

Congress of the United States

Washington, DC 20515

July 27, 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 encourage your agency to exercise its powers under Section 244 of the Immigration and Nationality Act (INA) to designate both Guatemala and Nicaragua for Temporary Protected Status (TPS). 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 protections are warranted. **As you know, safe haven status is not refugee status and, under current law, leads to no legal status.** The current conditions in both countries, in our view, meet the statutory requirements for designation purposes.

Section 244 of the INA provides your agency with the ability to provide safe haven in very specific circumstances. Specifically, in cases where: (1) there is ongoing armed conflict; (2) due to disruptive disasters, there is a significant impact on living conditions; or (3) to address conditions that are extraordinary and temporary in nature, so long as the presence of immigrants from a designated country are not counter to the national interest. Both Guatemala and Nicaragua have experienced significant events that impact and disrupt living conditions which compromise the short-term return of immigrants to those countries.

Given the individual circumstances, we make the following observations:

In the case of Guatemala:

On June 3, 2018, the *Volcán de Fuego* erupted and caused significant damage to the Chimaltenango, Escuintla and Sacatepéquez departments. The *Coordinadora Nacional para la Reducción de Desastres de Guatemala* (CONRED) notes that at least 276 persons have gone missing.¹ Officially, the death count is 147, but the total number of persons who have died is expected to grow. CONRED reports that over 1.7 million people have been affected by the volcanic eruption.² The eruption caused the destruction of 186 homes in Escuintla, but has also put an additional 750 homes at risk of further damage in both Esquintla and Sacatepéquez.³

¹ Coordinadora Nacional para la Reducción de Desastres de Guatemala. Ultimas 24 Horas. <https://conred.gob.gt/site/ultimas-24-horas> as of 07/26/2018 7:00 a.m.

² *Id.*

³ *Id.*

Roughly 3,000 people find themselves sheltered in shelters, and the eruption has caused damage to schools and road infrastructure.⁴ The number of dead, along with the full extent of its impact on Guatemalan families, is likely to grow given discrepancies in current record keeping.⁵ The circumstances have also prompted President Jimmy Morales to request formal designation under the program.⁶ Based on the conditions in Guatemala resulting from the environmental disaster, it is our assessment that a safe haven designation under 244(b)(1)(B) is warranted given the following:

1. The environmental disaster in question has resulted in a substantial, but temporary disruption of living conditions in the impacted area⁷;
2. The foreign state is unable to handle the immediate return of Guatemalan nationals based on the number of homes lost, the total number of affected persons and total number of persons currently in shelters;⁸ and
3. The foreign state in question has formally requested designation.^{9,10}

Given these circumstances and the intent of the statute governing the use of TPS, we request that your agency provide TPS for a period of 18 months to eligible Guatemalans. A period of 18 months will allow for the evaluation and potential resolution of the temporary disruption in living conditions that prompt this designation.

In the case of Nicaragua:

Your agency previously indicated that TPS was no longer warranted for Nicaraguans.¹¹ Indeed, the designation provided to Nicaragua was under section 244(b)(1)(B) for natural disasters, a designation that your agency decided was no longer a factor in the immediate return of Nicaraguan nationals.

⁴ *Id.*

⁵ McVicar, J. America: The Jesuit Review. Death toll from a volcano eruption in Guatemala may far exceed the official count. <https://www.americamagazine.org/politics-society/2018/06/27/death-toll-volcano-eruption-guatemala-may-far-exceed-official-count>

⁶ The White House. June 28, 2018. Remarks by Vice President Pence, President Morales of the Republic Of Guatemala, President Sánchez Cerén of the Republic of El Salvador, and President Hernández of the Republic of Honduras in Joint Press Statements. <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-president-morales-republic-guatemala-president-sanchez-ceren-republic-el-salvador-president-hernandez-republic-honduras-joint-pr/>

⁷ See INA 244(b)(1)(B)(i)

⁸ See INA 244 (b)(1)(B)(ii)

⁹ See INA 244 (b)(1)(B)(iii)

¹⁰ El Comercio. June 25, 2018. Guatemala pide a EE.UU. el TPS por tragedia del Volcán de Fuego. <https://elcomercio.pe/mundo/actualidad/guatemala-pide-estados-unidos-tps-tragedia-volcan-fuego-noticia-530689>

¹¹ Termination of the Designation of Nicaragua for Temporary Protected Status. Federal Register. United States Citizenship and Immigration Services. December 15, 2017. 82 FR 59636. Pages 59636-59642. <https://www.federalregister.gov/documents/2017/12/15/2017-27141/termination-of-the-designation-of-nicaragua-for-temporary-protected-status>

Since the date of that decision, however, Nicaragua has experienced significant issues stemming from a social security reform law that sparked nationwide mass protests, which evolved to address a wider set of grievances, including democratic reforms.¹² During these protests, the Government of Nicaragua has been unable to provide for the safety and security of all its nationals and the right to full and fair free expression, at times using excessive and deadly force in basic police riot control operations. Clashes between police forces and civilians has been further aggravated by the presence of non-state actors, including some that have exhibited paramilitary characteristics. The clashes have left approximately 300 people dead.¹³ In response to the escalation of violence, the administration has sanctioned three Nicaraguans who have been allegedly linked to the country's current violent trends.¹⁴

Despite the involvement of Intergovernmental Organizations (IGOs), including the Inter-American Commission on Human Rights (IACHR) and its arm in Nicaragua, the Mechanism for Nicaragua (MESENI), current conditions suggest that the Nicaraguan government is temporarily unable to provide for the safety and security of all Nicaraguans. The previous actions of the national police force, in conjunction with its response mechanisms, draw serious questions about the wellbeing of Nicaraguan nationals that may be granted or forced to depart to a country that is not immediately able to provide for their collective security. Prior to these protests, the conditions in Nicaragua would have not fallen under any designation criteria. **However, the current temporary and extraordinary circumstances in Nicaragua, in our view, fall well within your agency's responsibilities under section 244 of the Immigration and Nationality Act.** Specifically, 244(b)(1)(C) states that as designation can be provided under this subparagraph if:

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

In reviewing the designation criteria under subparagraph (C), we make the following observations on current country conditions in Nicaragua:

1. There are a wide set of grievances in the country ranging from Social Security reform to current democratic practices. Some of these grievances have led to violent responses from both state and non-state actors;
2. The presence of the Inter-American Commission on Human Rights (IACHR), and its ongoing work, suggest that practices employed by the Nicaraguan National Police (NNP) have been egregious enough to warrant an external review of current practices;

¹² Diao, A. April 22, 2018. Nicaragua's president withdraws social security reforms that sparked violent unrest. National Public Radio. <https://www.npr.org/sections/thetwo-way/2018/04/22/604762080/violent-unrest-continues-in-nicaragua-over-social-security-reforms>

¹³ McDonnell, P. July 25, 2018. Here's what you need to know about the crisis in Nicaragua. The Los Angeles Times. <http://www.latimes.com/world/la-fg-nicaragua-unrest-20180726-story.html>

¹⁴ Birnbaum, E. July 5, 2018. US sanctions three Nicaraguans, threatens additional action. The Hill. <http://thehill.com/homenews/administration/395740-trump-administration-sanctions-three-nicaraguans-threatens-additional>

3. Given the number of deaths (approximately 300)¹⁵ at the time of this letter's writing, current conditions would prevent the return of Nicaraguan nationals from returning to their state "in safety" given the government's temporary inability to simultaneously and successfully supervise peaceful protests, address crime related issues, and address outstanding grievances;
4. The presence of "paramilitary groups" that have, at times, conducted arson-related activities¹⁶ suggest that the current government efforts are unable to, on a temporary basis, provide the immediate security needs of all its country's residents;
5. The use of the *Global Magnitsky Sanctions Program*, while warranted, is insufficient and does not guarantee the safety of Nicaraguans physically present in the United States and may expose said nationals to potentially troubling temporary and extraordinary conditions; and
6. The deportation of Nicaraguans in the immediate future from the United States is counterintuitive to our values and would expose said nationals to concerning conditions that would potentially violate the statute's requirement since these immigrants cannot be returned "to the state in safety."¹⁷

Given this assessment of Nicaragua's circumstances, we encourage your agency to consider the granting of TPS under 244(b)(1)(C) for a period of 12 months to ensure the resolution of current temporary and extraordinary circumstances. This 12-month period would also allow for the investigation of alleged abusive policing practices, the disarming of non-state actors, and allow intergovernmental organizations the ability to provide appropriate assessments and remedies and ensure the country's resolution of current issues, stability and provide evidence that the country is able to fully repatriate its nationals. **If your agency chooses not to pursue this recommendation**, please provide a written explanation on your interpretation of statutory requirements under 244(b)(1)(C) and why Nicaragua does not fall within the parameters established under statute. As part of your explanation, please provide an action plan—in collaboration with appropriate federal agencies—that ensures that Nicaraguan nationals are able to return to their state in safety.

As mentioned previously, TPS is a valuable tool created by Congress to allow the United States to respond to immediate and pressing circumstances. Failing to use this tool not only undermines our values, but prevents the United States from being a proactive leader in foreign affairs.

Given the circumstances of these two countries, we request a response to this letter no later than **30 calendar days**. We look forward to your response and working with you to ensure that enshrined protections in statute are provided in circumstances that warrant its use.

¹⁵ McDonnel, P. July 25, 2018. Here's what you need to know about the crisis in Nicaragua. The Los Angeles Times. <http://www.latimes.com/world/la-fg-nicaragua-unrest-20180726-story.html>

¹⁶ Hill, T. June 28, 2018. Nicaragua's government is brutally cracking down on its people, but protests are spreading. Vice News. https://news.vice.com/en_us/article/nekxdk/nicaraguas-government-is-brutally-cracking-down-on-its-people-but-protests-are-spreading

¹⁷ See 244(b)(1)(C)

Sincerely,



Nydia M. Velázquez
Member of Congress



Betty McCollum
Member of Congress



Elijah E. Cummings
Member of Congress



Gwen S. Moore
Member of Congress



Bonnie Watson Coleman
Member of Congress



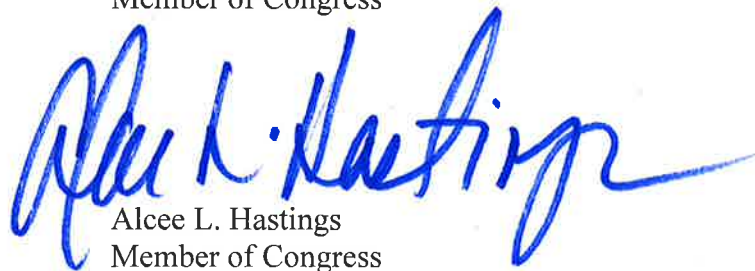
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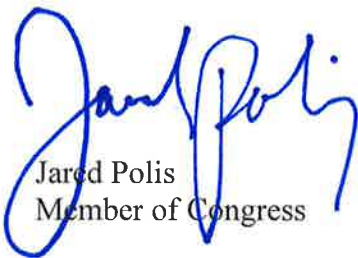
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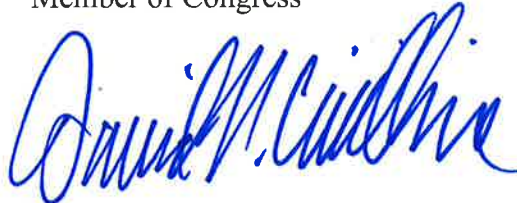
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Mike Quigley
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Adam Smith
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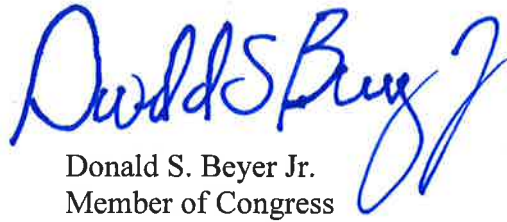
Beto O'Rourke
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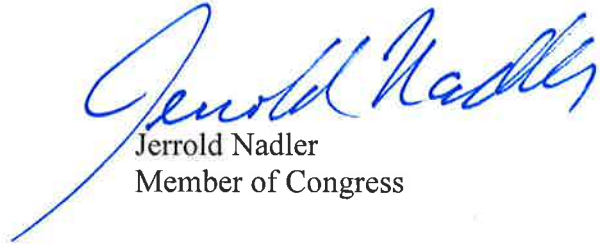
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Jerrold Nadler
Member of Congress

cc: Kirstjen Nielsen, Secretary, Department of Homeland Security

Mike Pompeo, Secretary, Department of State