DETERMINATION PURSUANT TO SECTION 7041(a)(3)(B) OF THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2017 (Div. J, P.L. 115-31)

By virtue of the authority vested in me as Secretary of State pursuant to section 7041(a)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, P.L. 115-31) (the "Act"), I hereby determine that it is important to the national security interest of the United States to waive the certification requirement under section 7041(a)(3)(A) of the Act. I hereby waive that requirement.

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

AUG 21-2018

Date

Michael R. Pompeo

MEMORANDUM OF JUSTIFICATION FOR WAIVER UNDER SECTION 7041(a)(3)(B) OF THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2017 (Div. J, P.L. 115-31)

The Secretary of State has determined that it is important to the national security interest of the United States to waive the certification requirement in section 7041(a)(3)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, P.L. 115-31) (SFOAA) with respect to 15 percent of foreign military financing (FMF) assistance withheld from obligation for assistance for Egypt.

The United States seeks a stable and prosperous Egypt that supports regional peace and efforts to combat terrorism. As the most populous Arab state and guarantor of Suez Canal security (through which approximately eight percent of global maritime trade transits), Egypt contributes to regional security. Egypt provides the U.S. military with overflight approvals, including in support of counter-ISIS operations. The U.S.-brokered 1979 Egypt-Israel Peace Treaty continues to be the foundation of U.S.-Egypt bilateral relations. The Egyptian government is eager to improve bilateral relations and to strengthen cooperation in counterterrorism and security. Egypt is engaged in an active counterterrorism campaign in northeast Sinai, where the country faces a growing insurgency from the ISIS branch.

The overall human rights climate in Egypt continues to deteriorate, with the government enacting and enforcing legislation that conflicts with its human rights obligations including the right of peaceful assembly, freedom of association, freedom of expression and fair trial guarantees. President al-Sisi signed into law highly restrictive legislation governing NGOs in May 2017, and civil society activity is otherwise severely constrained. A three-month state of emergency, imposed following terrorist attacks on Coptic churches in April 2017 and continually renewed since then, allows the state to take exceptional measures. Freedom of expression, including for the press, is highly restricted and these restrictions have been extended to expression on the internet.

There is a continuing problem with arbitrary arrests and detentions and enforced disappearances, and numerous allegations of torture and deaths in detention. There are reports of extrajudicial killings. The government did not comprehensively investigate human rights violations and abuses or hold perpetrators accountable, and inconsistently punished or failed to prosecute officials who were accused of committing such violations and abuses. To support U.S. goals, among other bilateral topics of discussion, the United States consistently encourages Egypt to expand domestic political participation and freedoms, respect human rights, hold its security forces accountable, and allow greater access to monitor assistance. Therefore, because the Department cannot conclude that Egypt meets the certification requirements regarding democracy and human rights, it is important to U.S. national security interests to waive the certification requirements in section 7041(a)(3)(A), which will allow for the obligation of the remainder of FMF for Egypt. As required by section 7041(a)(3)(B) of the SFOAA, this report sets forth the reasons why the requirements of section 7041(a)(3)(A) of the SFOAA cannot be met.

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With regard to (i) Taking effective steps to advance democracy and human rights in Egypt, including to govern democratically and protect religious minorities and the rights of women, which are in addition to steps taken during the previous calendar year for such purposes;

The Egyptian government has continued to restrict the right of peaceful assembly and freedoms of association and expression, including in the presidential elections. President al-Sisi was reelected in May after nearly all independent candidates were arrested or withdrew citing pressure from authorities. Since al-Sisi's reelection, numerous prominent activists and journalists have been arrested and charged with crimes including joining a banned group and spreading "false" news.

The government has taken some steps to protect and advance the rights of women, but religious and cultural barriers continue to limit women's political participation. Violence against women, sexual harassment, and female genital mutilation remain serious problems.

The government has taken some significant steps to protect and advance the rights of Egypt's Christian minority population. The provision of the church construction law which allows unlicensed churches and related buildings to be legalized is being implemented. Over 200 have been approved for licensing and more than 5,000 are pending. Some perpetrators convicted of killing Christians are being held accountable. The government has directed that 17 new communities around Cairo include churches and that the government will pay for their construction. Al-Sisi has also frequently emphasized in public the equality of Egypt's Christians with Muslims. However, authorities continue to largely fail to hold perpetrators of violence against Christians and their churches accountable, including local authorities reportedly colluding with perpetrators in coercing Copts to agree to the continued closure of churches. In addition, local and international rights groups reported several cases of authorities charging and convicting individuals with denigrating religion under Egypt's blasphemy law, targeting both Christians and Muslims.

With regard to (ii) Taking effective steps to implement reforms that protect freedoms of expression, association, and peaceful assembly, including the ability of civil society organizations and the media to function without interference;

There are increased restrictions on freedom of expression, freedom of association, and the right of peaceful assembly, including the ability of civil society organizations and the media to function without undue interference.

Authorities continue to implement a 2013 law governing public demonstrations that includes an expansive list of activities that are prohibited, including any public meeting of more than 10 individuals to discuss an issue of a public nature, without first notifying the Ministry of Interior. Human rights organizations estimate that thousands of individuals have been charged and convicted under the law. The government preemptively restricts peaceful public assembly by arresting activists in advance of planned protests.

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The government continues to investigate and prosecute peaceful critics, ranging from entertainers and media figures to ordinary citizens, for allegedly inciting violence, and insulting religion, the judiciary, the military, and other public institutions and figures. The government continues to block or censor internet content, denies journalists entry to Egypt, and has passed a new social media law leveraging fines on any person who "publishes or spreads false news." Since May 2017, Egyptian authorities have blocked more than 500 online outlets, including news and aggregator sites and a range of other sites.

There was an increase in reports of arrests and harassment of LGBTI individuals, particularly after a rainbow flag was raised at a concert in September 2017. Rights groups and activists reported harassment by police, including physical assault and forced payment of bribes to provide information concerning other LGBTI individuals or to avoid arrest.

Al-Sisi signed new legislation governing NGOs in May 2017. The law places NGOs under an onerous regulatory regime. It requires prior government approval for all projects; sets up a government committee, which includes the security services, to regulate foreign NGO funding; and contains a provision requiring a fee to be imposed on governments who provide grants to NGOs. The law includes severe criminal penalties, including prison sentences, for non-compliance and non-registration. Registration requires an affirmative act by the government to be considered effective. State-controlled and affiliated media continues to disseminate conspiratorial accusations to vilify NGOs receiving foreign assistance, including from the U.S. Government. Although the Egyptian government has not released implementing regulations and thus the law's implementation appears effectively suspended for the time being, the environment for civil society remains severely constrained.

With regard to (iii) Taking effective steps to release political prisoners and provide detainees with due process of law;

There were reports of large numbers of political prisoners and detainees, although verifiable estimates are not available. The government claimed there are no political prisoners, and that all persons in detention had been or were in the process of being charged with a crime unrelated to the exercise of their fundamental freedoms. Human rights groups and international observers assert the government detained or imprisoned as many as several thousand persons solely or chiefly because of their political beliefs or opposition to the government. Peaceful activists have been jailed on national security grounds for expressing anything that could be interpreted as criticism of government policy.

Egypt remains deficient in providing fair trial guarantees. There is excessive use of detention without bail and prolonged preventative detention during trials for nonviolent offenses. Some individuals have been held for over five years in pretrial detention. Military courts are sometimes used to try civilians, and there are mass trials involving hundreds of defendants with no evidence presented on an individual basis.

Arrests often occur without warrants or judicial orders. Conditions in prisons and detention centers are harsh due to overcrowding, physical abuse, inadequate medical care, and poor

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ventilation. Egyptian courts have continued to issue mass death sentences in proceedings that failed to meet Egypt's international human rights obligations.

With regard to (iv) Taking effective steps to hold Egyptian security forces accountable, including officers credibly alleged to have violated human rights;

Impunity of police and security forces remains a serious problem. There were numerous reports that the government or its agents committed arbitrary or unlawful killings while making arrests or holding persons in custody. There were allegations of persons tortured to death and of killings in prisons and detention centers. In both 2017 and 2018, footage of Egyptian soldiers appearing to execute prisoners in the Sinai was released on social media. We are not aware of any steps taken by Egyptian authorities to investigate these incidents or previous allegations of extrajudicial killings in the Sinai.

In some instances, lower-level officers were held accountable for violations and abuses; but in other cases, existing convictions were reduced on appeal. In February 2018, a court upheld the five-year sentencing of a police officer in connection with the 2013 deaths of 37 Muslim Brotherhood detainees. The officer was originally sentenced to 10 years in prison in 2014. The court upheld one-year suspended sentences against three other officers.

With regard to (v) Taking effective steps to provide regular access for United States officials to monitor such assistance in areas where the assistance is used:

The government continues to limit access to the conflict area in northern Sinai, where U.S. assistance is used, apart from official travel to Multinational Force and Observers facilities. The Egyptian military has provided limited access to U.S. officials to tour development projects in the Sinai near the Suez Canal.