January 11, 2019

The Honorable Lindsey Graham  
Chairman  
Subcommittee on State, Foreign Operations, and Related Programs  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Leahy:

On behalf of the American Bar Association, I write to express our concern that the Government of Guatemala is continuing to ignore the decisions of that country’s Constitutional Court in an apparent effort to obstruct investigations into allegations of corruption that implicate the highest levels of government. This constitutional crisis, which has been escalating consistently for several months, threatens efforts to establish the rule of law in Guatemala, to stem the flow of narcotics, and to address the migration challenges in the region. We therefore request that the Committee take steps to convey to both our own Department of State and the government of Guatemala that ongoing U.S. support of Guatemala is directly threatened by the Guatemalan government’s failure to adhere to the rule of law, including, in particular, respecting the independence and authority of both the Constitutional Court and the U.N.-backed commission to combat impunity (known by the Spanish acronym, CICIG).

As you know, Guatemala has struggled to combat endemic corruption and impunity for widespread human rights violations since the end of the internal armed conflict over two decades ago. To address these challenges, the government agreed to the creation of CICIG. CICIG’s investigations have been critical to efforts to combat high-level corruption, which has undermined economic development and allegedly contributed to the embezzlement of funds within the Guatemalan security forces. While CICIG has made great strides in investigating corruption, the current constitutional crisis began when CICIG and the Guatemalan Attorney General requested that the country’s legislature initiate a preliminary hearing against President Jimmy Morales for alleged illicit campaign financing.

Since that time, the situation has deteriorated to the point that the Morales administration has repeatedly disregarded the judgments of the Constitutional Court and threatened legal action against magistrates of the Court. If the magistrates of the Court are improperly removed in advance of the upcoming election, any questions about the legitimacy of the elections would be resolved by a compromised Court that lacks meaningful independence.

Under the Guatemalan Constitution, the Constitutional Court has the ultimate authority to determine whether any official acts undermine the rights of the Guatemalan people. In direct
contravention of the orders of the Court, the Morales administration has refused to allow the head of CICIG to re-enter Guatemala, denied visas and withdrew diplomatic immunity of CICIG staff, and expelled CICIG from Guatemala. The government’s past failure to execute a number of arrest warrants issued in grand corruption cases raises legitimate concern that these most recent actions are motivated by an effort to stall anti-corruption investigations.

The failure of the Ministry of Interior to abide by the Court’s judgments is especially troubling in light of the United States’ longstanding support of the Guatemalan police, which are under the command of the Ministry. Indeed, in an apparent effort to obstruct the corruption investigations, the Ministry has used U.S.-origin military vehicles that had been transferred to the Guatemalan police for counter-narcotics purposes. For example, the day that President Morales announced his decision not to renew the CICIG’s mandate, the Ministry sent Guatemalan police in U.S.-origin military vehicles to the U.S. Embassy and CICIG’s headquarters, in what the bipartisan leadership of the Senate Foreign Relations and House Foreign Affairs Committees characterized as an act that appeared to be intended to send a political message and that was inconsistent with the purpose for which the vehicles were donated.

It is important to U.S. interests to convey that the Morales administration’s assault on judicial independence and misuse of U.S. defense articles is unacceptable. The Committee could consider suspending further security assistance until such time as the Ministry of the Interior demonstrates a full commitment to executing outstanding arrest warrants and abiding by the decisions of the Constitutional Court. The State Department could also be encouraged to examine sanctions under the Global Magnitsky Act against high-level officials who have ordered the security forces to disregard the decisions of the Constitutional Court.

The government’s failure to respect the judgments of the country’s highest court will clearly undermine the legal authority of Guatemala’s law enforcement and justice systems. If rule by force of arms replaces the rule of law in Guatemala, the migration challenges will likely intensify, and Guatemalan security forces will be unable to partner effectively with the United States on counter-narcotics operations. The United States should therefore make clear that there will be consequences if the Guatemalan government continues to ignore the orders of the Court or seeks to undermine its independence.

Thank you for your consideration of our views.

Sincerely,

Robert M. Carlson

Cc: The Honorable Michael Pompeo
    U.S. Secretary of State