

No. 20-315

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**IN THE  
Supreme Court of the United States**

JOSE SANTOS SANCHEZ, ET AL.,  
*Petitioners,*

v.

ALEJANDRO N. MAYORKAS, SECRETARY OF HOMELAND  
SECURITY, ET AL.,  
*Respondents.*

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On Writ of Certiorari  
to the United States Court of Appeals  
for the Third Circuit

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**BRIEF OF *AMICUS CURIAE*  
OXFAM AMERICA IN SUPPORT OF PETITIONERS**

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## INTEREST OF THE *AMICUS CURIAE*

Oxfam America (“Oxfam”), *amicus curiae*, is a global organization working to end the injustices of poverty in sixty-seven countries, including the Republic of El Salvador, the Republic of Haiti, the Republic of Honduras, the Republic of South Sudan, and the Republic of Yemen.<sup>1</sup>

Oxfam can offer unique insight into conditions on the ground in El Salvador, Haiti, Honduras, South Sudan, and Yemen because its aid workers have worked in these countries to develop community driven projects, educate individuals about their basic rights, assist with evacuations, and coordinate response efforts to humanitarian crises. Oxfam has witnessed and chronicled the living circumstances in these countries through its deep and decades-long relationships with local civil society. Oxfam continually assesses security and living conditions in the countries where it works, both to inform its humanitarian responses and to exercise its duty of care toward its staff. Understanding the conditions in these countries will aid the Court in evaluating the impact of its decision on stakeholders such as Petitioners. Requiring Temporary Protected Status (“TPS”) holders to return to the unsafe conditions described below in order to adjust their immigration status would put thousands of TPS holders at risk,

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<sup>1</sup> All parties have consented in writing to the filing of this brief. No counsel for either party authored this brief in whole or in part, nor did any party or other person make a monetary contribution to the brief's preparation or submission.

increase strain on limited humanitarian resources, and be contrary to the intent of the TPS statute. See 18 U.S.C. § 1254a(b)(1)(C).

## INTRODUCTION AND SUMMARY OF ARGUMENT

Congress created the TPS program to “shield aliens already in the country from removal when a natural disaster or similar occurrence has rendered [their] removal unsafe.”<sup>2</sup> That intent is clear from the TPS statute’s face: 8 U.S.C. § 1254a(b)(1)(C) provides that TPS is meant for circumstances where “extraordinary and temporary conditions in [a] foreign state . . . prevent aliens who are nationals of the state from returning to the state in safety.”<sup>3</sup>

The Third Circuit held that petitioners’ “interpretation . . . undermine[d] the purpose of the TPS statute.”<sup>4</sup> But it is the government’s interpretation of the statute, not Petitioners’, that undercuts TPS’s purpose. Under the government’s interpretation, to become a lawful permanent resident, TPS holders should be required “to exit the United States to seek an immigrant visa through processing at a U.S. embassy or consulate in another

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<sup>2</sup> *Sanchez v. Secretary United States Department of Homeland Security*, 967 F.3d 242, 247 (3d Cir. 2020) (internal quotation marks omitted).

<sup>3</sup> *Id.*

<sup>4</sup> *Sanchez*, 967 F.3d at 247.



country.”<sup>5</sup> “Such processing usually takes place in the alien’s home country.”<sup>6</sup> Of course, to qualify for TPS in the first place, the individual’s home country must have been deemed “unsafe” by the Department of Homeland Security.<sup>7</sup>

Violence and natural disasters in El Salvador, Haiti, Honduras, South Sudan, and Yemen have exacerbated the humanitarian crises that occasioned their initial designation as TPS countries. The government’s interpretation leaves only one viable path for TPS holders to become lawful permanent residents: they must return to the dangerous conditions in their home countries, putting their lives at risk and increasing the strain on the limited resources of aid organizations such as Oxfam. It is hard to imagine a result that is more at odds with TPS’s purpose of “prevent[ing]” its beneficiaries “from returning to” their disaster-ridden home countries.<sup>8</sup>

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<sup>5</sup> *Ramirez v. Brown*, 852 F.3d 954, 964 (9th Cir. 2017).

<sup>6</sup> *Id.*

<sup>7</sup> *See* 8 U.S.C. § 1254a(b)(1).

<sup>8</sup> *See id.* § 1254a(b)(1)(C).

## ARGUMENT

### I. EL SALVADOR'S CONTINUING STRUGGLE WITH THE IMPACT OF NATURAL DISASTERS HAS MADE THE COUNTRY UNSAFE FOR THE RETURN OF TPS HOLDERS.

The Department of Homeland Security designated El Salvador under the Temporary Protected Status Program in 2001 for a period of 18 months due to the destruction caused by three earthquakes that El Salvador suffered in January and February 2001.<sup>9</sup> The earthquakes immediately displaced almost 20 percent of El Salvador's population and caused an estimated \$2.8 billion of destruction to housing, infrastructure, and agriculture.<sup>10</sup>

Since the 2001 TPS designation, DHS has extended El Salvador's TPS designation 11 times, most recently in 2016.<sup>11</sup> In extending El Salvador's

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<sup>9</sup> 66 Fed. Reg. 14,214 (Mar. 9, 2001).

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

<sup>11</sup> *Extending Temporary Protected Status for El Salvador: Country Conditions and U.S. Legal Requirements*, Ctr. for Latin Am. & Latino Studies 10–24, (Dec. 2017), <https://tinyurl.com/34nkw9sh>; 81 Fed. Reg. 44,645 (July 8, 2016).

TPS designation, DHS considered country conditions beyond the repercussions of the 2001 earthquakes.<sup>12</sup>

For example, the 2010 extension cited destruction from Tropical Storm Stan in 2005, the eruption of the Santa Ana volcano in 2005, earthquakes in 2006, and Hurricane Ida in 2009. DHS found that these disasters displaced thousands of Salvadorans, destroyed public infrastructure, and contributed to food insecurity by destroying crops.<sup>13</sup> Separately, the 2010 extension also cited “a public security crisis that threatens to undermine sustained development and confidence in democratic governance, as well as increasing levels of violent crime” as a rationale for the TPS designation.<sup>14</sup> In 2013, DHS considered the effects of another 7.4 magnitude earthquake in 2012 and additional tropical storms in 2011 and 2012, noting that “[a]lthough over a decade has passed, affected areas of El Salvador are still rebuilding from the devastating 2001 earthquakes. Reconstruction efforts have been further complicated by sluggish economic growth and by more recent natural disasters.”<sup>15</sup> Finally, in 2016, DHS found that El Salvador was experiencing a devastating drought that led to \$400 million of lost

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<sup>12</sup> *Extending Temporary Protected Status for El Salvador: Country Conditions and U.S. Legal Requirements*, Ctr. for Latin Am. & Latino Studies 3 (Dec. 2017), <https://tinyurl.com/34nkw9sh>.

<sup>13</sup> 75 Fed. Reg. 39,556 (July 9, 2010).

<sup>14</sup> *Id.*

<sup>15</sup> 78 Fed. Reg. 32,418 (May 30, 2013).

crops and food insecurity, combined with a mosquito borne disease outbreak, lack of access to basic infrastructure such as clean water and electricity, and increasing levels of unemployment and violent crime.<sup>16</sup>

**A. Environmental disasters have increased food insecurity and poverty in El Salvador.**

Since DHS's last extension of El Salvador's TPS designation in 2016, the conditions within El Salvador have not materially improved. El Salvador is ranked among the countries in the world most at risk from natural disasters, due both to the frequency at which they occur in the region as well as the country's inadequate ability to respond and rebuild.<sup>17</sup> In 2020 alone, El Salvador was hit by four major storms: tropical storms Amanda and Cristobal, and hurricanes Eta and Iota. These storms displaced over 12,000 residents and destroyed 42,000 hectares of crops, leaving hundreds of thousands of Salvadorans without adequate nutrition.<sup>18</sup> Tropical Storm Amanda, which hit El Salvador on May 31, 2020, left

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<sup>16</sup> 81 Fed. Reg. 44,645 (July 8, 2016).

<sup>17</sup> Claire Ribando Seelke, *El Salvador: Background and U.S. Relations*, Cong. Rsch. Serv. 12 (July 1, 2020).

<sup>18</sup> Silva Mathema & Tom Jawetz, *TPS Can Promote Stability and Recovery for Central American Countries Hit by Recent Hurricanes*, Ctr. for Am. Progress 3 (2020), <https://tinyurl.com/w26j8p6k>.

almost 340,000 people in severe food insecurity.<sup>19</sup> These destructive storms came on the heels of a severe drought that lasted three years (2014–2016) and that had already pushed Salvadorans into poverty and food insecurity.<sup>20</sup>

**B. Salvadorian TPS holders would face the threat of violent crime.**

In addition to regular environmental disasters, El Salvador is experiencing high levels of violence related to gangs, drug traffickers, and its own security forces.<sup>21</sup> The country has the highest rate of femicide—that is, murder because the victim is a woman—in the world.<sup>22</sup> Although homicide rates dropped significantly in 2020, El Salvador still has a large and active gang population.<sup>23</sup> Gangs are known

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<sup>19</sup> U.N. World Food Programme, *Tropical Storm Amanda Severely Impacts Food Security of 340,000 Salvadorans* (June 8, 2020), <https://tinyurl.com/3dbabape>.

<sup>20</sup> U.N. World Food Programme, *Food Security and Emigration: Why People Flee and the Impact on Family Members Left Behind in El Salvador, Guatemala and Honduras* 5–6 (Aug. 22, 2017).

<sup>21</sup> Claire Ribando Seelke, *El Salvador: Background and U.S. Relations*, Cong. Rsch. Serv. 5–6 (July 1, 2020).

<sup>22</sup> *Femicide and International Women’s Rights: An Epidemic of Violence in Latin America*, Glob. Ams. Rep. (2021), <https://tinyurl.com/3sdpx32j>.

<sup>23</sup> *El Salvador: Events of 2020*, Human Rights Watch, <https://tinyurl.com/yh4yzbvy>.

to kill, rape, “disappear,” and displace those who stand in their way, and security forces are also accused of committing human rights violations, including extrajudicial killings.<sup>24</sup> One study estimated that crime and violence cost El Salvador almost six percent of its GDP, and high crime rates significantly hamper economic development in the country.<sup>25</sup> In light of these conditions, the U.S. State Department has issued a Level Three travel warning urging Americans to reconsider travel to El Salvador due to violent crime and gang activity.<sup>26</sup> To make matters worse, individuals who return to El Salvador from the United States are often singled out for kidnapping, extortion, and other forms of violence by gangs and state actors. Human Rights Watch reported that 138 Salvadorians forcibly deported to El Salvador from the United States were killed between 2013 and 2019, a number that is likely an undercount.<sup>27</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> Claire Ribando Seelke, *El Salvador: Background and U.S. Relations*, Cong. Rsch. Serv. 11 (July 1, 2020).

<sup>26</sup> U.S. Dep’t of State, Bureau of Consular Affairs, *El Salvador Travel Advisory* (Sept. 14, 2020), <https://tinyurl.com/4yawt34s>.

<sup>27</sup> *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, Human Rights Watch (Feb. 5, 2020), <https://tinyurl.com/6h5ux9n4>.

\* \* \*

In short, although decades have passed since the earthquakes that prompted the original TPS designation, El Salvador still has not recovered. One study estimates that costs to rebuild from recurring natural disasters in El Salvador amount to more than \$35 million per year.<sup>28</sup> By 2018, 28 percent of households live in multidimensional poverty, which is equivalent to 2.2 million people,<sup>29</sup> and this situation is deteriorating with the pandemic. The return of TPS holders seeking to adjust their status would put them at risk of violence, poverty, and food insecurity. Not only is this unsafe for El Salvadorian TPS holders, but it threatens to increase the strain on El Salvador's resources and that of aid organizations. As one Salvadoran TPS recipient put it, "[t]here is nothing to go back to in El Salvador . . . [t]he infrastructure may

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<sup>28</sup> *Extending Temporary Protected Status for El Salvador: Country Conditions and U.S. Legal Requirements*, Ctr. for Latin Am. & Latino Studies 30 (Dec. 2017), <https://tinyurl.com/34nkw9sh>.

<sup>29</sup> Rodrigo Barraza, et. al., *COVID-19 and Vulnerability: A Multidimensional Poverty Perspective in El Salvador*, U.N.D.P. Latin America and the Caribbean 8 (May 2020), <https://tinyurl.com/y84bf5fz>.

be better now, but the country is in no condition to receive us.”<sup>30</sup>

## **II. HAITIAN TPS HOLDERS WOULD RETURN TO A STATE OF INCREASING VIOLENCE AND A LACK OF FOOD AND VITAL HEALTHCARE INFRASTRUCTURE.**

Haiti was originally designated for TPS after the 2010 earthquake that killed thousands, destroyed critical infrastructure, and left millions without adequate food, water, and housing.<sup>31</sup> Since then, Haiti’s TPS designation has been extended four times: in October 2012, March 2014, August 2015, and May 2017.<sup>32</sup> The first three extensions were based on continuing homelessness, severely damaged infrastructure, food insecurity, political instability, and violent crime.<sup>33</sup> Unfortunately, these conditions have persisted. The Congressional Research Service has recognized that “Haiti is still recovering from the devastating 2010 earthquake, as well as Hurricane

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<sup>30</sup> Miriam Jordan, *Trump Administration Says That Nearly 200,000 Salvadorans Must Leave*, N.Y. Times (Jan. 8, 2018), <https://nyti.ms/2EmEtKl>.

<sup>31</sup> See 75 Fed. Reg. 3,476 (Jan. 21, 2010).

<sup>32</sup> See 77 Fed. Reg. 59,943 (Oct. 1, 2012); 79 Fed. Reg. 11,808 (Mar. 3, 2014); 80 Fed. Reg. 51,582 (Aug. 25, 2015); 82 Fed. Reg. 23,830 (May 24, 2017).

<sup>33</sup> See 77 Fed. Reg. 59,943; 79 Fed. Reg. at 11,810–11; 80 Fed. Reg. at 51,583–84.



Matthew in 2016.”<sup>34</sup> Furthermore, U.S. Ambassador to Haiti, Michele J. Sison, declared a disaster in the country on December 16, 2019 “due to the complex emergency”<sup>35</sup> consisting of growing threats of violence, lack of healthcare, and food insecurity, among other life-threatening conditions.

**A. Violent crime and civil unrest in Haiti have intensified in recent years.**

Haiti is currently facing “one of its worst outbreaks of violence since 1986.”<sup>36</sup> Persistent poverty and tensions related to public calls for an end to political corruption have led to widespread protests that have often resulted in violence and other human rights violations. Between September and November 2019, over 42 people were killed and hundreds were injured during Haitian political demonstrations.<sup>37</sup> The United Nations Office of Human Rights found that “the number of human rights violations and abuses against the rights to life and security of [a] person” increased by 333 percent from July 2018 to

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<sup>34</sup> Maureen Taft-Morales, *Haiti’s Political and Economic Conditions*, Cong. Rsch. Serv., R45034 (Mar. 5, 2020), <https://tinyurl.com/989h4wff>.

<sup>35</sup> *Fact Sheet #1: Haiti – Complex Emergency*, USAID 5 (Jan. 19, 2021), <https://tinyurl.com/2qp9dnmo>.

<sup>36</sup> *Haiti: Events of 2020*, Human Rights Watch, <https://tinyurl.com/5mmjfc3y>.

<sup>37</sup> Maureen Taft-Morales, *Haiti’s Political and Economic Conditions*, Cong. Rsch. Serv., R45034 (Mar. 5 2020), <https://tinyurl.com/989h4wff>.

December 2019.<sup>38</sup> Political unrest is expected to intensify as calls for mass protests have grown. In the first six weeks of 2021, the U.S. Embassy in Haiti has already issued four security alerts regarding political demonstrations in Port-au-Prince.<sup>39</sup> The U.N. Office of Human Rights warned that poverty and political tensions in Haiti will lead to a “pattern of public discontent followed by violent police repression and other human rights violations.”<sup>40</sup>

Violent crime has increased alongside the threat of political violence. Humanitarian staff have reported an increase in kidnappings and gang-related violence in Port-au-Prince since late November 2020.<sup>41</sup> From January 2020 to August 2020, the United Nations Integrated Office in Haiti reported “944 intentional homicides, 124 abductions, [] 78 cases of sexual and gender-based violence,” and 159 deaths that resulted from gang violence.<sup>42</sup> In February 2021,

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<sup>38</sup> *Unrest in Haiti: Their Impact on Human Rights and the State’s Obligation to Protect All Citizens*, U.N. Human Rights 1 (Jan. 18, 2021), <https://tinyurl.com/mzxnja9u>.

<sup>39</sup> U.S. Embassy in Haiti, *Alerts and Messages*, <https://tinyurl.com/5ebtdhc6>.

<sup>40</sup> Marta Hurtado, *Press Briefing Notes on Haiti*, U.N. Human Rights (Jan. 19, 2021), <https://tinyurl.com/4japhpfk>.

<sup>41</sup> *Fact Sheet #1: Haiti – Complex Emergency* USAID 2 (Jan. 19, 2021), <https://tinyurl.com/2qp9dnmo>.

<sup>42</sup> *Haiti: Events of 2020*, Human Rights Watch, <https://tinyurl.com/5mmjfc3y>.

school closures were ordered, not because of COVID-19, but rather an “epidemic” of kidnapping-for-ransom that began in 2020.<sup>43</sup> These security concerns have been recognized by the U.S. State Department, which classifies Haiti as a “Level 4: Do Not Travel” country due to “crime, civil unrest, kidnapping, and COVID-19.”<sup>44</sup>

**B. Ten years after the 2010 earthquake, Haiti still lacks sufficient healthcare infrastructure.**

The 2010 earthquake destroyed much of Haiti’s healthcare infrastructure, including hospitals and clinics. Over 10 years later, the country has yet to recover. For example, Haiti has not completed construction on its flagship general hospital in Port-au-Prince, and a 2019 study found that Haiti had only 124 intensive care beds and 64 ventilators prior to the onset of the COVID-19 pandemic.<sup>45</sup> Haiti’s public health system faced a chronic lack of resources before the pandemic, and shortages of fuel, clean water,

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<sup>43</sup> Harold Isaac et al., *Haiti Braces for Unrest As a Defiant President Refuses to Step Down*, N.Y. Times (Feb. 9, 2021), <https://tinyurl.com/bc5vwk55>.

<sup>44</sup> U.S. Dep’t of State, Bureau of Consular Affairs, *Haiti Travel Advisory* (Aug. 6, 2020), <https://tinyurl.com/3befts6f> (emphasis omitted).

<sup>45</sup> Jessica Obert, *Coronavirus in Haiti: Weakened by Past Disasters, the Country Was Already in Crisis*, The New Humanitarian (Apr. 20, 2020), <https://tinyurl.com/ruhce2jd>.

equipment, medicine, and staff have only grown more severe. In fact, Haiti’s hospitals have faced increased strain due to “repeated strikes and staffing shortages due to violence against health workers, low or unpaid wages, and the risks of COVID-19.”<sup>46</sup> Shortages of resources have caused medical staff to make difficult decisions, such as turning patients away.<sup>47</sup> Since November 2019, Doctors Without Borders has treated 1,795 trauma patients in its Tabarre hospital, which represented only 28 percent of all patients who sought care at the hospital for traumatic injuries.<sup>48</sup>

**C. Haitians continue to struggle with poverty-related conditions such as scarcity of food, water, housing, and economic opportunities.**

Haiti is the poorest country in the Western Hemisphere and one of the poorest countries in the world. It ranks 170th out of 189 countries on the Human Development Index, which is “a summary

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<sup>46</sup> *Haiti: Treating Trauma Patients Affected by Chronic Violence*, Doctors Without Borders/Medecins Sans Frontieres (Dec. 17, 2020), <https://tinyurl.com/4dka7fwh>.

<sup>47</sup> Jessica Obert, *Coronavirus in Haiti: Weakened by Past Disasters, the Country Was Already in Crisis*, The New Humanitarian (Apr. 20, 2020), <https://tinyurl.com/ruhce2jd>.

<sup>48</sup> *Haiti: Treating Trauma Patients Affected by Chronic Violence*, Doctors Without Borders/Medecins Sans Frontieres (Dec. 17, 2020), <https://tinyurl.com/4dka7fwh>.

measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and hav[ing] a decent standard of living.”<sup>49</sup> Almost 60 percent of the population lives under the national poverty line of \$2.41 per day, and almost 25 percent live under the national extreme poverty line of \$1.23 per day.<sup>50</sup> In fact, almost a third of Haiti’s GDP comes from remittances from Haitians working in the United States.<sup>51</sup> Returning to Haiti would not only leave TPS holders with limited economic opportunities but would also threaten to further weaken Haiti’s struggling economy.

In addition to limited economic opportunities, TPS holders forced to return to Haiti to adjust their immigration status would face shortages of basic resources necessary for survival. Over a “third of the population lacks access to clean water[,] and two-thirds ha[ve] limited or no sanitation.”<sup>52</sup> In February 2021, 42 percent of the Haitian population (around four million people) faced high acute food insecurity—meaning that they were in urgent need of aid—and this number is expected to increase to 46 percent

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<sup>49</sup> U.N. Development Programme, *Human Development Index (HDI)* (2020), <https://tinyurl.com/4868rwah>.

<sup>50</sup> Maureen Taft-Morales, *Haiti’s Political and Economic Conditions*, Cong. Rsch. Serv., R45034 4 (Mar. 5, 2020), <https://tinyurl.com/989h4wff>.

<sup>51</sup> *Id.* at 16.

<sup>52</sup> *Haiti: Events of 2020*, Human Rights Watch, <https://tinyurl.com/5mmjfc3y>.

(around 4.4 million people) by June 2021.<sup>53</sup> These issues are further exacerbated by chronic socio-political instability and COVID-19, which have reduced access to food, increased food prices, and reduced household purchasing power.<sup>54</sup>

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If Haitian TPS holders were required to return to Haiti to adjust their immigration status, they would face life-threatening conditions that are predicted to get worse: an expanding threat of violent crime and violent civil unrest, increasing food insecurity, diminished healthcare infrastructure that has been further taxed by a global pandemic, and growing poverty. Requiring TPS holders to face such unsafe conditions in a country where many of them have no remaining ties would be a dangerous result and contrary to TPS's purpose of ensuring that TPS holders can return to their home countries in *safety*.

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<sup>53</sup> *IPC Haiti Alert September 2020*, Integrated Food Security Phase Classification, <https://tinyurl.com/jfxrhj98> .

<sup>54</sup> *IPC Acute Food Insecurity Analysis: Haiti*, Integrated Food Security Phase Classification (Sept. 2020), <https://tinyurl.com/li15jvfp>.

### III. HONDURAS CONTINUES TO BE RAVAGED BY NATURAL DISASTERS THAT HAVE EXACERBATED DANGEROUS LIVING CONDITIONS.

In October 1998, Hurricane Mitch slammed into the coast of Honduras, bringing with it torrential rains and winds topping 250 kilometers-per-hour.<sup>55</sup> The storm soon overtook the entire nation, causing immense devastation. In a matter of days, 5,657 Hondurans had been killed and another 12,272 injured.<sup>56</sup> The rains caused extensive flooding and mudslides in each of the country's 18 departments, ultimately destroying two-thirds of the nation's roads and bridges, 70 percent of its crops, and tens of thousands of homes.<sup>57</sup> Approximately 1.4 million people—nearly one out of every five Hondurans—were left homeless.<sup>58</sup>

Months later, Attorney General Janet Reno determined that, in light of Hurricane Mitch, Honduras was “unable, temporarily, to handle adequately the return of [its] national[s]” living in the

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<sup>55</sup> See 78 Fed. Reg. 20,123 (Apr. 3, 2013) (hereinafter 2013 Honduras TPS Extension)

<sup>56</sup> See 79 Fed. Reg. 62,170 (Oct. 16, 2014) (hereinafter 2014 Honduras TPS Extension)

<sup>57</sup> See 68 Fed. Reg. 23,745 (May 5, 2003); 2013 Honduras TPS Extension; 2014 Honduras TPS Extension.

<sup>58</sup> See *Activities in Honduras in Support of the Hurricane Mitch Reconstruction Program*, U.S. Geological Survey, May 2002.

United States.<sup>59</sup> She thus designated the country for the Temporary Protected Status program on January 5, 1999.<sup>60</sup>

**A. Honduras has yet to recover from the 1998 hurricane.**

The after-effects of Hurricane Mitch continued to inflict “substantial disruption to living conditions” in Honduras over the following decades.<sup>61</sup> And to make matters worse, the storm was just the first in a series of natural disasters that would decimate Honduras.<sup>62</sup> For example, in October 2001, almost three years after Hurricane Mitch’s landing, Honduras was struck by yet another storm, Hurricane Michelle.<sup>63</sup> Though not as severe, Michelle “affected more than 50,000 people and damaged 1,300 houses”; in combination with Mitch’s lingering effects, Michelle “produced major problems of food insecurity, unemployment, and displacement” and “weakened the country to such an extent that subsequent smaller scale disasters . . . had a much greater impact.”<sup>64</sup> Thus, seven years later, in October 2008,

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<sup>59</sup> 64 Fed. Reg. 524 (Jan. 5, 1999).

<sup>60</sup> *Id.*

<sup>61</sup> 65 Fed. Reg. 30,438 (May 11, 2000); 66 Fed. Reg. 23,269 (May 8, 2001).

<sup>62</sup> *See* 76 Fed. Reg. 68,488 (Nov. 4, 2011) (hereinafter 2011 Honduras TPS Extension).

<sup>63</sup> *See* 67 Fed. Reg. 22,452 (May 3, 2002).

<sup>64</sup> 67 Fed. Reg. 22,451 (May 3, 2002); 2011 Honduras TPS Extension.



when Tropical Depression Sixteen brought a period of extreme rain, more than half of the country's roads were destroyed by flooding.<sup>65</sup> The following year, in May 2009, a 7.3 magnitude earthquake further damaged houses, bridges, and water systems.<sup>66</sup> A year later, in May 2010, Tropical Storm Agatha made landfall, causing more destruction to the country's infrastructure, and leaving thousands more Hondurans without homes.<sup>67</sup> In 2011, another series of floods overtook much of the country's Pacific region, killing 29 people, harming major export plantations, and causing approximately \$205 million in losses.<sup>68</sup> The floods of 2011 were followed by a severe drought in the spring of 2012.<sup>69</sup> In 2013, a quarter of the country's coffee crops—one of its main exports—were damaged by climate-related rust fungus.<sup>70</sup> Parts of 2014 brought yet more drought, leading to more crop failures and thus food shortages throughout the country.<sup>71</sup> And 2014 also brought extreme rains, drastically increasing the prevalence of mosquito-

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<sup>65</sup> *Id.*

<sup>66</sup> See *The M7.3 Honduras Earthquake of May 28, 2009*, Earthquake Eng'g Rsch. Inst. (Aug. 2009), <https://tinyurl.com/4s6zcuw8>.

<sup>67</sup> See *Dozens Dead in Central America Tropical Storms*, NBC News (June 1, 2010), <https://tinyurl.com/juu97934>.

<sup>68</sup> See 2014 Honduras TPS Extension.

<sup>69</sup> See 2013 Honduras TPS Extension.

<sup>70</sup> See 2014 Honduras TPS Extension.

<sup>71</sup> *Id.*

borne diseases, such as dengue and chikungunya.<sup>72</sup> This influx of disease in turn strained the country's hospital system; by 2015, public hospitals were barely able to provide medical treatment for common illnesses.<sup>73</sup> The combination of the environmental and health emergencies took its toll on Honduras' economy: by 2016, over "65 percent of the population [was] living in poverty."<sup>74</sup>

This onslaught of environmental disasters and the damage they wrought "exacerbated the persisting disruptions caused by Hurricane Mitch" and led the United States to extend Honduras' TPS designation thirteen times between 1999 and 2016.<sup>75</sup>

Tragically, in November 2020, natural disaster struck Honduras yet again: Tropical Storm Eta and Hurricane Iota "devastated large swathes of Honduras."<sup>76</sup> The Sula Valley region, the major agricultural center for Honduras, was hit the hardest. According to official figures, approximately 4.7 million people were affected by Eta and Iota, and thousands of houses were flooded with up to two meters of water,

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<sup>72</sup> See 81 Fed. Reg. 30,331 (May 16, 2016).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *When it Rains it Pours: The Devastating Impact of Hurricanes Eta and Iota in Honduras*, Amnesty Int'l (Dec. 13, 2020), <https://tinyurl.com/hh6lrnju>.

resulting in the loss of all household assets.<sup>77</sup> A total of 927 roads were affected, and more than seventy-two bridges damaged, with sixty-two destroyed, according to the International Federation of Red Cross and Red Crescent Societies.<sup>78</sup> The estimated damage is near \$2 billion.<sup>79</sup>

**B. Honduras is plagued by extreme violence and impunity.**

Along with the environmental destruction, Honduras' society has begun tearing apart at the seams. Violent crime, gang activity, and human trafficking is now widespread throughout the country.<sup>80</sup> The nation's murder rate is among the highest in the world<sup>81</sup>, and it has the second highest rate of femicide, second only to El Salvador.<sup>82</sup> "The level of violence affecting women in El Salvador and Honduras exceeds the combined rate of male and female homicides in some of the 40 countries with the

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<sup>77</sup> *Honduras: Hurricane Eta and Iota – Emergency Appeals No. MDR 43007 Operation Update No. 2*, Int'l Fed'n of Red Cross and Red Crescent Soc'ys (Jan. 21, 2021), <https://tinyurl.com/nrsjzc22>.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *See Honduras: Events of 2019*, Human Rights Watch (2020), <https://tinyurl.com/1e2yxfpl>.

<sup>81</sup> *Id.*

<sup>82</sup> *Femicide and International Women's Rights: An Epidemic of Violence in Latin America*, Glob. Ams. Rep. (2021), <https://tinyurl.com/3sdpx32j>.

highest murder rates in the world, such as Ecuador, Nicaragua and Tanzania.”<sup>83</sup> The most recent presidential election was tainted by “irregularities and deficiencies” so severe that international groups expressed doubt over the results.<sup>84</sup> And human rights abuses abound: citizens are routinely tortured and killed extrajudicially, criminal elements intimidate the media, and indigenous and other minority communities are faced with constant threat.<sup>85</sup> These societal ills, in combination with the unending stretch of natural disasters, have turned Honduras into one of the world’s most vulnerable countries. Indeed, mere weeks ago, thousands of Hondurans received widespread international attention when they fled the country by foot, headed north towards Guatemala and Mexico. One of the migrants, “[a] light blue cloth face mask hang[ing] from her chin, [and] several bags and children . . . at her feet,” explained why the group had fled: “We are leaving” Honduras, she said, “because we don’t want to suffer further.”<sup>86</sup>

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<sup>83</sup> *Id.*

<sup>84</sup> See Peter J. Meyer, *Honduras: Background and U.S. Relations*, Cong. Rsch. Serv. 4 (Apr. 27, 2020), <https://tinyurl.com/pdhjyc83>.

<sup>85</sup> See *Honduras: Events of 2019*, Human Rights Watch (2020), <https://tinyurl.com/1e2yxfpl>.

<sup>86</sup> Jason Beaubien, *Migrant Caravan: Thousands Move Into Guatemala, Hoping To Reach U.S.*, NPR (Jan. 18, 2021), <https://tinyurl.com/n27x8jl5>.

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Interpreting the TPS statute in the manner proposed by the government would do the unthinkable: it would send TPS immigrants, who have lived peaceful and productive lives in this country, back to a country where life is so fraught with danger that its people are doing anything they can to leave.

#### **IV. SOUTH SUDANESE TPS HOLDERS WOULD RETURN TO RAMPANT VIOLENCE AND A HUMANITARIAN CRISIS.**

South Sudan is a country born out of decades of civil war with northern Sudan and for which sustained peace and reliable government institutions remain elusive. Displacement and food insecurity are rampant amidst ongoing violence that targets civilians. Compounding the problem, the distribution of humanitarian aid remains an almost insurmountable challenge.<sup>87</sup> South Sudanese refugees now number over two million, creating “the largest refugee crisis in Africa, and the third largest

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<sup>87</sup> See *South Sudan: In Focus*, Cong. Rsch. Serv. (Oct. 28, 2019), <https://tinyurl.com/38gmpjs5>; see also *South Sudan Refugee Crisis*, USA for UNHCR, <https://tinyurl.com/3wmz8xh5>.

in the world.”<sup>88</sup> “Amid increasing violence and deteriorating conditions, the situation in South Sudan has escalated to a full-blown humanitarian emergency.”<sup>89</sup>

South Sudan became independent from its neighbor to the north, the Republic of Sudan (commonly known as “Sudan”) in 2011, after decades of civil war.<sup>90</sup> Unfortunately, violence has continued to plague the new country and its 64 tribal groups.<sup>91</sup> Months after its independence, DHS recognized the dangers facing South Sudanese from “ongoing armed conflict” and widespread food insecurity, among other problems, and designated the country for TPS protection.<sup>92</sup> For similar reasons, DHS extended

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<sup>88</sup> *South Sudan Refugee Crisis*, USA for UNHCR <https://tinyurl.com/3wmz8xh5>.

<sup>89</sup> *Id.*

<sup>90</sup> U.S. Dep’t of State, Office of the Historian, *A Guide to the United States’ History of Recognition, Diplomatic, and Consular Relations, by Country, Since 1776: South Sudan*, <https://tinyurl.com/7y8ozp0f>.

<sup>91</sup> Jennifer Williams, *The Conflict in South Sudan, Explained*, Vox (Jan. 9, 2017), <https://tinyurl.com/3dby963o>.

<sup>92</sup> See 76 Fed. Reg. 63,629 (Oct. 13, 2011) (hereinafter 2011 South Sudan TPS Designation).

South Sudan’s TPS status in 2013,<sup>93</sup> 2014,<sup>94</sup> 2016,<sup>95</sup> 2017,<sup>96</sup> 2019,<sup>97</sup> and, most recently, November 2020.<sup>98</sup> Even now, the conditions in South Sudan are such that the U.S. Department of State advises Americans to “*not* travel to South Sudan due to COVID-19, crime, kidnapping, and armed conflict. . . . Violent crime, such as carjackings, shootings ambushes, assaults, robberies, and kidnappings is common through South Sudan, including Juba.”<sup>99</sup>

**A. Ongoing armed conflict in South Sudan makes safe return impossible.**

Much of the current violence in South Sudan dates back to a 2013 rift between the president, Salva Kiir Mayardit, and vice president, Riek Machar,

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<sup>93</sup> See 78 Fed. Reg. 1,866 (Jan. 9, 2013).

<sup>94</sup> See 79 Fed. Reg. 52,019 (Sept. 2, 2014) (hereinafter 2014 South Sudan TPS Extension).

<sup>95</sup> See 81 Fed. Reg. 4,051 (Jan. 25, 2016).

<sup>96</sup> See 82 Fed. Reg. 44,205 (Sept. 21, 2017) (hereinafter 2017 South Sudan TPS Extension).

<sup>97</sup> See 84 Fed. Reg. 13,688 (Apr. 5, 2019) (hereinafter 2019 South Sudan TPS Extension).

<sup>98</sup> See 85 Fed. Reg. 69,344 (Nov. 2, 2020) (hereinafter 2020 South Sudan TPS Extension).

<sup>99</sup> U.S. Dep’t of State, Bureau of Consular Affairs, *South Sudan Travel Advisory* (Feb. 22, 2021), <https://tinyurl.com/5d9wqnb8> (italics added, boldomitted).

which quickly turned into an all-out civil war.<sup>100</sup> Both sides engaged in mass violence and ethnically targeted killings.<sup>101</sup> This included “[r]eports ... that [government] security forces conducted house to house searches and arrested hundreds of civilians in Juba and elsewhere. Witnesses claimed that some of those arrested were summarily shot in the street, while others were hauled to overcrowded jails.”<sup>102</sup>

In 2018, the parties signed a peace agreement, which led to the formation of a new, unity coalition government on February 21, 2020.<sup>103</sup> The new government has yet to put a stop to continued strife between armed groups across the country. To the contrary, “[b]oth [the U.S. Department of State] and the United Nations reported that the intensity of intercommunal violence increased in 2019 and 2020, as localized competition for resources was exacerbated by adverse weather conditions and struggles for dominance along ethnic, tribal, and subclan lines.”<sup>104</sup> Out of recognition of the ongoing crisis in the country, in March and May 2020, the U.N. Security Council again extended the UN Mission in South Sudan’s (“UNMISS”) mandate and renewed sanctions and an

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<sup>100</sup> *South Sudan: In Focus*, Cong. Rsch. Serv. (Oct. 28, 2019), <https://tinyurl.com/38gmpjs5>; see 2014 South Sudan TPS Extension.

<sup>101</sup> See 2014 South Sudan TPS Extension.

<sup>102</sup> See 2014 South Sudan TPS Extension.

<sup>103</sup> See 2020 South Sudan TPS Extension.

<sup>104</sup> *Id.*



arms embargo against the country.<sup>105</sup> Though the government of South Sudan argued “that the conflict has been resolved,” Amnesty International reported that “government soldiers were shooting civilians, burning their homes, raping women and girls, and displacing tens of thousands of people from their villages in the southern part of the country.”<sup>106</sup>

**B. Violence targeting civilians, and in particular women and children, is prevalent.**

The “incidents of armed groups attacking civilians” has “consistently [been] the leading form of violence throughout the conflict.”<sup>107</sup> Between April and June 2020, “UNMISS reported more than 417 attacks against civilians . . . with a minimum of 1,620 civilians harmed,” which “is a near quadrupling of civilians attacked from the same period in 2019.”<sup>108</sup>

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<sup>105</sup> U.N. Security Council Resolution 2521 (May 29, 2020), <https://tinyurl.com/psetzgec>; U.N. Mission in South Sudan: Mandate, <https://tinyurl.com/u3kmu222>.

<sup>106</sup> *South Sudan: United Nations Arms Embargo Must Remain in Place After Surge in Violence Against Civilians in 2020*, Amnesty Int’l (Nov. 30, 2020), <https://tinyurl.com/1rcpw14o>.

<sup>107</sup> See 2020 South Sudan TPS Extension.

<sup>108</sup> Julie Gregory & Aditi Gorur, *Data Overview: Violence Against Civilians in South Sudan*, Stimson Ctr. (Oct. 13, 2020), <https://tinyurl.com/14n48bob>.

Sexual and gender-based violence is often employed as a weapon of war in South Sudan.<sup>109</sup> “A 2016 U.N. survey found that 70% of the women in the [UNMISS] camp in Juba had been raped since the war began.”<sup>110</sup> There have also been widespread reports of mass rapes to terrorize civilians.<sup>111</sup> As one example reported by *The New York Times*, “First they killed her husband. Then, the South Sudanese woman said, government soldiers tied her to a tree and forced her to watch as at least 10 of them raped her 15-year-old daughter.”<sup>112</sup>

Yet another aspect of the horrific impact to civilians is the abuse of children, who are “routinely abducted and forced to join fighting forces.”<sup>113</sup> UNICEF reported in December 2017 that 19,000 children had been conscripted by armed groups since the conflict started.<sup>114</sup> The forcible use of children by government and rebel groups continued even after the

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<sup>109</sup> 2017 South Sudan TPS Extension; *South Sudan: In Focus*, Cong. Rsch. Serv. (Oct. 28, 2019), <https://tinyurl.com/38gmpjs5>.

<sup>110</sup> *South Sudan: In Focus*, Cong. Rsch. Serv. (Oct. 28, 2019), <https://tinyurl.com/38gmpjs5>.

<sup>111</sup> Nick Cumming-Bruce, *Mass Rape, a Weapon of War, Traumatizes South Sudan*, N.Y. Times (Mar. 11, 2016), <https://tinyurl.com/1teguuzs>.

<sup>112</sup> *Id.*

<sup>113</sup> 2019 South Sudan TPS Extension.

<sup>114</sup> *Id.*

2018 peace agreement.<sup>115</sup> Beyond the risk of being recruited as child soldiers, “[t]he conflict has deprived children of education and basic health services, and left them at risk of being killed, abducted, [and] sexually assaulted.”<sup>116</sup>

**C. There is a humanitarian crisis in South Sudan due to the desperate need for aid and difficulty in providing it.**

Millions of South Sudanese require housing, food, and other humanitarian aid. In a country of just over eleven million,<sup>117</sup> “[s]even million people require humanitarian assistance, most of whom faced acute food shortages.”<sup>118</sup> The humanitarian crisis has only been exacerbated by the COVID-19 pandemic, as well as the related decline in oil prices, given that South Sudan’s economy is oil-dependent.<sup>119</sup>

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<sup>115</sup> *South Sudan: Events of 2019*, Human Rights Watch, <https://tinyurl.com/j4n49oj9>.

<sup>116</sup> 2017 South Sudan TPS Extension.

<sup>117</sup> U.N. Population Fund, *World Population Dashboard: South Sudan*, <https://tinyurl.com/dhukubsy>.

<sup>118</sup> *South Sudan: Events of 2019*, Human Rights Watch, <https://tinyurl.com/j4n49oj9> (emphasis added).

<sup>119</sup> Amina Lahreche & Niko Alfred Hobdari, *Four Things to Know About How Fragile States Like South Sudan Are Coping With COVID-19*, Int’l Monetary Fund (Nov. 20, 2020), <https://tinyurl.com/449ql9xb>.

South Sudan is one of the most food insecure countries in the world. “Ongoing violence, flooding, resultant population displacement, and disrupted trade, markets, and cultivation activities have exacerbated food insecurity and humanitarian needs.”<sup>120</sup> In October 2020, U.N. Commission on Human Rights in South Sudan Chair Yasmin Sooka reported: “It is quite clear that both Government and opposition forces have deliberately used the starvation of civilians as a method of warfare in these States, sometimes as an instrument to punish non-aligning communities.”<sup>121</sup> Altogether, “approximately 51 percent of South Sudan’s total population . . . may face Crisis (IPC 3) or worse levels of acute food insecurity and require urgent food assistance.”<sup>122</sup>

It is extremely difficult for South Sudanese to access humanitarian aid. Among other reasons, “[s]easonal rains, violence, and government restrictions hinder aid efforts.”<sup>123</sup> Complicating those issues is the fact that, as of 2011, South Sudan had

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<sup>120</sup> *Food Assistance Fact Sheet - South Sudan*, USAID (Mar. 30, 2020), <https://tinyurl.com/3fcsc4kz>.

<sup>121</sup> *Starvation Being Used as a Method of Warfare in South Sudan - UN Panel*, U.N. Human Rights Council (Oct. 6, 2020), <https://tinyurl.com/yhqxp66>.

<sup>122</sup> *Food Assistance Fact Sheet - South Sudan*, USAID (Mar. 30, 2020), <https://tinyurl.com/3fcsc4kz>.

<sup>123</sup> *See South Sudan: In Focus*, Cong. Rsch. Serv. (Oct. 28, 2019), <https://tinyurl.com/38gmpjs5>; *see also South Sudan Refugee Crisis*, USA for UNHCR, <https://tinyurl.com/3wmz8xh5>.

“fewer than 100km of paved roads in [the country].”<sup>124</sup> In addition, government and other armed forces have targeted aid workers. As of 2018, “for the third consecutive year, South Sudan was the most dangerous place for delivering humanitarian assistance, according to the United Nations.”<sup>125</sup> In total, “124 aid workers—most of whom were South Sudanese—have lost their lives in the line of duty” since the conflict began in 2013.<sup>126</sup> Given these challenges, humanitarian aid organizations have a hard time delivering the basic aid that so many South Sudanese desperately require.

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South Sudan remains an incredibly dangerous country with severe and unmet humanitarian needs. South Sudanese TPS holders returning to the country would be in grave danger due to the ongoing and severe threat of violence to civilians, and in particular to women and children. In light of these conditions, it would be inhumane to require South Sudanese TPS holders to return to the country to adjust their immigration status.

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<sup>124</sup> 2011 South Sudan TPS Designation.

<sup>125</sup> 2019 South Sudan TPS Extension.

<sup>126</sup> U.S. Dep’t of State, U.S. Embassy in South Sudan, *Statement on the Recent Killings of Humanitarian Aid Workers* (Nov. 4, 2020), <https://tinyurl.com/25fkwh5>.

**V. YEMENI TPS HOLDERS WOULD RETURN TO VIOLENT CIVIL WAR AND SEVERE SHORTAGES OF FOOD AND HEALTHCARE.**

For over six years, Yemen has been plagued by armed conflicts of multiple internal militant groups and foreign nations. Collectively, these conflicts have eroded the country's central governance, devastated its infrastructure, killed hundreds of thousands, and caused such vast, profound suffering that conditions in Yemen are "now considered the world's worst humanitarian crisis."<sup>127</sup>

Yemen is in the middle of a civil war in which regional actors have intervened. The conflict traces its origins to 2011 Arab spring uprisings and the failed transition from the longtime rule of President Ali Abdullah Saleh to the internationally recognized government of President Abdu Rabbu Mansour Hadi.<sup>128</sup> Around the same time, Ansar Allah, "a predominantly Zaydi Shia revivalist political and insurgent movement," known colloquially as the "Houthis," started seizing territory in northern Yemen.<sup>129</sup> In September 2014, the Houthis captured the capital, Sana'a, and in March 2015, after Hadi had fled Yemen and asked for international intervention,

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<sup>127</sup> Jeremy M. Sharp, *Yemen: Civil War and Regional Intervention*, Cong. Rsch. Serv. (Dec. 8, 2020), <https://tinyurl.com/un6xn5z9>.

<sup>128</sup> *Id.* at 1.

<sup>129</sup> *Id.* at 3.

Saudi Arabia headed a military coalition comprised of its Arab partners with the aim of restoring Hadi's rule.<sup>130</sup> The initial combatants have since engaged in a "missile war," with the Saudi coalition launching airstrikes and the Houthis deploying a variety of missiles, drones, and anti-personnel mines.<sup>131</sup> The internationally recognized government of Yemen also imposed heavy restrictions on the movement of goods and people, which have evolved over time but largely remain to this day.<sup>132</sup> The dependence of Yemen's current civilian population on dwindling imports, the splintering of Yemen's government ministries and central bank, and the destruction of Yemen's purchasing power have coalesced to push basic commodities and public services out of the reach of millions of Yemenis.<sup>133</sup>

Yemen first received its TPS designation on September 3, 2015 due to "ongoing armed conflict," which had then internally displaced 1.3 million, rendered 12.9 million food insecure, and damaged homes, hospitals, schools, roads, airports, the electric power grid, and the water supply.<sup>134</sup> Even in these early days, dislocated Yemenis cited medicine and treatment for malnutrition, malaria, diarrhea,

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *See id.* at 10–11.

<sup>133</sup> *See id.* at 8.

<sup>134</sup> 80 Fed. Reg. 53,319 (Sept. 3, 2015).

chronic health conditions, and respiratory diseases as their most pressing need.<sup>135</sup>

Since then, the conflict has fragmented: numerous Yemeni parties, many with the backing of foreign states seeking to advance their own strategic interests in the country, have competed for money, power, and resources.<sup>136</sup> Personal incomes and the availability of public services have continued to decline as the devaluation of the Yemeni riyal has accelerated.<sup>137</sup> Yemen's TPS designation was therefore extended in the intervening years, with the most recent extension issued on March 4, 2020 due to both the unceasing armed conflict and "extraordinary and temporary conditions" on the ground.<sup>138</sup>

**A. Yemen continues to suffer from chronic violence, especially against civilians.**

Beyond the casualties of combatants, the conflict in Yemen has featured staggering brutality

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<sup>135</sup> *Id.*

<sup>136</sup> Jeremy M. Sharp, *Yemen: Civil War and Regional Intervention*, Cong. Rsch. Serv. (Dec. 8, 2020), <https://tinyurl.com/un6xn5z9>.

<sup>137</sup> Declan Walsh, *The Tragedy of Saudi Arabia's War*, N.Y. Times (Oct. 26, 2018), <https://tinyurl.com/9ktja7kz>.

<sup>138</sup> 85 Fed. Reg. 12,313 (Mar. 4, 2020).



upon civilians.<sup>139</sup> By the end of 2020, 130,000 Yemenis had been killed in the conflict.<sup>140</sup> The Yemen Data Project, a non-profit independent data collection project, has tallied over 22,000 Saudi-led coalition air strikes since March 2015, resulting in over 18,500 civilian casualties.<sup>141</sup> About a third of coalition airstrikes have hit civilian objects, such as residential homes, hospitals, schools, farms, food stores, markets, mosques, bridges, water wells, civilian factories, and detention centers,<sup>142</sup> in addition to sites of weddings<sup>143</sup> and communal meals.<sup>144</sup> Some of the most notorious airstrikes have landed on a funeral hall in an attack

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<sup>139</sup> U.N. Human Rights Council, *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014* (Sept. 28, 2020), <https://tinyurl.com/6c55h3x3>.

<sup>140</sup> Jeremy M. Sharp, *Yemen: Civil War and Regional Intervention*, Cong. Rsch. Serv. (Dec. 8, 2020), <https://tinyurl.com/un6xn5z9>.

<sup>141</sup> Yemen Data Project (Dec. 31, 2020), <https://tinyurl.com/h6a8y32p>.

<sup>142</sup> *World Report 2021: Yemen*, Human Rights Watch (2021), <https://tinyurl.com/8s3udn28>.

<sup>143</sup> Declan Walsh, *The Tragedy of Saudi Arabia's War*, N.Y. Times (Oct. 26, 2018), <https://tinyurl.com/9ktja7kz>.

<sup>144</sup> Sumaya Bakhsh, *Yemen: The Man Who Lost 27 Family Members in an Air Strike*, BBC News (Nov. 4, 2016), <https://tinyurl.com/yt57z3bj>.

that killed at least 110 Yemenis,<sup>145</sup> a cholera treatment center established by Doctors Without Borders<sup>146</sup> and a school bus returning from a picnic.<sup>147</sup> After a bomb blast on a private residence, leaving six dead, one surviving family member told Amnesty international, “We buried them the same day because they had turned into severed limbs. There were no corpses left to examine.”<sup>148</sup>

Houthi fighters have also inflicted considerable suffering on civilians. The U.N. Human Rights Council described how Houthis exacerbated Yemen’s food insecurity by laying mines and explosives in grain mills, near fishing sites, and on pasture land where farmers and children herd livestock.<sup>149</sup> Houthis have attempted to impose burdensome

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<sup>145</sup> *Yemen: Saudi-led Funeral Attack Apparent War Crime*, Human Rights Watch (Oct. 13, 2016), <https://tinyurl.com/yyydjzsf>.

<sup>146</sup> Omer Karasapan, *Yemen’s Civilians: Besieged on All Sides*, Brookings Inst. (Mar. 31, 2020), <https://tinyurl.com/3x37zcmu>.

<sup>147</sup> *Yemen War: Saudi-led Air Strike on Bus Kills 29 Children*, BBC News 9 (Aug. 9, 2018), <https://tinyurl.com/y42rjpyx>.

<sup>148</sup> *Yemen: US-made Bomb Used in Deadly Air Strike on Civilians*, Amnesty Int’l (Sept. 26, 2019), <https://tinyurl.com/263b23kk>.

<sup>149</sup> U.N. Human Rights Council, *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014* 9 (Sept. 29, 2020), <https://tinyurl.com/2v99s4sa>.

bureaucratic requirements to hamper humanitarian operations.<sup>150</sup> They have requisitioned schoolhouses to store weapons and detained educators who “refus[ed] to collaborate with Houthi child recruitment efforts.”<sup>151</sup> Such efforts have placed boys into combat roles, leading to injury or death, and compelled girls to become recruiters, spies, guards, and medics, some of whom were further subjected to sexual assault or involuntary early marriage.<sup>152</sup> In addition to the forced disappearances and arbitrary detention of Yemeni citizens, human rights activists, lawyers, and journalists, parties to the conflict have tortured their victims with solitary confinement, sexual violence, suspension for prolonged periods of time, compelled crawling on glass, removal of finger nails, electrocution, burning, beating, and mock executions.<sup>153</sup>

**B. The civil war has exacerbated food insecurity.**

Yemen’s civil war has led to an “unprecedented” level of hunger.<sup>154</sup> Yemen already depended on importing 90 percent of its food supply,<sup>155</sup>

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 13.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 11.

<sup>154</sup> U.N. World Food Programme, *Yemen Emergency* (2021) <https://tinyurl.com/x4e8xxkd>.

<sup>155</sup> 80 Fed. Reg. 53,319 (Sept. 3, 2015).

so the shelling of civilian food stores,<sup>156</sup> cyclical fuel crises,<sup>157</sup> and restrictions imposed by both the Saudi-led coalition and the recognized government<sup>158</sup> only brought the country closer to mass starvation. Even with humanitarian assistance, 16 million Yemenis, about half the population, are food insecure, and among that number, “nearly 5 million are acutely food insecure.”<sup>159</sup> A U.N. World Food Program survey found that “almost one third of families have gaps in their diets, and hardly ever consume foods like pulses, vegetables, fruit, dairy products or meat.”<sup>160</sup> Indeed, one media report found that families in displacement camps resorted to “eating boiled tree leaves.”<sup>161</sup> And a woman, struggling to take care of two

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<sup>156</sup> U.N. Human Rights Council, *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014* 7 (Sept. 29, 2020), <https://tinyurl.com/2v99s4sa>.

<sup>157</sup> Nasser Abdulkareem, *New Fuel Crisis Deepens Suffering for Hungry Yemenis*, Norwegian Refugee Council (Oct. 16, 2019), <https://tinyurl.com/xd3vjad>.

<sup>158</sup> See Jeremy M. Sharp, *Yemen: Civil War and Regional Intervention*, Cong. Rsch. Serv. (Dec. 8, 2020), <https://tinyurl.com/un6xn5z9>; Declan Walsh, *The Tragedy of Saudi Arabia’s War*, N.Y. Times (Oct. 26, 2018), <https://tinyurl.com/9ktja7kz>.

<sup>159</sup> U.N. World Food Programme, *Yemen Emergency* (2021), <https://tinyurl.com/x4e8xxkd>.

<sup>160</sup> *Id.* (emphasis in original).

<sup>161</sup> *AP Report: Yemen’s Food Donations Are Being Snatched From the Starving*, PBS NewsHour (Dec. 18, 2018), <https://tinyurl.com/rkmm6t69>.

grandchildren, told the Guardian, “[W]e . . . buy ourselves some flour and then eat it with water . . . Either we die from the bombing or from the hunger.”<sup>162</sup> Conditions like these have resulted in 85,000 children dying from malnutrition near the end of 2018,<sup>163</sup> with one million pregnant or lactating women and two million children requiring treatment for acute malnutrition in the opening days of 2021.<sup>164</sup> What is more, the U.N. expects the number of people enduring famine in Yemen to triple by June of this year.<sup>165</sup>

**C. The conflict has weakened Yemen’s healthcare infrastructure.**

The conflict in Yemen has also decimated the country’s healthcare system, making the treatment of basic diseases, malnutrition, and injuries challenging, ultimately driving an increase in the critical caseload. Only around half of public health facilities are fully

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<sup>162</sup> Saeed Kamali Dehghan & Ahmad Algohbary, *Yemen’s Food Crisis: ‘We are Broken, We Either Die from Bombing or the Hunger’*, The Guardian (Feb. 8, 2017), <https://tinyurl.com/8m7c2c5c>.

<sup>163</sup> *Yemen Crisis: Why is There a War*, BBC News (June 19, 2020), <https://tinyurl.com/usxu649z>.

<sup>164</sup> U.N. World Food Programme, *Yemen Emergency* (2021), <https://tinyurl.com/x4e8xxkd>.

<sup>165</sup> *Id.*

functional;<sup>166</sup> about 20 percent of Yemen’s 333 districts lack medical doctors;<sup>167</sup> and essential medications and equipment are unavailable or in short supply.<sup>168</sup> The World Bank has observed that an “estimated 20.5 million people [lack] safe water and sanitation, and 19.9 million [lack] adequate healthcare.”<sup>169</sup> Consequently, “mass outbreaks of preventable diseases, such as cholera, diphtheria, measles, and Dengue Fever” have plagued Yemen,<sup>170</sup> whose malnourished population and remaining under-equipped hospitals are in a precarious position to contend with the COVID-19 pandemic.

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Today, with 3.6 million internally displaced and 24.1 million in need of aid,<sup>171</sup> “Yemen remains a tortured land, with its people ravaged in ways that

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<sup>166</sup> Omer Karasapan, Yemen and COVID-19: The Pandemic Exacts Its Devastating Toll, Brookings Inst. (June 15, 2020), <https://tinyurl.com/37kmt4f5>.

<sup>167</sup> *Id.*

<sup>168</sup> Kent Garber et al., *Estimating Access to Health Care in Yemen, A Complex Humanitarian Emergency Setting: A Descriptive Applied Geospatial Analysis*, *The Lancet* (Nov. 2020), <https://tinyurl.com/u3knuud7>.

<sup>169</sup> *Yemen Overview*, World Bank (Oct. 1, 2020), <https://tinyurl.com/scvkatmh>.

<sup>170</sup> *Id.*

<sup>171</sup> 85 Fed. Reg. 12,313 (Mar. 4, 2020).

should shock the conscience of humanity.”<sup>172</sup> The government’s interpretation of the TPS statute would lead to an absurd result: Yemeni nationals living under a TPS designation seeking to adjust their status would have to return to the very country conditions that justified Yemen’s TPS designation in the first place. Yemen is a raging battlefield where violence and deprivation far eclipse the humanitarian assistance that can be offered. It cannot have been the intent of Congress to require Yemeni TPS holders to return under these circumstances.

## CONCLUSION

Because the government’s interpretation would require TPS holders to return to the unsafe conditions described above and because such a result is contrary to the purpose of the TPS statute, the Court should reverse the holding of the court of appeals.

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<sup>172</sup> U.N. Human Rights Council, *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014* (Sept. 28, 2020), <https://tinyurl.com/6c55h3x3>.

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