



By Alyssa Misner & Allison Everhardt

Biden's Central American Anti-Corruption Campaign and Implications for US Businesses

Last month, US Vice President Kamala Harris visited Guatemala in her role overseeing diplomatic efforts aimed at reducing migration pressures in the Northern Triangle of Central America. Vice President Harris had a stark message for the Honduran, Salvadoran, and Guatemalan families and unaccompanied children wanting to head north: “Do not come.” Instead, she encouraged Central Americans to “find hope at home.” For would-be migrants desperate to flee the poverty, violence, and political instability of their homelands, finding reasons to stay is a tall order. In an open letter to the Vice President ahead of her visit, Jordán Rodas, the Human Rights Ombudsman for Guatemala, traced the intractable social ills pushing Guatemalans northward to the nation’s “permanent networks of corruption and crime” and the elites that enable them. It is little surprise, then, that the Biden administration has made anti-corruption efforts the lynchpin of its \$4 billion strategy for the region.

While the US’s primary goal may be strengthening governance, its focus on ending impunity and corruption creates additional risks for companies doing business in the region. President Biden made clear in a memorandum ahead of the Vice President’s trip that corruption, which is a major driver of transnational crime and violence, is now considered a core US national security interest. In a related development, US Attorney General Merrick Garland announced initiatives to fight corruption, together with human smuggling and trafficking, in Central America, introducing joint Department of Justice and Homeland Security efforts to investigate and prosecute these illicit activities. With the US eyeing organized crime in these countries and the DOJ further primed for enforcement, companies already sensitive to Foreign Corrupt Practices Act liability will want to be even more careful about how they do business in the region and with whom they partner.

To be sure, there are many naysayers about the US’s ability to dismantle such entrenched systemic problems, and many question if on the ground in the Northern Triangle it will be business as usual. There is plenty of reason for skepticism about the US’s chance for success. In 2018, the UN-backed International Commission Against Impunity in Guatemala (CICIG), which had made impressive strides in holding powerful national political leaders to account for more than a decade, was shut down when it pursued then-President Jimmy Morales and his family. Morales refused to renew its mandate as the

Trump administration looked away. Business elites who had benefitted from the status quo pushed CICIG into its grave, and now key transparency activists who had led Guatemala's burgeoning anti-corruption movement have either fled the country or been jailed.

A similar story has unfolded in El Salvador, where Nayib Bukele, a 39-year-old social media-savvy businessman and mayor who rose to the presidency as a popular agent of transformation, quickly took an authoritarian turn, tossing out five Constitutional Court judges and the attorney general who was investigating his cabinet for corruption, replacing them with allies. Bukele is now pushing for the adoption of Bitcoin as a national currency, raising concerns over increased money laundering and other crimes. Likewise in Honduras, sitting President Juan Orlando Hernández's brother was convicted for drug-trafficking in a US federal court and in March was sentenced to life; the DOJ considers Hernández to be a co-conspirator, though it is not currently pursuing charges against him.

Regardless of the progress the US makes in the region long-term, the legal and regulatory stakes for those doing business there—even in the short-term—will be higher amid the US's anti-corruption campaign. Potential investors and others planning to operate in Central America will need to conduct sophisticated due diligence on their individual and corporate business partners. Further, should the intensified prosecutorial focus on corruption in the Northern Triangle lead to investigations or charges, investigators can be instrumental in mounting a strong defense, both pre-indictment and in preparation for trial. Proper research, done in Spanish and English, can develop impeachment evidence to undermine the credibility of possible government witnesses and can surface exculpatory evidence to support the defense.

Specialized investigators know how to gather information in high-risk areas, like the Northern Triangle, and can help international players more thoroughly understand their local partners' business practices and key relationships to avoid wading into troubled waters. Although public records can be difficult to obtain—many having to be manually retrieved onsite—or non-existent, basic records like corporate filings, civil litigation records, trademark filings, or government contracting information can be obtained and provide valuable leads. But they are not enough.

Because business interests in these countries are often concentrated in powerful familial oligarchies, nestled within a web of political and international influence, a tick-the-box diligence exercise will not provide the nuanced understanding needed to effectively confront and mitigate risk. Capable investigators know that gaining real insights into players in a region where communities often rely heavily on social networks necessitates conducting discreet inquiries within an expansive, trusted source network. It is equally important to take a broad view of useful resources, including relying on known sources in-country and the diaspora—who often remain closely plugged in to local developments but may speak more freely with less fear of retaliation. Tapping established source networks is the only effective way to obtain certain critical insights in countries dominated by a handful of secretive, private family enterprises.

Previous experience shows that this type of expertise in particular can show how closely connected an opposing party may be to small town politicians or local *caudillos*, which could suggest a lack of objectivity or a potential exposure to corruption risk. In one such case in Guatemala, a combination of thorough public record research and source inquiries found that an opposing party in litigation likely had significant influence over local high-ranking officials and judges—a potential hindrance to a fair outcome in the matter. Further, accusations of involvement in a large investment project scandal were also uncovered and undercut the opposing party's credibility. Savvy researchers will also understand how to parse an individual's reputation, whether on paper the person seems like a stand-up member of a *buena familia* or has been the subject of local rumors or innuendo. In another matter, despite initial suggestions that a businessman was related to local politicians—a concern for his international business partners—further discussions with local sources uncovered no such relationship.

Some international companies, answering the Biden administration's call to support development and

good governance in the Northern Triangle, may lament the added risk and cost for inadvertently running afoul of anti-corruption laws. But for now, this may be a necessary course of action.



About our firm

Nardello & Co. is a global investigations firm whose experienced professionals handle a broad range of issues including due diligence, anti-corruption & fraud investigations, civil and white collar criminal litigation and arbitration support, asset tracing, activist defense, political risk and strategic intelligence, digital investigations and cyber defense, monitorships and independent investigations, and compliance. Nardello & Co. has been recognized as a top-tier firm by Chambers and Partners worldwide and is the only investigative firm in the US to earn a Band 1 ranking, their highest level of recognition.

Our clients include the world's leading law firms and financial institutions, Fortune 500 and FTSE 100 companies, high-net-worth individuals and family offices, governments, NGOs, sports organizations, and academic institutions.

With offices in New York, London, Washington DC, Hong Kong, Tokyo, Milan, and Dubai, Nardello & Co. maintains a professional staff that includes former US federal prosecutors, US and international lawyers, former law enforcement personnel and intelligence operatives, licensed investigators, research analysts, former journalists, financial crime specialists, forensic accountants, and computer forensic experts.

Contact

Alyssa Misner

Associate Managing Director
+1 202 545 3000
amisner@nardelloandco.com

Allison Everhardt

Managing Director
+1 202 545 3000
aeverhardt@nardelloandco.com

