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July 24, 2019

United States Senate
Washington, DC 20510

RE: Operation Safe Return Is Not Safe

Dear Senators:

I write on behalf of Human Rights Watch to express strong opposition to the Senate letter signed by Ron Johnson, Kyrsten Sinema, Rob Portman, Joe Manchin, James Lankford, Doug Jones, Michael Enzi, John Barrasso, and John Cornyn expressing their desire for the implementation of a pilot program they term Operation Safe Return.¹ Operation Safe Return, despite the name, will not keep asylum seekers safe but instead will increase the risk of returning refugees to harm and separating families through fast-track deportations.

Under Operation Safe Return, families apprehended at the US border would be subject to fast-track deportation procedures that essentially speed up existing expedited removal procedures and apply them to more families. The program, as described in the Senators' letter, provides that these families would be interviewed on their reasons for coming to the US by Border Patrol officers, and that families "shall be provided fair access to non-governmental attorneys or waive access within 48 hours." Those who do express fear of return would be given "credible fear" interviews within approximately nine days after being encountered. Those who are determined not to have a credible fear may request to have their cases reviewed by the Department of Justice, and within approximately 15 days after being encountered, the Department of Homeland Security (DHS) would deport families who are not found to have a credible fear.

Despite the letter's claims regarding the fairness of the process, our own research on expedited removal shows that it lacks adequate safeguards



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¹ United States Senate Letter to President Trump Signed by Senators Johnson, Sinema, Portman, Manchin, Lankford, Jones, Enzi, Barrasso, and Cornyn, July 17, 2019, <https://www.hsgac.senate.gov/imo/media/doc/2019-07-17%20RHJ,%20Et%20All%20to%20President%20Trump%20re%20Operation%20Safe%20Return.pdf> (accessed July 23, 2019).

against rapid deportation without a fair hearing.² Operation Safe Return would allow the fast-tracked implementation of the Trump administration's latest effort to bar asylum seekers, an interim final rule that effectively renders ineligible for asylum anyone who has traveled through a third country to reach the southern US border.³

Border Patrol agents currently applying expedited removal already subvert the rule of law, as Human Rights Watch research has found. Agents often fail to record asylum seekers' claims of fear and their intention to apply for asylum, in violation of US and international law. Asylum seekers also report that Border Patrol officers have harassed, threatened, and attempted to dissuade them from applying for asylum.⁴ Empowering officers who have already proven themselves unable to uphold US asylum obligations to identify more families for fast-track deportations will lead to disastrous results.

It is highly unlikely that families in DHS custody could have meaningful access to attorneys in such a fast-track program. Under existing expedited removal procedures, we have seen asylum seekers deported to dangerous situations without legal representation.⁵ The proposal does not specify what "fair access" to attorneys looks like and merely promises families will receive a list of pro bono legal counsel. Currently, migrants in Border Patrol detention facilities do not have access to attorneys. Even migrants in Immigration and Customs Enforcement (ICE) facilities, who have more access to Legal Orientation Programs, which inform asylum seekers about US immigration procedures and their rights, and a more clearly defined right to an attorney, find it extremely challenging to find legal representation. As one woman subjected to existing fast-track expedited removal told Human Rights Watch, "They give you a paper with [the names of] free lawyers. But nobody answers when you call."⁶ One study found that among detained families, only 32 percent were able to find counsel for the initial stage of proceedings.⁷ And these families were not expected to find counsel to present life-or-death claims in days, as would be the case under Operation Safe Return.

² Human Rights Watch, *"You Don't Have Rights Here": US Border Screening and Returns of Central Americans to Risk of Serious Harm*, October 16, 2014, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>.

³ "US: New Rule Flouts Asylum Norms," Human Rights Watch news release, July 15, 2019, <https://www.hrw.org/news/2019/07/15/us-new-rule-flouts-asylum-norms>

⁴ Human Rights Watch, *"You Don't Have Rights Here": US Border Screening and Returns of Central Americans to Risk of Serious Harm*, https://www.hrw.org/sites/default/files/reports/us1014_web_o.pdf, pp. 26-29

⁵ *Ibid.*, pp. 30-35.

⁶ *Ibid.*, pp. 31.

⁷ Ingrid Eagly et al., American Immigration Council, "Detaining Families: A Study of Asylum Adjudication in Family Detention," August 2018, https://www.americanimmigrationcouncil.org/sites/default/files/research/detaining_families_a_study_of_asylum_adjudicati_in_family_detention_final.pdf (accessed July 23, 2019).

The letter does not specify in what kind of facilities families would be held, but again, Customs and Border Protection and Immigration and Customs Enforcement are agencies with horrific track records in maintaining safe conditions for children and adults.⁸ Families deprived of adequate sleep and food and in unsanitary conditions are unlikely to be able to participate meaningfully in a process designed for rapid deportation.

The rapid deportation envisioned in Operation Safe Return is also likely to risk more family separations, as some members of a family could be apprehended and deported quickly without a fair hearing on their claim of persecution while others remain in the US. Families are sometimes forced to flee or travel separately, meaning that US authorities do not encounter them at the same time.

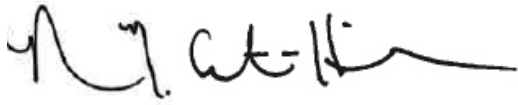
Despite the Trump administration's repeated efforts to deny access to asylum, the United States has a clear obligation under US and international law to ensure asylum seekers can fairly exercise their right to seek asylum. For this right to be meaningful, asylum seekers need to have genuine access to legal representation and fair hearings before impartial judges. Fair processing of asylum-seeking families can even be more cost-effective than strategies focused purely on detention and deterrence. As found by DHS's Office of Inspector General, the ICE Family Case Management Program, a support system for non-detained asylum seeking families, primarily Central American mothers and children, was extremely successful, with 100 percent attendance at court hearings, at a cost of \$36 per day per family unit compared to nearly \$300 per day per person for family detention.⁹

Human Rights Watch recognizes that the backlog in immigration courts is a major failure in the US immigration system. We support efforts to reduce the backlog in ways that protect human rights values of humane treatment, fairness and due process, such as alternatives to detention, more immigration judges and restoring of immigration judges' discretion to administratively close low-priority cases. We oppose strongly, however, this effort to speed-up deportations of migrant families through fast-track procedures that give more power to agencies that have already proven themselves unable to ensure migrants' basic asylum rights.

Sincerely,

⁸ "Written Testimony: 'Kids in Cages: Inhumane Treatment at the Border,'" Human Rights Watch news release, July 11, 2019, <https://www.hrw.org/news/2019/07/11/written-testimony-kids-cages-inhumane-treatment-border>; Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*, June 20, 2019, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

⁹ Jane C. Timm, "This Obama-era pilot program kept asylum-seeking migrant families together. Trump canceled it." *NBC News*, June 24, 2018, <https://www.nbcnews.com/storyline/immigration-border-crisis/obama-era-pilot-program-kept-asylum-seeking-migrant-families-together-n885896> (accessed July 23, 2019).

A handwritten signature in black ink, appearing to read "Nicole Austin-Hillery". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nicole Austin-Hillery
Executive Director, US Program
Human Rights Watch