

June 20, 2018

The Honorable Kirstjen M. Nielsen
Secretary
Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20530

The Honorable Mike Pompeo
Secretary
Department of State
2201 C Street NW
Washington, DC 20520

SCANNED/RECEIVED
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2018 JUN 28 PM 3:21

Dear Secretary Nielsen and Secretary Pompeo:

On behalf of the American-Arab Anti-Discrimination Committee (ADC), we are writing to request that you extend and renew the designation of the Yemen for Temporary Protected Status (TPS) for an 18-month period in accordance with your authority as Secretary of the Department of Homeland Security (DHS) pursuant to 8 U.S.C. § 1254a. ADC is the largest grassroots Arab-American civil rights and civil liberties organization; it is nonprofit, non-sectarian, and non-partisan, with members in every State of the United States. As the largest Arab-American civil rights organization, ADC is especially concerned for the welfare and human rights of the innocent civilians who are affected by the ongoing armed conflict in Yemen.

ADC's legal department regularly provides pro bono legal advice to Yemeni nationals seeking information about refugee status, temporary protected status, and asylum. ADC's initial TPS request, filed in April 22, 2015, was endorsed by the National Association of Yemeni Americans (NAYA), Yemeni American Association (YAA), Yemeni American Benevolent Association (YABA), and the Yemeni American Civil Rights Coalition (YACRC). TPS for Yemen was first designated by DHS on September 3, 2015, effective from September 3, 2015 until March 3, 2017.¹ The decision to designate TPS for Yemen was based on the ongoing civil war and outbreak of armed conflict in Yemen in 2014. In December of 2016, ADC filed a legal petition to extend and re-designate TPS for Yemen. We commended DHS's extension and re-designation of Yemen for TPS on January 4, 2017, effective until September 3, 2018. Similarly, Yemen was re-designated based on the ongoing civil war and armed conflict.

With the September 3, 2018 expiration date for TPS approaching, we request that you extend the applicable period of TPS designation. We also request that you provide 60 days advance notice for such extension in order to ease the strain on the system and decrease the pressure on individuals seeking TPS and employment authorizations. Re-designation and extension of TPS for Yemen is more than warranted. Yemen is a clear-cut case of the purpose and need of TPS to protect nationals of a country where there is: 1) 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; and 2) extraordinary

¹ Designation of the Republic of Yemen for Temporary Protected Status; USCIS Notice, 80 Fed. Reg. 53319 (September 3, 2015).

conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety. 8 U.S. Code § 1254(b)(1).

We also request that you renew the designation for Yemen with a new registration period. The humanitarian impact of the Yemen refugee and humanitarian crisis, four years of civil war and ongoing armed conflict is far reaching. The number of people in need of humanitarian assistance as a result of the armed conflict in Yemen is calculated at 22.2 million.² Over 8 million are severely food insecure, and nearly every governorate in the country is at crisis levels for impending famine. The civil war has caused nearly 3 million Yemenis to be internally displaced, the majority of which have now been displaced for over one year, and nearly 200,000 into refuge across the world.³ There are over 1 million cases of cholera and the spread of diphtheria and measles across the country.⁴

Additionally, the current TPS designation does not help many of the Yemeni nationals who have been forced to flee Yemen since 2017. With the registration deadline passed, we request that you renew the designation of Yemen for TPS to allow eligible Yemen nationals to register and apply for TPS for the first time. Yemen continues to meet the qualifying conditions for re-designation under § 1254a. DHS has previously re-designated other countries for TPS, sometimes with an extension of the initial designation, according to § 1254a. In Yemen, it continues to be the case 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 part of the state) would pose a serious threat to their personal safety.” Yemen “is unable, temporarily, to handle adequately the return to [Yemen] of aliens who are” Yemen nationals; and “there exist extraordinary and temporary conditions in [Yemen] that prevent aliens who are [Yemen nationals] from returning to [Yemen] in safety.”

The case for extending TPS for the 18-month maximum allowed by the law, and re-designating TPS for eligible Yemenis, is statutorily clear. The four year war is an ongoing armed conflict with rampant violence throughout the country that renders the safe return of roughly 1,200 Yemeni TPS holders in the United States unfeasible and inhumane. The humanitarian crisis represents a “substantial, but temporary, disruption of living conditions” for Yemenis, and the civil war and loss of territory and vital infrastructure renders the Yemeni government “unable, temporarily, to handle adequately the return” of Yemenis (8 U.S.C. §1254a). The United Nations and the Armed Conflict Location and Event Data Project have documented thousands of civilian deaths, with upward of 3,000 persons killed in 2018 alone.⁵ All parties involved in the war are

² United Nations Office for the Coordination of Humanitarian Affairs (OCHA). (2018). Yemen: Humanitarian Dashboard (January - February 2018). Retrieved from https://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_dashboard_Jan%20to%20feb%202018.pdf; 2017/2018 Amnesty International Report on Yemen, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/yemen/report-yemen/>; UNCHR 2018 Global Focus, <http://reporting.unhcr.org/node/2647>.

³ *Id.*

⁴ World Health Organization, Epidemic and pandemic-prone diseases outbreak update – cholera in Yemen, 30 March 2018, <http://www.emro.who.int/pandemic-epidemic-diseases/cholera/outbreak-update-cholera-in-yemen-30-march-2018.html>

⁵ Armed Conflict Location and Event Data Project, <https://www.acleddata.com/> [Yemen January 1, 2018 – Present]

indiscriminately targeting civilians and vital civilian infrastructure, including residences, medical centers, and transportation networks.⁶

War and Ongoing Armed Conflict

Since 2014, Yemen has been in a constant state of war. The civil war quickly became an international armed conflict with foreign countries involved in direct combat, supplying weapons, providing resources and support.ⁱ The civil war involves violent hostilities between the Yemeni government, supporters of Abd Rabbuh Mansour Hadi (former Vice President), supporters of Ali Abdullah Saleh (former President), Houthi forces, al-Qaeda, and other armed militias and groups.ⁱⁱ The Office of the UN High Commissioner for Human Rights, reported in August 2017, that 5,144 civilians have been killed since the war began.ⁱⁱⁱ This includes more than 1,184 children, and more than 8,749 civilians suffering from injury.^{iv}

The Armed Conflict Location and Event Data Project reports an even higher fatality number as their data not only includes battle deaths and civilian targeted deaths, but also fatalities that are consequences of war.^v This included political protest related deaths, non-state actor killings, and private remote killings that persist due to lack of government enforcement of law. According to the Data Project, in 2017, there were 7,885 violent incidents causing the death of 16,814 persons. In 2017, 10,552 deaths occurred directly as a result of the ongoing armed conflict. Only six (6) months into 2018, the Data Project has recorded 3,832 violent incidents causing the death of 11,219 persons. Out of the 11,219 persons killed, ongoing armed conflict directly caused the death of 7,013 persons. The number of persons killed in Yemen is expected to increase this year by 20-25% compared to 2017.

The indiscriminate air bombardments of 2017 persist. Airstrikes are one of the leading causes of civilian deaths.^{vi} Residential areas are under constant bombardment, particularly in Sana'a, Ta'iz, Hajjah, Hodeidah, and Sa'da.^{vii} Air raids also continue throughout the country and infrastructure is constantly being destroyed.^{viii} Cluster munitions continue to be deployed despite international prohibitions against their use because of their inherently indiscriminate nature.^{ix} In February 2017, Brazilian-manufactured rockets containing banned cluster munitions were deployed on residential areas and farmland in Sa'da city, injuring civilians and causing material damage.^x Human Rights Watch documented 85 unlawful coalition airstrikes, killing nearly 1,000 civilians, and targeting homes, markets, hospitals, schools, and mosques.^{xi} The disproportionate collateral impact on civilians continues without sufficient government and international accountability for foreign, state, and non-state actors.^{xii}

The United Nations led peace process has failed to bring lasting peace, safety, and security to the Yemeni people.^{xiii} The U.N.'s attempts to reestablish a cessation of hostilities have been temporary and meager.^{xiv} There has been little progress and the violent war continues to escalate. The United States' renewal of the Executive Order 13611 declaration of a national emergency, has further affirmed that peace and safety in Yemen is not foreseeable in the immediate future.^{xv} As military operations and fighting continued in and around the port cities of Mokha and

⁶ "Yemen--World Report 2018," Human Rights Watch, <https://www.hrw.org/world-report/2018/country-chapters/yemen>. Human Rights Watch documented 85 unlawful coalition airstrikes, killing nearly 1,000 civilians, and targeting homes, markets, hospitals, schools, and mosques. *Id.* Cluster munitions and air bombardment strikes have also been deployed in the country. *Id.*

Hodeidah, all parties to the conflict refused to engage with the UN-led process at different times depending on military gains on the ground.

War has destabilized the country and enabled mass human rights violations and abuses including, but not limited to, extrajudicial killings, forced disappearances and abductions, torture, arbitrary detention and arrest, secret detention centers, trafficking, and the recruitment of child soldiers.^{xvi} The use of drones by foreign states in Yemen continued at an alarmingly rate in 2017.^{xvii} According to the Bureau of Investigative Journalism, the United States nearly tripled its use of drone strikes in Yemen in 2017 compared to 2016, carrying out 105 drone attacks in 2017.^{xviii} In March [2017], a helicopter attacked a boat carrying 146 Somali migrants and refugees off the coast of the port city of Hodeidah, killing 42 civilians and injuring 34 others.

The war and violence on the ground dictating the country conditions in Yemen are a threat to the Yemeni people and Yemen's peace, security, and stability. Based on Executive Order 13611, the United States cannot ignore the fact that the same detrimental and devastating conditions that support the national emergency declaration support TPS designation. The armed group al-Qa'ida in the Arabian Peninsula (AQAP) continues to control parts of southern Yemen and to carry out bomb attacks in the governorates of Aden, Abyan, Lahj and al-Bayda. We cannot forcibly return Yemeni nationals to war and to suffer indefinite persecution, torture, and death.

Exceptional Circumstances: Food Insecurity, Refugees and Humanitarian Crisis

The war in Yemen has left over 20 million people, three quarters of the population, in need of humanitarian or protection assistance. Escalation of hostilities, disruption of basic services and destruction of infrastructure, compounded by severe economic deterioration, threat of famine, an outbreak of cholera, along with continued violations in international humanitarian law, has resulted in Yemen becoming the largest humanitarian crisis in the world.

The civil war has caused nearly 3 million Yemenis to be internally displaced, the majority of which have now been displaced for over one year, and nearly 200,000 into refuge across the world.^{xxxiii} The internal displacement is widespread throughout the country with many displacements originating from Taiz, Hajjah, Amanat alAsimah, Sa'ada, and Sana'a among others.^{xxxiv} As a result of the fighting, the humanitarian situation in the country deteriorated significantly, with 8.4 million people at potential risk for famine and a reported 80 percent of the country's population requiring humanitarian assistance by year's end.

The ongoing war has also destroyed the Yemen's health infrastructure, with little to no medical access for the civilian population.^{xxxv} As a direct result, Yemen suffered from two cholera outbreaks, in October 2016 and April 2017, and a diphtheria outbreak.^{xxxvi} The World Health Organization found that there were more than 964,000 suspected cases of cholera resulting in more than 2,220 deaths since April 2017.^{xxxvii} Food insecurity and severe medical needs are exasperated by the denial of access to humanitarian aid to the most vulnerable communities in Yemen who are desperately in need of assistance.^{xxxviii}

The war, ongoing armed conflict impede majority of humanitarian aid efforts to the country and people in most need. Throughout 2017, vessels carrying aid shipments, fuel, and other essential

supplies were prevented from reaching the port of Hodeidah.^{xxxix} As a result, many aid shipments were forced to be rerouted to Aden, delaying the delivery of essential aid to civilians for three months.^{xl} Recently, in November 2017 institution of a blockade on air, sea and land crossings has devastated the Yemeni population.^{xli} Security checkpoints and blockades have also been misused and abused to seize and/or refuse humanitarian aid, medicine and food to areas under siege.^{xlii} These actions on further entrench the impact of the humanitarian crisis caused by the war, contributing to mas human rights violations.

Conclusion

We strongly urge you to re-designate Temporary Protected Status for Yemen. ADC looks forward to working with your office to ensure that the re-designation is granted. Should you have any questions, or to schedule a meeting, please feel free to contact me at the office at 202-244-2990 or via email at skhalaf@adc.org.

Respectfully Submitted,



Samer Khalaf, Esq.
ADC National President

i See Ben Watson, The War in Yemen and the Making of a Chaos State, ATLANTIC, Feb. 3, 2018, <https://www.theatlantic.com/international/archive/2018/02/the-war-in-yemen-and-the-making-of-a-chaosstate/551987/>; Key Facts about the War in Yemen, AL JAZEERA, Mar. 25, 2018, <https://www.aljazeera.com/news/2016/06/key-factswar-yemen-160607112342462.html>.

ii See Al Jazeera, *supra* note i; see generally U.S. Dep't. of State, 2017 Country Report on Human Rights for Yemen, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

iii OCHR, The Situation of Human Rights in Yemen including Violations and Abuses, A/HRC/36/33, Civilian Casualties, March 2015 – June 2017, <http://www.ohchr.org/SiteCollectionImages/Countries/YE/2017/Infographic3b-YemenReport2017.jpg>; OCHR, Yemen: An “entirely man-made catastrophe” – UN human rights report urges international investigation, Sept. 5, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22025>.

iv OCHR, The Situation of Human Rights in Yemen including Violations and Abuses Since September 2014, <http://www.ohchr.org/SiteCollectionImages/Countries/YE/2017/Infographic3b-YemenReport2017.jpg>.

v The Armed Conflict Location and Event Data Project, Data, Yemen, <https://www.acleddata.com/data/>.

vi State Dept. Report *supra* note ii at 12 -13, 16.

vii *Id.* at 13.

viii Yemen 2017/2018 Amnesty International Report, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/yemen/report-yemen/> (last accessed June 1, 2018).

ix See *id.*

x See *id.*

xi Yemen: Events of 2017, Human Rights Watch, <https://www.hrw.org/world-report/2018/country-chapters/yemen>. (85 unlawful coalition airstrikes, killing nearly 1,000 civilians, and targeting homes, markets, hospitals, schools, and mosques. Cluster munitions and air bombardment strikes have also been deployed in the country).

xii *Id.*

xiii Amnesty International, *supra* note xiv. xiv See *id.* xv Notice Regarding the Continuation of the National Emergency with Respect to Yemen, May 14, 2018, <https://www.whitehouse.gov/briefings-statements/notice-regarding-continuation-national-emergency-respect-yemen/>.

xvi Human Rights Watch, *supra* note at xvii; see also generally Dept. of State Report, *supra* note ii. xvii Human Rights Watch, *supra* note at xvii. xviii State Dept. Report, *supra* note ii, at 13-15; Human Rights Watch, *supra* note xvii.

xix See *id.*

xx See Karen McVeigh, 'Manmade catastrophe': Yemen conflict has killed 1,100 children, says UN, THE GUARDIAN, Sept. 5, 2017, <https://www.theguardian.com/global-development/2017/sep/05/man-made-catastrophe-yemen-conflict-has-killed-1100-children-says-united-nations>. xxi State Dept. Report, *supra* note ii at 14; Situation of human rights in Yemen, including violations and abuses since September 2014, A/HRC/36/33, at 12.

xxii OCHR, The Situation of Human Rights in Yemen including Violations and Abuses Since September 2014, A/HRC/36/33, Arbitrary or Illegal Detentions, <http://www.ohchr.org/SiteCollectionImages/Countries/YE/2017/Infographic4YemenReport2017.jpg>.

xxiii National Commission to Investigate Alleged Violations of Human Rights, Preliminary Report, Human Rights Council 33rd Session, at 25, <http://embassy-of-yemen.pl/wpcontent/uploads/2016/08/Report-on-Human-RightsViolations.pdf>; see also State Dept. Report, *supra* note ii at 3.

xxiv State Dept. Report, *supra* note ii, at 9.

xxv Amnesty International, *supra* note xiv.

xxvi See *id.*

xxvii Human Rights Watch, *supra* note xvii.

xxviii Yemen: Detained African Migrants Tortured, Raped, Human Rights Watch, Apr. 17, 2018, <https://www.hrw.org/news/2018/04/17/yemendetained-african-migrants-tortured-raped> ("Yemeni government officials have tortured, raped, and executed migrants and asylum seekers from the Horn of Africa in a detention center in the southern port city of Aden").

xxix UN Migration Agency Calls for Greater Protection of Migrants, Yemenis Following Visit to Yemen, Int'l Org. for Migration, May 8, 2018, <https://www.iom.int/news/un-migration-agency-calls-greater-protection-migrants-yemenis-following-visit-yemen>; Stranded Migrants, Refugees Return Home from War-torn Yemen: IOM, Int'l Org. for Migration, Mar. 15, 2018, <https://reliefweb.int/report/yemen/stranded-migrants-refugees-return-home-war-torn-yemen-iom>.

xxx State Dept. Report, *supra* note ii at 14.

xxxi Human Rights Watch, Yemen: Houthi's Sentence Baha'i Man to Death, Feb. 27, 2018, <https://www.hrw.org/news/2018/02/27/yemenhouthis-sentence-bahai-man-death>; Alesha Matharu, Baha'i Man Sentenced to Public Execution in Yemen. His Crime? Practicing His Faith, THE WIRE, Jan. 14, 2018, <https://thewire.in/external-affairs/bahai-mansentenced-public-execution-yemen-crime-practicing-faith>.

xxxii See Winston Nagan, For Baha'is, Yemen man's death sentence is grimly familiar, RELIGION NEWS SERVICE, Mar. 1, 2018, <https://religionnews.com/2018/03/01/for-bahais-yemen-mans-death-sentence-has-grim-familiarity/>.

xxxiii *Id.* at 12; OCHA, About OCHA Yemen, <https://www.unocha.org/yemen/about-ocha-yemen> (last accessed June 1, 2018).

xxxiv State Dept. Report, *supra* note ii at 22; UNHCR's Fact Sheet for April 2018, <https://reliefweb.int/report/yemen/unhcr-yemen-factsheet-april-2018>.

xxxv See International Rescue Committee, They die of bombs, we die of need: impact of collapsing public health systems in Yemen, Mar. 26, 2018, <https://reliefweb.int/report/yemen/they-die-bombs-we-die-need-impact-collapsing-public-health-systems-yemen>; Heba Kanso, Malaria Stalks Yemen Amid Collapsing Health System, AL JAZEERA, Jan. 18, 2018, <https://reliefweb.int/report/yemen/they-die-bombs-we-die-need-impact-collapsing-public-health-systems-yemen>; Defenders for Medical Impartiality, Yemen's Healthcare Sector Decimated While World Stands Idly By, Feb. 20, 2017, <https://defendmedicalimpartiality.org/?p=1799>; Physicians for Human Rights, Attacks on Medical Facilities in Yemen is a "Defining Element" of Nation's Intractable Conflict, Feb. 27, 2018, <http://physiciansforhumanrights.org/press/pressreleases/attacks-on-medical-facilities-1.html?print=t>.

xxxvi State Dept. Report, *supra* note ii, at 22; Yemen's cholera epidemic likely to intensify in coming months: WHO, REUTERS, Feb. 26, 2018, <https://www.reuters.com/article/us-yemen-securitycholera/yemens-cholera-epidemic-likely-to-intensify-in-coming-months-who-idUSKCN1GA225>; Emma Batha, Yemen risks new cholera

outbreak as rainy season begins, REUTERS, May 3, 2018, <https://www.reuters.com/article/us-yemencholera/yemen-risks-new-cholera-outbreak-as-rainyseason-begins-idUSKBN1I42T6>.

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<http://www.emro.who.int/pandemic-epidemicdiseases/cholera/outbreak-update-cholera-in-yemen22-march-2018.html>; World Health Organization, Amidst the devastation of war in Yemen, efforts are under way to control cholera, June 4, 2018, <http://www.emro.who.int/yem/yemen-news/amidstthe-devastation-of-war-in-yemen-efforts-are-underway-to-control-cholera.html>; Yemen's Cholera Epidemic 'Largest Ever Recorded', BBC NEWS, July 21, 2017, <https://www.bbc.com/news/av/worldmiddle-east-40687456/yemen-s-cholera-epidemiclargest-ever-recorded>.

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Christine Monaghan, In Yemen and other conflict zones, hospitals remain a target, THE LANCET GLOBAL HEALTH BLOG, <http://globalhealth.thelancet.com/2017/06/30/yemenand-other-conflict-zones-hospitals-remain-target>. xxxix State Dept. Report, *supra* note ii at 12.

xl See *id.*; Amnesty International, *supra* note xiv. xli OCHA, Yemen: Impact of the closure of seaports and airports on the humanitarian situation - Situation Update 2, Nov. 16, 2017, <https://reliefweb.int/report/yemen/yemen-impactclosure-seaports-and-airports-humanitarian-situationsituation-update-2-16>.

xlii See *id.*



U.S. Citizenship
and Immigration
Services

July 24, 2018

Mr. Samer Khalaf, Esq.
President, American-Arab Anti-Discrimination Committee
1705 DeSales Street, NW, Suite 500
Washington, DC 20036

Dear Mr. Khalaf:

Thank you for your June 20, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

I appreciate your interest in the Temporary Protected Status (TPS) designation for Yemen. The Secretary of Homeland Security's authority to designate a country for TPS and to extend or terminate a country's existing designation is based upon specific statutory criteria. *See* Immigration and Nationality Act (INA) § 244(b). U.S. Citizenship and Immigration Services (USCIS) is principally responsible for advising the Secretary on TPS issues and implementing the program.

At least 60 days before the current expiration date for a TPS designation, the Secretary must review conditions in the foreign country and, after consultation with other appropriate federal agencies, determine whether the statutory conditions for TPS continue to be met. Under the INA, if the Secretary determines that the conditions for designation continue to be met with respect to a country, the designation must be extended. However, if the Secretary determines that the conditions are no longer met with respect to a country, the Secretary is required to terminate the designation. *See* INA § 244(b)(1),(3).

On July 5, 2018, after carefully considering relevant conditions in Yemen and the statutory TPS requirements, Secretary Nielsen announced her determination to extend the TPS designation for Yemen for 18 months, through March 3, 2020. Prior to the conclusion of this 18-month extension, the Secretary will review conditions in Yemen and, after consultation with other appropriate federal agencies, determine whether another extension or a termination is warranted, in full compliance with the INA.

Additional information on the extension of TPS for Yemen can be found in Secretary Nielsen's July 5, 2018 announcement of the decision posted on the Department of Homeland Security's website, on the USCIS website, and in a notice that will be published in the *Federal Register*.

Mr. Samer Khalaf, Esq.
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Thank you for your letter and interest in this important issue. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "LFC", with a stylized flourish extending to the right.

L. Francis Cissna
Director