



## U.S. Customs and Border Protection

NOV 05 2019

Commissioner

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Johnson:

Thank you for your July 17, 2019 letter. Acting Secretary McAleenan asked that I respond on his behalf.

I appreciate the commitment you have shown to the men and women of U.S. Customs and Border Protection (CBP) when speaking with me first by telephone and then in person regarding this and other matters. With regard to Operation Safe Return (OSR), CBP and the Department of Homeland Security (DHS) welcome the intent of the proposed process. As we have discussed, my staff and subject matter experts would welcome the opportunity to provide technical assistance on this matter.

Although your letter encouraged us to “use authorities in use as of June 30, 2019,” the applicable regulatory framework has changed substantially since that date. As authorized by Section 208 of the Immigration and Nationality Act (INA), DHS and the Department of Justice jointly issued an Interim Final Rule, “Asylum Eligibility and Procedural Modifications,” 84 Fed. Reg. 33829 (Third Country IFR), on July 16, 2019. The Third Country IFR modified asylum regulations to bar from asylum eligibility, with limited exception, aliens who have entered the United States across the southern land border after failing to apply for protection in at least one third country through which he or she transited en route to the United States. Single Adults (SAs) and Family Unit Aliens (FMUAs) who have traveled through at least one prior country that is a signatory to relevant international instruments governing consideration of refugee claims are subject to the Third Country IFR, unless there is an applicable exception. Aliens subject to the bar remain eligible for withholding of removal and protection under the Convention Against Torture and no alien will be returned to a country where it is more likely than not that they will be persecuted or tortured, in accordance with the government’s non-refoulement obligations.

Notwithstanding the new regulation, DHS and its components—including CBP—have worked diligently during the last several months to implement many of the concepts underpinning OSR. First, we have developed and implemented an effective process for returning Northern Triangle nationals who do not claim fear, including FMUAs, to their home country via expedited removal. Second, we have developed and begun implementing a pilot for the more effective processing of FMUAs amenable to the Third Country IFR. In order for this pilot to be successful, CBP, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services have

committed to investing in the resources and operational guidance necessary to implement streamlined processes.

Throughout the current crisis, CBP has pursued, and continues to pursue, all avenues within its authority to promptly transfer, transport, process, release, or repatriate those in our custody. However, I must again stress that, without Congressional action to address outdated laws and judicial interpretations, FMUAs and unaccompanied alien children (UAC) will continue to fall victim to human smugglers or transnational criminal organizations. They will continue to make the dangerous journey, drawn in part by incentives such as immediate or prompt release from detention due to the inability to detain family units and UAC. Without legislative changes, current rates of migration to could very well continue at current crisis levels or further escalate.

As CBP continues to implement effective and efficient strategies to address the current rates of migration, we appreciate continued engagement with Congress, and would be happy to offer a briefing on the initiatives described in this letter to you and your staff. We look forward to continue working with the Committee on durable solutions that serve the American people and restore integrity to our broken immigration system. It is my goal as Acting Commissioner of CBP to seek out every available solution to the current humanitarian and national security crisis in order to safeguard our homeland and our values.

Thank you for your interest in this important matter. The cosigners of your letter will receive a separate, identical response. Should you need further assistance, please do not hesitate to contact me or have a member of your staff contact Bradley F. Hayes, Acting Assistant Commissioner for the Office of Congressional Affairs, at 202-344-1760.

Sincerely,



Mark A. Morgan  
Acting Commissioner