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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, Chief Counsel and Staff Director
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October 23, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Mike Pompeo
Secretary
U.S. Department of State
Washington, D.C. 20520

Dear Secretary Nielsen and Secretary Pompeo:

As over 7,000 Hondurans travel through Mexico toward the United States border, we urge you to execute a safe third country agreement with the Mexican government that requires asylum seekers to make their claims in their first country of arrival. We believe this would be an appropriate next step because such an agreement is rooted in precedent, addresses our national security concerns, and serves the best interests of American citizens.

A safe third country agreement is not unprecedented. In 2002, the United States entered into an agreement with Canada for cooperation in the examination of refugee status claims from nationals of third countries. The 2002 Safe Third Country Agreement with Canada required those seeking refugee status to make their claim in the first country of arrival. Given our shared land borders with both Canada and Mexico, and the decade-long surge of illegal immigration across our southern border, such an agreement is both appropriate and just. Further, there is international precedent. The Dublin Regulation¹ required asylum seekers arriving in the European Union to register their claims in the first country of arrival, and the EU-Turkey 2016 Agreement required Syrian migrants to file their claims in Turkey if they arrived in Greece via the Mediterranean Sea.² The United States, which is by far the most generous nation in the world, should also take appropriate steps to legally defend our own sovereignty.

A safe third country agreement with Mexico would also address national security concerns inherent in a large group of unidentified individuals moving unabated toward the United States. We know now that this caravan, as it stands currently, is not entirely comprised of Central American asylum seekers. As then-President Obama's own Homeland Security Secretary, Jeh Johnson, noted in an agency memorandum, titled *Cross-Border Movement of Special Interest Aliens*: "we must continually evaluate our border and port of entry security posture to ensure our

¹ See Regulation (EU) No 604/2013 of the European Parliament and of the Council, Official Journal of the European Union, Jun. 26, 2013.

² See Council of the European Union, *EU-Turkey Statement*, Mar. 18, 2016.

resources are appropriately aligned to address trends in the migration of SIAs.”³ As you know, Special Interest Aliens or “SIAs” are individuals who are considered national security threats to our homeland, who attempt – often successfully – to enter the interior of the United States illegally. We need only look back to a 2017 investigative report from POLITICO that showed Hezbollah and their affiliated networks have trafficked narcotics, weapons and persons from Venezuela and other parts of Latin America, to the United States.⁴ Of particular concern is Guatemala’s recent announcement that it apprehended 100 ISIS terrorists in country, raising new security concerns about whether similar high risk individuals may have joined the caravan.⁵ Due to the likelihood that such national security threats could mask themselves within this large caravan population, at a minimum, our federal government must prioritize the security of American citizens over anything else.

A safe third country agreement also permits the federal government to address overdue fixes we need here at home, within our immigration laws and border security apparatus. Our border and immigration enforcement authorities are long overdue for aggressive increases in resources, technology, and infrastructure support. Further, our country’s legal system that would be tasked with processing the thousands of migrants’ claims for asylum is already in a dire state, and likely cannot withstand the incoming pressure. According to the *FY 2019 Proposed Refugee Admissions Report*, the number of pending affirmative asylum cases stands at about 320,000 (approximately 492,000 individuals).⁶ This is in addition to the immigration asylum backlog, which stands at about 348,000 individuals.⁷ Accepting this current caravan would add thousands of cases to our existing backlog, and send a message to future populations that the United States has open borders, all funded off the backs of American taxpayers and legal immigrants.

For over a decade now, United States sovereignty has been tested and too often disregarded. Under President Trump’s Administration, and due in large part to both of your efforts, the United States is finally in a position to secure our border and reinstitute law and order. We strongly urge you – on the eve of a new Mexican presidential administration – to set the tone for American sovereignty in the twenty-first century. Entering into a safe third country agreement with Mexico would send a message to our partners across Central America that they too must share the burden of unsanctioned mass migration.

³ See Jeh Charles Johnson, *Cross-Border Movement of Special Interest Aliens*, Memorandum, Department of Homeland Security, Jun. 24, 2016. (Attached).

⁴ See Josh Meyer, *The Secret Backstory of how Obama let Hezbollah off the Hook*, POLITICO, Dec. 18, 2017.

⁵ Andrea Orozco, *Executive Reserves Information about ISIS Captures*, Prensa Libre, <https://www.prensalibre.com/guatemala/politica/captura-de-terroristas-de-isis-es-informacion-prottegida-segun-el-ejecutivo>.

⁶ See *Proposed Refugee Admissions for Fiscal Year 2019 Report to Congress*.

⁷ See *id.*

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive style with a large, prominent "C" and "G".

Charles E. Grassley
(R-IA)
Chairman
U.S. Senate Committee on the Judiciary

A handwritten signature in blue ink that reads "Mike S. Lee". The signature is written in a cursive style with a large, prominent "M" and "L".

Mike S. Lee
(R-UT)
U.S. Senate Committee on the Judiciary



Homeland Security

June 24, 2016

MEMORANDUM FOR: Sarah Saldaña
Director, U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske
Commissioner, U.S. Customs and Border Protection

León Rodríguez
Director, U.S. Citizenship and Immigration Services

ADM Paul F. Zukunft
Commandant, United States Coast Guard

Francis X. Taylor
Under Secretary for Intelligence and Analysis,
Counterterrorism Coordinator, and Chief Intelligence Officer


Alan Bersin
Assistant Secretary for International Affairs
and Chief Diplomatic Officer

VADM William Lee
Director, Joint Task Force – East

Janice Ayala
Director, Joint Task Force – Investigations

Commander Robert Harris
Director, Joint Task Force – West

Todd Bresseale
Assistant Secretary for Public Affairs

FROM: Jeh Charles Johnson 

SUBJECT: Cross-Border Movement of Special Interest Aliens

This Department is doing much to identify and address Special Interest Aliens (“SIAs”) apprehended at our borders. As we all appreciate, SIAs may consist of those who are potential national security threats to our homeland. Thus, the need for continued vigilance in this particular area.

I want to ensure we are bringing the full resources of the Department to bear in a coordinated manner on the issue of SIAs, while continuing to utilize existing operating structures. Therefore, I hereby direct the convening of a multi-DHS Component “SIA Joint Action Group.” The primary task of the Joint Action Group shall be to develop a consolidated action plan, to be executed by the JTFs and Components, and guided by the following lines of effort:

Ensure intelligence collection and analysis: Timely and actionable intelligence is essential to effectively drive efforts to counter the threats posed by the smuggling of SIAs. As such, we must ensure we have a mechanism to lead, deconflict, integrate, and coordinate DHS migration-related intelligence collection and analysis.

Law Enforcement and Investigations: The Department is conducting global law enforcement investigations and operations to identify, disrupt, and dismantle human smuggling organizations. These include ongoing operations like Operation Citadel and Operation All In. Even as we continue operations such as these, we must ensure that we are bringing to bear the full resources of the Department, and those of our Federal government partners, in an effective and coordinated manner to bring down organizations involved in the smuggling of SIAs into and within the United States.

Border and Port of Entry Operations: DHS has a number of capabilities in place – including a dedicated and mission-focused staff, border infrastructure, fixed and mobile sensing technologies, air and marine support, unmanned aerial systems, maritime interdiction capabilities, biometric entry, and the National Targeting Center – to help us identify and interdict SIAs of national security concern who attempt to enter the United States. Nevertheless, we must continually evaluate our border and port of entry security posture to ensure our resources are appropriately aligned to address trends in the migration of SIAs, while maintaining other aspects of DHS’s border security mission. This evaluation should also include an assessment of our policies with respect to the screening and detention of particular categories of SIAs apprehended while attempting to enter the United States illegally.

International engagement: By its nature, the issue of SIAs requires extensive engagement with source and transit countries. We have done much in the last few years to enhance our engagement and cooperation with our international partners, and have described how the Department uses the range of its capabilities in concert with international partners to mitigate risks to the homeland through our recently released

International Engagement Strategy. Specific actions have included the development of Transnational Criminal Investigative Units (TCIUs), Special Tactics Operations Groups (GOETs), the Joint Security Program (JSP), the Immigration Advisory Program (IAP), the Biometric Identification Transnational Migration Alert Program (BITMAP), Secure Real Time Platform (SRTP), the Automated Targeting System – Global (ATS-G), Advanced Passenger Information Sharing (APIS), and the Human Smuggling Global Plan. These are all important efforts which have demonstrated tangible results. We must build on these efforts and ensure robust and effective DHS engagement with both source countries of these migrants and transit countries in region, and with other critical U.S. government partners, particularly the Department of State.

International capacity building: We are currently engaged in activities to enhance the abilities of our partner nations to combat the national security and public health risks. We have provided mentors, technical assistance, and other capabilities to build partner nation capacity. Additionally, we have identified training needs, begun delivering training in detecting signs of human smuggling, and provided other assistance to counter related national security and public health threats. Given the increased global movement of SIAs, DHS components must work collaboratively with external stakeholders, consistent with Presidential Policy Directive 23, Security Sector Assistance, to enhance our capacity building in both source and transit countries. These efforts should be executed in concert with Security Sector Assistance funding sources in the Departments of State and Defense.

Public messaging: The above lines of effort should be coordinated with public messaging, so that we can effectively communicate to the American public, and in source and transit countries, what we are doing to protect the United States and our partners against this potential threat. The message must be clear: DHS will use the full array of its authorities and capabilities, here and abroad in concert with U.S. government and foreign partners, to detect, disrupt, and dismantle human smuggling organizations, particularly those who specialize in smuggling migrants into the Western Hemisphere.

Under Secretary Francis X. Taylor will chair the SIA Joint Action Group, and members will include the three Joint Task Force Directors as well as the Deputy Component heads of the Office of Intelligence and Analysis, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, the United States Coast Guard, DHS Office of Policy, and DHS Office of Public Affairs. Other DHS Components will participate and provide support as requested by the Joint Action Group. Each member of the Joint Action Group shall designate working group-level personnel to undertake the Group's day-to-day work. Please identify working group-level personnel to the Joint Action Group Chair no later than June 28. The Joint Action Group will report to me on its progress at our recurring Southern Border and Approaches Campaign/Joint Task Force Directors meeting, or at other times and fora as appropriate.

To assist in development of the consolidated action plan, the Joint Action Group shall, as an initial matter, undertake two assessments. First, to ensure we have a comprehensive intelligence picture, the Joint Action Group shall develop an intelligence assessment of the SIA issue, coordinated under the auspices of the DHS Chief Intelligence Officer. Second, to ensure we have a comprehensive view of the capabilities and resources devoted to this issue across the Department, I direct each Component to develop a Component-specific capability estimate, which should describe available authorities, policies, and resources, as well as potential recommendations for additional resources. These will be provided to me in a consolidated brief by the Joint Action Group by July 12.

These two products will be used to conduct an analysis of the shortfalls, limiting factors, and potential areas for improvement in the Department's ability to fulfill this mission, and of opportunities to effectively enhance our coordinated efforts. This should include a clear assessment of unmet resource requirements, as well as outstanding or pending policy or programmatic issues. The Joint Action Group will then develop courses of action, based on the findings of this analysis, to be presented to me by August 3. Based on the selected courses of action, the Joint Action Group will provide the consolidated action plan to me by August 24.

Thank you in advance for your immediate attention to this directive, and for your continued work on this issue.

cc:

Deputy Secretary

Under Secretary for Management

Under Secretary for National Protection and Programs Directorate

Director, United States Secret Service

Administrator, Federal Emergency Management Agency

Administrator, Transportation Security Administration

General Counsel

Director, Federal Law Enforcement Training Center

Assistant Secretary for Legislative Affairs