

**MEMORANDUM OF JUSTIFICATION REGARDING CERTIFICATION
UNDER SECTION 7045(a) OF THE DEPARTMENT OF STATE, FOREIGN
OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2020
(DIV. G, P.L. 116-94)**

Section 7045(a)(2)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, P.L. 116-94) (FY 2020 SFOAA) requires the Secretary of State to certify and report to Congress that the central government of El Salvador government meets nine criteria, prior to obligating 50 percent of assistance for such government. Section 7045(a)(1)(B) further provides that FY 2019 funds for the central government of El Salvador shall be made available subject to the same conditions, notwithstanding section 7045(a)(1) and (2) of the FY 2019 SFOAA. For the reasons outlined below, the Deputy Secretary of State, pursuant to Delegation of Authority 245-2, has determined that, since the inauguration of President Bukele on June 1, 2019, the central Government of El Salvador (GOES) is meeting those criteria.

Combating corruption and impunity, including prosecuting corrupt government officials:

President Bukele based his 2019 election campaign in part on an anti-corruption platform. Eliminating corruption in El Salvador remains a focus of his administration and his current very high approval rating is partly due to public support for his anti-corruption stance. Fulfilling one of Bukele's campaign promises, on November 26, 2019, the GOES and the Organization of American States (OAS) signed a letter of agreement formally establishing the International Commission against Corruption and Impunity in El Salvador (CICIES). Since then, CICIES appointed the reputable former Ambassador of El Salvador to the OAS as Commissioner, set up an office, signed a series of MOUs with GOES's entities including the Supreme Court and the Attorney General's Office; interviewed and hired staff, and began providing technical assistance on three high-profile cases pursuant to a request from El Salvador's Attorney General. The OAS is currently requesting contributions to support CICIES.

At the direction of President Bukele, on July 29, 2019, the Court of Accounts began auditing the "reserved spending account" for state intelligence funding of the Sanchez Ceren administration - totaling \$183.8 million from 2014-2019. Former Presidents Saca and Funes misused the account to divert and misappropriate public funds.

In conjunction with its investigation of former President Mauricio Funes, who embezzled more than \$350 million in public funds, El Salvador's Attorney General (AG) Office specialized unit for asset forfeiture and anti-impunity seized nine properties and financial assets worth an estimated \$1.3 million in January 2020. These assets belonged to David Rivas, the former Secretary of Communications, and Manuel Arturo Amaya, former Director of the Presidential Executive Office.

In July 2019, El Salvador's Financial Investigation Unit regained Egmont Group membership, permitting it to access data to support corruption investigations.

Implementing reforms, policies, and programs to increase transparency and strengthen public institutions:

While Salvadoran government actions have not been forward leaning in this area, there has been some limited positive movement that is sufficient to consider the criterion has been met.

Before outlining those positive actions, it is important to note our significant concerns that President Bukele's February 9, 2020 use of the National Civil Police and armed soldiers to pressure and intimidate El Salvador's legislature to approve funding for his security plan threatened the Assembly's independence and potentially weakened public institutions. Although at the time President Bukele believed his actions were justified based on the advice of his legal counsel, his subsequent acquiescence to the ruling of the Supreme Court prohibiting further such actions demonstrated the independence of the judicial branch, the rule of law, and could be interpreted as reaffirming the foundation of the country's democratic system of government.

However, the incident also suggests that absent the judicial decision President Bukele would have further undermined a public institution.

Similarly, although at the outset of the COVID-19 pandemic President Bukele worked very closely with the Legislative Assembly to ensure that emergency measures limiting freedom of movement, quarantines, and police enforcement powers were implemented in accordance with the constitution, he later clashed with the Assembly and Supreme Court over ongoing implementation. To its credit, the GOES provided exemplary transparency in its daily COVID-19 response briefings which included current information on the number of COVID-19 cases, testing, and detailed explanations of policies to prevent further infections. Also, the GOES has maintained a highly transparent and continually updated website of relevant information on the nation's COVID-19 situation. Throughout the crisis, Salvadoran government officials utilized social media effectively to provide real time transparency on the GOES' response to COVID-19. Overall, polls indicated over 90 percent of Salvadorans approve of the government's response to the COVID-19 pandemic. However, when the Supreme Court issued a ruling that President Bukele needed approval from the Legislative Assembly to enforce his emergency executive order requiring Salvadorans to stay at home, President Bukele asserted the Supreme Court did not have the authority to decide on the issue due to the state of emergency. Bukele's assertion was seen by many as an effort to weaken, rather than strengthen, public institutions. His recent actions on Twitter to block a reputable human rights NGO from following him in order to limit the NGO's critical commentary of the government's COVID-19 response reinforces the critique from some civil society members that the government is not promoting a transparent exchange of views on COVID-19 policy.

While these examples do not demonstrate that the government is uniformly pursuing reforms and policies and programs to increase transparency and strengthen public institutions, the central government of El Salvador is nevertheless meeting this criterion for the reasons set forth below.

One example of positive government action is that on June 13, 2019, the Institute for Access to Public Information (IAIP), a government agency designed to fight corruption, affirmed that the daily working agendas of legislators are public information. The IAIP received a budget increase in 2019 from \$1.4 million up to \$1.9 million.

The creation of CICIÉS with input from civil society collected by Vice President Felix Ulloa demonstrates the central government of El Salvador's efforts to strengthen institutions by attacking corruption. A key part of CICIÉS' mission (established on November 26, 2019) will be to support, strengthen, and actively collaborate with the institutions of El Salvador responsible for preventing, investigating, and punishing acts of corruption and other related crimes (including crimes related to public finances, illicit enrichment, money laundering, and national and transnational organized crime (TCO)). As of April 2020, CICIÉS is collaborating with the Attorney General on high-profile corruption cases, including the Chaparral dam, and will oversee donations and government procurement during the COVID-19 pandemic.

In August 2019, President Bukele eliminated the so-called "secret presidential account" (partida secreta in Spanish) used by previous two presidents (Sanchez Ceren and Funes) to funnel many millions of dollars to political cronies. The office of the Attorney General also launched investigations into funds distributed from this account by the previous administrations. This is a highly commendable step given the indictment of three recent presidents for corruption and misappropriation of millions of dollars.

Protecting the rights of civil society, opposition political parties, and the independence of the media:

Salvadoran government actions have not been forward leaning with respect to this criterion. However, there has been some limited positive movement that is sufficient to consider the criterion has been met.

El Salvador has a multi-party political system and several operating civil society organizations. In February 2019, President Bukele won a landslide presidential election and his June inauguration marked the first time since the Salvadoran civil war that a third-party candidate took power. El Salvador's unicameral legislative assembly remains representative of El Salvador's broad political spectrum. El Salvador is preparing to hold elections for the Legislative Assembly in February 2021.

President Bukele announced June 18 he would veto any legislation that proposed an amnesty for war crimes committed during El Salvador's civil war if they do not comply with international law or have the support of civil society and victims groups. Bukele's action directly supported civil society groups and civil war victims seeking justice by giving them a voice in the process of creating a national reconciliation law.

On July 23, 2019, El Salvador launched a Human Rights Observatory in collaboration with the Human Rights Institute (HRI) of the Universidad Centroamericana. The Observatory is intended to work with justice sector institutions to share information and data related to human rights violations in El Salvador, especially those related to life and physical integrity, which are most affected by police abuse and security policies. **It remains unclear whether the Observatory will receive the political cover necessary to carry out its mandate. Reports indicate HRI staff are threatened in retaliation for their work exposing abuses and have needed to install their own cameras and security to help monitor and protect their offices, absent security assistance from the**

government. HRI staff report they operate in fear, especially when their investigations point to human rights abuses by those currently in power.

Meanwhile, government efforts to silence media outlets and journalists if they do not support the government's official narrative continue. Journalists critical of government policy face threats, many of which are fueled by Bukele's treatment of them on social media. These efforts, which include selectively choosing to pull advertising from media outlets critical of its policies in order to shape content, undermine the healthy and open exchange of views that freedom of the press allows and does not promote independence of the media. Despite these concerns, we assess that, overall, the central government of El Salvador is meeting this criterion.

Providing effective and accountable law enforcement and security for its citizens, and upholding due process of law:

Reforms implemented under the Bukele administration's Territorial Control Plan, launched on June 18, 2019, have resulted in significant improvements in the public perception of the National Civil Police (PNC) and a reduction of violence by and against police. The Bukele administration utilized the PNC's Jaguar tactical unit, an INL-developed unit, to make numerous high-risk arrests without to our knowledge committing any human rights violations. Additionally, the PNC have become increasingly professionalized and capable of addressing crime and violence demonstrated by institutionalization of intelligence-led policing nationwide and improved infrastructure and efficiency at the borders with Guatemala and Honduras.

On January 23, 2020, the Attorney General arrested nine police officers, three soldiers, and 31 civilians involved in 44 cases for illegally planning and executing gang members. The Attorney General Organized Crime division worked closely with the Civil National Police Internal Affairs office to implement this action and prepare the case. This action demonstrates GOES' commitment to investigate and prosecute extrajudicial killings.

Violent confrontations between police and alleged gang members are down almost 50 percent, and the number of alleged extrajudicial killings has decreased.

El Salvador was ranked Tier 2 in the 2019 Trafficking in Persons Report because it demonstrated increasing efforts compared to the previous period. These efforts included investigating an allegedly complicit government official, convicting and sentencing more traffickers to significant prison terms, and providing services to girl victims.

In December 2018, the government reopened an investigation into the El Mozote massacre against 16 surviving defendants, and in July 2019 a judge ordered additional crimes against humanity charges in the case. In March 2019, the government reopened an investigation into the Jesuit priest murders during the civil war. President Bukele has promised to further increase efforts to pursue justice for civil war era crimes against humanity. In January 2020, during the first testimony by a high-ranking former military officer in the ongoing El Mozote case, retired air force general Juan Rafael Bustillo Toledo acknowledged that the Atlacatl battalion of the Salvadoran armed forces was responsible for the torture and execution of approximately 1,000 civilians in the 1981 El Mozote massacre.

Implementing policies to reduce poverty and promote equitable economic growth and opportunity:

On July 29, 2019, members of the economic cabinet and representatives of the private sector met to relaunch the National Trade Facilitation Committee, which had met only twice since its creation in 2017. The Committee – a World Trade Organization (WTO) Trade Facilitation Agreement commitment – must develop and implement a work plan to reduce trade barriers. Minister of Economy Hayem and Secretary of Commerce and Investment Kattan advised on reforms to improve the Committee’s functioning and coordination and presented a modernization plan for the Customs agency. Private sector representatives proposed the joint development of a Strategic Trade Facilitation Plan 2019-2024, the creation of a new General Customs Law, and prioritized swifter incorporation of El Salvador into the Northern Triangle Customs Union (in progress since July 2018).

Seeking to attract investment and improve the business climate, the Bukele administration is working on eliminating red tape and bottlenecks by facilitating permitting. According to the Commerce and Investment Secretary Kattan, around \$7 billion in potential investments are stalled due to permitting problems related to environmental issues.

The government continues advancing the micro and small enterprises simplified tax system, which if approved, allows informal sector businesses (roughly 70 percent of the economy) to pay a small tax and formalize in exchange for credit eligibility from formal banking institutions.

On January 27, 2019, the U.S. Ambassador and the GOES signed an America Crece memorandum of understanding, which aims to create financing opportunities for medium and large infrastructure projects in El Salvador. Bukele noted in the press conference following the event that America Crece had the potential to bring in billions of dollars in investment and create hundreds of thousands of jobs.

Supporting the independence of the judiciary and of electoral institutions:

In 2019, El Salvador conducted a free and fair presidential election overseen by an independent electoral commission. The Salvadoran Supreme Court, the senior institution of the Salvadoran judicial system, is fully staffed and operates consistent with El Salvador’s constitution. In issuing the injunction (to which the President ultimately acquiesced) against the President’s further incursions into the legislature this past February, the Constitutional Court has likewise shown itself willing to uphold the law.

Improving border security:

U.S. Department of Homeland Security (DHS) encounters of Salvadoran nationals at the U.S southern border dropped by over 90 percent from May 2019 to February 2020.

On July 21, 2019, Salvadoran President Bukele, U.S. Secretary of State Pompeo, Salvadoran Defense Minister Merino, and U.S. Commander for Southern Command Admiral Faller extended

the United States' lease of the Cooperative Security Location (CSL) at Comalapa airport for the basing of U.S. drug-interdiction air assets in El Salvador. CSL supports roughly 60 percent of tactical flights (and anti-narcotics missions) in the Eastern Pacific.

On September 11, 2019, El Salvador stood up a new Border Patrol with 160 officers assigned to secure official and unofficial border crossings.

The Salvadoran government continues to coordinate with DHS Immigration and Customs Enforcement (ICE) in facilitating the removal of Salvadoran nationals. Prior to the COVID-19 pandemic, the Salvadoran government received four flights per week with up to 135 passengers per flight. Despite adopting extraordinary measures to combat COVID-19, El Salvador continued to accept ICE removal flights. In July 2019, the Salvadoran government committed to participate in a five-week pilot of ICE's Electronic Nationality Verification Program (ENV), which expedites the removal of Salvadorans with final removal orders from the United States. El Salvador committed to continue participating in the ENV after the conclusion of the pilot.

The Salvadoran government cooperates closely with the United States and Mexico to receive its returned nationals. The government received 26,479 of its nationals from the United States and Mexico at La Chacra, El Salvador's principal reception center in 2018, and 32,705 from January through October 2019. Returns from Mexico have risen sharply with an 85 percent increase when compared to the same period in 2018 (from 8,765 to 16,347).

Combating human smuggling and trafficking and countering the activities of criminal gangs, drug traffickers, and transnational criminal organizations:

Since June 1, 2019, the Salvadoran government tripled the number of prosecutors dismantling migrant smuggling networks; arrested 159 migrant smugglers; and improved enforcement of existing laws preventing irregular migration. In July 2019, the Salvadoran government launched a U.S.-Salvadoran Migration Task Force with U.S. Embassy participation. On October 28, 2019, El Salvador signed a Border Security Memorandum of Understanding and a Biometrics Data Sharing Program Memorandum of Cooperation with DHS to expand bilateral cooperation with the United States to improve border security, combat migrant smuggling and human trafficking, and improve information sharing. On December 12, 2019, El Salvador signed a Joint Security Program Memorandum of Understanding with DHS to expand cooperation to identify high-risk travelers seeking to enter El Salvador or the United States at airports.

In June 2019, President Bukele launched his Territorial Control Plan, a multiphase national strategy for civilian security. The plan focuses first on dense urban areas, seeking to decrease extortions- gangs' primary source of revenue- and cutting communications between incarcerated gang leadership and gang members on the street. As gang members retreat to semi-rural areas due to the increased pressure in urban areas, the police will then shift its focus to these semi-rural areas and subsequently rural areas as gangs are pushed farther out.

In December 2019, El Salvador convicted nearly 400 MS-13 leaders for terms up to 74 years in the largest organized crime case in history through Operation Regional Shield IV. The Operation is a regional anti-gang joint operation with Guatemala and Honduras and resulted in

the indictments of over 8,000 gang members in El Salvador alone from 2017-2019. These successes prevent gangs like MS-13 from expanding their activities in the United States. Salvadoran information sharing helps U.S. prosecutors put gang leaders in prison. President Bukele indicates he plans to continue cooperating with the United States to fight gangs.

In January 2020, the GOES was successful in reducing Salvadoran participation in a migrant caravan and thwarted another, while arresting and prosecuting the caravan organizers for the first time. In September 2019 the GOES successfully seized over \$1 million in an operation that resulted in multiple arrests for human trafficking.

Informing its citizens of the dangers of the journey to the southwest border of the United States:

President Bukele, Vice President Ulloa, and Foreign Minister Hill have repeatedly discouraged irregular migration and participation in migrant caravans in public remarks. Foreign Minister Hill has frequently and publicly urged Salvadorans to refrain from irregular migration to prevent further tragedies. In January 2020, Foreign Minister Hill urged Salvadorans to not join caravans that were being organized and provided information that dissuaded most who had gathered in San Salvador from departing on the journey. The GOES migration office also led a vibrant social media campaign aimed at dissuading would-be irregular migrants, including a well-received video highlighting the perils of the journey.