

# Congress of the United States

Washington, DC 20515

August 6, 2018

The Honorable L. Francis Cissna  
Director  
United States Citizenship and Immigration Services  
Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, D.C. 20528

Dear Director Cissna:

As Members of Congress, we write to express our concerns regarding the most recent decisions on Temporary Protected Status (TPS) for Honduran and Nepali immigrants. Over the course of the past few months, the Department of Homeland Security (DHS) has terminated the status of 98% of all current TPS program participants. As Members expressed in a previous letter to Secretary Nielsen on a letter dated April 17, 2018, TPS is a practical and effective tool for American foreign policy and allows the United States to respond quickly and appropriately in cases where safe haven is warranted. Safe haven status is not refugee status and, under current law, leads to no legal status. Despite the basis providing safe haven status exercised by both Republican and Democratic administrations, the actions taken by your agency continue to draw concerns over the interpretation of its statutory requirements under section 244 of the Immigration and Nationality Act (INA).

As you know, section 244 provides your agency with the ability to provide safe haven protections in specific circumstances. Specifically (1) during ongoing armed conflict; (2) during disruptive disasters that significantly impact living conditions; or (3) to address conditions that are extraordinary and temporary. Both the countries of Honduras and Nepal have experienced significant conditions that impact living conditions based on their previous designation, and compromise an immigrant's ability to return "in safety."<sup>1</sup> **While both countries were originally designated under 244(b)(1)(B),<sup>2</sup> the subsequent challenges to reconstruction and rehabilitation of infrastructure and state functions continue to impact these countries. It is likely that current conditions will be temporary in nature, given your agency's assessment of revocation of previous TPS.**

Given these circumstances, we ask that you provide answers to the following questions in the cases of Honduras and Nepal.

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<sup>1</sup> The term "in safety" as defined in 244(b)(1)(C).

<sup>2</sup> 244(b)(1)(B) of the Immigration and Nationality Act provides status for natural disasters resulting in significant disruptions in living conditions.

### **In the case of Nepal:**

On June 24th, 2015, the Department of Homeland Security (“DHS”) designated Nepal for Temporary Protected Status after a 7.8 earthquake and its subsequent aftershocks affected approximately 8 million people.<sup>3</sup> As a result of the natural disaster, 9,000 persons lost their lives and over 755,000 homes were damaged or destroyed.<sup>4</sup> The Government of Nepal committed to using a portion of the \$4.1 billion in aid provided by international donors to subsidize the rebuilding of over 770,000 homes. Only a small fraction of these funds began being disbursed one year after the earthquake.<sup>5</sup> In October 2016, DHS published: “TPS for Nepal Extension of the Designation of Nepal for Temporary Protected Status,” (“2016 Notice”).

On May 22nd, 2018, DHS announced through the Federal Register the rescission of the designation of Nepal for TPS, “Termination of Nepal for Temporary Protected Status” (“Termination Notice”). In the Termination Notice, your agency notes that the country has made “considerable progress in post-earthquake recovery and reconstruction” to justify this assessment. Your agency later finds that “...reconstruction of thousands of homes has been completed or is underway,” and that “slightly more than one in seven homes destroyed have been fully rebuilt and more than half of homes under construction.” Additionally, in terms of access to clean water and public services, your agency specifically notes that “only 11 percent of schools and less than 9 percent of health facilities remain impacted by earthquake damage. Access to clean water has generally returned to pre-earthquake levels, and there has been a gradual improvement in food security in areas most affected by the earthquake.” Furthermore, the Termination Notice indicates that: “thousands of Nepalis return annually after working abroad and that the government has been able to take the return of its citizens” and makes a note about an increase in tourism-related activities.<sup>6</sup>

While the above assessments provide a very general review of ideas concerning current country conditions, we are deeply concerned with its relative lack of breadth and depth when compared with previous notices in the Federal Register. We are also concerned over the use of vague terminologies and unclear justifications published in the Termination Notice. Notwithstanding your agency’s assessment, we would like your agency to provide answers to the following questions:

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<sup>3</sup> Designation of Nepal for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. June 24, 2015. 80 FR 36346. Pages 36346-36350.  
<https://www.federalregister.gov/documents/2015/06/24/2015-15576/designation-of-nepal-for-temporary-protected-status>

<sup>4</sup> Extension of the Designation of Nepal for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. October 26, 2016. 81 FR. 74470. Pages 74470-74475.  
<https://www.federalregister.gov/documents/2016/10/26/2016-25907/extension-of-the-designation-of-nepal-for-temporary-protected-status>

<sup>5</sup> *Id.*

<sup>6</sup> Termination of the Designation of Nepal for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. May 22, 2018. 83 FR. 23705. Pages 23705-23710  
<https://www.federalregister.gov/documents/2018/05/22/2018-10868/termination-of-the-designation-of-nepal-for-temporary-protected-status>

1. Despite your agency noting that many projects are underway, the statistic included in the Termination Notice notes that “slightly more than one in seven homes destroyed having been fully rebuilt and more than half of homes under construction.” In general, this statement provides very little indication of the overall ability of Nepal to recover from the earthquake. To assess your agency’s analysis, the 2016 Notice finds that 755,000 homes were damaged or destroyed.<sup>7</sup> If we break down the fraction provided by your agency in its most recent Termination Notice, (1/7), in percentage terms, this suggests that **14.3%** of total damaged homes have been completely reconstructed. If we take this percentage and convert it to its nominal form from the total number, that figure is: **107,965**.
  - a. Your agency notes that more than half of destroyed homes are under construction. In the absence of an actual quantity expressed in specific numeric or percentage terms, we will assume 50% for the term “more than half”. Taking the figure from the 2016 Extension Notice, half of the 755,000 damaged or destroyed homes (excluding homes already constructed as per the Termination Notice), suggests that at least 323,518 homes are currently under construction. **The 2018 Termination Notice fails to explain the current state of projects that are under construction.** Can you provide, in collaboration with appropriate agencies, appropriate benchmarks to determine the state of construction projects that are in progress?
    - i. As part of your answer to this question, please provide a description of such benchmarks and the criteria established to quantify the state of completion of such homes.
  - b. What was the basis for your agency’s assertion that “reconstruction of thousands of homes has been completed or is underway”? How would your agency account for the fact that The Asia Foundation reported that 62% of people who lost their homes in the earthquake are still living in temporary shelters?<sup>8</sup>
2. The assessment provided by your agency in 2016 notes that 18,200 persons were displaced in camps, representing 15% of those who were displaced after the earthquake.<sup>9</sup> **The 2018 Termination Notice omits this population.** How many persons are still living in such camps?
3. The 2016 Notice indicates that the five-year period following 2016 would be host to an \$8.3 billion reconstruction plan from Nepal’s Reconstruction Authority.<sup>10</sup>

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<sup>7</sup> Extension of the Designation of Nepal for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. October 26, 2016. 81 FR. 74470. Pages 74470-74475.

<https://www.federalregister.gov/documents/2016/10/26/2016-25907/extension-of-the-designation-of-nepal-for-temporary-protected-status>

<sup>8</sup> The Asia Foundation, Aid and Recovery in Post-Earthquake Nepal 20 (2017), <https://asiafoundation.org/wp-content/uploads/2017/10/Aid-and-Recovery-in-Post-Earthquake-Nepal-Quantitative-Survey-April-2017.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

This project would rebuild hospitals, roads and schools. The Termination Notice provided this year does not provide specific details about the current state of construction. In fact, your notice limits its assessment to: “Schools and hospitals are functioning, and roads are being rebuilt.”

- a. Out of the outlined \$8.3 billion project, how much, to your agency’s knowledge, has been allocated to the following three specific projects: hospitals, schools and roads?
  - b. Based on your agency’s knowledge or via interagency communications, how does the Government of Nepal prioritize these projects?
  - c. The 2018 Termination Notice indicates that “only 11 percent of schools and less than 9 percent of health facilities remain impacted by earthquake damage.”<sup>11</sup> This indication seems at odds with the 2016’s Notice that indicated that Nepal’s Prime Minister estimated that reconstruction of schools would take three years. Can you describe, in detail, why such discrepancy exists between the two Federal Register notices?
4. The Termination Notice uses the following metric for examining public service capabilities: “for the most part, schools and health facilities have resumed operating at levels consistent with the state of public services in other areas of Nepal.” Such metric provides little detail about the country’s ability to attend to its nationals—but furthermore—in the absence of an alternative metric, does not necessarily justify termination of status. Can you describe, in detail, the baseline benchmarks and appropriate methodologies that were used by your agency to arrive to this assessment?
- a. The Termination Notice also remarks that “all national-level and most subnational level infrastructure... has been retrofitted or rebuilt”.<sup>12</sup> However, how does your agency account for a World Bank report from 2017 that discovered that reconstruction of these sites, including schools, hospitals, and public buildings, have “barely started”?<sup>13</sup>
  - b. The Termination Notice also claimed that “access to clean water and sanitation has significantly increased” and that “schools and hospitals are functioning, and roads are being rebuilt”.<sup>14</sup> Could you elaborate on the number of citizens who now have access to these facilities; or the percentage of schools, hospitals, or roads that were destroyed in the earthquake but are now functional?

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<sup>11</sup> Termination of the Designation of Nepal for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. May 22, 2018. 83 FR. 23705. Pages 23705-23710.  
<https://www.federalregister.gov/documents/2018/05/22/2018-10868/termination-of-the-designation-of-nepal-for-temporary-protected-status>

<sup>12</sup> *Id.*

<sup>13</sup> The World Bank, Nepal Development Update 16 (2017)  
<http://documents.worldbank.org/curated/en/764611505401428300/pdf/119723-WP-PUBLIC-SEPT-17-38p-Nepal-Development-Update-Sept-2017.pdf>

<sup>14</sup> Termination of the Designation of Nepal for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. May 22, 2018. 83 FR. 23705. Pages 23705-23710  
<https://www.federalregister.gov/documents/2018/05/22/2018-10868/termination-of-the-designation-of-nepal-for-temporary-protected-status>

5. In the 2018 Termination Notice, the agency finds that “Nepal is welcoming tourists...at higher rates than before the earthquake”.<sup>15</sup> First, this reasoning was never a part of any of the justifications in original designation nor the extension. Its inclusion is, for lack of better words, confusing. We are unsure why tourism is being used to justify an ability for Nepali nationals to return and live in Nepal. The ability for tourists to access the resources they need is not the same as those who have lived in the country since the earthquake, nor does it show the ability of the country to provide adequate housing, jobs or support to those forced to return to Nepal. What exactly, in your agency’s view, is the connection between Nepal’s ability to accommodate tourists who have the economic resources to “tour” Nepal and its ability to accommodate for those currently holding TPS in the United States? Furthermore, Nepalis who return from seasonal work in other countries often have to leave the country to earn enough income to survive in Nepal, as there are very few job opportunities in the country to help support rebuilding efforts. Does your agency know if Nepal is able to simultaneously accommodate both seasonal and permanent residents?
6. The 2016 Notice stated that large-scale reconstruction will not begin until 2017, and would take 2 years to complete the reconstruction of private homes. Does your agency know the current status of those reconstruction projects? What is the status of the pledged \$4.1 billion dollars in aid and how much of it has been distributed for the rebuilding of homes?<sup>16</sup>
7. Your agency took **26 days** to publish its decision in the Federal Register. **This is an extremely long time for a decision to be published and is, arguably, contrary to the spirit of the law’s requirement of “timely basis” in the Register.** What caused this delay?
8. Would you reconsider the previous termination if your review, prompted by this letter, or further congressional inquiries, determine that the conditions existing in Nepal warrant continued designation under Temporary Protected Status?

### **In the case of Honduras:**

Honduras was first designated for TPS in 1999 because of the severe damage caused by Hurricane Mitch in 1999. On December 15, 2017 Honduras was granted a six-month extension of its TPS status because your agency was unable to arrive at a conclusion for TPS.<sup>17</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> Extension of the Designation of Nepal for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. October 26, 2016. 81 FR. 74470. Pages 74470-74475.  
<https://www.federalregister.gov/documents/2016/10/26/2016-25907/extension-of-the-designation-of-nepal-for-temporary-protected-status>

<sup>17</sup> Extension of the Designation of Honduras for Temporary Protected Status. Federal Register, United States Citizenship and Immigration Services. December 15, 2017. 82 FR 59630. Pages 59630-59636.  
<https://www.federalregister.gov/documents/2017/12/15/2017-27140/extension-of-the-designation-of-honduras-for-temporary-protected-status>

Following this extension, your agency terminated Honduras' TPS status on June 5, 2018, stating "recovery and reconstruction efforts relating to Hurricane Mitch have largely been completed."<sup>18</sup> This assessment is very vague and seems unlikely as the 2016 extension notice indicated that "Honduras still has a housing deficit of 1.1 million homes."<sup>19</sup> Additionally the 2016 extension notes several health concerns, including Dengue Fever and Chikungunya. Your agency's 2018 termination status provides no indication of the current risk of infectious diseases nor any specific indication of improvement to health care centers.

1. Your agency reported in the Federal Register on June 5, 2018: "While some housing issues remain, recent construction figures show sustained growth in 2017, with residential projects growing by 10% with respect to 2016 and commercial projects growing by 18% over the same period."<sup>20</sup> These statistics give no information about what the current housing deficit is. As mentioned above, in 2016 the deficit was 1.1 million. Please provide details on the current number of Hondurans in need of housing and how the return of the nearly 57,000 Hondurans residing in the United States will affect the deficit.
2. Regarding your agency's assessment that "recovery and reconstruction efforts relating to Hurricane Mitch have largely been completed," please provide specific numbers for the improvements of roads, health centers, and schools and how many of each remain in disrepair.
3. Honduras currently has a crisis of gang violence and a homicide rate of 42.8 per 100,000.<sup>21</sup> The Department of State's Bureau of Diplomatic Security (OSAC) has assessed the country "as being a critical-threat location for crime directed at or affecting official U.S. government interests."<sup>22</sup> Can your agency ensure Hondurans are not forcibly returned to life-threatening, unsafe conditions?
4. Your agency took **29 days** to publish its decision in the Federal Register. **This is an extremely long time for a decision to be published and is, arguably, contrary to the spirit of the law's requirement of "timely basis" in the Register.** What caused this delay?
5. Would you reconsider the previous termination if your review, prompted by this letter, or further congressional inquiries, determine that the conditions existing in Honduras warrant continued designation under Temporary Protected Status?

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<sup>18</sup> Termination of the Designation of Honduras for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. June 5, 2018. 83 FR 26074. Pages 26074-26080.  
<https://www.federalregister.gov/documents/2018/06/05/2018-12161/termination-of-the-designation-of-honduras-for-temporary-protected-status>

<sup>19</sup> Extension of the Designation of Honduras for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. May 16, 2016. 81 FR 30331. Pages 30331-30337.  
<https://www.federalregister.gov/documents/2016/05/16/2016-11306/extension-of-the-designation-of-honduras-for-temporary-protected-status>

<sup>20</sup> Termination of the Designation of Honduras for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. June 5, 2018. 83 FR 26074. Pages 26074-26080.  
<https://www.federalregister.gov/documents/2018/06/05/2018-12161/termination-of-the-designation-of-honduras-for-temporary-protected-status>

<sup>21</sup> Clavel, T. (2018, January 19). InSight Crime 2017 Homicide Round-Up. Retrieved June 06, 2018, from <https://www.insightcrime.org/news/analysis/2017-homicide-round-up/>

<sup>22</sup> Honduras 2018 Crime & Safety Report. April 3, 2018.  
<https://www.osac.gov/pages/ContentReportDetails.aspx?cid=23798>

Based on the current statutory requirements and current realities in each of these countries, it can be argued that such circumstances can be considered "extraordinary and temporary" conditions under section 244(b)(1)(C). Forcing the return of Honduran and Nepali immigrants to these conditions may impact their ability to return to their state "in safety" as noted under subparagraph (C). In fact, the deportation of such nationals may cause further disruption of the temporary conditions. We urge your agency to consider exercising your power provided under statute to designate such conditions under subparagraph (C). No immigrant under TPS poses a threat to our national interests; nor does their presence in the United States. Should your agency decide to not exercise such authority, please provide an analysis justifying this decision. As part of your analysis, we also ask that you include your agency's definition of what it means for an immigrant to "return to their state in safety" despite the conditions that exist in these countries.

Given our concerns, we request a response to these questions no later than **60 calendar days** from the date of this letter. Your agency's response will facilitate Congress' assessment of the metrics and methodologies used to justify the conclusions furnished by your agency.

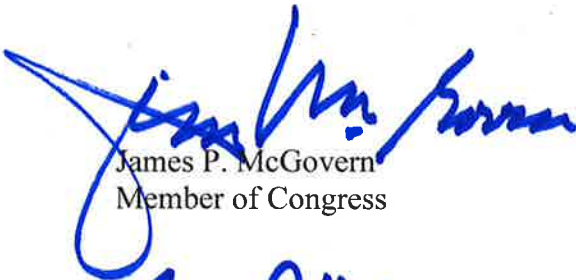
Sincerely,



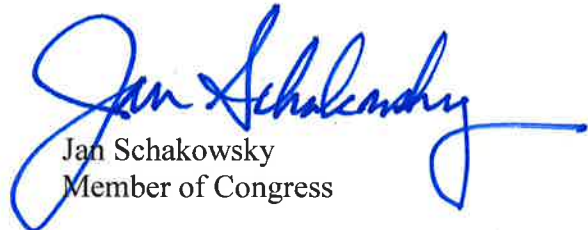
Nydia M. Velázquez  
Member of Congress



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Member of Congress



James P. McGovern  
Member of Congress



Jan Schakowsky  
Member of Congress



Frank Pallone, Jr.  
Member of Congress



Eleanor Holmes Norton  
Member of Congress



André Carson  
Member of Congress



Betty McCollum  
Member of Congress

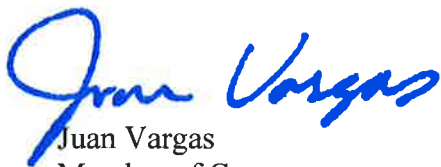


Adriano Espaillat  
Member of Congress



Henry C. "Hank" Johnson  
Member of Congress





Juan Vargas  
Member of Congress



Dina Titus  
Member of Congress



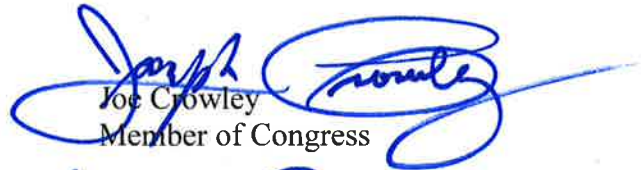
Ruben J. Kihuen  
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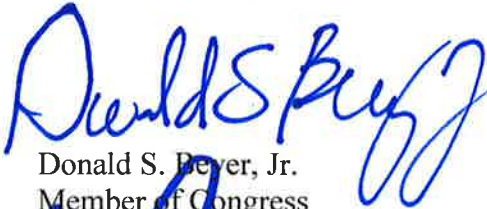
Pramila Jayapal  
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Filemon Vela  
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Salud O. Carbajal  
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Donald S. Beyer, Jr.  
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Grace Meng  
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Judy Chu  
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Nanette Diaz Barragan  
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