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Certification under Section 1290 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (DIV. A, P.L. 115-232) Related to Military Assistance for Saudi Arabia and the United Arab Emirates

Pursuant to section 1290(a)(1) and (c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (DIV. A, P.L. 115-232), I hereby certify that:

(1) the Government of Saudi Arabia and the Government of the United Arab Emirates are undertaking—

(A) an urgent and good-faith effort to support diplomatic efforts to end the civil war in Yemen;

(B) appropriate measures to alleviate the humanitarian crisis in Yemen by increasing access for Yemenis to food, fuel, medicine, and medical evacuation, including through the appropriate use of Yemen's Red Sea ports, including the port of Hudaydah, the airport in Sana'a, and external border crossings with Saudi Arabia; and

(C) demonstrable actions to reduce the risk of harm to civilians and civilian infrastructure resulting from military operations of the Government of Saudi Arabia and the Government of the United Arab Emirates in Yemen, including by—

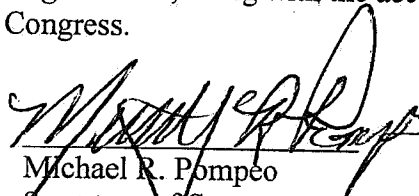
(i) complying with applicable agreements and laws regulating defense articles purchased or transferred from the United States; and

(ii) taking appropriate steps to avoid disproportionate harm to civilians and civilian infrastructure; and

(2) in the case of Saudi Arabia, the Government of Saudi Arabia is undertaking appropriate actions to reduce any unnecessary delays to shipments associated with secondary inspection and clearance processes other than the United Nations Verification and Inspection Mechanism (UNVIM).

This certification shall be published in the *Federal Register* and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

9/10/18
Date


Michael R. Pompeo
Secretary of State

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**MEMORANDUM OF JUSTIFICATION REGARDING CERTIFICATION PURSUANT
TO SECTION 1290 OF THE JOHN S. MCCAIN NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2019 (P.L. 115-232)**

The Secretary of State has made the certifications described in section 1290(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232). The reasons for the certifications are set forth in this Memorandum of Justification.

The Trump Administration has been clear that ending the conflict in Yemen is a national security priority. The Iranian regime has provided sophisticated weapons to the Houthis that they use to threaten U.S. citizens residing in Saudi Arabia and other U.S. national security interests, conduct attacks against partner nations, and imperil commercial shipping. Several Iranian-backed Houthi missile attacks last year targeted locations in the region where Americans are present. In order to enhance our partner's self-defense and confront these threats, the Administration's policy is to focus on ending the war and avoiding a regional conflict, countering the threat from the Islamic State of Iraq and Syria in Yemen (ISIS-Y) and al-Qa'ida in the Arabian Peninsula (AQAP), and countering malign Iranian influence. The Administration firmly believes that the only solution to the conflict in Yemen is a negotiated political settlement under United Nations (UN) auspices in accordance with UN Security Council Resolution (UNSCR) 2216. The Departments of State and Defense have implemented the President's guidance to provide limited defensive support, which enables the nations in the region to defend their borders and populations while negotiations lead to a comprehensive political agreement between Houthis and Republic of Yemen Government (ROYG).

Our support to the Saudi-led Coalition promotes U.S. national security priorities, including on counterterrorism and countering Iran's destabilizing behavior. The United States supports Yemen's territorial integrity and Coalition countries' ability to defend themselves from cross-border incursions and missile attacks by the Iranian-backed Houthis. Saudi Arabia and the UAE are strong counterterrorism partners. AQAP continues to pose a significant threat to the American people by plotting attacks against the U.S. homeland, while ISIS-Y aims to use the ungoverned spaces of Yemen to plot, direct, instigate, supply, and recruit for attacks in the region. AQAP took territory in southern Yemen following the Houthi rebellion and subsequent breakdown in governance in late 2014 and early 2015. With U.S. support, UAE military forces expelled AQAP from the port city of Mukallah in May 2016. This cut off a significant source of revenue of the terrorist group. UAE forces also conducted several successful counterterrorism operations in Shabwah and Hadramawt governorates throughout 2017 and 2018.

Urgent and Good-Faith Diplomatic Efforts to End the Civil War

The Administration assesses that Saudi Arabia and the United Arab Emirates (UAE) are undertaking urgent and good-faith diplomatic efforts to end the civil war in Yemen. The Saudis and Emiratis continue to express their support publicly for the efforts of UN Special Envoy for Yemen Martin Griffiths' office. The UN has repeatedly made clear -- and the United States supports that position -- that there is no military solution to the crisis in Yemen. As of July 2018, UN Special Envoy for Yemen Martin Griffiths completed initial consultations with the key parties to the conflict, including the ROYG and the Houthis. He proposed holding the first round of direct consultations between the conflict parties on September 6, 2018, in Geneva. Griffiths'

goal is to create a framework for building trust before entering into comprehensive negotiations, which the UN would convene, consistent with UNSCR 2216. The consultations will also provide the parties with the opportunity to discuss confidence-building measures and specific plans to move the process forward. Saudi Arabia and the UAE remain actively engaged in the "Quad" (the United States, the United Kingdom, Saudi Arabia, and the UAE) and "Quint" talks (Quad plus Oman), which seek progress toward negotiations while the conflict persists.

Saudi Arabia consistently articulates a vision for Yemen that includes a complete cessation of cross-border hostilities, a secure Saudi-Yemeni border, substantially reduced Iranian influence in the country, and a stable ROYG able to provide for its people. The Houthis, to date and during several months of negotiations in 2016, have been unwilling to provide meaningful assurances regarding Saudi Arabia's legitimate security concerns and have publicly stated their intent to continue their attacks on Saudi territory and to attempt to strike UAE territory in the context of ongoing hostilities. We have emphasized that all parties, including the ROYG, will need to compromise. The Houthis will have to make clear and credible commitments to respect Saudi security if they hope to retain a political role in Yemen. A durable resolution to the conflict will have to have the buy-in of key Yemeni parties, including the ROYG, the Houthis, and other Yemeni actors.

Reducing the Risk of Harm to Civilians and Civilian Infrastructure

The Administration assesses that the KSA and UAE are undertaking demonstrable actions to reduce the risk of harm to civilians and civilian infrastructure resulting from military operations of the Government of Saudi Arabia and the Government of the UAE, including by complying with the applicable agreements and laws regulating defense articles purchased or transferred from the United States, and that they are taking appropriate steps to avoid disproportionate harm to civilians and civilian infrastructure. The Administration recognizes that civilian casualties have occurred at rates that are far too high in the Saudi-led Coalition's campaign in Yemen. We believe civilian casualties must be mitigated and reduced as much as possible for both strategic and moral reasons. As a result, we are engaging the Saudi-led Coalition to urge them to strengthen measures that reduce the risk of harm to civilians and civilian infrastructure. The Department of State and the Department of Defense (DoD) will continue to press Saudi Arabia and the UAE on this issue at the highest levels. The Administration assesses that Saudi Arabia and the UAE are undertaking some actions to reduce the risk of harm to civilians and civilian infrastructure resulting from Saudi-led Coalition military operations. The Saudi-led Coalition incorporated a no-strike list (NSL) into its target development procedures and changed its rules of engagement to incorporate some U.S. recommendations. The Saudi Ministry of Defense committed to fund U.S.-provided training for the Royal Saudi Air Force (RSAF) on minimizing civilian casualties as one component of a \$750 million, multi-year Foreign Military Sales training case. This training seeks to improve RSAF targeting capabilities and reduce the risk of civilian casualties. As of May 2017, the U.S. government delivered a course for the RSAF that included training on the law of armed conflict (LOAC) and air-to-ground targeting processes. In 2016, the Coalition established the Joint Incident Assessment Team (JIAT) to investigate strikes that result in collateral damage.

The United States has called on Saudi Arabia and the UAE to conduct thorough, transparent, and expedient investigations in cases where airstrikes have caused harm to civilians and civilian

objects, and to make the results of those investigations public. These cases include the coalition operations that reportedly resulted in civilian casualties on August 9, 2018, in Sa'ada, and on August 23, 2018, in al-Durayhimi, and the targeting of civilian infrastructure such as water and sanitation facilities which could exacerbate cholera outbreaks in Yemen. The Saudi-led Coalition announced on September 1, 2018, that it would undertake such an investigation and hold those responsible to account. It is important to note that cholera is endemic in some parts of Yemen, even in the absence of armed conflict, and that Houthi entrenchments in Hudaydah have damaged water lines there. That resultant damage is a more direct cause of the spread of cholera in that area. As part of its engagement with UN leadership to refine and implement its humanitarian plan for Hudaydah, the UAE has allowed the UN to embed a civil-military advisor in Abu Dhabi and has been receiving the NSL from Evacuation and Humanitarian Operations Cell (EHOC) officials in Riyadh, Saudi Arabia. We continue to press the need for additional actions to reduce civilian casualty incidents. Recent civilian casualty incidents indicate insufficient implementation of reforms and targeting practices. Investigations have not yielded accountability measures. Additional information can be found in the classified annex.

The Administration also assesses that Saudi Arabia and the UAE are complying with applicable U.S. laws governing the sale and transfer of arms, including the Arms Export Control Act, with rare exception. Defense article sales to both countries are subject to U.S. end-use monitoring requirements, allowing the Administration to verify that items have not been modified, tampered with, or transferred to a third party without prior authorization. The Department of State adjudicates all potential arms transfers through a review process on a case-by-case basis and through a consultative process with Congress, as required by law. U.S. support to the Coalition allows it to pursue its mission of assisting the legitimate government of Yemen.

Alleviating the Humanitarian Crisis in Yemen

The Administration assesses that Saudi Arabia and the UAE are taking measures to alleviate the humanitarian crisis in Yemen, and we continue to press all conflict parties to facilitate unfettered access to humanitarian aid and commercial imports throughout the country. On January 22, 2018, Saudi Arabia announced its Yemen Comprehensive Humanitarian Operations (YCHO) plan, which included a \$2 billion commitment to support the Central Bank of Yemen and a joint Saudi-led Coalition commitment to provide \$1.5 billion to support the humanitarian response for Yemen. Saudi Arabia and the UAE contributed approximately \$997 million toward the UN's 2018 Humanitarian Response Plan (HRP) for Yemen in March 2018—more than one-third of the amount that the UN projected is needed to respond to the health and food insecurity crises. The YCHO plan established an air bridge for Coalition-provided aid between Saudi Arabia and Marib, ensured access to Yemen from land borders such as the Al-Wadeyah crossing, and worked to begin increasing throughput capacity at ports controlled by the ROYG. While the Administration is generally supportive of Saudi Arabia's efforts to deliver humanitarian aid to Yemenis, we continue to encourage them to make the plan as fulsome as possible, to ensure aid reaches Yemenis throughout the country, and to take into account the views and ongoing work of the UN and other humanitarian actors in Yemen.

The UAE also focuses on providing humanitarian assistance to ease the crisis Yemen's population is facing, particularly in the south. In 2018, the Emiratis provided more than \$3.81 billion in total humanitarian assistance to Yemen, including nearly \$467 million to

Yemen's HRP. The UAE also publicly released details of a humanitarian plan for Hudaydah on June 28, 2018, and provided an update on this effort to the UN Security Council on July 6, 2018. The UAE's plan includes delivering humanitarian supplies through Hudaydah port and overland. While the Administration is generally supportive of the UAE's efforts to deliver humanitarian assistance, the Administration has also encouraged the Emiratis to coordinate closely with the UN and to consider NGO efforts in their planning to ensure humanitarian assistance is delivered in the most transparent, effective, and efficient means possible. To inform this effort, U.S. officials have met regularly with NGO and other humanitarian representatives and have provided feedback on the UAE humanitarian plan to senior UAE officials.

Following the temporary closure of ports in November 2017 following an attempted Houthi ballistic-missile attack on Riyadh's airport, the Saudi-led EHOc has continued to allow commercial and humanitarian goods in Hudaydah and Saleef ports since December 2017. We remain concerned about restrictions on EHOc-characterized "dual-use" items, which include water sanitation supplies like pipes and chlorine that are critical to averting cholera outbreaks. Although the ports remain open, and EHOc has reduced its average clearance time, imports have yet to reach pre-November 2017 levels, because commercial shippers are uncertain about port security, lack access to trade credits, and are concerned about delays associated with Coalition inspections. The UN Verification and Inspection Mechanism (UNVIM) is working with the Saudi-led Coalition to improve clearance and cargo discharge processes. The United States is also supporting an expanded inspections proposal for UNVIM that may address Coalition concerns about the smuggling of illicit weapons and components into Hudaydah port. The plan aims to increase the number of inspections, improve inspections equipment, and enhance facilities. Since January 2017, there have been two UNVIM monitors at the port in Jeddah, Saudi Arabia, to assist with inspections. The EHOc has deployed a liaison officer to UNVIM's head office in Djibouti to formalize coordination and resolve challenges more effectively.

Commercial flights into or out of Sana'a airport remain prohibited by the Saudi-led Coalition, cutting off access for Yemeni civilians to outside medical treatment and opportunities to seek asylum or flee internal armed conflict. The EHOc continues to approve UN Humanitarian Air Service and International Committee of the Red Cross flights in and out of the airport for the transport of humanitarian aid, including medicine, and international humanitarian workers. Border crossings between Saudi Arabia and Yemen remain open to commercial traffic, civilian crossings, and transport of humanitarian aid – including food, medicine, and shelter aid provided by the King Salman Humanitarian Aid and Relief Centre.

Equally important as increasing the amount of imports is building a functioning and credible financial system. The lack of liquidity, inefficient management of foreign exchange reserves, and irregular salary payments to civil servants are straining Yemen's economy. The Administration is working with Saudi Arabia and the UAE to deliver technical assistance to the Central Bank of Yemen (CBY). Restoring the bank's functionality is an important first step toward revamping the Yemeni economy. The United States, with our Saudi, Emirati, and British partners (a forum known as the Quad) worked with the ROYG last year to restore the CBY's access to foreign reserve funds held at the Federal Reserve Bank in New York. This helped restore some liquidity. The Quad works with CBY leadership, the International Monetary Fund, and the UN Special Envoy's office to arrange the reunification of the Aden and the Sana'a

branches of the CBY. If successful, this will allow the CBY to set and enforce a monetary policy and facilitate the payment of government employee salaries. The Quad also enlisted the IMF to conduct a diagnostic of the CBY, which will lead to a donors meeting in Fall 2018. Saudi Arabia provided a four-week technical training to CBY employees in December 2017 and provided \$2 billion in foreign exchange to increase liquidity and credit and facilitate imports of basic commodities. The CBY is using some of the \$2 billion to fund letters of credit for importers to ensure availability of staple commodities and, hopefully, prevent an increase in prices.

Saudi Arabia's Efforts to Undertake Actions to Reduce Unnecessary Delays to Shipments

In the case of Saudi Arabia, the Administration assesses that the Government is undertaking necessary actions to reduce unnecessary delays to shipments associated with secondary inspection and clearance processes other than UNVIM. Since late November 2017, Hudaydah and Saleef ports remain open and operational. At the request of the ROYG, the Saudi-led Coalition approves vessels' entrance into Yemen's territorial waters; however, once vessels clear the Coalition's holding area, Houthis control the operations at the port where offloading occurs. Ras Isa port has been closed since June 2017. Certain ports that are under ROYG control, such as Mukallah and Aden ports, also remain open and operational; however, humanitarian partners have reported some delays at Aden port due to Coalition inspections of ships and low management capacity. EHOC assists the ROYG with clearances for Aden port in southern Yemen. While the first step is to clear vessels to enter the ports, all sides must ensure that commercial and humanitarian goods can reach Yemenis who desperately need it without unnecessary impediments. UNVIM and EHOC report that communication and coordination between the two entities have improved. Additionally, UNVIM implemented in February 2018 a process for vessels to inform UNVIM directly by email or phone of the vessel's expected date of discharge and next port of call. UNVIM then communicates this to the EHOC and the Coalition's Western Fleet to avert any delay on vessels exiting the port.

There has been a notable trend in improved EHOC clearance times since mid-June 2018. The average clearance time for the week ending July 31, 2018, was approximately 21 hours, compared to 67 hours over the previous three months. Additionally, the average weekly number of clearance requests has risen from 6.48 to 6.83 when compared to the period from December 20, 2017, to June 12, 2018, – that is, from the period when restrictions were eased at the key Red Sea ports to when UAE-backed Yemeni forces advanced towards Hudaydah airport. As part of Saudi Arabia's YCHO plan, the governments of Saudi Arabia and Yemen signed a memorandum of understanding on February 5, 2018, for Saudi Arabia to supply mobile cranes at ROYG-controlled ports of Aden, Mocha, and Mukalla to increase throughput capacity at those locations. The cranes are able to handle an output of 60 tons per day. In late July 2018, Yemen's director general of docks and ports announced Aden port's Ma'alla terminal would extend its work hours, from 8 a.m. to 10 p.m. weekdays and 8 a.m. to 6 p.m. weekends, to 8 a.m. to 4 a.m. seven days a week. The move is expected to ease congestion at Aden port.

The ROYG and Coalition forces paused military operations to liberate Hudaydah and Saleef ports after capturing Hudaydah airport to provide space to the UN Special Envoy's efforts to negotiate the withdrawal of conflict parties from the critical city and ports. Although ROYG and Coalition military operations have since restarted in Houthi-controlled areas south of these critical areas, ROYG and Coalition forces have continued to abstain from direct military actions

against Hodaydah and Saleef. Fighting in these areas has had a significant humanitarian impact, including civilian casualties, damage to critical infrastructure, and population displacement.

For the reasons outlined above, the Secretary of State has certified that the Government of Saudi Arabia and the Government of the UAE are undertaking the effort, measures, and actions described in section 1290(c). The Administration will continue to work closely with the Saudi-led Coalition to ensure Saudi Arabia and the UAE maintain support for UN-led efforts to end the civil war in Yemen, allow unimpeded access for the delivery of commercial and humanitarian support through as many avenues as possible, and undertake actions that mitigate the impact of the conflict on civilians and civilian infrastructure. The Administration believes that the support that the United States provides to Saudi Arabia and the UAE is helping defeat ISIS-Y and AQAP and counter Iran's malign activities. The success of all these efforts hinges on the resolution of this conflict; thus, the Administration fully supports the work to reach a negotiated political settlement under UN auspices.