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DEPARTMENT OF HOMELAND SECURITY

Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims

AGENCY: Department of Homeland Security, Office of Strategy, Policy, and Plans.

ACTION: Notice of agreement.

SUMMARY: The Department of Homeland Security is publishing the Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims. The text of the Agreement is set out below.

Robert Paschall,
Deputy Assistant Secretary for International Affairs,
Office of Strategy, Policy, and Plans,
U.S. Department of Homeland Security.

AGREEMENT
BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR

FOR COOPERATION IN THE EXAMINATION OF PROTECTION CLAIMS

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR (hereinafter referred to individually as "Party," or collectively as "the Parties"),

CONSIDERING that El Salvador is a party to the 1951 Convention relating to the Status of Refugees, done at Geneva, July 28, 1951 (the "1951 Convention") and the Protocol relating to the Status of Refugees, done at New York, January 31, 1967 (the "1967 Protocol"), and the United States is party to the 1967 Protocol, and reaffirming the Parties' obligations to provide protection for eligible refugees who are physically present in their respective territories in accordance with their respective obligations under those instruments, subject to the Parties' respective reservations, understandings, and declarations;

ACKNOWLEDGING in particular the obligations of the Parties in honoring the principle of non-refoulement as set forth in the 1951 Convention and the 1967 Protocol, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (the "Convention Against Torture"), subject to the Parties' respective reservations, understandings, and declarations and reaffirming their respective obligations to promote and protect human rights and fundamental freedoms consistent with their respective international obligations;

RECOGNIZING and respecting the obligations of each Party under its domestic laws, policies, instructions, and agreements;

EMPHASIZING that the United States and El Salvador offer systems of refugee protection that are consistent with their respective obligations under the 1951 Convention or the 1967 Protocol, and committed to the notion that cooperation and burden-sharing with respect to refugee status claimants can be enhanced;

DESIRING to uphold asylum or equivalent temporary protection as a critical instrument of the international protection of refugees, while simultaneously desiring to prevent fraud in the asylum process, which undermines its legitimate purpose, and resolved to strengthen the integrity of that institution and the public support on which it depends; and

AWARE that such sharing of responsibility must ensure in practice that persons in need of international protection are identified and that breaches of the fundamental principle of non-refoulement are avoided, and therefore determined to safeguard for each refugee status claimant eligible to pursue a refugee status claim who comes within their jurisdiction, access to a full and fair refugee status determination procedure;

AGREE as follows:

ARTICLE 1

For the purposes of this Agreement:

1. "Protection Claim" means a request from a person to the government of a Party for protection consistent with their respective obligations under the 1951 Convention or the 1967 Protocol, or the Convention Against Torture, in accordance with the Parties' respective laws and policies implementing those obligations, or any other equivalent temporary protection available under El Salvadornian migration law.

2. "Protection Claimant" means any person who makes a Protection Claim in the territory of one of the Parties.

3. "Protection Determination System" means the sum of laws and administrative and judicial practices employed by each Party's national government for the purpose of adjudicating Protection Claims. In the case of El Salvador, it means any applicable laws, regulations, decrees, or resolutions.

4. "Unaccompanied Minor" means a Protection Claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian present and available to provide care and custody in the country where the Unaccompanied Minor is encountered, either in the United States or El Salvador.

ARTICLE 2

This Agreement does not apply to Protection Claimants who are citizens or nationals of El Salvador; or who, not having a country of nationality, are habitual residents of El Salvador.

ARTICLE 3

1. In order to ensure that Protection Claimants have access to a Protection Determination System, El Salvador shall not return or remove a Protection Claimant referred by the United States under the terms of Article 4 to another country until an administratively final adjudication of the person's Protection Claim has been made.

2. El Salvador shall not remove a Protection Claimant transferred to El Salvador under the terms of this Agreement pursuant to any other agreement or regulatory designation. El Salvador shall have a procedure to resolve, consistent with its domestic law and international obligations, potential abandonment of claims by individuals transferred under this agreement.

3. During the transfer process as determined in the implementation plan, individuals subject to this agreement will be the responsibility of the United States until the transfer process is complete.

ARTICLE 4

1. Responsibility for determining the Protection Claim shall rest with the United States, where the United States determines that the person:

    a. Is an Unaccompanied Minor; or

    b. Arrived in the territory of the United States:

        i. With a validly issued visa or other valid admission document, other than for transit, issued by the United States; or
        ii. Not being required to obtain a visa by the United States.

2. El Salvador shall not be required to accept the transfer of a Protection Claimant until a final determination with respect to paragraph 1 is made by the United States.

3. Subject to paragraphs 1 and 2 of this article, El Salvador shall examine, in accordance with its Protection Determination System, to determine the Protection Claim of any person who makes such claims after arriving at a port of entry, or crossing a border between ports of entry of the United States on or after the effective date of this Agreement.

4. The United States shall apply this Agreement with respect to Unaccompanied Minors consistent with its national law.

5. El Salvador shall not dispute any decision of the United States that an individual qualifies for an exception under Articles 4 and 5 of this Agreement.

6. The Parties will have procedures in place to ensure that transfers of Protection Claimants to El Salvador are consistent with the Parties respective obligations and national laws.

ARTICLE 5

Notwithstanding any provision of this Agreement, either Party may at its own discretion examine any Protection Claim made to that Party where it determines that it is in its public interest to do so.

ARTICLE 6

The Parties may:

1. Exchange such information as may be necessary for the effective implementation of this Agreement subject to national laws and regulations. That information shall not be disclosed by the Party of the receiving country except in accordance with its national laws and regulations. The Parties shall seek to ensure that information is not exchanged or disclosed in such a way as to place Protection Claimants or their families at risk in their countries of origin.

2. Exchange on a regular basis information on the laws, regulations, and practices relating to their respective Protection Determination Systems.

ARTICLE 7

1. The Parties shall develop standard operating procedures to assist with the implementation of this Agreement. These procedures shall include provisions for notification, to El Salvador, in advance of the transfer of any Protection Claimant pursuant to this Agreement. The United States shall work with El Salvador to identify appropriate individuals to be transferred pursuant to this agreement.

2. Those procedures shall include mechanisms for resolving differences respecting the interpretation and implementation of the terms of this Agreement. Issues that cannot be resolved through these mechanisms shall be settled through diplomatic channels.

3. The United States intends to cooperate with El Salvador in order to strengthen El Salvador's institutional capacities.

4. The Parties agree to review this Agreement and its implementation. The first review shall take place not later than 3 months from the date of entry into force of this Agreement and shall be jointly conducted by representatives of each Party. The Parties may invite other appropriate organizations with expertise, as agreed upon by the Parties, to participate in this initial review. The Parties may cooperate with such organizations in the monitoring of this Agreement, provided that those organizations agree to provide such consultation services.

5. Within 7 days of the entry into force of this agreement, the Parties intend to complete an initial implementation plan that seeks to address, among other things: (a) procedures necessary to effectuate the transfer of individuals under this agreement; (b) the volume or number of individuals to be transferred; and (c) institutional capacity requirements. Until the initial implementation plan is completed, the parties do not plan to operationalize this agreement.

ARTICLE 8

Both Parties shall, upon request, endeavor to assist each other in the resettlement of individuals determined to require protection in appropriate circumstances.

ARTICLE 9

1. This Agreement shall enter into force upon exchange of notes by both Parties indicating that each has completed the necessary domestic legal procedures for bringing the Agreement into force.

2. Either Party may terminate this Agreement upon six months' written notice to the other Party.

3. Either Party may, immediately upon written notice to the other Party, suspend for an initial period of up to three months' application of this Agreement. Such suspension may be renewed for additional periods of up to three months upon written notice to the other Party. Either Party may, with the written agreement of the other Party, suspend any part of this Agreement.

4. The Parties may agree on any modification of or addition to this Agreement in writing. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE at 2:30pm, this 20th day of September 2019, in duplicate in the English and Spanish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security

FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR:

Alexandra Hill Tinoco
Minister
Ministry of Foreign Relations

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