

U.S. Should Abandon “Asylum Cooperation Agreement” with Guatemala

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KEY TAKEAWAYS

The Trump Administration should scrap the asylum agreement with Guatemala and pursue better options to address the ongoing Central American migration crisis.

Investing in Guatemala’s institutions and combating corruption will help to quell the destabilizing factors that drive migration and further regional instability.

The U.S. must enact policies, such as releasing frozen aid funds and working with Guatemala to combat corruption, to set the region up for long-term improvements.

On July 26, the United States and Guatemala signed the Asylum Cooperation Agreement to reduce the number of Central American asylum cases in the U.S. According to the publicly available text, once the agreement is enforced, the U.S. will begin relocating asylum seekers who transited through Guatemala back to Guatemala, where they can apply for asylum or chose to return home. They will be unable to apply for asylum in the U.S. In exchange, the U.S. will provide Guatemalans with an undetermined number of H-2A visas for temporary agricultural workers and H-2B visas for temporary construction workers.¹

Guatemala and the U.S. have a free trade agreement, and Guatemala is the largest economy in Central America. The country is also the largest source of Central Americans who arrived in the U.S. illegally during the recent crisis at the U.S.–Mexican border,² and a

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major transit zone for U.S.-bound narcotics.³ U.S. policymakers should be concerned about the feasibility of this agreement and must pursue better options to address the ongoing Central American migration crisis.

The Trump Administration should scrap this asylum agreement and focus on building capacity in Guatemala. This should include renewing fiscal year (FY) 2018 funding for programs to prevent illegal immigration and pursuing a bilateral counter-corruption program with Guatemala. If the Administration chooses to pursue the agreement, it should work alongside the United Nations High Commissioner for Refugees (UNHCR) to determine Guatemala's asylum management capacity. The Administration should also abandon the notion of granting country-specific visas. Congress, for its part, also stop contributing to the border crisis and finally fix the U.S. immigration system.

Guatemala in Context

Guatemala, a small Central American country, shares a porous, dense, and heavily trafficked 600-mile border with Mexico. On its east, Guatemala shares a two-centuries-old disputed border with Belize. The United Nations International Court of Justice is currently arbitrating the territorial dispute. On its south, Guatemala shares borders with Honduras and El Salvador—these three countries are known as Central America's northern triangle.

Guatemala's colonial and post-colonial history has been plagued by political violence; the most recent conflict was a 36-year civil war from 1960 to 1996. During much of the war, the military controlled the government, until democratic elections were held in 1985. While the signing of peace accords in 1996 marked the end of the civil war, Guatemala's transition to democracy has been a slow and difficult process.

Legal Uncertainties in Guatemala over the Asylum Cooperation Agreement

As of this writing, the Asylum Cooperation Agreement has not been implemented. In Guatemala, there is uncertainty about its legal standing. According to the country's Constitutional Court, the agreement must be ratified by the National Assembly.⁴ Outgoing President Jimmy Morales, a supporter of the agreement, does not believe he needs legislative authorization to enforce it. On August 11, Alejandro Giammattei was elected as the new president and will take office on January 14, 2020. While Giammattei does not support the deal and claims it does not benefit Guatemalans enough,

he is not expected to withdraw from the agreement.⁵ The National Assembly is equally skeptical.⁶ In the U.S., congressional approval is not required.

Dysfunctional Guatemalan Government Incapable of Fulfilling Migration Accord

Even when there is political will from top-level Guatemalan leadership, institutions are weak, ineffective, too often corrupt, and unable to provide basic government services to its citizens. The Guatemalan Migration Institute has only eight asylum officers. In 2018, the institute processed 262 asylum requests and left 232 pending.⁷ In one of the most violent countries in the world, the rate of impunity averaged 94 percent during the past decade—and increased to 97 percent in 2018.⁸ On average, less than 5 percent of homicides lead to a prison sentence.⁹ Various U.S. State Department Human Rights Reports find that impunity within security forces is common. These are the same security forces that the U.S. has been funding for decades in an attempt to improve their operational capacity—and will now rely upon for the migration accord.

A recent investigation alleges that from 2012 to 2014, the then–health minister and other government officials embezzled more than \$7 million of Guatemalan earthquake reconstruction funds from the Public Ministry of Health.¹⁰ Guatemala’s past three presidents have been arrested, and two remain imprisoned, for charges related to public corruption. One was extradited and prosecuted in the U.S. for laundering \$2.5 million in bribery payments from Taiwan.¹¹

Building Capacity and Addressing Corruption in Guatemala Prevents Illegal Immigration

U.S. aid must serve to advance U.S. interests and national security objectives. In the case of the northern-triangle countries, specifically Guatemala, the goal is to strengthen domestic institutions to render foreign assistance obsolete. On one side, U.S. policymakers should bear in mind that these are nascent and emerging democracies: Guatemala’s civil war ended only in 1996. The ongoing debate over the effectiveness of U.S. assistance in Guatemala and the broader region needs to include that key fact. Building capacity in this post–civil war nation will be a long-term investment, but it is necessary for U.S. interests. Aid, when used wisely, is a tool that provides the U.S. government leverage, oversight, and the ability to advance its interests abroad.

Over the past two years, there has been a tendency on the part of the U.S. to prefer international agreements with regional partners while neglecting long-term capacity-building programs. Some of these international efforts have so far proven successful, such as Mexico's commitment to increased security at its border with the U.S. and stricter enforcement of measures against human trafficking. Yet, unless the U.S. supports the development of government infrastructure in these countries over the long term, these agreements will be in vain. Capacity building of public institutions is the key to making sure the agreements and enforcement measures work.

The rampant corruption in Guatemala's public and private sector will remain a significant impediment to the effectiveness of U.S. assistance. U.S. policymakers must conduct vigilant oversight on this enduring problem. With the termination of the anticorruption commission, known as the International Commission Against Impunity in Guatemala (CICIG), on September 3, the U.S. must consider replacing it with a bilateral cooperation program.

Guatemalan institutions alone are unable to address the country's corruption. A cynical observer could even say that Guatemalan authorities are not interested in truly addressing the migration crisis. Migration outflows relieve the burden on the state, and Guatemalans abroad send home remittances. In 2017, Guatemala received \$8.2 billion in remittances, totaling 11.2 percent of the country's gross domestic product (GDP) in 2017. That number increased to \$9.2 billion, 12.1 percent of GDP, in 2018.¹²

Getting Guatemala Right

Near-uncontrolled migration from Central America has created a humanitarian crisis at the U.S. southern border. The U.S. must enact policies that remedy the immediate problems and set the region up for long-term improvements.

Rather than pursuing the Asylum Cooperation Agreement with Guatemala, the U.S. should:

- **Release frozen FY 2018 U.S. Agency for International Development and State Department funds for Central America.** These funds are important for long-term institution building but also address immediate challenges, such as recently deported individuals who are at higher risk for returning to the U.S. FY 2018 funding cuts will shut down Central American shelters for deportees, thus increasing the likelihood of illegal immigration to the U.S.

- **Develop bilateral programs with Guatemala to combat corruption.** With the end of the CICIG, U.S. Departments of State and Justice should work with their Guatemalan counterparts to strengthen Guatemala's criminal justice system.
- **Maintain cooperation with the UNHCR to build and determine Guatemala's asylum management capacity.** Should the U.S. Administration pursue the agreement, the UNHCR would be the best-equipped entity to help Guatemala advance its asylum capabilities.
- **Prohibit granting country-specific visas.** Governments should not distort the market by selecting immigrants from specific countries for job categories.¹³
- **Fix U.S. immigration policy, which continues to incentivize illegal migration.** Congress's refusal to fix the broken immigration system has contributed to the border crisis. For starters, Congress must close the loopholes, increase immigration-law enforcement, and properly fund border security barriers.¹⁴

Conclusion

Guatemala's shortcomings limit U.S. options for what is feasible in bilateral migration agreements. While building capacity in Guatemala is a long-term endeavor, the geography and U.S. interests in the region leave the U.S. with little choice. Investing in Guatemala's institutions and combatting corruption will help to quell the destabilizing factors that drive migration.

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