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One Hundred Sixteenth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515
www.foreignaffairs.house.gov

March 6, 2020

The Honorable Michael Pompeo
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 202320

Dear Secretary Pompeo:

We write to express our concern that the “safe third country agreements” that the Trump Administration recently signed with El Salvador and Honduras, like the one with Guatemala that members of Congress wrote to oppose¹ in June of last year, are illegal, dangerous, and antithetical to American values. Turning asylum seekers away and sending them to these countries – each of which the State Department warns its own citizens about traveling to – betrays the fundamental promise of America as a land where persecuted individuals can find safety in accordance with our laws. As we continue to evaluate the process by which these agreements were made, we are requesting additional information and documents from the Department of State.

Sending Asylum Seekers to Guatemala Violates the Law and Endangers Their Lives

We have previously noted that the Administration had no legal authority to negotiate or sign a “safe third country” agreement (also referred to as an “Asylum Cooperation Agreement”

¹ See Letter from Eliot L. Engel, Chair, House Comm. on Foreign Affairs; Jerrold Nadler, Chair, House Comm. on the Judiciary; and Bennie G. Thompson, Chair, House Comm. on Homeland Sec. to Michael Pompeo, Sec’y of State and Kevin A. McAleenan, Acting Sec’y of Homeland Sec (June 27, 2019) (online at: https://foreignaffairs.house.gov/_cache/files/f/f/ff99ce78-0724-4715-bee2-717133980afa/189D6080FB109904AC860BC4C2B3EE7B.06-27-19-engel-letter-to-sec.-pompeo-and-acting-sec.-mcaleenan-in-opposition-to-third-country-agreements-with-guatemala-mexico.pdf).

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or “ACA”) with Guatemala,² since that country does not offer “access to a full and fair procedure for determining a claim to asylum,” as required by the Immigration and Nationality Act (“INA”).³ Officials from the Department of Homeland Security (“DHS”) confirmed as much to congressional staff in a briefing on Monday, February 24. In that briefing, DHS admitted that there are only four asylum officers in the entire country of Guatemala. Yet despite this, DHS explained that it had already determined in November that Guatemala’s asylum system was “full and fair,” and begun deporting asylum seekers to Guatemala under the ACA. When pressed on how the Administration could possibly have reached that conclusion, DHS officials refused to answer, citing litigation risks.

At that same briefing, DHS explained that, since late 2019, the Administration has already deported 698 asylum seekers to Guatemala under the ACA, 324 of whom had fled here with their families. This was done on the theory that these people could simply apply for asylum in Guatemala instead. But of these 698, only 24 – less than 4% – have even been able to seek protection through Guatemala’s nascent, overburdened asylum system. DHS officials admitted that they have no knowledge of, and no ability to find out, what became of the remaining 96%.

While the Trump Administration appears content to treat these asylum seekers as “out of sight, out of mind,” lawsuits reveal that among those who were turned away by the United States and sent to Guatemala under the 2019 ACA are:

- A gay man whose parents had disowned him, who fled El Salvador after an MS-13 gang member solicited him for sex and threatened him. He was sent by U.S. authorities to Guatemala, but when he sought to apply for asylum there, “Guatemalan officials advised him to go to Mexico,” because Guatemala “is also unsafe for gay people.”⁴
- A man who “fled his native Honduras after members of the MS-13 gang repeatedly attacked him and threatened his life,” including “hit[ting] him over the head with a bat” and “stab[b]ing him multiple times with a broken bottle.” U.S. officials deported him to Guatemala despite the fact that he told officials that “he was afraid of going to Guatemala” because he “knew that MS-13 could locate him there.” He is now in hiding in Honduras.⁵

U.S. asylum officers responsible for processing these cases were aware that tragedies like these were likely, having reportedly been provided a “resource guide” that detailed the dangers

² See Agreement on Cooperation Regarding the Examination of Protection Claims, U.S.-Guat., Jul. 26, 2019 (online at: <https://www.govinfo.gov/content/pkg/FR-2019-11-20/pdf/2019-25288.pdf>).

³ See Letter from Eliot L. Engel et al, *supra* note 1.

⁴ See *U.T. et al v. Barr et al*, No. 1:20-cv-00116-EGS (D.D.C. Jan. 15, 2020); Compliant at ¶¶ 21-22.

⁵ *Id.* at ¶¶ 23-24.

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faced by those in the country, including gangs, violence, and killings with “high levels of impunity.”⁶ According to one asylum officer quoted in press reporting:

Being told to send asylum-seekers to Guatemala without even a screening on their claim while also being given research explaining, in detail, the incredible danger that exists throughout the country is extensively frustrating.

This agreement feels like a pretext to get rid of as many asylum claims as possible.⁷

In addition to violating the INA, these cases show that deporting individuals to Guatemala under an ACA also violates the United States’ obligation of *non-refoulement* under international law, which mandates that a country cannot turn away asylum seekers by sending them on to a place where they will face further persecution.⁸

“Safe Third Country” Agreements with Honduras and El Salvador Are Dangerous and Illegal

Rather than learning from the tragic consequences of the Guatemala ACA, the Trump Administration is now doubling down by signing ACAs with El Salvador and Honduras, countries which State Department reporting indicates also have utterly insufficient asylum procedures in place.⁹

El Salvador

The State Department has reported that, as in Guatemala, El Salvador has a nascent asylum system that falls far below the requirements of the INA. Specifically, the State Department notes that El Salvador’s “judiciary [is] burdened by inefficiency and corruption.”¹⁰ When pressed about El Salvador’s asylum system, DHS officials could not provide even basic information at a Congressional briefing on February 24.

⁶ See Hamed Aleaziz, *Asylum Officers Were Told of Killings and Violence in Guatemala. They Were Ordered to Send People There Anyway.*, (Nov. 21, 2019) BuzzfeedNews.Com (online at: <https://www.buzzfeednews.com/article/hamedaleaziz/asylum-officers-guatemala-deport-central-guidance>).

⁷ *Id.*

⁸ See U.N. OFFICE OF HUMAN RIGHTS OFFICE OF THE HIGH COMM’R: THE PRINCIPLE OF NON REFOULEMENT UNDER INT’L H.R. LAW (online at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>).

⁹ Fact Sheet, U.S. Dep’t of Homeland Sec., DHS Agreements with Guat., Hond., and El Sal. (Nov. 7, 2010) (online at <https://www.dhs.gov/publication/fact-sheet-dhs-agreements-guatemala-honduras-and-el-salvador>).

¹⁰ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., El Salvador H.R. Report 7 (2018), at 7 (online at: <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>).

The most recent Human Rights Report for El Salvador states that only four petitions for asylum were even filed in the country through July 31, 2018.¹¹ Of those, three were denied, and one was still under consideration at the time of the report.¹² These numbers raise serious questions about the capacity of the asylum system in El Salvador to address potentially thousands of claims of non-Salvadoran deportees who could be deported there under a “safe third country agreement.”

The danger that deported asylum seekers would face there is also well-documented. A recent report by Human Rights Watch (“HRW”) reveals that individuals who have previously been deported from the United States to El Salvador under other laws have been attacked or killed with alarming frequency.¹³ Across the more than 200 cases it examined, HRW found “a clear link between the killing or harm to the deportee upon return and the reasons they had fled El Salvador in the first place.”¹⁴ According to the International Rescue Committee, El Salvador suffers from “levels of violence akin to war zones like Syria.”¹⁵ As a result of this violence, “[a]round 300,000 Salvadorans a year are internally displaced; last year one woman was murdered every 20 hours.”¹⁶ This has led, not surprisingly, to El Salvador being a country from which 46,800 people sought asylum in 2018.¹⁷

Honduras

The State Department also warns against travel to Honduras,¹⁸ and the 2018 Human Rights Report states that “transiting migrants were vulnerable to abuse by criminal organizations,” and “there were areas where authorities could not assure freedom of movement because of criminal activity and a lack of significant government presence.”¹⁹ The report also cites an Internal Displacement Monitoring Center estimate that there were 190,000 internally displaced persons in the country in 2017.²⁰

¹¹ *Id.* at 13.

¹² *Id.*

¹³ See HUMAN RIGHTS WATCH: DEPORTED TO DANGER: UNITED STATES DEPORTATION POLICIES EXPOSE SALVADORIANS TO DEATH AND ABUSE (2020) (online at <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>).

¹⁴ *Id.*

¹⁵ Press Release, Int’l Rescue Comm., Inc., U.S. El Sal. “cooperative agreement” would send asylum-seekers into harm’s way (Sept. 20, 2019) (online at <https://www.rescue.org/press-release/us-el-salvador-cooperative-agreement-would-send-asylum-seekers-harms-way>).

¹⁶ *Id.*

¹⁷ Zolan Kannao-Youngs and Elisabeth Malkin, *U.S. Agreement With El. Sal. Seeks to Divert Asylum Seekers*, N.Y. TIMES (Sept. 20, 2019) (online at: <https://www.nytimes.com/2019/09/20/us/politics/us-asylum-el-salvador.html>).

¹⁸ Advisory, U.S. Dep’t of State, Hond. Travel Advisory (Jun. 24, 2019) (online at: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/honduras-travel-advisory.html>).

¹⁹ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Hond. H.R. Report (2018), at 14 (online at <https://www.state.gov/wp-content/uploads/2019/03/HONDURAS-2018.pdf>).

²⁰ *Id.*

DHS officials stated to Congressional staff on February 24 that it had determined in January that Honduras' asylum system is "full and fair," despite the fact that it employs only 35 asylum officials for the entire country. As with Guatemala, DHS refused to explain how it arrived at this determination, again citing litigation risks. As you know, the mere fact that an agency is also engaged in litigation on a particular topic does not justify withholding information from Congress. To conclude otherwise would raise serious constitutional issues and create perverse incentives for both agencies and private litigants to initiate court cases in order to halt the flow of information to lawmakers and the American people.

Core elements of America's modern asylum and refugee laws were enacted as a deliberate response to the Holocaust. They are more than just a set of legal obligations, but a principled declaration that never again shall this country or any other be free to turn its back on the world's most vulnerable people or to send them onward to situations that are as dangerous as or worse than those that they originally fled. The Guatemala ACA violates the law, betrays these values, and puts the lives of asylum seekers at risk, all with the full knowledge of the Trump Administration; the proposed agreements with Honduras and El Salvador threaten to do the same.

In order to fulfill Congress' constitutionally-mandated obligation to conduct oversight on foreign policy matters, regulate immigration, and monitor the use of so-called "executive agreements," the Committee on Foreign Affairs requests the following:

Briefing

A briefing to Committee staff on these agreements by Assistant Secretary of State for Consular Affairs Carl Risch and Acting Legal Adviser Marik String **no later than March 13, 2020.**

Documents

The Committee also requests that the Department produce the following, **no later than March 13, 2020:**

1. All Circular-175 ("C-175") packages, including memoranda of law, for any agreements between or among the United States, Guatemala, Honduras, and/or El Salvador related in any way to immigration or asylum from January 20, 2017 to the present.
2. Any and all implementing agreements, arrangements, or plans, whether or not binding under international law or the law of any state, to include non-binding political

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commitments, that are related in any way to any agreements between or among the United States, Guatemala, Honduras, and/or El Salvador related in any way to immigration or asylum from January 20, 2017 to the present.


3. Any and all records, including but not limited to diplomatic notes, referring or relating in any way to a determination that Guatemala, Honduras, and/or El Salvador qualify as countries in which an "alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion," as required by 8 U.S.C. § 1158.
4. Any and all records, including but not limited to diplomatic notes, referring or relating in any way to a determination that Guatemala, Honduras, and/or El Salvador qualify as countries in which an "alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection," as required by 8 U.S.C. § 1158.
5. Any and all records referring or relating in any way to the risk or actual occurrence of harm or violence, including but not limited to sexual assault or death of any individual who was, is, or may be subject to deportation to Guatemala, Honduras, or El Salvador.

The Committee is prepared to work with the Department of State to facilitate this briefing and the production of these documents. Thank you for your cooperation on this urgent matter.

Sincerely,


ELIOT L. ENGEL
Chairman


JOAQUIN CASTRO
Chairman
Subcommittee on Oversight and
Investigations


ALBIO SIRES
Chairman
Subcommittee on the Western Hemisphere,
Civilian Security, and Trade