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Plan To Send Mexicans To Guatemala May Fray US Ties

By **Suzanne Monyak**

Law360 (January 7, 2020, 10:05 PM EST) -- The Trump administration's plan to send Mexicans seeking asylum in the U.S. to Guatemala threatens to further undermine America's relations with Mexico and place migrants' lives at risk, experts say.

The U.S. Department of Homeland Security said Monday that Mexican citizens requesting asylum at the southwest border could be sent to Guatemala, a country known for high crime rates and gang activity, under an asylum cooperation agreement.

Currently, only asylum-seekers from El Salvador and Honduras, who likely would have passed through Guatemala en route to the U.S., can be sent to Guatemala under the agreement.

But attorneys and advocates say that such an expansion would endanger vulnerable asylum-seekers — by sending them to a country they don't know — and jeopardize America's relationship with Mexico in the process.

"The Mexican government has been a valued partner. This treatment of Mexican citizens is likely to undermine that relationship," said Kevin Johnson, the dean of the University of California, Davis School of Law.

The U.S.-Guatemala "asylum cooperation agreement," **signed** over the summer under the tenure of former acting Homeland Security Secretary Kevin McAleenan, took effect **in November**, allowing the U.S. to send asylum-seekers from Honduras and El Salvador to Guatemala instead.

The administration has also entered similar agreements with **El Salvador** and **Honduras**, allowing the U.S. government to send asylum-seekers to those countries as well, but those pacts have not yet been enforced.

The signings sparked outrage among humanitarian advocates who said that the three countries, which make up the Northern Triangle region, **aren't safe**. The U.S. Department of State urges American travelers to "exercise increased caution" when visiting El Salvador and Guatemala and to "reconsider travel" to Honduras because of crime.

DHS, however, has said that the agreements comply with U.S. humanitarian obligations under international law and that the U.S. is working with those countries to improve their asylum systems. And with the latest expansion, it appears the administration is doubling down.

Acting DHS Deputy Secretary Ken Cuccinelli confirmed the plan's expansion to include Mexicans on Twitter on Monday night.

"Certain Mexicans seeking humanitarian protections in the United States may now be eligible to be transferred to Guatemala and given the opportunity to seek protection there, under the terms of the Guatemala Asylum Cooperative Agreement," a DHS spokesperson said in a statement on Tuesday.

The spokesperson didn't respond to a follow-up question about the timeline of the expansion.

Mexico, which has so far cooperated with White House immigration policies forcing migrants to wait out their immigration cases in Mexico, promptly voiced its opposition to the prospect of its citizens being flown to the Northern Triangle.

The country's foreign affairs ministry said in a statement Monday night that it "expresses its disagreement with the plan." It also predicted that the expansion would affect about 900 asylum applicants in February.

The plans were announced after the number of Mexican adults apprehended at the southwest border ticked up while the number of Central American families crossing — which had overwhelmed the U.S. Border Patrol's ill-prepared facilities — declined.

Speaking at the White House in November, acting U.S. Customs and Border Protection Commissioner Mark Morgan told reporters that for the first time in more than a year, the majority of people apprehended at the southwest border were from Mexico.

According to recent CBP data, November saw more than 28,000 Mexican single adults and 2,000 families apprehended at the border, compared to about 10,000 Central American single adults and 12,000 family units that same month.

But the move puts Mexico in an "awkward position," said Yael Schacher, senior U.S. advocate for Refugees International.

On the one hand, she said, Mexico has an interest in protecting its own citizens. But on the other, the asylum-seekers at risk of being sent to Guatemala are people who have accused the Mexican government of failing to protect them, she said.

Loren C. Locke, an immigration lawyer at Ford Harrison and former consular officer in Mexico, agreed.

"It is delicate to draw a lot of attention to the fact that there exist Mexican people who are fleeing Mexico," she said.

Mexico's foreign ministry said in its statement that the Mexican government will "work to offer better options to Mexicans who may be affected by this provision." Speaking to reporters on Tuesday, Martha Barcena, the Mexican ambassador to the U.S., said that the expansion will stop itself if Mexicans just choose to stay in Mexico.

Mexico has caved to President Donald Trump's demands before. In May, Trump **threatened to slap a 25% tariff** on all Mexican goods unless the country did more to help stem Central American migration to the U.S.-Mexico border. A week later, and following **widespread confusion** among the business community, the president **dropped that threat** after announcing that the U.S. and Mexico had struck a deal.

Mexico agreed to deploy guards along its southern border and to accept U.S. asylum-seekers as part of the Trump administration's "Migrant Protection Protocols," which forces migrants to wait in Mexico while their immigration cases continue.

Schacher predicted that while Mexico could make "a little bit of a stink" with press releases like the one on Monday night, she thought it was "unlikely" that Mexico would put its foot down and refuse to cooperate with those earlier migration measures.

Locke said that she wasn't sure how Mexico would react, but questioned if this could be the "one provocation that could push it over the edge."

"I think they'll take some humiliation. They're going to eventually hit their limit," Locke said.

If the U.S. refuses to bend to international pressure, a challenge to the agreement and its expansion to Mexicans could face a tough path in the courts, attorneys said.

Individual asylum-seekers have limited avenues to contest immigration court decisions. Locke also pointed out that it will be difficult for Mexican migrants to meet the "extreme standard" of proving they would "more likely than not" face persecution because of their social group in Guatemala if they've never been to that country.

Broader challenges to the agreement as a whole could also face an uphill battle.

Sarah Pierce, an immigration lawyer and policy analyst at the nonpartisan Migration Policy Institute, said that even though sending asylum-seekers to countries they didn't pass through "goes against everyone's instincts and maybe even moral judgments on this," it's not a legal requirement under the Immigration and Nationality Act.

Potential challengers would also have to prove they have standing to sue, which could be difficult because the Mexicans and other foreigners who would be sent to Guatemala under the agreement would then be outside the U.S., she said.

But Pierce said that a provision in the INA requiring that asylum-seekers only be sent to countries with full and fair asylum systems under these types of agreements could catch the Trump administration in court if any potential challengers can show that the U.S. government didn't properly analyze Guatemala's asylum system before sending people there.

According to Human Rights First, as of June, Guatemala had just 12 officers processing asylum claims.

"It really just proves that these asylum cooperation agreements are far more about deterring migrants from arriving at the southern border than they are about protecting asylum-seekers," Pierce said.

--Editing by Jill Coffey and Emily Kokoll.