

**Congress of the United States**  
**Washington, DC 20515**

June 27, 2019

The Honorable Michael Pompeo  
Secretary  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

The Honorable Kevin K. McAleenan  
Acting Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20016

Dear Secretary Pompeo and Acting Secretary McAleenan:

We write to express our opposition to the negotiation of safe third country agreements with the Governments of Guatemala and Mexico and to explain how their negotiation would be contrary to U.S. law. The President does not have independent constitutional authority to negotiate and conclude such agreements. Rather, that authority must flow from – and be exercised in compliance with – a statute passed by Congress. Because Mexico and Guatemala do not meet the requirements for safe third country agreements under the Immigration and Nationality Act (INA), the President lacks the legal authority to proceed with these negotiations.

The INA states that safe third countries must allow for individuals to “have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.” *See* 8 U.S.C. 1158. The INA also requires that safe third countries be nations “in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.” The State Department’s 2018 Human Rights Reports on Guatemala and Mexico make it clear that Guatemala and Mexico do not meet these standards.

The Report on Guatemala states that “the judicial system generally failed to provide fair or timely trials due to inefficiency, corruption and intimidation of judges, prosecutors and witnesses”. It also notes that Guatemala did not define the term “refugee” under domestic law until 2017, and that regulations to implement that law have not yet been issued. Most alarmingly, with regard to asylum, your Administration’s report states that “UNHCR...reported that identification and referral mechanisms for potential asylum seekers were inadequate. Both

migration and police authorities lacked adequate training concerning the rules for establishing refugee status.”

Likewise, the State Department’s 2018 Human Rights Report on Mexico raises several concerns regarding Mexico’s ongoing challenges in establishing a functioning asylum system and in protecting asylum applicants while in country. For example, the report notes that “NGOs reported bribes sometimes influenced the adjudication of asylum petitions and requests for transit visas.” The report also states, “The press and NGOs reported victimization of migrants by criminal groups and in some cases by police, immigration officers, and customs officials. Government and civil society sources reported the Central American gang presence spread farther into the country and threatened migrants who had fled the same gangs in their home countries.” Finally, it explains, “A November 2017 Amnesty International report highlighted the dangers Central American LGBTI migrants faced in Mexico. Citing UNHCR data, the report stated two-thirds of LGBTI migrants from El Salvador, Guatemala, and Honduras who applied for refugee status reported having been victims of sexual violence in Mexico.”

Rather than unlawfully negotiating safe third country agreements with the Governments of Guatemala and Mexico, the Administration should return to the longstanding and common-sense bipartisan policy of providing foreign assistance to the Northern Triangle countries to address the root causes of child and family migration. At the same time, we must partner with the Mexican government as it works to strengthen its asylum system.

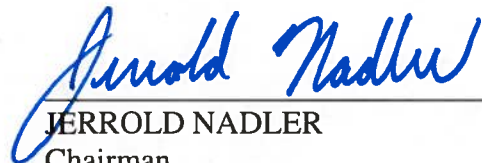
In closing, we reiterate that under the law, the executive branch does not now have the authority to negotiate safe third country agreements with Guatemala or Mexico, and we request an immediate briefing for our offices to address these concerns and discuss the legality of safe third country agreements with Guatemala and Mexico. Such a briefing must include the appropriate representatives from the State Department’s Office of the Legal Adviser.

Thank you for your attention to this urgent matter.

Sincerely,



ELIOT L. ENGEL  
Chairman  
House Committee on Foreign Affairs



JERROLD NADLER  
Chairman  
House Committee on the Judiciary



BENNIE G. THOMPSON  
Chairman  
House Homeland Security Committee