Law Professors Fight To Preserve Protections For Haitians

By Kaitlyn Burton

Law360 (January 8, 2020, 7:28 PM EST) -- Nearly two dozen immigration law professors asked the Second Circuit to uphold a lower court's decision preserving temporary protected status for Haitians, slamming the Trump administration's argument that it has unreviewable discretion to nix protections.

In a brief Tuesday, the professors sided with a group of refugees challenging the administration's revocation of temporary immigration protections for some 59,000 Haitians living in the U.S. since a 2010 earthquake. The government doesn't have "unfettered executive discretion" to extend or end temporary protected status, or TPS, they said.

"The government's assertions in this case that the executive enjoys unfettered or unreviewable discretion are contrary to the TPS regime that Congress enacted," they said.

In April, a New York federal judge halted the Trump administration's 2017 decision to end TPS for Haitians, ruling that the refugees are likely to win their case.

The refugees presented solid evidence that the decision violated the Administrative Procedure Act as well as the Fifth Amendment's equal protection clause, the judge said.

Beneficiaries of the TPS program have claimed the decision to end it was driven by President Donald Trump's alleged racism toward Haitians, as he has reportedly called the country a "shithole" and said that its inhabitants "all have AIDS."

The professors said in enacting the TPS statute, Congress imposed limitations on the executive branch. The statute allows nixing protections only if the U.S. Department of Homeland Security finds that the country no longer meets the conditions, they noted.

"The history, purpose and text of the TPS statute demonstrate that Congress intended to constrain the executive's discretion, to set forth criteria for the designation and extension of TPS and to ensure that the decision was orderly, transparent and guided by the law," the group of 21 professors said.

Sejal Zota, legal director at Just Futures Law, who is representing the refugees, told Law360 on Wednesday that "the government has repeatedly argued in this case that the court lacks jurisdiction to consider plaintiffs' claims because the Department of Homeland Security has
unreviewable discretion when it comes to the termination of TPS designations."

"The immigration law scholars' brief very powerfully turns that assertion on its head," she said.

A representative for the professors declined to comment Wednesday. A representative for the government didn't immediately respond to a request for comment.

The professors are represented by Kurt Wm. Hemr of Skadden Arps Slate Meagher & Flom LLP.

The refugees are represented by Kurzban Kurzban Tetzeli & Pratt PA, Mayer Brown LLP, National Immigration Project of the National Lawyers Guild and Just Futures Law.

The government is represented by Gerard Sinzdak of the U.S. Department of Justice's Civil Division.

The case is Saget v. Trump, case number 19-1685, before the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Mike LaSusa. Editing by Stephen Berg.