

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA
ON COOPERATION REGARDING THE EXAMINATION OF PROTECTION CLAIMS**

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA, hereinafter referred to individually as "Party" or collectively "the Parties".

CONSIDERING that Guatemala regulates its relations with other countries in accordance with international principles, rules and practices, with the purpose of contributing to the maintenance of peace and freedom, the respect and defense of human rights, and the strengthening of democratic processes and international institutions that guarantee the mutual and equitable benefit among the states. On the other hand, Guatemala will maintain relations of friendship, solidarity and cooperation with those states whose economic, social and cultural development is analogous to that of Guatemala, such as the right of people to migrate and their need for protection.

WHEREAS Guatemala currently incorporates a dynamic immigration law into its domestic legislation, which requires Guatemala to recognize the right of every person to emigrate or immigrate, thereby allowing any migrant to enter, remain, transit, leave and return to its territory in accordance with its domestic laws. Likewise, in situations not provided for by domestic legislation, the norm that most favors the migrant must be applied. As such, temporary shelter and care should be given to those who wish to enter Guatemala legally. For the above reasons it is necessary to promote cooperation agreements with other states that uphold the same values outlined in Guatemala's migration policy, which is regulated by the National Migration Authority.

CONSIDERING that Guatemala is a party to the 1951 Convention relating to the Status of Refugees, done at Geneva on July 28, 1951 (the "1951 Convention") and the Protocol Relating to the Status of Refugees, done at New York on January 31, 1967 (the "1967 Protocol"), to which the United States of America is a party and reaffirming the obligation of the Parties to provide protection to refugees who meet the requirements and who are physically in their respective territories, in accordance with their obligations under those instruments and subject to the respective laws, treaties, and declarations of the Parties.

RECOGNIZING, in particular, the obligation of the Parties to comply with the principle of non-refoulement, as outlined in the 1951 Convention and the 1967 Protocol, as well as the Convention against Torture and Other Treatment or Cruel, Inhuman or Degrading Penalties, signed in New York on 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 international obligations;

RECOGNIZING and respecting the obligations of each Party in accordance with its domestic laws

and policies, and international agreements and arrangements;

UNDERSCORING that the United States and Guatemala offer refugee protection systems that are consistent with their obligations under the 1951 Convention and/or the 1967 Protocols;

DETERMINED to maintain the status of refuge or equivalent temporary protection, as an essential measure of the protection of refugees or asylees, and at the same time wishing to prevent fraud in the refugee or asylum application process –an action that undermines its legitimate purpose– and determined to strengthen the integrity of the official process for requesting asylum or refugee status as well as public support for said processes;

AWARE that the distribution of responsibility for requests for protection must guarantee in practice, that people in need of protection be identified and that violations of the basic principle of non-refoulement be avoided; and, therefore, committed to safeguarding for each applicant the status of refuge or asylum that meets the required conditions, access to a full and fair procedure for the determination of their claim;

AGREE to the following:

ARTICLE 1

For the purposes of this Agreement:

1. "Request for Protection" refers to the request of a person of any nationality, to the government of one of the Parties to receive protection in accordance with their respective institutional obligations derived from the 1951 Convention, the 1967 Protocol or the Convention against Torture, and in accordance with the respective laws and policies of the Parties, enforcing compliance with said international obligations; as well as to receive any other type of equivalent temporary protection available under the migration law of the receiving party.
2. "Protection Applicant" refers to any person who submits a request for protection in the territory of one of the Parties.
3. "System to Determine Protection" refers to the set of policies, laws, administrative and judicial practices that the Government of each Party uses to make a decision on requests for protection.
4. "Unaccompanied Minor" refers to an applicant for protection who has not reached the age of eighteen (18) and whose parent or legal guardian is not present or available to provide care and physical custody in the United States, or in Guatemala, where the unaccompanied minor is located.
5. In the case of Guatemala immigration, law and migration policy refers to the rights of persons to enter, remain, transit and leave its territory in accordance with its domestic laws and international agreements and arrangements, and immigration stay means the authorized period of time according to the immigration status granted to individuals.

ARTICLE 2

This Agreement does not apply to applicants for protection who are citizens or nationals of Guatemala; or stateless individuals habitually residing in Guatemala.

ARTICLE 3

1. To ensure that protection applicants transferred to Guatemala by the United States have access to a system to determine protection, Guatemala will not return or expel applicants for protection in Guatemala, unless the application is abandoned by the applicant or is formally rejected through an administrative decision.
2. During the transfer process, the persons subject to this Agreement will be the responsibility of the United States until the transfer process is completed.

ARTICLE 4

1. The responsibility for determining and concluding requests for protection within its territory shall rest with the United States, when the United States establishes that that person:

- a. is an unaccompanied minor; or
- b. has arrived in the territory of the United States:
 - i. with a validly-issued visa or other valid admission document, other than a transit visa, issued by the United States; or
 - ii. without the United States requiring him to obtain a visa.

2. Notwithstanding paragraph 1 of this article, Guatemala will evaluate the request for protection on an individual basis, in accordance with what is established and authorized by the competent authority on immigration matters in its migration policies and laws and in its territory, of persons who meet the appropriate requirements under this Agreement and who arrive in the United States at a port of entry or between ports of entry, on or after the effective date of this Agreement. Guatemala will evaluate the request for protection, in keeping with the Initial Implementation Plan and the standard operating procedures referenced in Article 7.1 and 7.5.

3. The Parties shall apply this Agreement with respect to unaccompanied minors, in accordance with their respective domestic laws.

4. The Parties shall have procedures in place to ensure that the transfers from the United States to Guatemala of the persons covered by this Agreement are compatible with their respective obligations, domestic and international laws, and migration policies.

5. The United States shall make the final decision that an individual qualifies for an exception under Articles 4 and 5 of this Agreement.

ARTICLE 5

Notwithstanding any provision of this Agreement, any Party may, at its discretion, examine any request for protection that has been submitted to that Party when it decides that it is in the public interest to do so.

ARTICLE 6

The Parties may:

1. Exchange information when necessary for the effective implementation of this Agreement, subject to national laws and regulations. Such information will not be disclosed by the recipient country except in accordance with its national laws and regulations.
2. The Parties may regularly exchange information regarding laws, regulations, and practices related to their respective systems to determine migration protection.

ARTICLE 7

1. The Parties shall develop standard operating procedures to assist in the implementation of this Agreement. These procedures shall incorporate provisions to notify Guatemala in advance of the transfer of any person pursuant to this Agreement. The United States will collaborate with Guatemala to identify the appropriate individuals to be transferred to Guatemala's territory.
2. The operating procedures shall incorporate mechanisms to resolve disputes that respect the interpretation and implementation of the terms of this Agreement. Unforeseen cases that cannot be resolved through these mechanisms will be resolved through diplomatic channels.
3. The United States plans to cooperate to strengthen the institutional capacities of Guatemala.
4. The Parties agree to regularly evaluate this Agreement and its implementation to correct any deficiencies found. The evaluations will be carried out jointly by the Parties, the first within a maximum period of three (3) months from the date of entry into operation of the Agreement with following evaluations occurring by the same terms. The Parties may invite, by mutual agreement, other relevant organizations with specialized knowledge on the subject, to participate in the initial evaluation and/or cooperate for the implementation of this Agreement.
5. The Parties intend to complete an initial implementation plan, which will contain gradual steps, and 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. The Parties plan to operationalize this Agreement upon the completion of a phased implementation plan.

ARTICLE 8

1. This Agreement shall enter into force by means of an exchange of notes between the Parties indicating that each party has complied with the necessary domestic legal procedures for the Agreement to enter into force. For the term of two (2) years, renewable before its expiration with the exchange of diplomatic notes.

2. Any Party may terminate this Agreement by giving written notice to the other Party three (3) months in advance.

3. Any Party may, immediately after notifying the other Party in writing, suspend for an initial period of up to three (3) months the implementation of this Agreement. This suspension may be extended for additional periods of up to three (3) months, by means of written notification to the other Party. Any Party may, with the written consent of the other, suspend any part of this Agreement.

4. The Parties may in writing, by mutual agreement, make any modification or addition to this Agreement. These shall enter into force in accordance with the relevant legal procedures of each Party and the amendment or addition shall constitute an integral part of this Agreement.

5. Nothing in this Agreement shall be construed in such a way as to oblige the Parties to disburse or obligate funds.

IN FAITH WHEREOF, the undersigned, duly authorized by their respective governments, sign this Agreement.

SIGNED on the ____ day of _____ of the year 2019 in the English and Spanish languages, with both texts being authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:
Kevin K. McAleenan,
Acting Secretary of Homeland Security

FOR THE GOVERNMENT OF THE
REPUBLIC OF GUATEMALA:
Enrique A. Degenhart Asturias
Minister of Government
