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December 19, 2019

Maureen A. Dunn

Chief, Humanitarian Affairs Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
Office of Policy and Strategy, Suite 1200
20 Massachusetts Avenue NW
Washington, DC 20529

Re: **DHS Docket No. USCIS-2019-0021**
EOIR Docket No. 19-0021

Dear Chief Dunn,

On behalf of ADL (the Anti-Defamation League), we are writing to oppose in the strongest terms the above-referenced interim final rule governing asylum claims of displaced people who transited through another country en route to the southern border of the United States. We urge that it be immediately withdrawn.

ADL is a leading anti-hate organization founded in 1913 to stop the defamation of the Jewish people and to secure justice and fair treatment for all. We are rooted in a community that has experienced the plight of living as refugees throughout its history. ADL has advocated for fair and humane immigration policy since our founding and has been a leader in exposing anti-immigrant and anti-refugee hate that has poisoned our nation's debate.

In light of our mission, ADL opposes the interim final rule as drafted and calls on the Department of Homeland Security to immediately withdraw it, including terminating any proceedings currently pending pursuant to the interim final rule.

The interim final rule (Rule) finds that, with limited exceptions, displaced people who enter or attempt to enter the United States across the southern border are ineligible for asylum if they did not apply for protection in a country through which they transited en route to the U.S. Someone found ineligible for asylum under the Rule may be subject to an order of removal under an Asylum Cooperative Agreement (ACA). There is a pre-existing ACA with Canada, but this Rule specifically excludes Canada from its implementation. Instead, the Rule focuses on three new ACAs, as outlined in the Rule: El Salvador, Guatemala, and Honduras. The Rule claims that none of these agreements have yet entered into force.¹

¹ Department of Homeland Security and Department of Justice, Notice of Rulemaking and Request for Comment on Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, USCIS Docket No. USCIS-2019-0021 and EOIR Docket No. 19-0021, A.G. Order No. 4581-2019, 84 F.R. 63994, issued November 19, 2019.

Shortly after the issuance of the Rule in mid-November 2019 – before it was finalized and while the comment period was still open – the Department of Homeland Security (DHS) began sending non-Guatemalan asylum seekers to Guatemala. Although officials initially said that they would only be turning away single adults, DHS also began applying the policy to non-Guatemalan families in mid-December.² Guatemala is not equipped to handle an influx of asylum claims. Susan Fratzke, a policy analyst with the Migration Policy Institute and a former official in the U.S. Department of State’s Bureau of Population, Refugees, and Migration, describes Guatemala’s asylum system as “embryonic”.³

Alarminglly, the three specific ACAs referenced in the Rule involve countries the United States Department of State knows to be unsafe. The State Department has an ongoing Travel Advisory in place for Guatemala advising travelers to exercise increased caution when going to Guatemala and to reconsider travel to a number of areas due to crime: “Violent crime, such as armed robbery and murder, is common. Gang activity, such as extortion, violent street crime, and narcotics trafficking, is widespread. Local police may lack the resources to respond effectively to serious criminal incidents.”⁴

Similarly, the State Department has issued a Travel Advisory for El Salvador, noting additionally that arms trafficking is a widespread form of gang activity in the country.⁵ The Travel Advisory for Honduras is even more severe, advising travelers to reconsider travel to Honduras and explicitly counseling against travel to the Gracias a Dios Department, “an isolated area with high levels of criminal activity and drug trafficking” where “[i]nfrastructure is weak, government services are limited, and police and military presence is scarce” and U.S. government employees are restricted from travel.⁶ Moreover, according to the State Department, “[v]iolent gang activity, such as extortion, violent street crime, rape, and narcotics and human trafficking, is widespread”⁷; local law enforcement and state services are unable to respond effectively to this prevalent violence.⁸

Sending displaced persons seeking asylum to another country where they will not be safe is inconsistent with international law. As a signatory of the 1967 Protocol Relating to the Status of Refugees and the 1984 Convention Against Torture, the United States has an obligation of *non-*

² Molly O’Toole, *Los Angeles Times*, “In a first, U.S. starts pushing Central American families seeking asylum to Guatemala,” Dec. 10, 2019, <https://www.latimes.com/politics/story/2019-12-10/u-s-starts-pushing-asylum-seeking-families-back-to-guatemala-for-first-time>.

³ David C. Adams, *Univision News*, “Guatemala’s ‘embryonic’ asylum system lacks capacity to serve as safe U.S. partner, experts say,” Aug. 2, 2019, <https://www.univision.com/univision-news/immigration/guatemalas-embryonic-asylum-system-lacks-capacity-to-serve-as-safe-u-s-partner-experts-say>.

⁴ U.S. Department of State, Bureau of Consular Affairs, “Guatemala International Travel Information,” <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Guatemala.html> (web-page last visited Dec. 17, 2019).

⁵ U.S. Department of State, Bureau of Consular Affairs, “El Salvador Travel Advisory,” <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html> (web-page last visited Dec. 18, 2019)(“ Violent crime, such as murder, assault, rape, and armed robbery, is common. Gang activity, such as extortion, violent street crime, and narcotics and arms trafficking, is widespread. Local police may lack the resources to respond effectively to serious criminal incidents.”).

⁶ U.S. Department of State, Bureau of Consular Affairs, “Honduras Travel Advisory”, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/honduras-travel-advisory.html> (web-page last visited Dec. 18, 2019).

⁷ Id.

⁸ Id.

refoulement – an asylum seeker cannot be sent to another territory or State where they fear threats to their life or freedom or are in danger of being subjected to torture.⁹ Consequently, the United Nations has repeatedly expressed concerns about the Rule and attendant ACAs, arguing that the Rule “excessively curtails the right to apply for asylum, jeopardizes the right to protection from refoulement, significantly raises the burden of proof on asylum seekers beyond the international legal standard, sharply curtails basic rights and freedoms of those who manage to meet it, and is not in line with international obligations.”¹⁰

ADL is mindful that Jews have a long history of displacement throughout the world. Many American Jewish families first came to this country as refugees and asylum seekers. We are also acutely aware of what happens when the United States flatly denies asylum to displaced persons without consideration for the harm they may face once turned away from this country’s protection, because the incident of the *St. Louis* is burned into our collective memory.

In 1939, the German ship *St. Louis* sailed for Cuba carrying 937 passengers. Almost all of them were Jews fleeing Nazi Germany. Most of the Jewish passengers had applied for U.S. visas and were planning to stay in Cuba only until they could enter the United States. However, political conditions in Cuba changed abruptly just before the ship sailed and only 28 passengers were actually admitted by the Cuban government. The remaining 908 passengers were left in limbo – unable to disembark and be admitted to Cuba and terrified of turning back. The *St. Louis* was ordered out of Cuban waters on June 2, 1939 and sailed so close to Miami that passengers could see its lights. Some of them cabled President Franklin D. Roosevelt asking for refuge. He never responded. Instead, the State Department sent a passenger a telegram stating that passengers must “await their turns on the [visa] waiting list and qualify for and obtain immigration visas before they may be admissible into the United States.”¹¹

The asylum seekers aboard the *St. Louis* had no choice but to return to Europe. Notably, they did not return to Germany. Jewish organizations were able to negotiate with four European governments to secure entry visas for the passengers – they found refuge in “safe” third countries. Unfortunately, Germany invaded western Europe in May 1940, trapping 532 former *St. Louis* passengers. About half – 254 people – were murdered in the Holocaust.¹² This Rule turning away asylum seekers directly ignores the tragic lessons we should have learned from turning our back on Jewish refugees during World War II and would again close America’s doors to some of the world’s most vulnerable people.

Jews learn from the rabbis in *Pirke Avot* (1:5) to “let your house be open wide, always treating the poor as members of your own family.” In the Talmud, Rabbi Eliezer says that the Torah

⁹ U.N. General Assembly, *Convention and Protocol Relating to the Status of Refugees*, December 2010, United Nations, <https://www.unhcr.org/en-us/3b66c2aa10>, at Art. 33; U.N. General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, June 26, 1987, United Nations, <https://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>, at Art. 3.

¹⁰ UN Refugee Agency, “UNHCR deeply concerned about new U.S. asylum restrictions,” <https://www.unhcr.org/en-us/news/press/2019/7/5d2cdf114/unhcr-deeply-concerned-new-asylum-restrictions.html> (web-page last visited Dec. 17, 2019); see also UN Refugee Agency, “Statement on new U.S. asylum policy,” <https://www.unhcr.org/en-us/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html> (web-page last visited Dec. 17, 2019).

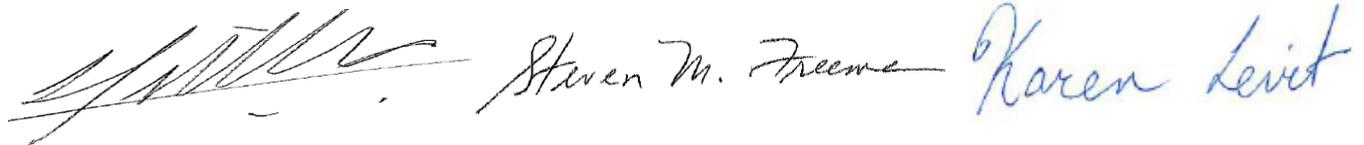
¹¹ United States Holocaust Memorial Museum, Holocaust Encyclopedia, “Voyage of the *St. Louis*,” <https://encyclopedia.ushmm.org/content/en/article/voyage-of-the-st-louis> (web-site last visited Dec. 17, 2019).

¹² *Id.*

“warns against the wronging of a *ger* (a stranger).” (Baba Metsia 59b). We should take these principles to heart; America is a nation of immigrants who were strangers once.

ADL is concerned that this interim final rule is unduly harsh and lacks compassion for those seeking asylum at our border. This change to immigration law does not improve our immigration system, nor is it the appropriate way to handle the volume of displaced persons being processed and often detained through the current immigration system. Instead, it violates international law and undermines the very core of our asylum system by turning asylum seekers away and sending them to places where they will not be safe. This interim final rule should be withdrawn, and instead the Department should focus on helping immigrants and their families thrive and become an integral part of this nation’s fabric.

Sincerely,

The image shows three handwritten signatures in black ink. The first signature on the left is for Max Sevilla, the middle one is for Steven M. Freeman, and the one on the right is for Karen Levit.

Max Sevilla
Vice President, Government
Relations, Advocacy &
Community Engagement

Steven M. Freeman
Vice President
Civil Rights

Karen Levit
National Civil Rights Counsel