



# DHS RUN AMOK?

A Reckless Overseas Operation,  
Violations, and Lies

A Democratic Staff Report  
Prepared for the use of the  
Committee on Foreign Relations  
United States Senate

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# DHS RUN AMOK?

OCTOBER 2020

“This explosive report is a painful reminder of how President Trump’s anti-immigrant agenda has overtaken every aspect of this Administration’s work. Blurring the lines between the work of our nation’s professional diplomatic corps and that of domestic immigration enforcement agents is corrosive and wholly unacceptable.

“Months before the Trump Administration used similar tactics against peaceful protestors in Portland, Oregon, we now know DHS secretly used State Department funding to rent unmarked vans in Guatemala to haul migrants back to the Guatemala-Honduras border. In doing so, DHS misused State Department funds, violated a written agreement between the two departments, and got caught lying about it.

“The Department of Homeland Security and Customs and Border Protection have no business acting as un-deputized international migration police throughout Latin America. Congress must once again step in to serve as a check on this President’s unhinged anti-immigrant agenda.”

**– SENATOR BOB MENENDEZ**  
**RANKING MEMBER**  
**SENATE FOREIGN RELATIONS COMMITTEE**

## Introduction

Since assuming office, President Donald Trump and his administration have made curbing irregular migration a near singular focus of U.S. foreign policy towards Central America. President Trump’s fixation on addressing irregular migration has undermined the Department of State’s traditional role as the principal steward of U.S. foreign policy in the region, and the Department of Homeland Security (DHS) has assumed unprecedented influence over foreign policy towards Central America. This paradigm shift has led to troubling consequences.

In January 2020, Senate Foreign Relations Committee (SFRC) Democratic Staff uncovered a disturbing incident in which DHS misused State Department funding to carry out an unauthorized operation. Specifically, CBP personnel in Guatemala transported an unidentified number of Honduran migrants in unmarked vans to relocate them to the Guatemala-Honduras border. DHS informed SFRC Democratic Staff that DHS personnel used the vans to transport migrant women and children, but was unable to clarify whether any family members had been separated during the operation or whether there was any process to reunify any family members that may have been separated. Moreover, the DHS operation to transport Honduran migrants was conducted in an improvised manner without any protocols in place to address security considerations or ensure the personal safety and human

rights of the migrants. DHS also failed to put in place any appropriate screening for individuals seeking asylum or international protection.

The January 2020 incident occurred in a broader context in which the Trump administration has repeatedly sought to increase the role that DHS plays in Central America. For example, when President Trump and Secretary of State Michael Pompeo recklessly suspended over \$400 million of U.S. foreign assistance for El Salvador, Guatemala, and Honduras in 2019—a decision they claimed was the result of the three countries not effectively stopping migrants from reaching the U.S. border—the Administration still rerouted tens of millions of dollars from the State Department to DHS programs to improve border security and address transnational crime in the region.<sup>1</sup> In April 2020, when Secretary Pompeo announced a restart of U.S. foreign assistance for the Northern Triangle and claimed the three governments had taken steps to combat migration to the United States, he touted that the governments had signed “14 historic agreements and arrangements ... to strengthen cooperation to deter illegal immigration.”<sup>2</sup> However, these agreements had largely been negotiated and signed by DHS, not the State Department.

In the January 2020 incident, DHS personnel stationed in Guatemala conducted a reckless operation that breached restrictions on their funding. Additionally, in response to SFRC Democratic Staff inquiries, DHS initially tried to obfuscate the violation of its agreement with the State Department. Later, DHS acknowledged that its actions violated the terms of an interagency agreement between DHS and the State Department’s Bureau of International Narcotics and Law Enforcement Affairs (INL), constituting a misuse of INL funding. In reviewing this incident, SFRC Democratic Staff found that:

- DHS violated its interagency agreement with the State Department that explicitly prohibited DHS from conducting operations with INL funding.
- DHS lied to the State Department about how it misused INL funding and caused the State Department to transmit misleading information to Congress.
- DHS’ improvised operation lacked protocols related to security, personal safety, human rights, and the screening of migrants for international protection.
- DHS unnecessarily exposed the U.S. Government to potential legal and financial liabilities.
- DHS has assumed unprecedented influence over U.S. bilateral relations with Guatemala, simultaneously imposing its policies on the Guatemalan government and undermining the State Department’s traditional role as the principal steward of U.S. foreign policy.

This report reviews the troubling January 2020 incident and makes recommendations for Congress and the State Department to prevent similar events in the future.<sup>3</sup> It also calls on the State Department and DHS Inspectors General to thoroughly investigate this matter.

1 Congressional Research Service (CRS), *U.S. Strategy for Engagement in Central America: Policy Issues for Congress*, at 20, updated Nov. 12, 2019; Morgan Ortagus, Department Spokesperson, U.S. Department of State, “Department Press Briefing,” June 17, 2019.

2 Press Statement, Michael R. Pompeo, Secretary of State, U.S. Department of State, “United States Continues U.S. Foreign Assistance for El Salvador, Guatemala, and Honduras,” Apr. 13, 2020; U.S. Department of Homeland Security, *Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador* (last visited October 6, 2020).

3 As the principal Senate committee with jurisdiction over the State Department, the Senate Foreign Relations Committee conducts regular oversight over INL programs, as well as INCLE-funded programs administered by the other departments and agencies, including DHS.

## State Department Agreement with DHS Prohibited Immigration and Law Enforcement Operations

The Secretary of State serves as the principal authority responsible for U.S. foreign policy and foreign assistance, and the Department of State plays a central coordinating role with other U.S. Government departments and agencies that operate overseas. U.S. Ambassadors, in their role as chiefs of mission, are responsible for overseeing and coordinating all activities of the U.S. government in country, including through the development of an Integrated Country Strategy. Additionally, given the authorities conferred on the Secretary of State in his or her administration of U.S. foreign assistance, the Department of State may transfer, allocate, or obligate foreign assistance funding to other U.S. departments and agencies to implement assistance programs in foreign jurisdictions.

The Bureau of International Narcotics and Law Enforcement Affairs (INL) leads the State Department's efforts to counter transnational crime and narcotics trafficking, as well as build the capacity of partner governments' criminal justice systems.<sup>4</sup> INL frequently partners with DHS, the Department of Justice (DOJ), and other agencies as part of its administration of INL assistance programs. INL regularly enters into interagency agreements with other U.S. Government departments and agencies to finance programs with State Department International Narcotics Control and Law Enforcement (INCLE) funding. In order to advance U.S. foreign policy objectives, INL utilizes interagency agreements to specify the purposes for which INCLE funding can be used, as well as particular limitations, restrictions, and prohibitions on the use of the funds.

Under routine circumstances, INL provides INCLE funding to DOJ and DHS to provide training to civilian police and border authorities in Central America, including technical training to improve criminal investigations and routine law enforcement inspections, as well as human rights standards.<sup>5</sup> INL utilizes its interagency agreements to prohibit DHS from conducting operations with INCLE funding, and the INL-DHS agreement for Guatemala included terms that explicitly stated **“U.S. personnel under this agreement will not conduct immigration or law enforcement operations; they are in country for mentoring, advising and capacity-building purposes only.”**<sup>6</sup>

Yet in January 2020, DHS directly violated its interagency agreement with INL and misused INCLE assistance when it did just that: conducted an overseas immigration operation to transport Honduran migrants in the border region of Guatemala.

## The Trump Administration's Deployment of U.S. Border Agents to Guatemala

Less than two weeks into January 2020, the year's first caravan of Central American migrants amassed in western Honduras.<sup>7</sup> With hundreds of migrants moving towards the Guatemalan border on January 15, the stakes were high for Guatemala's new president, Alejandro Giammattei. Less than 24 hours earlier, President Alejandro Giammattei had been sworn into office, pledging to combat the challenges

4 U.S. Department of State, “About Us – Bureau of International Narcotics and Law Enforcement Affairs,” <https://www.state.gov/about-us-bureau-of-international-narcotics-and-law-enforcement-affairs/>.

5 Government Accountability Office, “Central America Police Training,” GAO-18-618, Sept. 5, 2018, \; Nick Miroff & Kevin Sieff, “Trump Administration to send DHS agents, investigators to Guatemala-Mexico border,” *The Washington Post*, May 31, 2019.

6 Annex A.

7 Kirk Semple, “Migrant Caravan Embarks from Honduras, Posing Challenge to Region,” *The New York Times*, Jan. 15, 2020.

of corruption and crime that had festered under his predecessor—factors that forced tens of thousands of Guatemalans to flee their country every year.<sup>8</sup>

Before President Giammattei could formally take office, the Trump administration had already made it clear that addressing irregular migration in Central America would continue to be its number one priority for the U.S.–Guatemala bilateral relationship. On January 14, DHS Undersecretary Chad Wolf joined Commerce Secretary Wilbur Ross in Guatemala for the new president’s inauguration.<sup>9</sup> Before the ceremony, Wolf met Giammattei privately to discuss immigration and subsequently expressed his public expectations that the two countries would continue their “already strong partnership to reduce illegal immigration to the United States.”<sup>10</sup>

Upon returning to Washington, Wolf expressed confidence in a Fox Radio interview that the Trump administration had established enough obstacles to prevent members of the migrant caravan from reaching the U.S. border or pursuing asylum claims in the United States, despite U.S. laws guaranteeing the right to seek asylum.<sup>11</sup> Wolf asserted in his interview, “[w]hat has changed from 2018 or even from last year are the number of agreements that we have in place with Honduras, Guatemala, as well as Mexico.”<sup>12</sup> To reinforce the Trump administration’s aggressive stance, he stated, “[w]e have CBP agents—tactical agents—in Guatemala.”<sup>13</sup>

As Guatemalan authorities prepared to respond to the surge of Honduran migrants crossing the border, Wolf’s comments about the deployment of “tactical agents” alluded to an unauthorized DHS operation conducted by Customs and Border Protection (CBP) personnel in the country.

## DHS Participation in Migration Operation at the Guatemala-Honduras Border

On January 15, as the first migrant caravan of 2020 moved across the border from Honduras into Guatemala, officers from the Guatemalan border police—the Division of Ports, Airports, and Border Crossings (*División de Puertos, Aeropuertos y Puestos Fronterizos*, DIPAFRONT)—responded.<sup>14</sup> Guatemala has long been a source and transit country for irregular migration, and the phenomenon of migrant caravans gained widespread international attention in 2018 when thousands of Hondurans crossed Guatemala en route to the United States.<sup>15</sup> With hundreds of migrants arriving on January 15, DIPAFRONT personnel mounted their response near the Corinto crossing at the Guatemala-Honduran border.

8 Sofia Menchu and Frank Jack Daniel, “Turbulent Inauguration Day in Guatemala, Outgoing President Hit by Eggs,” *Reuters*, Jan. 14, 2020.

9 Press Release, U.S. Department of Commerce, “Secretary of Commerce Leads U.S. Delegation to Guatemala,” Jan. 15, 2020.

10 Press Release, U.S. Department of Commerce, “Secretary of Commerce Leads U.S. Delegation to Guatemala,” Jan. 15, 2020; Sofia Menchu and Frank Jack Daniel, “Turbulent Inauguration Day in Guatemala, Outgoing President Hit by Eggs,” *Reuters*, Jan. 14, 2020.

11 Chad Wolf, Acting Secretary of Department of Homeland Security, Interview with Brian Kilmeade, *The Brian Kilmeade Show*, *Fox News*, Jan. 16, 2020. The right to seek asylum in the United States is codified under the United States Refugee Act of 1980, P.L. 96-212, 8 U.S.C. § 1158.

12 Chad Wolf, Acting Secretary of Department of Homeland Security, Interview with Brian Kilmeade, *The Brian Kilmeade Show*, *Fox News*, Jan. 16, 2020. For information about the agreements, see U.S. Department of Homeland Security, *Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador*,

[https://www.dhs.gov/sites/default/files/publications/19\\_1028\\_opa\\_factsheet-northern-central-america-agreements\\_v2.pdf](https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf).

13 Chad Wolf, Acting Secretary of Department of Homeland Security, Interview with Brian Kilmeade, *The Brian Kilmeade Show*, *Fox News*, Jan. 16, 2020.

14 “US Agents Aid in Guatemalan Crackdown on Hundreds of Migrants Headed North,” *The Guardian*, Jan. 16, 2020. While reporting by *The Guardian* indicated the presence of DHS Immigrations and Custom Enforcement (ICE) personnel at the Guatemala-Honduras border, DHS later clarified to SFRC Democratic Staff that the personnel had been from U.S. Customs and Border Protection (CBP).

15 Dara Lind, “The Migrant Caravan, Explained,” *Vox*, updated Oct. 25, 2018.

However, in a break from past practice, DHS personnel deployed to the border and actively participated in joint operations with DIPRAFRONT.<sup>16</sup> Press reports indicated that CBP personnel assumed a direct role in preventing the migrant caravan from transiting Guatemala.<sup>17</sup> The State Department and DHS later confirmed that CBP personnel participating in the operation had overstepped the authority of their authorized training activities.<sup>18</sup> DIPRAFRONT and DHS personnel stopped hundreds of Honduran migrants after they crossed the border and later bussed them to border facilities for processing.<sup>19</sup> According to Guatemalan officers on the ground, “the United States paid for the buses.”<sup>20</sup>

DHS eventually confirmed that CBP personnel present in eastern Guatemala commissioned unmarked vehicles and contracted drivers to support its joint operations with DIPRAFRONT.<sup>21</sup> CBP and DIPRAFRONT loaded an untold number of Honduran migrants into unmarked vans and drove them back to the Guatemala-Honduras border. It remains unclear whether the Honduran migrants were provided with any information about the role of the United States Government when they were taken into custody and placed into vans that did not bear the logo of DHS, CBP, or DIPRAFRONT. It is also unclear if the Honduran migrants were provided with any information about their rights in Guatemala as they were loaded into the unmarked vehicles commissioned by CBP.<sup>22</sup> Additionally, CBP’s operation to transport Honduran migrants was carried out in an entirely improvised manner. There were no protocols put in place to ensure operational security or the personal safety and human rights of Honduran migrants that were transported by DHS.<sup>23</sup>

**As would become apparent in the ensuing weeks, the deployment of CBP agents to the Guatemalan border for joint operations with DIPRAFRONT constituted a direct violation of its interagency agreement with the State Department and one that exposed the U.S. Government to potential legal and financial liabilities.**

## SFRC Oversight Met with DHS Obfuscation

On January 21, SFRC Democratic Staff submitted written questions to the Department of State regarding the press accounts of the events that took place at the Guatemala-Honduras border. Given the concerning nature of the media reports that DHS personnel were participating in joint operations with DIPRAFRONT, SFRC Democratic Staff specifically asked the State Department to confirm if DHS participated in operations to transport Honduran migrants in Guatemala and whether any State Department funding was utilized to support DHS participation in any such operations. SFRC Democratic Staff also asked the State Department to confirm if any of the Honduran migrants were

16 “US Agents Aid in Guatemalan Crackdown on Hundreds of Migrants Headed North,” *The Guardian*, Jan. 16, 2020; Sonia Pérez, “Guatemala Deportó a un Grupo de la Caravana de Migrantes a Honduras,” *Telemundo Houston*, Jan. 15, 2020.

17 Sonia Pérez, “Guatemala Deportó a un Grupo de la Caravana de Migrantes a Honduras,” *Telemundo Houston*, Jan. 15, 2020; “US Agents Aid in Guatemalan Crackdown on Hundreds of Migrants Headed North,” *The Guardian*, Jan. 16, 2020.

18 U.S. Department of State and Department of Homeland Security Officials, Meeting with Senate Foreign Relations Committee Staff, Washington, DC, Jan. 30, 2020.

19 “US Agents Aid in Guatemalan Crackdown on Hundreds of Migrants Headed North,” *The Guardian*, Jan. 16, 2020.

20 *Id.*

21 See Annex B.

22 In a meeting with SFRC Democratic Staff, DHS was not able to provide any specificity about the number of Honduran migrants transported by CBP during its joint operation with DIPRAFRONT, any evidence that CBP or DIPRAFRONT personnel had informed the Honduran migrants they were being transported on vehicles commissioned by CBP, or any evidence that CBP or DIPRAFRONT personnel had informed the Honduran migrants of their rights in the Guatemalan legal system. U.S. Department of State and Department of Homeland Security Officials, Meeting with Senate Foreign Relations Committee Staff, Washington, DC, Jan. 30, 2020.

23 DHS was not able to provide any evidence that it had protocols in place to ensure the security of the vehicles or drivers, or any screening and security processes in place to ensure the personal safety of the migrants transported in the vans. *Id.*

provided with access to asylum screening, specifically given that, prior to the Asylum Cooperative Agreement entering into force on November 15, 2019, DHS and DOJ had certified that the Guatemalan asylum system is capable of providing migrants with a full and fair asylum process.<sup>24</sup>

On January 22, the Department of State transmitted written responses to the Senate Foreign Relations Committee regarding DHS operations in Guatemala. The State Department's responses indicated that, "DHS has informed INL that they did not participate in the action of bussing Honduran migrants from Guatemala back to the Honduran border or their country of origin."<sup>25</sup> The State Department also noted that, "INL is not aware any INL funding was utilized to pay for operations in Guatemala to return Honduran migrants back to the Honduran border or their country of origin."<sup>26</sup>

Additionally, the State Department responses reaffirmed that "INL's interagency agreement with DHS in Guatemala clearly specifies U.S. personnel under this agreement will not conduct immigration or law enforcement operations; they are in country for mentoring, advising and capacity-building purposes only."<sup>27</sup> However, as would soon become apparent, DHS had lied to the State Department in order to cover up its role in the joint operations with Guatemalan authorities. In doing so, DHS caused the State Department to transmit misleading information to Congress.

## DHS Admitted to Violating its Agreement with the State Department

On January 30, 2020, the State Department submitted revised responses to the Senate Foreign Relations Committee—information that would correct the falsehoods advanced by DHS the week prior. Acknowledging that the "information previously provided was not accurate," the State Department provided new details that it had received from DHS.<sup>28</sup>

In violation of the terms of its interagency agreement with INL, DHS acknowledged that it had used State Department INCLE funding from fiscal year 2017 to conduct its joint operations with DIPRAFRONT.<sup>29</sup> Specifically, DHS admitted that INCLE funding "previously utilized to rent three 12-passenger vans and drivers to transport personnel and equipment was subsequently used to return Honduran migrants back to the Guatemalan-Honduran border."<sup>30</sup>

That same day, senior officials from the State Department and DHS met with SFRC Democratic Staff to provide additional clarifications regarding the false information transmitted on January 22, 2020. When SFRC Democratic Staff raised questions about the provision of the INL-DHS interagency agreement that prohibited immigration and law enforcement operations, DHS acknowledged that the joint operation with DIPRAFRONT violated the terms of the agreement.<sup>31</sup> In recognition of the gravity of the transgressions committed, DHS stated that it had curtailed the assignment of the personnel in Guatemala who authorized the joint operation and that the individual would be returning to Washington immediately.<sup>32</sup>

<sup>24</sup> See Annex A.

<sup>25</sup> Annex A.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Annex B.

<sup>29</sup> See *id.*

<sup>30</sup> *Id.*

<sup>31</sup> U.S. Department of State and U.S. Department of Homeland Security Officials, Meeting with Senate Foreign Relations Committee Staff, Washington, DC, Jan. 30, 2020.

<sup>32</sup> *Id.*

Additionally, DHS confirmed that the vans rented with INCLE funding had been used to transport migrant women and children separately from men.<sup>33</sup> However, DHS was unable to provide information as to whether any family members had been separated during their operation, whether any children were unaccompanied, whether there was any process to reunify family members who may have been separated, or whether Guatemalan authorities ensured migrants had access to asylum screening prior to being returned to Honduras.<sup>34</sup>

By its own admission, DHS took few precautions to ensure that the human rights of migrants—particularly refugees, asylum seekers, and children—subject to their operation were upheld. This unsettling admission leaves open the possibility that DHS may have contributed to new incidents of family separation, facilitated the forcible return of refugees, or otherwise added to the protection risks faced by asylum seekers and other vulnerable migrants. In failing to develop appropriate screening protocols for the Honduran migrants, the DHS operation exposed the U.S. Government to possible complicity in any potential violation of the principle of non-refoulement enshrined in the 1951 Refugee Convention and its 1967 Protocol, as well as the 1984 Convention Against Torture, which both Guatemala and the United States are required to uphold.

SFRC Democratic Staff also raised concerns about the potential legal and financial liabilities that the U.S. Government would have faced if any of the vehicles rented by DHS would have been in an auto accident while transporting Honduran migrants in Guatemala or if the driver or the passengers had been injured. In recognition of the seriousness of the unnecessary risks that had been incurred by DHS participation in joint operations with DIPRAFRONT, the State Department acknowledged that the U.S. Government potentially would have faced significant liabilities.

## Conclusion

The DHS breach of its interagency agreement with the State Department and initial effort to obfuscate the violation must be seen in the broader context of the Trump administration's failed track record of coercive policies toward Central America. To advance President Trump's narrow goals, his Administration has resorted to a wide range of aggressive tactics.

The Trump administration has threatened visa sanctions against countries unable to receive deportation flights during the current COVID-19 pandemic, even following reports which confirmed that the U.S. had deported individuals to Guatemala who tested positive for COVID-19.<sup>35</sup> In March 2019, the Trump administration suspended over \$500 million in U.S. foreign assistance aimed at addressing the root causes of irregular migration because it felt that Central American governments were not doing enough to prevent their citizens from leaving.<sup>36</sup> And, the Trump administration has forced governments in the Northern Triangle of Central America—El Salvador, Guatemala, and Honduras—to sign a series of asylum-related agreements that not one of the governments can implement responsibly.<sup>37</sup>

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> President Donald J. Trump, Memorandum on Visa Sanctions, The White House, Apr. 10, 2020, <https://www.whitehouse.gov/presidential-actions/memorandum-visa-sanctions/>; Yael Schacher and Rachel Schmidtko, "Harmful Returns: The Compound Vulnerabilities of Returned Guatemalans in the Time of COVID-19," Refugees International, June 23, 2020.

<sup>36</sup> Congressional Research Service, U.S. Strategy for Engagement in Central America: Policy Issues for Congress, at 20, updated Nov. 12, 2019.

<sup>37</sup> Rachel Schmidtko et al., "Deportation with a Layover: Failure of Protection Under the U.S.-Guatemala Asylum Cooperative Agreement," Refugees International, May 19, 2020; U.S. Department of Homeland Security, Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador, [https://www.dhs.gov/sites/default/files/publications/19\\_1028\\_opa\\_factsheet-northern-central-america-agreements\\_v2.pdf](https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf).

Such aggressive tactics have damaged United States standing in the Northern Triangle and, on May 21, 2020, led President of Guatemala to remark that, “I don’t believe the U.S. is an ally to Guatemala, because they don’t treat us like one.”<sup>38</sup> The continuation of this trend threatens to undermine U.S. national security interests in Central America, and must be reversed.

## PRINCIPAL FINDINGS

- DHS violated its interagency agreement with the State Department.** The INL-DHS interagency agreement included terms that established that, “U.S. personnel under this agreement will not conduct immigration or law enforcement operations; they are in country for mentoring, advising and capacity-building purposes only.”<sup>39</sup> Nevertheless, DHS personnel actively participated in joint operations with Guatemalan border police to transport Honduran migrants back to the Guatemala-Honduras border. DHS personnel acknowledged that this was an explicit violation of the INL-DHS interagency agreement.<sup>40</sup>
- DHS lied to the State Department about how it misused INCLE funding and caused the State Department to transmit misleading information to Congress.** In written answers submitted to SFRC Democratic Staff on January 22, the State Department noted that “DHS has informed INL that they did not participate in the action of bussing Honduran migrants from Guatemala back to the Honduran border or their country of origin.”<sup>41</sup> Despite initial attempts at obfuscation, DHS subsequently corrected that assertion and acknowledged that it had misused INCLE funding for purposes explicitly prohibited in the INL-DHS interagency agreement.
- DHS operated without security and human rights safeguards.** DHS transported Honduran migrants to the Guatemala-Honduras border without any protocols in place to ensure the security of the unmarked vans that it rented or the safety of the drivers and passengers. It also operated without any assurances or procedures in place to prevent the forcible return of refugees or individuals fearing torture, risking U.S. complicity in any potential violation of the principle of non-refoulement enshrined in the 1951 Refugee Convention and its 1967 Protocol, as well as the 1984 Convention Against Torture, which both Guatemala and the United States are required to uphold. Additionally, DHS’ actions may have contributed to new incidents of family separation.
- DHS exposed the U.S. Government to potential legal and financial liabilities.** By conducting prohibited joint operations with Guatemalan border police, DHS personnel unnecessarily exposed the U.S. government to potential legal and financial liabilities. By transporting Honduran migrants inside Guatemala, DHS ran the risk of a potential automobile accident and related personal injuries, which would have exposed the U.S. Government to potential legal and financial liabilities, as well as significant political and reputational damages.

<sup>38</sup> Rafael Bernal, “Guatemalan president: ‘I don’t believe the U.S. is an ally to Guatemala,’” *The Hill*, May 21, 2020.

<sup>39</sup> See Annex A.

<sup>40</sup> U.S. Department of State and Department of Homeland Security Officials, Meeting with Senate Foreign Relations Committee Staff, Washington, DC, Jan. 30, 2020.

<sup>41</sup> *Id.*

## Recommendations

- 1. The State Department and DHS Inspectors General should investigate violations of the INL interagency agreement and misuse of INCLE funds.** DHS participation in joint operations with Guatemalan migration authorities explicitly violated the terms of the INL-DHS interagency agreement, which stated that, “U.S. personnel under this agreement will not conduct immigration or law enforcement operations.”<sup>42</sup> The State Department and DHS Inspectors General should examine how DHS personnel violated the terms of the interagency agreement and misused INCLE funds for activities that were specifically prohibited, as well as if other similar violations may have occurred in Central America and Mexico.
- 2. Congress must reform INCLE authorities.** Congress must reform the Foreign Assistance Act (FAA) to prevent the State Department’s International Narcotics and Law Enforcement (INCLE) funding from being used for anti-immigration operations overseas. Specifically, Congress must amend Section 481 of the FAA (22 U.S.C. § 2291) to expressly prohibit joint operations with foreign government migration and border authorities. Pending such reform, Congress should place similar restrictions in appropriations bills to prohibit use of INCLE funding in immigration operations in foreign jurisdictions. Such legal prohibitions would strengthen policy restrictions placed by the State Department in the INL-DHS interagency agreement.
- 3. The State Department must implement comprehensive mitigation measures.** Following SFRC Democratic Staff raising concerns about this incident, State Department and DHS agreed to a series of measures to mitigate against future misuse of INCLE funds in Guatemala, including an increased frequency of coordination meetings, additional financial reporting, and an explicit requirement that only U.S. Government personnel are able to enter any vehicle rented with INCLE funds. To prevent similar events occurring elsewhere in the region, it is essential that these changes be standardized for all INL-DHS interagency agreements related to Mexico and Central America.
- 4. The State Department must reclaim its leadership of U.S. foreign policy.** Despite the Trump administration’s singular fixation on addressing irregular migration in Central America, the State Department must reassert its role as the principal steward of U.S. foreign policy in the region. U.S. Ambassadors in Central America and Mexico must reassert their authority for overseeing and coordinating the activities of all U.S. government agencies in the country, specifically DHS. DHS misuse of INCLE funds in Guatemala showed that DHS officials are willing to place their own operational decisions above the limitations and prohibitions in their interagency agreements with the State Department. DHS must return to its traditional role of solely providing training and technical assistance to foreign counterparts.

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<sup>42</sup> *Id.*

## ANNEX A

### INL Response to Questions by Brandon Yoder Senate Foreign Relations Committee Staff<sup>43</sup>

- 1. Is INL aware of whether DHS/ICE (or any other part of DHS) participated in bussing Honduran migrants from Guatemala back to the Honduran border or their country of origin?**

DHS has informed INL that they did not participate in the action of bussing Honduran migrants from Guatemala back to the Honduran border or their country of origin.

- 2. Was any INL funding (regardless of fiscal year) utilized to pay for operations in Guatemala to return Honduran migrants back to the Honduran border or their country of origin? If so, please detail all related funding, including the source of funds/account, fiscal year(s), awardee(s), funding amounts, and a brief description of each award.**

No. INL is not aware any INL funding was utilized to pay for operations in Guatemala to return Honduran migrants back to the Honduran border or their country of origin. INL's inter-agency agreement with DHS in Guatemala clearly specifies U.S. personnel under this agreement will not conduct immigration or law enforcement operations; they are in country for mentoring, advising and capacity-building purposes only.

- 3. In the event that INCLE (or any other funding) was used to support the operations described above, please cite the specific funding authority utilized to carry out these operations.**

INL is not aware any INL funding was used to support the bussing Honduran migrants from Guatemala back to the Honduran border or their country of origin.

Separately, the Department's Bureau of Population, Refugees, and Migration (PRM) provides financial support for the International Organization for Migration (IOM)'s Assisted Voluntary Return (AVR) program operating in Mexico and several Central American countries, including Guatemala. IOM's AVR program provides a safe, humane, voluntary means for migrants in those countries to return to their home countries, if they wish to do so.

- 4. Given that DHS/DOJ recently certified that the Guatemalan asylum system is capable of providing migrants with a full and fair asylum process, were any of the migrants returned under the operations described above provided with access to an asylum screening?**

DHS has informed INL that they did not support the bussing of Honduran migrants from Guatemala back to the Honduran border or their country of origin.

<sup>43</sup> This information was transmitted to the Senate Foreign Relations Committee by the Department of State on Jan. 22, 2020. Email from the Bureau of Legislative Affairs, U.S. Department of State, to Senate Foreign Relations Committee Staff, Jan. 22, 2020.

## ANNEX B

### INL Revised Responses to Questions by Brandon Yoder

#### Senate Foreign Relations Committee Staff

January 30, 2020<sup>44</sup>

**1. Is INL aware of whether DHS/ICE (or any other part of DHS) participated in bussing Honduran migrants from Guatemala back to the Honduran border or their country of origin?**

Since the Department of State's January 22 response to you, we learned the information previously provided was not accurate. DHS informed INL January 23 that FY17 INCLE funding previously utilized to rent three 12-passenger vans and drivers to transport personnel and equipment was subsequently used to return Honduran migrants back to the Guatemalan-Honduran border.

**2. Was any INL funding (regardless of fiscal year) utilized to pay for operations in Guatemala to return Honduran migrants back to the Honduran border or their country of origin? If so, please detail all related funding, including the source of funds/account, fiscal year(s), awardee(s), funding amounts, and a brief description of each award.**

Yes. DHS informed INL January 23 that FY17 INCLE funding was utilized to rent three 12-passenger vans and drivers to transport personnel and equipment and then subsequently used to transport Honduran migrants back to the Honduran border.

**3. In the event that INCLE (or any other funding) was used to support the operations described above, please cite the specific funding authority utilized to carry out these operations.**

The Guatemala Assistance on Irregular Migration (GAIM) program is funded through an inter-agency agreement between INL and DHS with FY17 INCLE funding.

**4. Given that DHS/DOJ recently certified that the Guatemalan asylum system is capable of providing migrants with a full and fair asylum process, were any of the migrants returned under the operations described above provided with access to an asylum screening?**

DHS informed INL they are unaware whether the Honduran migrants transported back to Honduras requested asylum in Guatemala.

<sup>44</sup> This information was transmitted to the Senate Foreign Relations Committee by the Department of State on Jan. 30, 2020. Email from the Bureau of Legislative Affairs, U.S. Department of State, to Senate Foreign Relations Committee Staff, Jan. 30, 2020.