeks. DRO and the Office of Chief Counsel (OCC) must work together to assess whether Haitian nationals in custody are statutorily eligible for TPS and for release. In the event logistical impediments prevent the removal of detained Haitians who are not eligible for TPS, the field will receive additional guidance.

This policy and statement of priorities and the decisions made as a result are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

II. Detention and Removal of Haitian Nationals who Arrive in the United States after January 12, 2010

ICE will detain and pursue the removal of any Haitian nationals who arrive in the United States after January 12, 2010, without lawful authority to enter or remain in the United States.

III. Detention and Removal of Haitian Nationals Ineligible for TPS

ICE will continue to detain and remove Haitian nationals who are ineligible for TPS—recognizing the need to work closely with the Government of Haiti and likelihood of logistical impediments in the near term. If these impediments remain, additional guidance will be issued. DRO and OCC must work closely together on all post-order custody reviews.

Appendix A: Information about the Current Detained Population of Haitian Nationals

The following tables provide information about the population of Haitian nationals in ICE custody as of January 11, 2010.

Current Population of Detained Criminal and Non-Criminal Haitian Nationals
(broken down by DRO field office and final orders status)

Currently Detained Field Office	Non Final Order			Final Order			Total		
	Criminal	Non Criminal	Total	Criminal	Non Criminal	Total	Criminal	Non Criminal	Total
Atlanta	13		13	8	1	9	21	1	22
Baltimore	1		1	2		2	3	0	3
Boston	22	8	30	10	5	15	32	13	45
Buffalo	7	2	9	4	2	6	11	4	15
Chicago	1	2	3				1	2	3
Dallas	3		3	5		5	8	0	8
Detroit	3		3	3		3	6	0	6
El Paso	2	1	3	1	1	2	3	2	5
Houston	1		1				1	0	1
Los Angeles		6	6				0	6	6
Miami	114	22	136	50	12	62	164	34	198
New Orleans	20	1	21	7		7	27	1	28
New York City	28	1	29	7	3	10	35	4	39
Newark	23	4	27	6	5	11	29	9	38
Philadelphia	17	3	20	11	1	12	28	4	32
Phoenix	5	1	6	2		2	7	1	8
Salt Lake City	1		1	1		1	2	0	2
San Antonio	26	21	47	3	6	9	29	27	56
San Diego	1	1	2	1		1	2	1	3
St. Paul	1		1	1		1	2	0	2
Washington	5	1	6	2		2	7	1	8
Total	294	74	368	124	36	160	418	110	528

As per IIDS January 11, 2010

Detained Criminal Haitian Nationals

(broken down by type of crime, final orders status and length of stay):

Haitian Criminal Breakdown	Non Final Order			Final Order			Total		
	0-90 days	90-180 days	180+	0-90 days	90-180 days	180+	0-90 days	90-180 days	180+
Homicide	0	1	0	3	0	1	3	1	1
Assault	16	9	6	8	0	0	24	9	6
Sex Assault	3	5	2	6	0	0	9	5	2
Sex Offense	5	0	0	1	0	0	6	0	0
Robbery	18	8	5	11	1	2	29	9	7
Weapons Offense	2	2	1	0	0	1	2	2	2
Kidnapping	0	0	0	0	1	0	0	1	0
Escape	1	0	2	0	0	0	1	0	2
Dangerous Drugs	63	43	28	44	9	6	107	52	34
Burglary	4	2	1	3	0	1	7	2	2
Family Offenses	2	4	3	3	0	0	5	4	3
Threat	0	0	0	1	0	0	1	0	0
Smuggling Aliens	0	0	0	1	0	0	1	0	0
Obstruct Police	1	5	1	1	1	0	2	6	1
Obstruction of Justice	1	0	0	1	0	0	2	0	0
Larceny	11	5	2	4	1	1	15	6	3
Stolen Property	1	1	1	1	0	0	2	1	1
Stolen Vehicle	0	0	0	1	0	1	1	0	1
Invasion of Privacy	1	0	0	0	0	0	1	0	0
Forgery	0	2	2	1	0	0	1	2	2
Fraudulent Activity	8	2	5	2	0	0	10	2	5
Public Peace	1	0	1	4	1	0	5	1	1
Traffic Offense	2	2	3	1	0	0	3	2	3
Total	140	91	63	97	14	13	237	105	76

As per IIDS January 11, 2010