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Chapter 1

Nationality, Citizenship, and Immigration

A. NATIONALITY AND CITIZENSHIP

1. Immigration and Nationality Act

On October 20, 2012, the U.S. District Court for the District of Columbia decided a case involving an attempt by a federal prisoner to compel the U.S. Department of State or the U.S. Citizenship and Immigration Services ("USCIS") to recognize his purported renunciation of U.S. citizenship by issuing a Certificate of Loss of Nationality ("CLN"). *Sluss v. USCIS*, No. 12-0417 (D.D.C. 2012). The court's opinion dismissing the case is excerpted below with footnotes and citations to the record omitted.

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I. LEGAL FRAMEWORK

United States law provides that a U.S. national "shall lose his nationality by voluntarily performing" any of a number of expatriating acts "with the intention of relinquishing United States nationality." 8 U.S.C. § 1481(a). When a U.S. national performs an expatriating act, he is "presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily." *Weber v. U.S. Dep't of State*, Civ. No. 12-0532, ___ F. Supp. 2d ___,___, 2012 WL 3024751, at *3 (D.D.C. July 25, 2012) (quoting 8 U.S.C. § 1481(b)) (citing *Lozada Colon v. U.S. Dep't of State*, 2 F. Supp. 2d 43, 45 (D.D.C. 1998) ("expatriation depends not only on the performance of an expatriating act, but also upon a finding that the individual performed such act 'voluntarily' and 'with the intention of relinquishing United States nationality'").

In addition, "[w]henever a . . . consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality," that officer "shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State," and "if the report of the . . . consular officer is approved by the Secretary of State," then a CLN shall be issued. 8 U.S.C. § 1501. "The State Department has issued regulations to implement 8 U.S.C. §§ 1481 and 1501 that (1) prescribe the 'form' of formal renunciations of nationality before consular officers and (2) prescribe regulations under which consular officers certify the facts that form the basis for the belief that a person abroad has lost his U.S. nationality." *Weber*, 2012 WL 3024751, at *3.

Although plaintiff states in his affidavit accompanying his renunciation request that he performed the expatriating act of declaring his allegiance to Canada, see 8 U.S.C. § 1481(a)(2), he seeks from the instant complaint an order to compel defendants to act on his alleged renunciation of citizenship under § 1481(a)(6) of the INA which states:

> A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by . . . making in the United States a formal written renunciation of

> nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense . . . .

8 U.S.C. § 1481(a)(6). Defendants argue first that plaintiff's mandamus claim fails because the act he seeks to compel from the State Department—issuing a CLN—is discretionary and next that plaintiff's claim is moot since the USCIS has responded to his request for renunciation under subsection (a)(6). They are correct on both points.

II. MANDAMUS

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This Court recently denied mandamus relief to an applicant seeking a CLN after finding that the Secretary's decision to issue a CLN is a discretionary act. *Weber*, 2012 WL 3024751, at * 4. Nothing in this case compels a different result. Furthermore, since the USCIS has performed the only ministerial duty owed plaintiff by responding to his request to renounce his citizenship, a fact plaintiff concedes, the Court has no further function to perform and, therefore, will dismiss the mandamus claim as moot. See accord *Schnitzler v. U.S.*, Civ. No. 11-1318, ___ F. Supp. 2d ___, ___, 2012 WL 1893582, at *2 (D.D.C. May 25, 2012) ("To the extent that defendant Homeland Security had a ministerial duty to act on the plaintiff's application to renounce his citizenship, which is also the relief the plaintiff seeks from the complaint, it has done so.") (citations omitted).

III. ADMINISTRATIVE PROCEDURE ACT

The provisions of the APA relevant to plaintiff's claim are those that direct the reviewing court to "compel agency action unlawfully withheld," 5 U.S.C. § 706(1), and "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Plaintiff argues that the USCIS' letter "is clearly in violation of the agency discretion that it may enjoy as afforded…by the statute, and therefore the response is arbitrary, capricious, or otherwise in violation of the law." Plaintiff contends correctly that "[t]he plain language of the statute does not encumber a person to visit a USCIS office . . . and does not [require a citizen] to be interviewed by the USCIS." But the statute requires the agency to assess the voluntariness of an applicant's renouncement without stating how such an assessment should occur. "[W]hen an agency is compelled by law to act, but the manner of its action is left to the agency's discretion, the 'court can compel the agency to act, [although it] has no power to specify what th[at] action must be.' " *Kaufman v. Mukasey*, 524 F.3d 1334, 1338 (D.C. Cir. 2008) (quoting *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 65 (2004)) (alterations in original).

While "APA cases are typically decided via summary judgment," on a factually developed administrative record, *Weber*, 2012 WL 3024751, at *5, the USCIS' reasonable explanation based on plaintiff's incarceration, provides a sufficient record for the Court to find that no APA violation resulted from the USCIS' action. See *Schnitzler*, 2012 WL 1893582, at *2 (agreeing with the USCIS that no prejudice arises from holding a prisoner's renunciation "application in abeyance until he is able to comply with § 1481(a)(6)") (citing, *inter alia*, *Koos v. Holm*, 204 F. Supp. 2d 1099, 1108 (W.D.Tenn. 2002) ("Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system," quoting *Hewitt v. Helms*, 459 U.S. 460, 467

(1983)).

While it appears from the instant record that the State Department still has not addressed plaintiff's request for a CLN, the Court will not prolong the inevitable dismissal of this case by compelling the State Department to perform what surely would be a futile gesture. The INA provides that:

> Except as provided in paragraphs (6) and (7) of section 1481(a) of this title, no national of the United States can lose United States nationality under this chapter while within the United States . . ., but loss of nationality shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this part if and when the national thereafter takes up a residence outside the United States and its outlying possessions.

8 U.S.C. § 1483(a). As long as plaintiff is incarcerated in the United States, he cannot lose his nationality and, thus, does not qualify for a CLN. Hence, not only does plaintiff fail to state a claim but he lacks standing to pursue the claim because any alleged injury is not "redressable by judicial relief." *Stilwell v. Office of Thrift Supervision*, 569 F.3d 514, 518 (D.C. Cir. 2009) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) (other citation omitted); see also *Schnitzler*, 2012 WL 1893582, at *2 (prisoner lacked standing to challenge the constitutionality of § 1481(a)(5), (6), since no prejudice would arise from holding his application in abeyance until he is able to comply with the statute).

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2. Nationality of Women and Children

See Chapter 6.B.2.c. for a discussion of the U.S.-led resolution at the Human Rights Council on women's and children's right to nationality.

B. PASSPORTS

1. Western Hemisphere Travel Initiative Implementation

The Department of Homeland Security ("DHS") issued a notice that, effective January 31, 2012, the Native American Tribal Card issued by the Kootenai Tribe is an acceptable document for identity and citizenship for purposes of entering the United States under the Western Hemisphere Travel Initiative ("WHTI"). 77 Fed. Reg. 4822 (January 31, 2012). For further information on the WHTI, see *Digest 2007* at 8-16.

2. Authority to Determine Content of Passports to Implement Foreign Policy

See Chapter 9.C., discussing developments in the *Zivotofsky* case in 2012.

C. IMMIGRATION AND VISAS

1. Change in visa fees

Effective April 13, 2012, the Department of State changed the schedule of fees for consular services, affecting a variety of types of U.S. visas. 77 Fed. Reg. 18,907 (March 29, 2012). As stated in the Federal Register notice, adjusting the visa fees was necessary "to ensure that sufficient resources are available to meet the costs of providing consular services in light of the recent fee review's findings that the U.S. government is not fully covering its costs for the processing of these visas under the current fee structure." *Id.* Although many fees for nonimmigrant visas increased, notably fees for several petition-based nonimmigrant visas and all immigrant visas actually decreased. *Id.*

2. Increase in validity period of visas for Colombians traveling to the United States

On April 15, 2012, the State Department announced that visas granted to visitors from Colombia would be valid for ten years, instead of five. The State Department fact sheet describing the change is available at *www.state.gov/r/pa/prs/ps/2012/04/187927.htm*. The fact sheet explains the reasons for the change:

> This extension of visa validity is supporting of the expanding partnership between the United States and Colombia on a broad array of issues, which has resulted in increased exchanges for tourism and business. The extension is also consistent with the passage of the U.S.-Colombia Trade Promotion Agreement, which can increase investment between our two countries. A growing Colombian economy will lead to a growth in travel for education and training, tourism, and economic activities.

3. Addition of Taiwan to the Visa Waiver Program

On October 2, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and with reference to the Taiwan Relations Act of 1979, designated Taiwan for participation in the Visa Waiver Program ("VWP"). The Department of Homeland Security ("DHS") issued the final rule adding Taiwan to the list of countries designated for participation in the VWP in the Federal Register on October 22, 2012. 77 Fed. Reg. 64,409 (Oct. 22, 2012). In general, travelers from designated VWP participants may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. The Secretary of Homeland Security determined, after consulting with the Secretary of State, that Taiwan meets all requirements for participation in the VWP under section 217 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1187, including: (1) meeting the statutory rate of nonimmigrant visitor visa refusals for nationals of the country; (2) a government certification that it issues machine-readable passports that comply with internationally accepted standards; (3) a U.S. government determination that the country's designation would not negatively affect U.S. law enforcement and security interests; (4) an agreement to report, or make available through other designated means, to

the U.S. government information about the theft or loss of passports; (5) the government acceptance for repatriation any citizen, former citizen, or national not later than three weeks after the issuance of a final order of removal; and (6) an agreement with the United States to share information regarding whether citizens or nationals of the country represent a threat to the security or welfare of the United States or its citizens.

4. Litigation over flawed diversity visa lottery

On July 3, 2012, the Court of Appeals for the District of Columbia Circuit affirmed a district court's dismissal of a class action complaint relating to the State Department's diversity visa ("DV") lottery. *Smirnov v. Clinton*, 487 Fed.App. 582, 2012 WL 2579312 (D.C. Cir. 2012). The DV lottery conducted for fiscal year 2012 did not comport with the requirement in the INA that the lottery be conducted in a random manner. After results of the flawed lottery had been posted on-line, the Department cancelled the first lottery and conducted a new one. A group of those selected in the flawed lottery brought suit. Excerpts from the opinion of the Court of Appeals follow (with footnotes omitted).

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The diversity visa program is designed to encourage and facilitate immigration to the United States from historically underrepresented countries. Each year, 50,000 diversity visas are distributed "to eligible qualified immigrants strictly in a random order established by the Secretary of State." 8 U.S.C. § 1153(e)(2). The State Department promulgated regulations pursuant to this statute establishing an annual drawing known as the diversity visa lottery, which selects 100,000 winners who then have the opportunity to apply for one of the 50,000 visas.

The regulations require that the lottery be conducted in three steps. First, as petitions are received online during a thirty-day submission period they are "assigned a number in a separate numerical sequence for each regional area" specified by the statute. 22 C.F.R. § 42.33(c). The initial numbers largely reflect the order in which petitions are received. Second, "all numbers assigned for each region will be separately rank-ordered at random by a computer using standard computer software for that purpose." *Id*. Third, the Department selects the appropriate quantity of petitions from the random "rank orders determined by the computer program." *Id*. The "winners" selected are considered for visas in the regional rank-order established by this process. *Id*. § 42.33(e). The program is extremely competitive: for the 2012 lottery, the Department received almost 15 million petitions.

The results of the first 2012 diversity visa lottery were posted online on May 1, 2011. But on May 5, the Department cut off access to its website in response to complaints that almost all of the winners had submitted their applications on October 5 or 6, 2010, the first two days of the submission period. Approximately 22,000 winners had already viewed the results. On May 13, the Department announced that the lottery results were invalid because they were not random as required by law, explaining that over 90% of the winners had been selected from the first two days of the registration period because of a "computer programming error." It had previously guaranteed all applicants from each region an equal chance regardless of the day they submitted

their petition. See 75 Fed.Reg. 60,846–02, 60,851 (Oct. 1, 2010). The Department announced it would conduct a second lottery and release the results on July 15, 2011.

On June 16, 2011, Ilya Smirnov filed suit on behalf of a putative class of the 22,000 winners who viewed the results before May 5. He sought an order to force the Department to honor the results of the first lottery and enjoin it from conducting another. The district court dismissed the action on July 14, 2011, finding the Department's actions were not arbitrary and capricious or contrary to law. *Smirnov v. Clinton*, 806 F.Supp.2d 1 (D.D.C.2011). The next day, the Department announced the results of the redrawn lottery, and most of the plaintiffs were not "winners" the second time around. Smirnov appealed.

We affirm the district court's conclusion that the Department acted reasonably in voiding the results of the first lottery and conducting a second. The first lottery was unlawful because it failed the regulation's requirement that the petitions be "rank-ordered at random" after the initial numbering is complete. See 22 C.F.R. § 42.33(c).

* * * *

Smirnov also argues that the Department should be equitably estopped from voiding the results of the first lottery, relying primarily on an October 25, 2011 report from the Office of the Inspector General of the Department of State detailing the process that led to the computer error. The report found that the Department did not follow several internal regulations regarding information technology testing and development when implementing the new randomizer program, and that some employees developing the software did not fully understand the diversity visa process. Because the report was released after the district court dismissed the case, Smirnov filed a Rule 60(b) motion for relief from judgment, which the district court rejected. He appealed that ruling and also asked us directly to take judicial notice of the report.

The equitable estoppel argument fails for at least two reasons. First, the State Department's software development practices were at most negligent—far short of the "affirmative misconduct" required to apply equitable estoppel against the government. See *Morris Commc'ns, Inc. v. FCC*, 566 F.3d 184, 191 (D.C.Cir.2009). Second, equitable estoppel requires a weighing of the equities, and were we to reallocate visa numbers back to the winners of the first lottery, the unfairness to the winners of the second lottery would be at least as grave as that to the first set of winners. Because the equitable estoppel claim lacks merit, we conclude that the district court did not abuse its discretion in denying the Rule 60(b) motion and that we need not decide whether it would be appropriate to take judicial notice of the report.

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5. Entry into Force of U.S.-Russia Visa Agreement

On September 9, 2012, the agreement between the United States and Russia regarding the issuance of visas entered into force. See *Digest 2011* at 2-3 for background on the agreement. The State Department issued a fact sheet on the agreement on September 7, 2012, available at *www.state.gov/r/pa/prs/ps/2012/09/197476.htm*. Excerpts from the fact sheet follow.

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Among other benefits, the agreement provides for longer visa validity which allows for expanded contacts and promotes greater mutual understanding between our societies.

U.S. Secretary of State Clinton and Russian Foreign Minister Lavrov first announced this agreement in July 2011, which was ratified by the Russia Duma and signed by President Putin in July 2012.

The agreement includes these key provisions:

- Three-year, multiple-entry visas will be issued as the standard "default" visa for U.S. citizens visiting Russia and Russian citizens visiting the United States;
- Diplomatic and official visa holders on temporary assignments will receive one-year, multiple-entry visas;
- The agreement streamlines the visa issuance process by reducing the documentation required. For example, the Russian government will no longer require U.S. citizens to provide formal, "registered" invitation letters when applying for Russian business visas or visas for private visits, although applicants seeking Russian tourist visas must continue to hold advance lodging reservations and arrangements with a tour operator;
- Both sides have committed to keeping standard visa processing times under 15 days, although the circumstances of individual cases may require additional processing; and
- The $100 issuance—or reciprocity—fee for Russians issued U.S. visas for business or tourism (visa types B1/B2) will decrease to $20.

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6. U.S.-Canada Visa and Immigration Information-Sharing Agreement

On December 13, 2012, the United States and Canada signed an agreement to enable the two countries to share information from nationals of other countries who apply for a visa or permit to travel to either the United States or Canada. The agreement is described in a December 14, 2012 media note, which is excerpted below and available in full at *www.state.gov/r/pa/prs/ps/2012/12/202065.htm*.

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This will better protect the safety and security of Americans and Canadians and facilitate legitimate travel and business. Increased information sharing will support better decision-making by both countries to confirm applicants' identities, and identify risks and inadmissible persons at the earliest opportunity. It will increase safety and security, as both countries work to identify terrorists, violent criminals, and others who pose a risk before they reach our borders. All officers working on immigration and refugee protection will be equipped with more information to make decisions. This will better protect the safety and security of Americans and Canadians alike and further facilitate legitimate travel.

The agreement authorizes development of arrangements under which the United States

may send an automated request for data to Canada, such as when a third country national applies to the United States for a visa or claims asylum. Such a request would contain limited information, such as name and date of birth in the case of biographic sharing, or an anonymous fingerprint in the case of biometric sharing. If the identity matches that of a previous application, immigration information may be shared, such as whether the person has previously been refused a visa or removed from the other country. The same process would apply in reverse when a third country national applies to Canada for a visa or claims asylum. Biographic immigration information sharing is set to begin in 2013, and biometric sharing in 2014.

Under the agreement, information will not be shared regarding U.S. or Canadian citizens or permanent residents. Any information shared on travelers and asylum seekers will be handled responsibly and, as with other information sharing agreements, exchanged in accordance with relevant U.S. and Canadian laws.

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D. ASYLUM AND REFUGEE STATUS AND RELATED ISSUES

Section 244 of the Immigration and Nationality Act ("INA" or "Act"), as amended, 8 U.S.C. § 1254a, authorizes the Secretary of Homeland Security, after consultation with appropriate agencies, to designate a state (or any part of a state) for temporary protected status ("TPS") after finding that (1) there is an ongoing armed conflict within the state (or part thereof) that would pose a serious threat to the safety of nationals returned there; (2) the state has requested designation after an environmental disaster resulting in a substantial, but temporary, disruption of living conditions that renders the state temporarily unable to handle the return of its nationals; or (3) there are other extraordinary and temporary conditions in the state that prevent nationals from returning in safety, unless permitting the aliens to remain temporarily would be contrary to the national interests of the United States. The TPS designation means that eligible nationals of the state can remain in the United States and obtain work authorization documents. For background on previous designations of states for TPS, see *Digest 1989–1990* at 39–40; *Cumulative Digest 1991–1999* at 240-47; *Digest 2004* at 31-33; *Digest 2010* at 10-11; and *Digest 2011* at 6-9. In 2012, the United States designated Syria for TPS and extended TPS designations for El Salvador, Somalia, and Haiti, as discussed below.

1. Syria

Effective March 29, 2012, the Secretary of Homeland Security designated Syria for TPS for a period of 18 months until September 30, 2013, based on the extraordinary and temporary conditions in that country that prevent Syrian nationals from returning in safety. 77 Fed. Reg. 19,026-30 (March 29, 2012). Excerpts below from the Federal Register notice announcing the designation further explain the basis for the action. See Chapter 17 for a discussion of UN action in response to the crisis in Syria. See also Chapter 6 for discussion of action at the Human Rights Council regarding Syria; see Chapter 9 for discussion of the

recognition of the Syrian Opposition Coalition; and see Chapter 16 for a discussion of U.S. sanctions imposed relating to Syria.

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The Secretary has determined, after consultation with the Department of State (DOS) and other appropriate Government agencies, that there exist extraordinary and temporary conditions in Syria that prevent Syrian nationals from returning in safety, and that permitting such aliens to remain temporarily in the United States would not be contrary to the national interest of the United States.

Protest crowds began to gather in Damascus and Dar'a by mid to late March 2011, when citizens seeking greater political freedom rose up against the rule of President Bashar al-Assad. In response, President al-Assad used the military to suppress the movement, and the Syrian Arab Republic Government (SARG) launched a brutal crackdown, violently repressing and killing thousands of its own civilians. The SARG continues to use excessive force against civilians, arbitrary executions, killing and persecution of protestors and members of the media, arbitrary detention, disappearances, torture, and ill-treatment in an effort to retain control of the country.

The Independent International Commission of Inquiry (COI), in its second report to the United Nations Human Rights Council (HRC) dated February 22, 2012 (A/HRC/19/69), reports that the SARG's initial violent suppression of dissent was followed by military defections and the formation of anti-government armed groups. The main armed opposition group is the Free Syrian Army (FSA). Other anti-government armed groups include the Higher Military Council and Al Faroukh Battalion, both of which are engaged in combat with the Syrian security forces in Homs. According to the COI report, while anti-government groups have also committed abuses, their actions are not comparable in scale or organization to those carried out by the Syrian state.

The COI report states that army snipers and Shabbiha (mercenaries hired by the SARG) have terrorized the population, targeting and killing small children, women, and other unarmed civilians. Military defectors report that soldiers continue to receive "shoot to kill" orders. Individual officers in the Syrian military have also shot unarmed protestors, including children, medical doctors, ambulance drivers, and mourners at funerals in Da'ra, Rif Dimashq, and Almastoumah governates.

Observers generally agree that the conflict has become increasingly violent and militarized. As of February 2012, the UN Under-Secretary-General for Political Affairs indicated that approximately 7,500 Syrians have been killed since the violence began, and new casualties are reported daily. The COI report pointed out that "casualties rose steeply as the violence intensified" in recent months. In fact, the UN's February 2012 death toll estimate of 7,500 exceeds its January 2012 estimate by 2,100 deaths. As of February 2012, public UN estimates indicated that between 100,000 and 200,000 Syrians are internally displaced, and as many as 500,000 citizens may be trapped in affected areas within Syria. According to the Office of the UN High Commissioner for Refugees (UNHCR), approximately 35,000 Syrians have sought shelter in the neighboring countries of Turkey, Lebanon, and Jordan.

The deteriorating security situation in Syria compelled the United States to suspend Embassy operations on February 6, 2012, and order the departure of all U.S. direct-hire

personnel from the country. Several other diplomatic missions have also suspended operations due to security concerns. On April 25, 2011, DOS advised all United States citizens to avoid travel to Syria and urged United States citizens in Syria to depart immediately. DOS has reiterated the travel warning several times, most recently on March 6, 2012.

The international community has responded to the crisis in Syria by imposing economic sanctions. The regime's economic mismanagement and economic sanctions have negatively affected the whole of the Syrian economy. According to the COI report, the prices of basic food items have increased by as much as 37 percent, and the unemployment rate is in the range of 22 to 30 percent. The economy is estimated to have shrunk by 2 to 4 percent in 2011, and a higher drop is expected in 2012. Tourism, which accounted for 6 to 9 percent of Syria's gross domestic product, has collapsed.

Thousands of Syrians have been uprooted from their communities and sought shelter in Turkey, Lebanon, and Jordan. Many of those that remain in the country are trapped in danger zones and are experiencing the effects of the economic sanctions. As of June 2011, UNHCR reports an estimated 10,000 Syrians are displaced in Turkey. Approximately 15,000 Syrians are displaced in Lebanon. Although in January 2012 Jordan reported that it formally hosts 2,500 to 3,000 Syrians displaced by violence, UNHCR estimates approximately 10,000 displaced Syrians are in Jordan. In February 2012, Jordan government sources stated that approximately 73,000 Syrians have entered Jordan through border crossings.

Journalists and bloggers have been subject to harm, including arrest, prolonged detention, and death. Reports also indicate that medical doctors providing treatment to wounded members of the opposition have been arrested. The campaign group Avaaz, which has been monitoring attacks on medical workers, recorded more than 250 arrests between March and October 2011. This has led to the establishment of clandestine makeshift clinics in mosques and basements of homes. According to the UN General Assembly's Conflict-related sexual violence: report of the Secretary-General, published in January 2012, reports of conflict-related sexual violence from both Syrian security forces and anti-government armed groups also have surfaced.

International humanitarian organizations face significant obstacles to gaining access to Syrian cities such as Homs and Hama that are crippled by the brutality and violence. As a result, they cannot assure humanitarian assistance to citizens in need of emergency relief, including medical care, food, and other supplies.

Given extraordinary and temporary conditions on the ground in Syria, Syrian nationals in the United States would face serious danger and threats were they to return to Syria.

Based upon this review, and after consultation with appropriate Government agencies, the Secretary finds that:

Syrian nationals cannot return to Syria in safety due to extraordinary and temporary conditions. See section 244(b)(1)(C) of the Act, 8 U.S.C. 1254a(b)(1)(C);

It is not contrary to the national interest of the United States to permit Syrian nationals (and persons without nationality who last habitually resided in Syria) who meet the eligibility requirements of TPS to remain in the United States temporarily. See section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C);

The designation of Syria for TPS should be for an 18-month period from March 29, 2012 through September 30, 2013. See section 244(b)(2) of the Act, 8 U.S.C. 1254a(b)(2)…

* * * *

2. El Salvador

On January 11, 2012, the Department of Homeland Security ("DHS") announced the extension of the designation of El Salvador for TPS for 18 months from March 9, 2012 through September 9, 2013. 77 Fed. Reg. 1710 (Jan. 11, 2012). The extension was based on the determination that "there continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from the series of earthquake that struck the country in 2001, and El Salvador remains unable, temporarily, to adequately handle the return of its nationals." *Id*. at 1711.

3. Somalia

On May 1, 2012, the Secretary of Homeland Security announced that she had simultaneously extended Somalia's designation for TPS and redesignated Somalia for TPS for a period of 18 months, from September 18, 2012 through March 17, 2014. 77 Fed. Reg. 25,723 (May 1, 2012). See *Digest 1991-98* at 245 for discussion of the original designation of Somalia for TPS on September 16, 1991. Excerpts below from the Federal Register notice announcing the extension and redesignation explain the basis for the action.

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Over the past year, the Department of Homeland Security (DHS) and the Department of State (DOS) have continued to review conditions in Somalia. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the armed conflict is ongoing, and the extraordinary and temporary conditions that prompted the 2001 redesignation persist. The Secretary has further determined that the conditions have not only persisted, but have deteriorated in Somalia, supporting redesignating Somalia for TPS under section 244(b)(1)(A) and (C) of the Act and changing the "continuous residence" and "continuous physical presence" dates.

Two decades of conflict in Somalia and the country's most severe drought in 60 years have led to what has been referred to as the worst humanitarian crisis in the world. During this reporting period of 2010 and 2011, the number of armed groups involved on both sides of the conflict increased and the areas of intense conflict expanded. A dramatic upsurge in violence and severe drought were related factors contributing to famine experienced by six regions in south-central Somalia during 2011. All these conditions led to a rise in civilian deaths and population displacement, and left more than half the population in need of humanitarian assistance. Distribution of humanitarian aid increased significantly during 2011 and the international community has doubled its pledge for humanitarian aid to Somalia for 2012. However, the delivery of humanitarian aid continues to be impeded by numerous factors, including piracy off the coast of Somalia, difficulty accessing areas affected by seasonal flooding, general insecurity, and most notably threats to aid workers and restrictions on the presence and work of humanitarian agencies.

Conflict between the Transitional Federal Government (TFG) and allied forces on one side and insurgent militias (including al-Shabaab) on the other continued to result in high levels of civilian casualties and population displacement. In early 2010, most of the country was in the hands of Islamist insurgents, with the TFG supported by the African Union Mission in Somalia (AMISOM) controlling only a few blocks of Mogadishu. Human Rights Watch (HRW) reported continual fighting between militant Islamist groups and the TFG raging in Mogadishu (Somalia's capital) throughout 2010, with all parties conducting random attacks causing high civilian casualties. HRW further reported that opposition fighters deployed unlawfully in densely populated civilian neighborhoods and at times used civilians as "shields" to fire mortars at TFG and AMISOM. These attacks were conducted so indiscriminately that they frequently destroyed civilian homes, but rarely struck military targets. According to the United Nations (UN) Secretary-General, by early November 2011, the TFG and AMISOM were present across almost all 16 districts of Mogadishu, but many districts remained insecure and terrorist attacks by al-Shabaab occurred almost daily.

During 2010 and 2011, the conflict intensified outside of Mogadishu. The UN Security Council reported that "the relatively stable northern regions of Puntland and Somaliland have suffered increasing spillover from the conflict to the south in the form of targeted killings and bombings." In late 2011, Kenya and Ethiopia provided assistance to the TFG and deployed troops into the border areas those countries share with Somalia to fight al-Shabaab.

An escalation in fighting contributed to high numbers of civilian casualties. An estimated 2,200 civilians were killed in 2010. Around 1,400 civilians were killed in the first half of 2011. Between January and July 2011 some 6,543 individuals were admitted to hospitals in Mogadishu with "weapon-related injuries." In addition to being caught in the middle of fighting, civilians were also targeted by armed groups. According to an August 2011 HRW report, all forces involved in the fighting in Mogadishu "have been responsible for serious violations of international humanitarian law * * * [including] indiscriminate attacks, extrajudicial killings, arbitrary arrests and detention, and unlawful forced recruitment" (including forced recruitment of children by al-Shabaab).

Worsening conditions, famine, and conflict led to the displacement of many people within and outside Somalia, with dire consequences for the health and safety of those populations. By the end of 2011, there were an estimated 1.5 million internally displaced people (IDP) within Somalia. Approximately 470,000 Somalis fled to IDP camps at or near Mogadishu. Makeshift IDP camps provided little access to humanitarian aid and placed IDPs at risk of harassment by local militia groups. In December 2011, the UN news agency Integrated Regional Information Networks reported a sharp rise in the number of rapes reported in IDP camps.

The number of Somalis fleeing to neighboring countries drastically increased. The Office of the UN High Commissioner for Refugees (UNHCR) reported that in 2011 new Somali refugee arrivals in neighboring countries increased to 286,487, bringing the total number of Somali refugees in the region to 944,692 as of November 2011. Approximately 1,500 refugees per day crossed the border from Somalia into Ethiopia and Kenya at the peak of the famine. UNHCR expressed alarm at security incidents targeting the refugee complex in Kenya, where four targeted attacks took place between October and December 2011, including the kidnapping of three aid workers.

Conflict, displacement, and factors related to food insecurity--including severe drought, rising food prices, and restrictions on humanitarian aid--were at the root of the ongoing

humanitarian crisis in Somalia during 2010 and 2011. In 2010, Amnesty International reported that the threat of piracy, insecurity, restrictions on movement and operations of aid agencies, and corruption were factors that hampered delivery of humanitarian aid to populations in need.

In July 2011 the UN declared a state of famine in parts of southern Somalia. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), by the second half of 2011, tens of thousands had died from famine. In August 2011, OCHA reported that "Somalia is currently facing the most serious food and nutrition crisis in the world in terms of both scale and severity." During this reporting period of 2010 and 2011, Somalia had the highest malnutrition rates in the world. According to the UN Food Security and Nutrition Analysis Unit, 450,000 children were acutely malnourished throughout the country. Only 30 percent of Somalis had access to safe water, the lowest rate globally. Furthermore, food prices had drastically increased in 2011. Local cereal prices in the south had increased 270 percent in some areas. Additionally, local food shortages, an increase in global oil and food prices, and piracy had contributed to an average increase of 29 percent on all imported commodities. By the end of 2011, the UN reported that an estimated four million Somalis were in urgent need of food aid, humanitarian aid, and other assistance--more than half the country's population; three million of those were in crisis, and 250,000 were suffering from famine and were at risk of starvation.

Despite the humanitarian crisis, al-Shabaab blocked aid distribution. TFG troops reportedly complicated aid distribution by stealing aid. Reports described blanket prohibition on humanitarian aid in al-Shabaab-controlled areas; and in late November 2011, al-Shabaab announced a ban on the operations of 16 relief organizations, including the UN Children's Fund, the World Health Organization and several UN agencies inside Somalia. This ban created concerns about renewed food insecurity and severe malnutrition. It also endangers the ability of Somali people in such areas to recover from the famine, rebuild community resilience, and build reserves for future adverse weather events.

Somalia currently does not have a national government capable of providing a minimum level of human security and law and order for its citizens, and public security is unstable in many parts of Somalia. The TFG has little or no presence outside of Mogadishu, and has limited capacity to provide normal government services in the areas it does control. The TFG's capacity to process, accommodate, and provide assistance to returnees is extremely limited. Somalia faces an uncertain political future as the TFG's mandate is scheduled to end in August 2012.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

The conditions that prompted the September 4, 2001 redesignation of Somalia for TPS continue to be met. See section 244(b)(3)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C).

There continues to be an ongoing armed conflict and extraordinary and temporary conditions in Somalia that prevent Somali nationals from returning to Somalia in safety. See section 244(b)(1)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C).

It is not contrary to the national interest of the United States to permit Somalis (and persons who have no nationality who last habitually resided in Somalia) who meet the eligibility requirements of TPS to remain in the United States temporarily. See section 244(b)(1)(C) of the Act, 8 U.S.C. 1254a(b)(1)(C).

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4. Haiti

On October 1, 2012, DHS announced the extension of the designation of Haiti for TPS for 18 months from January 23, 2013 through July 22, 2014. 77 Fed. Reg. 59,943 (Oct. 1, 2012). The extension was based on the determination that "[t]here continue to be extraordinary and temporary conditions in Haiti resulting from the devastating effects of the January 2010 earthquake that prevent Haitians from returning to their country in safety" *Id*. at 1711. See *Digest 2010* at 10-11 discussing the initial designation of Haiti for TPS in 2010. See *Digest 2011* at 6-7 discussing the redesignation of Haiti in 2011.

Cross References

Syria, **Chapter 6.A.3.c.**, **Chapter 9.B.1.**, **Chapter 16.A.1., Chapter 17.B.1.**
Constitutionality of state laws concerning immigration, **Chapter 5.A.**
Women and children: right to nationality, **Chapter 6.B.2.b.**
Nationality in Libya claims cases, **Chapter 8.C.1.**
Diplomatic relations, **Chapter 9.A.**
Executive authority over passport issuance, **Chapter 9.C.**
Atrocities Prevention, **Chapter 17.C.1.**