



May 17, 2018

VIA CERTIFIED MAIL/RETURN RECEIPT

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Re: Freedom of Information Act Request Regarding the Recent DHS Decision as to the Temporary Protected Status Designation of Syria

To Whom It May Concern:

Muslim Advocates and the American-Arab Anti-Discrimination Committee (“ADC”) (“Requestors”) submit this letter as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* for documents, communications, and all other materials related to the U.S. Department of Homeland Security’s (“DHS”) decision to extend, but not redesignate, the Temporary Protected Status (“TPS”) designation for Syria under the Immigration and Nationality Act (“INA”) § 244(b)(3), 8 U.S.C. § 1254a(b)(3). We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and that we be granted a fee waiver.

I. Background

Temporary Protected Status is a “blanket form of humanitarian relief”¹ that may be conferred by the U.S. Secretary of Homeland Security, in consultation with the U.S. Department of State and other government agencies, upon the nationals of a country experiencing conditions “that temporarily prevent the country’s nationals from returning safely, or . . . where the country is unable to handle the return of its nationals adequately.”² Since the program’s establishment in 1990, such conditions have often included armed conflict and environmental disasters. The Secretary of Homeland Security can issue TPS designations for periods ranging between six and eighteen months,³ at the end of which country conditions are reviewed and the Secretary may determine whether to terminate, extend, or redesignate TPS for each country under review.⁴

Under President Trump, the Department of Homeland Security has taken steps to significantly reduce the number of countries designated for TPS and the number of individuals living in the United States under the program’s protection. Since President Trump took office on January 20, 2017, DHS has announced the termination of TPS for six different countries, several of which have held the designation for more than a decade.⁵ As a result of these decisions—some of which were reportedly made despite strong opposition from State Department officials⁶—more than 425,000 people impacted by crises in their countries of origin will lose their protected

¹ CRS 7-5700, Temporary Protected Status: Overview and Current Issues (Jan. 17, 2018), 2, available at <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

² *Temporary Protected Status*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited May 15, 2018).

³ INA § 244(b)(2).

⁴ *Id.* at § 244(b)(3).

⁵ On September 18, 2017, then-Acting Secretary of Homeland Security Elaine Duke announced that TPS for Sudan would be terminated on November 2, 2018 (Press Release, Temporary Protected Status for Sudan to Terminate in November 2018, U.S. Citizenship and Immigration Services, Sept. 18, 2017, <https://www.uscis.gov/news/news-releases/temporary-protected-status-sudan-terminate-november-2018>); on November 6, 2017, then-Acting Secretary of Homeland Security Elaine Duke announced that TPS for Nicaragua would be terminated on January 5, 2019 (Press Release, Acting Secretary Elaine Duke Announcement on Temporary Protected Status for Nicaragua and Honduras, U.S. Department of Homeland Security, Nov. 6, 2017, <https://www.dhs.gov/news/2017/11/06/acting-secretary-elaine-duke-announcement-temporary-protected-status-nicaragua-and>); On November 20, 2017, then-Acting Secretary of Homeland Security Elaine Duke announced that TPS for Haiti would be terminated on July 22, 2019 (Press Release, Acting Secretary Elaine Duke Announcement on Temporary Protected Status For Haiti, U.S. Department of Homeland Security, Nov. 20, 2017, <https://www.dhs.gov/news/2017/11/20/acting-secretary-elaine-duke-announcement-temporary-protected-status-haiti>); on January 8, 2018, Secretary of Homeland Security Kirstjen Nielsen announced that TPS for El Salvador would be terminated on September 9, 2019 (Press Release, Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for El Salvador, U.S. Department of Homeland Security, Jan. 8, 2018, <https://www.dhs.gov/news/2018/01/08/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>); on April 26, 2018, Secretary of Homeland Security Kirstjen Nielsen announced that TPS for Nepal would be terminated on June 24, 2019 (Press Release, Secretary Kirstjen M. Nielsen Announcement on Temporary Protected Status for Nepal, U.S. Department of Homeland Security, Apr. 26, 2018, <https://www.dhs.gov/news/2018/04/26/secretary-kirstjen-m-nielsen-announcement-temporary-protected-status-nepal>); and on May 4, 2018, Secretary of Homeland Security Kirstjen Nielsen announced that TPS for Honduras would be terminated on January 5, 2020 (Press Release, Secretary of Homeland Security Kirstjen M. Nielsen Announcement on Temporary Protected Status for Honduras, U.S. Department of Homeland Security, May 4, 2018, <https://www.dhs.gov/news/2018/05/04/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>).

⁶ Nick Miroff, Seung Min Kim, and Joshua Partlow, *U.S. embassy cables warned against expelling 300,000 immigrants. Trump officials did it anyway.*, Washington Post (May 8, 2018), https://www.washingtonpost.com/world/national-security/us-embassy-cables-warned-against-expelling-300000-immigrants-trump-officials-did-it-anyway/2018/05/08/065e5702-4fe5-11e8-b966-bfb0da2dad62_story.html?utm_term=.19f883b2d301.

status in the United States.⁷ This equates to the termination of TPS for a staggering 98% of the roughly 437,000 individuals who were covered under the program as of October 12, 2017.⁸ In other instances, as in the case of Syria, DHS has decided to extend a country's coverage under TPS without redesignating it—thereby preventing new applicants and restricting eligibility for protection under TPS to those nationals who are already covered by the program.

The decision to extend but not redesignate TPS for Syria represents a significant departure from past DHS determinations with regard to the protection of Syrian nationals under the program. Syria was first designated for TPS in March 2012 by then-Secretary of Homeland Security Janet Napolitano, in light of the onset of Syria's now years-long civil armed conflict.⁹ After this initial designation, TPS for Syria was subsequently extended *and* redesignated in each of its three consecutive review periods between June 2013 and August 2016. On January 31, 2018, however, Secretary of Homeland Security Kirstjen Nielsen announced that as of April 1, 2018, Syria's TPS designation would be extended for 18 months, but not redesignated.¹⁰ As a result, only those Syrian nationals who entered the United States on or before Syria's last redesignation on August 1, 2016 are eligible to continue receiving protection under TPS.

Secretary Nielsen's official notice of TPS extension for Syria appears to explain her extension-only decision by noting that "there have been incremental improvements in stability in Syria," including setbacks for the so-called Islamic State and an increase in the number of displaced Syrians who returned home in 2017.¹¹ However, the official notice also clarifies that "new displacement[s] and attempts to flee Syria outstripped returns by 3 to 1 in 2017," and that "large-scale returns now could have a catastrophic effect given the lack of safe conditions and

⁷ See Temporary Protected Status: Overview and Current Issues, *supra* note 1, at 5. See also Tal Kopan, *DHS ends protections for nearly 90,000 Central Americans*, CNN (May 6, 2018), <https://www.cnn.com/2018/05/04/politics/immigration-tps-honduras/index.html>.

⁸ See Temporary Protected Status: Overview and Current Issues, *supra* note 1, at 5. According to figures provided to the Congressional Research Service by U.S. Citizenship and Immigration Services in late 2017, the total number of individuals with TPS as of October 12, 2017 was 436,866. Of this number, 428,258—or 98.02%—are nationals of countries whose TPS terminations have been announced since President Trump took office. In presenting these overall figures, the Congressional Research Service noted that the 436,866 number "include[s] some individuals who have since adjusted to another status, and may include individuals who have left the country or died." (*See id.*) As such, the Congressional Research Service also included figures pointing to the number of individuals from each TPS-designated country who were expected to re-register for protection at their country of origin's next redesignation or extension. The total number of such "expected reregistrants" as of October 12, 2017 was 317,660. Of this number, 310,540—or 97.75%—are nationals of countries whose TPS terminations have been announced since President Trump took office.

⁹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Designation of Syrian Arab Republic for Temporary Protected Status," 61 FR 19026-19030, March 29, 2012, <https://www.federalregister.gov/documents/2012/03/29/2012-7498/designation-of-syrian-arab-republic-for-temporary-protected-status>.

¹⁰ Press Release, Secretary of Homeland Security Kirstjen M. Nielsen Announcement On Temporary Protected Status For Syrian, U.S. Department of Homeland Security, January 31, 2018, <https://www.dhs.gov/news/2018/01/31/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>.

¹¹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Extension of the Designation of Syria for Temporary Protected Status," 83 FR 9331-9332, March 5, 2018, <https://www.federalregister.gov/documents/2018/03/05/2018-04454/extension-of-the-designation-of-syria-for-temporary-protected-status>.

the availability of basic infrastructure.”¹² In the months since Secretary Nielsen’s announcement, conditions in Syria have continued to actively deteriorate—marked by the heavy bombardment of and alleged use of chemical weapons against civilians, the latter of which prompted military action from the United States, France, and the United Kingdom in April 2018.¹³

The precise number of Syrian nationals who will be ineligible for TPS as a result of Secretary Nielsen’s extension-only decision is uncertain. However, each prior redesignation has seen a substantial increase in the number of Syrian nationals seeking and obtaining TPS—from approximately 2,750 in 2012¹⁴ to approximately 7,000 today.¹⁵ As such, and in light of the continued deterioration of conditions inside Syria, there is likely to be a large number of Syrian nationals who intended to seek protection upon Syria’s redesignation for TPS, but who are now barred from doing so.

II. Request for Records

We request the disclosure of the following records¹⁶ that were prepared, received, transmitted, collected, and/or maintained by DHS, U.S. Citizenship and Immigration Services (“USCIS”), U.S. Immigration and Customs Enforcement (“ICE”), and the U.S. Department of State (“DOS”):

1. All records created on or after January 20, 2017 relating to any recommendation made by any employee of the DHS, USCIS, ICE, and/or DOS as to the extension or redesignation of TPS for Syria;

¹² *Id.* at 9332.

¹³ In late February 2018, at least 250 civilians in Eastern Ghouta were killed during the Syrian government’s multi-day bombardment of the area; in early April 2018, hundreds of civilians were subjected to an alleged chemical weapons attack in the rebel-held town of Douma. See Tamara Qiblawi and Sarah Sirgany, *War crimes on epic scale: 250 deaths in two days in Syria’s Eastern Ghouta*, CNN (Feb. 21, 2018), <https://www.cnn.com/2018/02/20/middleeast/syria-eastern-ghouta-deadliest-day-intl/index.html> and Ben Hubbard, *In a Syrian Town, People Started Shouting: ‘Chemicals! Chemicals!’*, New York Times (Apr. 11, 2018), <https://www.nytimes.com/2018/04/11/world/middleeast/syria-chemical-attack-douma.html>. On April 13, 2018, the U.S., U.K., and France launched retaliatory airstrikes on targets thought to be associated with the chemical weapons program of Syrian President Bashar al-Assad. See Helene Cooper, Thomas Gibbons-Neff, and Ben Hubbard, *U.S., Britain and France Strike Syria Over Suspected Chemical Weapons Attack*, New York Times (Apr. 13, 2018), <https://www.nytimes.com/2018/04/13/world/middleeast/trump-strikes-syria-attack.html>.

¹⁴ See “Designation of Syrian Arab Republic for Temporary Protected Status,” *supra* note 15, at 19028.

¹⁵ See “Extension of the Designation of Syria for Temporary Protected Status,” *supra* note 17, at 9330.

¹⁶ The term “records” is intended in the broadest possible sense and includes without limitation all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, legal and policy memoranda, minutes or notes of meetings and phone calls, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message), training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations. No category of material should be omitted from search, collection, and production.

2. All records created on or after January 20, 2017 relating to any recommendation made by any employee of the DHS, USCIS, ICE, and/or DOS as to the termination of TPS for Syria;
3. All records created on or after January 20, 2017 relating to any inquiry or request made by any employee of the DHS, USCIS, ICE, DOS, and/or White House regarding the number of Syrian nationals who are currently protected under TPS;
4. All records created on or after January 20, 2017 relating to any inquiry or request made by any employee of the DHS, USCIS, ICE, DOS, and/or White House regarding the number of Syrian nationals who would be eligible to apply for TPS for the first time in the event of a redesignation of TPS for Syria;
5. All records created on or after January 20, 2017 relating to intra-agency communications between any employees of DHS, USCIS, ICE, and/or DOS regarding the TPS designation of Syria;
6. All records created on or after January 20, 2017 relating to communications between any employee of DHS, USCIS, and/or ICE and any employee of DOS regarding the TPS designation of Syria;
7. All embassy cables sent or received by any employee of the DOS on or after January 20, 2017 regarding the TPS designation of Syria;
8. All records created on or after January 20, 2017 relating to communications between any employee of DHS, USCIS, ICE, and/or DOS and any White House staff member or employee regarding the TPS designation of Syria;
9. All records created on or after January 20, 2017 relating to any communications between members of President Trump's Cabinet, including members of their respective staffs, and any employee of DHS, USCIS, ICE, and/or DOS regarding the TPS designation of Syria;
10. All records relating to any complaints and/or inquiries received by DHS, USCIS, ICE, and/or DOS in response to the announcement of the extension, but not redesignation, of TPS for Syria, including but not limited to complaints and/or inquiries from any member of the public, organizations (such as faith or advocacy groups), or by internal DHS, USCIS, ICE, and/or DOS employees;
11. All records created on or after January 20, 2017 relating to any communications sent or received by any employee of the DHS, USCIS, ICE, and/or DOS regarding TPS for Syria and/or Syrian nationals with TPS and containing any of the following terms: "terror," "terrorism," "terrorist," "national security," "risk," "threat," "radical," "extremist," "extremism," "Muslim," "Islam," "Islamic," "Islamist," "honor killing," or "gender-based violence;"
12. All records created on or after January 20, 2017 relating to any inquiry or request made or received by any employee of the DHS, USCIS, ICE, and/or DOS as to the number of

terrorism-related convictions in the United States of Syrian nationals with TPS;

13. All records relating to any response provided by any employee of the DHS, USCIS, ICE, and/or DOS as to the inquiries described in Requests No. 11 and 12 above;
14. All records created on or after August 1, 2016 relating to country conditions in Syria;
15. All records created since January 1, 2012 pertaining to past recommendations to extend and redesignate Syria for TPS;
16. All practices, policies, guidance, and procedures implemented on or after January 20, 2017, relating to criteria for assessing country conditions for the purpose of determining whether or not a country meets or continues to meet the eligibility requirements for TPS;
17. All records relating to the number and geographic distribution of Syrian nationals with TPS;
18. All records relating to the number of Syrian nationals with TPS who have children;
19. All records relating to the number of Syrian nationals with TPS under the age of 18 years old;
20. All records relating to the number of Syrian nationals with TPS who are enrolled in college or university in the United States;
21. All records relating to the number of Syrian nationals with TPS who operate or are employed by non-profit organizations and/or small businesses in the United States; and
22. All records relating to the number of Syrian nationals with TPS who are employed by any local, state, or federal government agency in the United States.

III. Application for Waiver of Fees

Muslim Advocates is a national non-profit civil rights and advocacy organization that focuses on issues of particular relevance to Muslim and immigrant communities in the United States.¹⁷ The American-Arab Anti-Discrimination Committee is a non-profit, grassroots civil rights organization that works to defend the rights of Arab-American and immigrant communities in the United States.¹⁸ We seek a waiver of document search, review, and duplication fees on the grounds that the disclosure of the requested documents is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)4(A)(iii). In the event that this fee waiver request is not granted, Requestors ask that fees be limited to reasonable standard charges for document duplication. Requestors qualify as

¹⁷ See *About*, Muslim Advocates, <https://www.muslimadvocates.org/about/>.

¹⁸ See *About Us*, American-Arab Anti-Discrimination Committee, <http://www.adc.org/about-us/>.

“representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. Disclosure Is in the Public Interest

The disclosure of the requested information is in the public interest because it will contribute substantially to the public understanding of the U.S. Government’s recent decisions as to the TPS designation of Syria. The decision of the DHS to extend but not redesignate Syria for TPS prevents an untold number of Syrian nationals from finding humanitarian relief in the United States from a brutal and destructive civil armed conflict that continues to pose a severe threat to civilian life. Given that this DHS decision has the potential to mean life or death for those individuals impacted by the determination, information related to the process by which it was reached is of the utmost public interest and importance.

The decision made by DHS regarding TPS for Syria, as well as the agency’s recent TPS-related decisions more broadly, have also generally been the subject of widespread and ongoing media attention.¹⁹ The disclosure of the requested information will significantly contribute to the public understanding of the way in which decisions regarding the termination, extension, or redesignation of TPS are being made under the current administration.

In light of these considerations, a fee waiver would fulfill the intent of Congress in granting fee waivers to noncommercial requestors. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requestors.” (internal quotation marks omitted)).

B. Requestors are Representatives of the News Media

In the event that a fee waiver is not granted, fees should nonetheless be “limited to reasonable standard charges for document duplication” because Requestors are “representative[s]

¹⁹ See, e.g., Yeganeh Torbati, *Syrians With Temporary U.S. Protection Brace for Trump Decision*, Reuters (Jan. 25, 2018), <https://www.usnews.com/news/us/articles/2018-01-25/syrians-with-temporary-us-protection-brace-for-trump-decision>; Julia Manchester, *Trump expected to renew TPS for Syrians, but stop taking new applications: report*, The Hill (Jan. 31, 2018), <http://thehill.com/homenews/administration/371669-trump-expected-to-renew-tps-for-syrians-but-stop-taking-new>; Colin Dwyer and Merrit Kennedy, *U.S. Renews Temporary Protected Status For Some Syrians*, NPR (Jan. 31, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/31/581544841/u-s-renews-temporary-protected-status-for-some-syrians>; Tal Kopan, *DHS to end protections for Sudanese immigrants*, CNN (Sept. 18, 2017), <https://www.cnn.com/2017/09/18/politics/sudan-tps-decision-dhs/index.html>; Nick Miroff, *DHS ends protected immigration status for Nicaraguans, but Hondurans get extension*, Washington Post (Nov. 6, 2017), https://www.washingtonpost.com/world/national-security/immigrants-from-central-america-haiti-await-dhs-announcement-on-protected-status/2017/11/06/7b690c80-c305-11e7-84bc-5e285c7f4512_story.html?utm_term=.cfc34c6392c3; Miriam Jordan, *Trump Administration Ends Temporary Protection for Haitians*, New York Times (Nov. 20, 2017), <https://www.nytimes.com/2017/11/20/us/haitians-temporary-status.html>; Miriam Jordan, *Trump Administration Says That Nearly 200,000 Salvadorans Must Leave*, New York Times (Jan. 8, 2018), <https://www.nytimes.com/2018/01/08/us/salvadorans-tps-end.html>; Akilah Johnson, *Nepali immigrants lose their protected status*, Boston Globe (Apr. 26, 2018), <https://www.bostonglobe.com/metro/2018/04/26/tps-terminated-for-nepal-ending-protections-for-about-nepali/R5eo5qNld7cxepLi23viJ/story.html>; Maria Benevento, *Most immigrants with temporary protected status face its expiration*, National Catholic Reporter (May 16, 2018), <https://www.ncronline.org/news/justice/most-immigrants-temporary-protected-status-face-its-expiration>.

of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(4)(A)(ii)(II). Organizations similar to Requestors in mission, function, and activities have been found by courts to be representatives of the news media. *See Elec. Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (a non-profit educational organization qualified under the news media category); *Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (a non-profit research organization qualified under the news media category).

Requestors do not seek to utilize the requested information for commercial use, 22 C.F.R. § 171.16(a)(2), and do not have a commercial interest that would be furthered by the disclosure of the requested information. Requestors’ primary interest in the disclosure of the requested information is to educate the public and advocate for the rights of Muslim immigrants and American Muslims. § 171.16(a)(2)(i)-(ii).

IV. Application for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need,” *see id.* § 552(a)(6)(E)(i)(I), for expedited processing because the request is being submitted by an organization “primarily engaged in disseminating information” with regard to a subject around which there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(i)(v)(II). The requested information is significant and urgent in light of the potential for Syrian nationals who are ineligible to apply for TPS to be deported to Syria, where their lives could be in imminent danger.

In the event that this request for expedited processing is refused, Requestors expect your response to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

V. Production

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B). Please search for responsive records regardless of format, medium, or physical characteristics, including electronic records. Requestors ask that responsive electronic records be provided electronically in their native file format. Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (e.g., PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

If any or all of this request is denied, please provide the grounds for denials or redactions by reference to specific FOIA exemptions. We expect the government to release all reasonably segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information.

In order to avoid delays in receiving records, Requestors ask that records be produced on a rolling basis as they become available.

Please furnish responsive records to:

Sirine Shebaya
Muslim Advocates
P.O. Box 66408
Washington, D.C. 20035
sirine@muslimadvocates.org

If you have any questions regarding the processing of this request, please contact Sirine Shebaya at 202-897-1894.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Thank you for your prompt attention to this matter.

Sincerely,



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