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Non-Detained

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1855 Gateway BLVD., Suite 850
Concord, CA 94520

In the Matter of	)	
Crystel Lima	)	**File No. 245-647-045**
In Removal Proceedings	)	

Immigration Judge: Nava, Marlem. Next Hearing Date: June 26, 2029 at 8:30

RESPONDENT'S OPPOSITION TO THE DEPARTMENT OF HOMELAND SECURITY'S MOTION TO PRETERMIT BASED ON ASYLUM COOPERATIVE AGREEMENTS

I. INTRODUCTION

Crystel Lima ("Lima"), by and through undersigned counsel, opposes the Department of Homeland Security's (DHS) Motion to Pretermit and requests that the Court deny the motion in its entirety because she is not subject to the Asylum Cooperative Agreements (ACAs) with Honduras and Ecuador.

Lima, a twenty-year-old asylum applicant from Guatemala, should be afforded the opportunity to proceed with her pending asylum application in the United States. The preponderance of the evidence demonstrates that Honduras and Ecuador are not safe third countries and do not have full and fair procedures for determining protection claims, and the United States' recent agreement with said countries should not be construed to apply retroactively. Although DHS relies on the general ACA regulatory framework promulgated in 2019, the specific bilateral agreements with Honduras and Ecuador were not signed until 2025, well after Lima entered the United States on December 20, 2023. These specific ACAs lack the necessary implementation procedures, and DHS has not demonstrated that either country will actually receive Lima or afford her a full and fair procedure for determining her protection claims. If either country is determined to be a safe third country, this Court should set this case for a hearing with an appropriate timeline for submission of evidence regarding a claim for protection from the applicable country or countries.

The ACAs between the United States and the relevant countries do not apply to the Respondent. As background, the relevant ACAs came into force as follows:

- The Honduras ACA was signed by the parties on March 10, 2025, amended on June 25, 2025, and published in the Federal Register on July 8, 2025. *See* 90 Fed. Reg. 30,076.
- The Ecuador ACA was effected by an exchange of diplomatic notes on July 16, 2025, and July 23, 2025, and published in the Federal Register on November 17, 2025. *See* 90 Fed. Reg. 51,376.

Lima entered the United States on December 20, 2023, prior to the publication of the Asylum Cooperative Agreements in question. While DHS cites the November 19, 2019 implementing regulation as the operative date, that regulation created only a general framework

for future ACAs – no specific ACA with Honduras or Ecuador existed at the time of Lima's entry. The Honduras ACA was not signed until March 10, 2025 (more than fifteen months after Lima's entry), and the Ecuador ACA was not published until November 17, 2025 (nearly two years later).

The Court has authority to determine whether an asylum applicant is subject to the terms of an agreement, and if so, whether "under the relevant agreement the alien should be removed to the third country, or whether the alien should be permitted to pursue asylum or other protection claims in the United States." 8 C.F.R. § 1240.11(h)(1). The Court should analyze whether Lima qualifies to still seek asylum from Guatemala in the United States under 8 C.F.R. § 1240.11(h)(1)-(2)(i)-(iii). Alternatively, if the Court finds that Lima is subject to either of the proffered ACAs, Lima respectfully requests additional time to show that she will suffer persecution or torture upon removal to Ecuador and/or Honduras under 8 C.F.R. § 1240.11(h)(1)(2)(iii).

Lima raises the following arguments in support of her request that the Court deny DHS's Motion to Pretermit: **(1)** DHS waived its ability to raise the issue of pretermission under the ACA, and now prejudices Lima by raising this issue for the first time after her master calendar; **(2)** DHS has not met its burden of showing that either of the ACA countries named have agreed to receive Lima, are actually capable of receiving Lima, and affording a "full and fair procedure" for seeking asylum or equivalent protection; **(3)** there is credible evidence that shows both countries are not safe and thus, their designation as "safe third countries" is invalid; **(4)** Lima came to the United States on December 20, 2023 and the retroactive application of the specific 2025 ACAs to her raises serious due process concerns, as these particular bilateral agreements did not exist at the time of her entry; **(5)** the Court has authority to find it is in the public interest for Lima to receive asylum in the United States; **(6)** 8 C.F.R. § 1240.11(h)(2), cited by DHS in its motion, is inconsistent with 8 U.S.C. § 1158(a)(2)(A), which does not preclude a grant of withholding of removal or protection under the Convention Against Torture (CAT) to the Respondent's country of origin even if the third-country bar precludes a grant of asylum; **(7)** Respondent has a due process right to a full evidentiary hearing and pretermission is inappropriate where there are disputed issues of fact; and **(8)** Lima merits additional time to file

an I-589 regarding her fear of removal to Honduras and/or Ecuador if the Court finds any of the ACAs applicable.

II. FACTS AND PROCEDURAL HISTORY

Crystel Lima is a twenty-year-old native and citizen of Guatemala. On or about December 20, 2023, Lima entered the United States without having been admitted or paroled after inspection by an immigration officer.

DHS initiated removal proceedings by filing a Notice to Appear (NTA) dated December 22, 2023, charging Lima as removable under INA § 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

Respondent filed an application for asylum, withholding of removal and protection under the Convention Against Torture (CAT) on December 8, 2025, in light of her fear of return to Guatemala.

On January 21, 2026, Lima submitted written pleadings admitting allegations in the NTA and conceding the charge of removability. Subsequently, she was scheduled for an Individual Hearing, to take place on June 26, 2029.

On February 19, 2026, DHS filed the instant Motion to Pretermit Lima's protection applications, arguing that Lima is barred from applying for asylum, statutory withholding of removal, and CAT protection under INA § 208(a)(2)(A) and 8 C.F.R. § 1240.11(h)(2), because she is allegedly subject to the ACAs with Honduras and Ecuador.

III. ARGUMENT

A. The Asylum Cooperative Agreements Do Not Apply to Lima as the Statute Prohibits Her Removal to the Third Countries.

Based on the Asylum Cooperative Agreements, a Respondent is not eligible to apply for asylum unless, among other reasons, the Immigration Judge determines that the Asylum

Cooperative Agreement in question does not apply to the Respondent. 8 C.F.R. § 1240.11(h)(2)(i); *Matter of C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291, 294 (BIA 2025).

An Asylum Cooperative Agreement's applicability analysis includes whether its applicability itself is lawful. Both of the ACAs at issue contain language requiring that **transfer of nationals to those nations comport with this country's immigration laws.** *See* 90 Fed. Reg. 30,076 at 30,079 ("The Parties shall establish procedures to ensure that the transfers of Protection Applicants to Honduras comply with the obligations set forth in this Agreement and the national laws of each Party."); 90 Fed. Reg. 51,376 at 51,378 ("Both Parties' actions under this Agreement shall be in accordance with [...] any other respective international obligations, national constitutions, laws, regulations, and immigration and visa policies of the Parties [...]"). As a result, the agreements in question are not applicable as their application would violate the cooperative agreements themselves.

The regulations on proceedings require that an Immigration Judge designate a country or countries to which a Respondent may be removed. 8 C.F.R. § 1240.10(f). Per the Notice to Appear, Lima is not considered an arriving alien and thus section 241(b)(2) applies. *See* Notice to Appear. The same states a Respondent may designate one country to which the Respondent wants to be removed, and the Attorney General shall remove to the same. INA § 241(b)(2)(A). Alternatively, the Attorney General may disregard this designation only under certain limited statutory circumstances. INA § 241(b)(2)(C). In the instant case, the Department seeks to disregard Guatemala as the country of removal, and remove the Respondent to countries whose governments have not confirmed they will accept Lima, outside the criteria listed on INA § 241(b)(2)(D). However, **the Department has provided no evidence that (1) the Department has even notified the nations of Honduras or Ecuador that they are seeking to remove Lima to those countries, (2) that Honduras or Ecuador are willing to accept Lima, (3) that Guatemala is not willing to accept the Respondent, or (4) the Attorney General has decided removing Lima to Guatemala is prejudicial to the United States.** INA § 241(b)(2)(D)(vii).

Because it is impossible to enforce the Asylum Cooperative Agreements without violating the statute, and the Agreements require compliance with immigration law, the Agreements in question cannot apply to the Respondent.

B. The Department Waived the Right to Raise the Issue of Pretermission Under the Relevant ACAs and Violates Lima's Right to Due Process by Raising This Issue at the Last Possible Moment.

"Immigration proceedings, although not subject to the full range of constitutional protections, must conform to the Fifth Amendment's requirement of due process." *Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1162 (9th Cir. 2005) (as amended). "A full and fair hearing is one of the due process rights afforded to aliens in deportation proceedings. . . . A court will grant a petition on due process grounds only if the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case." *Gutierrez v. Holder*, 662 F.3d 1083, 1091 (9th Cir. 2011) (citations and quotation marks omitted). In the instant case, determining the alleged Asylum Cooperative Agreements apply to the Respondent constitutes a due process violation as its misapplication would prevent the Court from hearing Lima's application for asylum.

BIA precedent states that if the Department alleges any of the Asylum Cooperative Agreements apply, the Court may not review the Respondent's asylum claim until a determination is reached on the Agreement's applicability. *Matter of C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291, 296 (BIA 2025). If the Court misapplies the Asylum Cooperative Agreements to the instant case, it will thus prevent Lima's asylum claim from ever being heard, inherently preventing a full and fair hearing.

In addition to showing a due process violation, an applicant generally must show prejudice. *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 440 (9th Cir. 2021). Prejudice is shown where the violation potentially affected the outcome of the proceedings. *Flores-Rodriguez v. Garland*, 8 F.4th 1108, 1113 (9th Cir. 2021). Here, the Court's granting of the Department's motion would prejudice Lima as it would bar the Court from hearing her asylum claim.

Even if the Court determines applying the Asylum Cooperative Agreements is not prevented by the statute, **the abrupt addition of new countries of removability constitutes a due process violation.** The Ninth Circuit has previously held that a last-minute change to the country of deportation constituted a violation of due process. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). The Ninth Circuit elaborated that it is wholly impermissible to base a

denial of asylum on an applicant's inadequate presentation of evidence on a matter that the applicant had no reason to anticipate would be a subject of the asylum hearing. *Id.* at 1041.

The same is true here. Despite the existence of the ACAs, the Department failed to notify Lima of their intention to seek her removal to any of the third countries they now argue. The ACAs are vague regarding individual applicability, and there is no way Lima could have known they would be applied to her. Additionally, it would be speculative at best for Lima to assume any reason for why the Department did not designate the three countries as countries of removal as part of their case strategy. As a result, it was impossible to preemptively prepare evidence, violating Lima's basic due process right to prepare and present relevant arguments and evidence.

C. The Department Has Not Met Its Burden of Showing that Ecuador and Honduras Will Receive Lima and Provide a Full and Fair Procedure for Determining Protection Claims.

It is the Department's burden as the moving party to show that there is cause for the motion to be granted. Pursuant to 8 U.S.C. § 1158(a)(2)(A), DHS must show that (1) an agreement exists between the United States and either Ecuador or Honduras, (2) that either of these nations would receive Lima specifically, (3) that her life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and (4) she would have access to a full and fair procedure for determining a claim to asylum or equivalent protection. Notably, the Department provided absolutely no evidence that either of these nations has been notified of Lima's proceedings, or that either nation has been requested to receive her. DHS argues only that the two agreements exist and therefore apply to Lima. This complete lack of individualized evidence and reliance on circular logic cannot satisfy the burden.

1. Honduras

DHS fails to show that Honduras will actually receive Lima. Specifically, the Department provided no evidence that Honduras has agreed to receive Lima. To support its argument, the Department provides only the generic language of the ACA found in the Federal Register. *See* DHS's Motion to Pretermit. The ACA does not mention receiving Lima, nor any

specific Respondent. Rather, it only notes Honduras reserves discretion for the acceptance of all individuals transferred. Furthermore, the same only states the two nations would later develop procedures for the transfer of Respondents. *Id*.

Again, the Department provided no evidence that any subsequent procedures have been made. However, in the ACA's subsequent Joint Implementation Plan, which DHS neglected to file, Honduras committed to taking no more than ten individuals per month for the next two years unless and until further negotiations take place: a total of just 240 people, at most, over two years. *See* Department of State: Agreement Between the United States of America and Honduras, with Joint Implementation Plan, attached herein as Exhibit 1. The Department included no evidence in their motion demonstrating Lima is to be counted against these 240 total persons. This number is underinclusive because 240 people is not nearly enough to guarantee that Honduras would receive Lima. **The Department has not submitted any evidence to show that Honduras has expanded its commitment or specifically accepted Lima for processing a claim for asylum.** Similarly, the ACA states neither party has an obligation to accept individuals involved in "any other activity linked to illicit activities" but provides no definition or elaboration on who may fall within that exception. *Id*. at 13. Clearly, then, the ACA has limiting criteria and exclusions but DHS provides no confirmation that Lima is not excluded.

Even if Honduras will receive Lima, **DHS has not shown that Honduras will provide a full and fair procedure for determining Lima's protection claims.** Indeed, following the administration's unsuccessful attempt to implement a Honduras ACA in 2019, the Senate Foreign Relations Committee ("SFRC") published a detailed report exposing the glaring defects in the procedures afforded asylum-seekers in Honduras. SFRC Democratic Staff Report, "Cruelty, Coercion, and Legal Contortions: The Trump Administration's Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador" (January 18, 2021), attached herein as Exhibit 2. The SFRC investigation concluded that Honduras did not have the institutional capacity to adjudicate protection claims. Both the State Department and the SFRC investigation found that the ACA agreements the administration entered into with Honduras followed a pattern designed to close off legal pathways to protection in the United States.

As the SFRC's report explained, **there was broad acknowledgement, even within the Trump administration, that Honduras lacked institutional capacity to provide protection to**

asylum seekers. Honduras' own National Human Rights Commissioner asserted that Honduras lacks the capacity and resources to provide dignified treatment to transferred individuals. Nearly five years after the publication of this report, DHS is still unable to provide the Court with evidence showing Honduras will provide a full and fair procedure for determining protection claims. Accordingly, the Court should deny DHS's motion as to Honduras.

2. Ecuador

Again, the Department has failed in its burden to show cause for the motion to be granted. **The Department included no evidence that the agreement actually applies to Lima specifically.** Under the Ecuador ACA, "The Government of the United States of America shall in its complete discretion propose to the Government of the Republic of Ecuador the transfer of such third-country nationals and the Government of the Republic of Ecuador shall in its complete discretion consider accepting such a proposal in whole or in part." *See* 90 Fed. Reg. at 51,377–78. The agreement continues that the United States and Ecuador "shall develop operating procedures to assist with the implementation of this Agreement through a subsequent instrument, including, among others, clear criteria to determine eligibility for transfer to the Republic of Ecuador, as well as any necessary bilateral assistance to implement this Agreement." *Id.* at 51,379. The Department did not, however, attach or even allude to in its motion any such "subsequent instrument," the existence of which is necessary to determine Lima's eligibility for transfer. **Without further evidence, it is therefore impossible to determine if the agreement applies to Lima.**

Moreover, the ACA states that its implementation is subject to the availability of funds and technical capacity of each Party, but DHS has not provided the Court with information on Ecuador's availability of funds or technical capacity to receive Lima. *See* 90 Fed. Reg. at 51,380. Without this critical information, the Court cannot determine whether Ecuador will receive Respondent.

Second, the Department provided no evidence that Ecuador has agreed to receive Lima. The agreement provides for Ecuador's discretionary acceptance of third-country nationals. *Id* ("The Government of the United States of America shall in Its complete discretion propose to the Government of the Republic of Ecuador the transfer of such third country nationals and the

Government of the Republic of Ecuador shall in Its complete discretion consider accepting such a proposal in whole or in part.") **The Department has provided no evidence to confirm or even suggest Ecuador has agreed to, or been asked to, receive Lima**. As a result, it is impossible to claim the Department has met its burden to establish the agreement in question applies.

Third, **DHS has not shown that Ecuador will provide a full and fair procedure for determining Lima's protection claims.** Indeed, Human Rights Watch's most recent report on Ecuador notes that "many migrants and asylum seekers in Ecuador struggle to obtain regular status and integrate." *See* Human Rights Watch 2024 World Report, Evidence Part 03, Exhibit 4. In addition, the U.S. Department of State recognized that "[m]igrants and refugees, especially women, children, and lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) individuals, sometimes experienced gender-based violence and human trafficking Authorities reported an increase in forced labor, sex trafficking, and the forced recruitment of migrants and refugees into criminal activity, such as drug trafficking and robbery, on the northern and southern borders, particularly by domestic criminal groups and transnational criminal organizations that also operated in Colombia." *See* U.S. Department of State 2023 Human Rights Report, Evidence Part 03, Exhibit 3.

The U.S. Department of State has recognized that migrants and asylum seekers in Ecuador struggle to obtain regular status and face gender-based violence and human trafficking. Authorities have reported increases in forced labor, sex trafficking, and forced recruitment of migrants into criminal activity on Ecuador's borders.

Again, as the moving party the Department must demonstrate Lima would receive a full and fair opportunity to receive protections in Ecuador. The department has provided no evidence beyond the attachment agreement to create an agreement between the United States and Ecuador. Based on the above information, DHS has not shown that Ecuador will either receive Lima or afford a free and full procedure for applying for protection.

In sum, DHS's motion lacks a factual and legal basis given the apparent implausibility that Lima will actually be received by either Ecuador or Honduras. Further, even if they receive Respondent, DHS has offered no evidence to show that either country has full and fair

procedures for Lima to apply for asylum or other protection, putting her at risk of refoulement to Guatemala. Therefore, the Court should find that DHS has not met its burden for the motion to be granted.

D.Designation of Ecuador and Honduras as Safe Third Countries Is Invalid Where Credible Evidence Shows That They Are Not Safe.

The Department's position that Honduras and Ecuador are safe third countries flies in the face of voluminous publicly available country conditions reports. While the Department bears the burden in establishing good cause for the motion to pretermit, **DHS has failed to provide the Court with any country conditions information.** Current conditions in the two countries are described below.

Pursuant to 8 U.S.C. § 1158(a)(2)(A), Respondent may only be removed to a country in which her life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. However, **country conditions reports indicate Lima would be subjected to similar persecution she suffered in Guatemala on account of the same protected grounds if removed to either of the intended countries.** Accordingly, Respondent has a credible fear of future persecution if removed to Honduras or Ecuador. *See* Respondent's Supplemental Declaration, Evidence Part 04.

Lima's case is inextricably linked to gang and gender-based violence. She fled Guatemala after being directly threatened by members of the Mara 18 gang, who targeted her because of her status as a young woman and her familial association to Heidi Martinez. On December 9, 2023, three men approached her after leaving church and told her that if she did not belong to them, she would not belong to anyone – a threat that carries unmistakable overtones of sexual violence and possessive control characteristic of gang culture in Central America. The threats continued after her arrival in the United States, including messages stating that her baby would not be born. As a young woman who was targeted precisely because of her status as a young woman and her perceived stance against the gang activity, Lima's safety profile must be evaluated through the lens of gender-based violence conditions in both proposed ACA countries.

1. Honduras

The State Department's own 2025 Trafficking in Persons Report for Honduras states that migrants are targeted by human traffickers present in the country, reflecting the country's broader failure to shield asylum applicants from persecution or torture. *See* 2025 Trafficking in Persons Report for Honduras, Evidence Part 02, Exhibit 3. In addition, the State Department recognized that **criminal groups, such as gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, intimidation, and other threats and violence against vulnerable populations.** *See* 2024 U.S. Department of State Country Reports on Human Rights Practices, Evidence Part 02, Exhibit 2. Human Rights Watch concludes that the country continues to struggle with widespread corruption, a compromised judiciary, high levels of violence, and attacks against environmental defenders. *See* Human Rights Watch 2025 World Report, Evidence Part 02, Exhibit 4. In such a context, Honduras cannot credibly be presented as a safe or viable destination under the ACA framework or be considered a safe destination for Lima.

On a more narrow approach to Lima's asylum claim, Honduras is identified as the **least safe country in the Americas to remove a young woman to.** The country has been repeatedly identified as having the **highest rate of femicide in Latin America, with approximately 7 femicides per 100,000 women.** *See* 2025 Human Rights Watch World Report, Evidence Part 02, Exhibit 4. This rate also characterizes one of the highest in the world, in a scenario of generalized and systematic violence against women, which only reflects the destabilization of institutional protection mechanisms and a "climate of widespread and systematic crime, corruption and impunity". *See* World Bank Gender-Based Violence Country Profile, Evidence Part 02, Exhibit 13.

Honduras has been named on multiple occasions the worst place in the world to be a woman. *See* Women's Bodies as a Battlefield: Gender-Based Violence in Honduras, Evidence Part 02, Exhibit 10. This is evidenced by the fact **the country registers approximately 16,000 reports of domestic violence and 3,200 reports of sexual crimes each year, and the vast majority of these cases do not result in trial or punishment.** *See* Femicides in Honduras, Evidence Part 02, Exhibit 14.

The maras – including the Barrio 18 gang, the same organization that threatened Lima in her home country – operate throughout Central America and are consolidated in Honduras. And the nature of gang violence in Honduras mirrors the very persecution Lima experienced in Guatemala. **Street gangs in Honduras, use sexual violence against women and girls as a deliberate tool of territorial control and intimidation.** "Thus, violence against women is a key tool in the behavior of many criminal groups and the perpetuation of their illicit activities that heightens the risk and vulnerability of women and girls in areas where these groups operate." *See* Impact of Organized Crime on Women, Girls and Adolescents in Northern Central American Countries, Evidence Part 02, Exhibit 8. They routinely use rape and sexual assault as instruments of punishment and domination over women in their areas of control, and women are specially vulnerable to human trafficking, torture, disappearances, slaverylike conditions, sexual servitude and forced prostitution. *Id*.

The U.S. Department of State's 2025 Trafficking in Persons Report confirms that **traffickers in Honduras specifically target women and children for sex trafficking and exploit victims within their own homes and communities.** *See* 2025 U.S. Department of State Trafficking in Persons Report, Evidence Part 02, Exhibit 3.

Lima was threatened in Guatemala by individuals associated with the Barrio 18 gang with the words: "if you don't belong to us, you won't belong to anyone." This is not an isolated threat – it reflects a documented pattern of gang behavior toward women throughout Central America, and particularly in Honduras, of territorial control through the exploitation of women's bodies. Sending Lima to Honduras would place her directly within the reach of the same criminal network that persecuted her in Guatemala, in a country where the State has clearly demonstrated it is unable and unwilling to protect women from precisely this type of violence. Under these circumstances, there is absolutely no basis to consider Honduras a safe country for Lima.

2. Ecuador

The 2024 Department of State Human Rights Report on Ecuador opens with the declaration that President Daniel Noboa decreed a state of emergency to stem escalating violence from local and transnational organized crime groups. The report notes **significant human rights issues including credible reports of arbitrary or unlawful killings; torture or cruel,**

inhuman, or degrading treatment or punishment; arbitrary arrest or detention; and serious restrictions on freedom of expression and media freedom. The Department of State further acknowledged that kidnappings and extortion by criminal groups increased in 2024 and that the government was forced to issue numerous executive decrees and renewed states of exception to curb rising crime. Human Rights Watch's most recent report on Ecuador states that homicide rates have reached unprecedented levels and notes that President Daniel Noboa himself admitted that the country was in an "internal armed conflict." Due to skyrocketing violence, Ecuador has shifted from being a transit or host country for foreign refugees to dealing with displacement of its own population, with approximately 93,000 Ecuadorians displaced by violence in 2024. Under these circumstances, there is no colorable argument that Ecuador is a "safe" third country for Lima, and the Court should deny DHS's motion.

The conditions for young women in Ecuador are dire and worsening. The U.S. Department of State's 2024 Human Rights Report specifically notes that **migrants and refugees (especially women and children) experience gender-based violence and human trafficking in Ecuador.** *See* 2023 U.S. Department of State Country Reports on Human Rights Practices, Evidence Part 03, Exhibit 3. Human Rights Watch also reports that **Ecuador has seen a sharp increase in violence by organized crime, "which took homicide rates to unprecedented levels", which drastically impacts children and adolescents.** *See* World Report 2025: Ecuador, Evidence Part 03, Exhibit 5.

Besides, impunity is seen as a systemic problem in Ecuador, especially for cases involving violence against women. *See* Freedom in the World 2025 Country Report, Evidence Part 03, Exhibit 7.

The truth ignored by DHS is that Ecuador is not a safe country for women and cannot address the grounds that gave rise to Lima's persecution. Six out of ten Ecuadorian women reported that they have been subjected to some form of violence in their lifetime. *See* World Bank Group Country Gender Scorecard, Evidence Part 03, Exhibit 11. .In September 2023, human rights organizations documented that male inmates entered the women's pavilion in a prison in Quevedo to rape, attack, and torture female inmates in complicity with the prison's own authorities – a horrifying illustration of the state's inability to protect women even within its own

custodial facilities. *See* U.S. Department of State 2023 Country Reports on Human Rights Practices, Evidence Part 03, Exhibit 3. Besides, **impunity is seen as a systemic problem in Ecuador, especially for cases involving violence against women.** *See* Freedom in the World 2025 Country Report, Evidence Part 03, Exhibit 7.

The UNHCR's 2024 Annual Results Report documented **1,064 cases of gender-based violence managed nationally among refugees, asylum seekers, and migrants**, with 8,445 individuals requiring specialized services including psychological support, legal counseling, and shelter in safe houses, demonstrating both the scale of the problem and the overwhelming demand on an already strained protection system. *See* UNHCR 2024 Annual Results Report 2024, Evidence Part 03, Exhibit 9. It should be further noted that refugees and migrants traveling in mixed movements are routinely exposed to sexual abuse and trafficking. *See* UNHCR Multi-Year Strategy 2023–2025, Evidence Part 03, Exhibit 10.

Lima, as a young Guatemalan woman with no documentation, no family, and no support network in Ecuador, would fall squarely within the most vulnerable population identified in these reports, exposed to gang and generalized gender violence. The threats she received in Guatemala, rooted in gang-affiliated sexual control and intimidation, would not only persist but intensify in a country where the state cannot protect even its own citizens from similar violence, much less an unaccompanied foreign woman with an infant child.

E. Application of the 2025 ACAs would violate Respondent's due process rights, and DHS Has Not Established That These Particular Agreements Were Operative or Applicable at the Time of Lima's Entry.

Lima came to the United States on December 20, 2023, prior to the signing of the two relevant ACAs in this case. Thus, the agreements should not be retroactively applied to Lima, as it would violate her due process rights.

DHS relies on 8 C.F.R. § 1240.11(h)(2) and the implementing regulation published on November 19, 2019, *see* 84 Fed. Reg. 63,994, to argue that any alien who entered the United States on or after November 19, 2019, is subject to any ACA subsequently entered into by the United States. Lima does not dispute that she entered the United States on December 20, 2023,

which is after the November 19, 2019 date referenced in the regulation. However, the existence of the 2019 regulatory framework alone does not resolve the question. The 2019 regulation created only a *general mechanism* by which future ACAs could bar asylum eligibility. It is the *specific bilateral agreements* – not the regulation in the abstract – that create the actual legal bar and designate specific countries to which a respondent may be removed. Without a specific, operative ACA with a particular country, the regulation has no independent force to bar an applicant's claims or designate that country for removal.

At the time Lima entered the United States on December 20, 2023, no ACA existed with either Honduras or Ecuador. The Honduras ACA was not signed until March 10, 2025 – more than fifteen months after Lima's entry – and was not published in the Federal Register until July 8, 2025. *See* 90 Fed. Reg. 30,076. The Ecuador ACA was not effected until July 16–23, 2025, and was not published until November 17, 2025. *See* 90 Fed. Reg. 51,376. **Thus, when Lima entered the United States, there was no bilateral agreement with Honduras or Ecuador that could have barred her protection claims, and no country other than Guatemala had been designated, or could have been designated, as a country of removal under the ACA framework.**

The application of the 2025 ACAs to Lima therefore attaches *new legal consequences* – specifically, the pretermission of her protection applications and her potential removal to countries that had no agreement with the United States at the time of her entry, that did not and could not exist when Lima crossed the border in December 2023. This implicates the deeply rooted presumption against retroactive application of legislation. *See Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994) ("[S]ettled expectations should not be lightly disrupted . . . the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place."). The standard to rebut this presumption is "demanding," requiring "a clear indication from Congress that it intended such a result." *See INS v. St. Cyr*, 533 U.S. 289, 316 (2001). The language rebutting the presumption of retroactivity must be "so clear that it could sustain only one interpretation." *Id.* at 317, quoting *Lindh v. Murphy*, 521 U.S. 320, 328, n.4 (1997).

Critically, **neither 8 U.S.C. § 1158(a)(2)(A) nor the 2019 implementing regulation contains express language authorizing the retroactive application of *specific future ACAs* to**

individuals who entered the United States before those agreements came into existence. The regulation's language cannot reasonably be read as Congress's or the Executive's "clear indication" that any ACA signed at any future date would automatically apply to all entrants since 2019, regardless of whether the agreement existed at the time of their entry. *See also Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.").

The BIA in *C-I-G-M-* engages only in cursory analysis of *Landgraf* and does not address whether the application of a specific, newly created ACA to individuals who entered before that agreement existed constitutes an impermissible retroactive effect. Nowhere does the BIA acknowledge that *Landgraf* specifies a two-step process to determine whether a federal statute has retroactive effect. The first step is determining if "Congress has expressly prescribed the statute's proper reach." *Landgraf v. USI Film Products,* 511 U.S. 244 (1994), at 280. In the absence of Congress's clear intent permitting retroactive application, a court must determine whether the statute creates new legal consequences for prior events in a way that upsets "familiar considerations of fair notice, reasonable reliance, and settled expectations." *Id*. at 270. Here, there is no express permission in the language of 8 USC § 1158(a)(2)(A) to apply an ACA retroactively[1]. Under the next step in *Landgraf*, it is clear that **pretermitting relief and removal to an ACA country would attach new legal consequences that did not exist at the time Lima came to the United States, fundamentally altering the legal landscape under which she made decisions about seeking protection in the United States, and upsetting the notions of fair notice, reasonable reliance, and settled expectations mentioned in *Landgraf*.**

The BIA cites to nonbinding dicta in *Landgraf* for the suggestion that there is no retroactive application where only "prospective relief" is affected. *See C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 298. *Landgraf* simply did not involve such circumstances. The petitioner in Landgraf sought to avail herself of an amendment to federal law while she appealed the dismissal of her complaint. A party's denial of "prospective relief" resulting from (not in spite

[1] *See also Bowen v. Georgetown University Hosp*., 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. […] By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.").

of) application of a new statute was simply not at issue in *Landgraf*. The Supreme Court is clear that the question is not, as the BIA puts it, whether the statute restricts retroactive application of an ACA; the question is whether the statute permits such application.

Moreover, even setting aside the retroactivity question, **DHS has not established the key predicate elements that make these specific ACAs operative as to Lima.** Regarding the Ecuador ACA, the agreement explicitly requires the parties to "develop operating procedures to assist with the implementation of this Agreement through a subsequent instrument, including, among others, clear criteria to determine eligibility for transfer." *See* 90 Fed. Reg. at 51,379. DHS has not provided any evidence that such a subsequent instrument exists or that eligibility criteria have been established. Without these implementation procedures, the Ecuador ACA is not fully operative as applied to any individual, including Lima. Similarly, the Honduras ACA states that Honduras retains discretion over acceptance of all transferred individuals, *see* 90 Fed. Reg. at 30,079, and that the parties "shall establish procedures to ensure that the transfers of Protection Applicants to Honduras comply with the obligations set forth in this Agreement," *id.* at 30,079, but DHS has provided no evidence that such procedures exist or that Honduras has agreed to receive Lima.

Finally, the BIA also cursorily cites Eighth Circuit decisions for the proposition that the statutory and discretionary nature of asylum means that applicants have no constitutionally protected liberty or property interest. *C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 298. The BIA ignores that this reasoning does not extend to individuals who establish eligibility for mandatory forms of protection such as withholding of removal and CAT. Apart from asylum, Lima's I-589 includes claims for withholding of removal and CAT protection that cannot be foreclosed by the applicability of an ACA. Therefore, the Court should deny DHS's Motion to Pretermit.

F. It Is in the Public Interest for Lima to Proceed with Her Asylum Application in the United States and the Court Has the Authority to So Find.

The asylum applicants in *C-I-G-M-* also referred to the statutory language in 8 U.S.C. § 1158(a)(2)(A) to argue that it would be in the public interest for them to receive asylum in the United States, ACA notwithstanding. *Id.* at 298. There is no text in 8 U.S.C. § 1158(a)(2)(A) that

justifies an interpretation where only the DHS Secretary or their delegates would have authority for a public interest finding. The Court has the authority to make such a finding.

Here, the facts of Lima's case clearly establish that it is in the public interest for her to receive asylum in the United States. Lima is a 20-year old girl, who suffered intense neglect and abandonment by her father and severe persecution in Guatemala, as still only a child. Lima has no connection whatsoever to either Ecuador or Honduras. She has no social network, no family, and no means of support while awaiting a determination on her application in either country. Despite their geographic proximity, the cultures of the three countries differ significantly, and even the language has distinct variations that could hinder Lima's ability to adapt and effectively pursue the refugee application process.

By contrast, Lima has built a life for herself in the United States since her arrival on December 20, 2023. Lima's only family and connections outside of Guatemala are in the United States, providing Lima with the only location where she can receive minimum familial and communitary protection while awaiting a decision on her claims.

Moreover, **Lima has a one-year-old U.S. citizen child who is entirely dependent on her as his primary caregiver.** Asher Abraham Quevedo Lima is a U.S. citizen, born on Martinez, California, on October 25, 2024, to Guatemalan parents. *See* Birth Certificate, attached herein as Exhibit 3, and Respondent's Supplemental Declaration, Evidence Part 04. Removing Lima to any of these countries would result in extreme hardship to the child under either possible scenario: (a) If Lima were removed to a third country and forced to leave Asher behind in the United States, the child would be left alone and without parental care, potentially becoming dependent on shelters or other temporary arrangements, with no responsible guardian to provide for his daily needs; or (b) If Lima were removed to Honduras or Ecuador and took her young U.S. citizen child with her, she would be placing him in countries marked by insecurity and generalized violence (as previously discussed), forcing him to abandon the nation where he has legal and emotional ties to, and where he has been developing and forming his earliest ties.

Additionally, it is unclear whether either country would even receive the child, as the referenced agreements do not address U.S. citizens. He holds no visa or legal status in either country and would not be entitled to lawful residence there.

In sum, **this scenario would inevitably result either in the dismantling of the family unit or in violations of the receiving countries' immigration laws, thereby causing extreme hardship to a U.S. citizen child**. Such an outcome cannot reasonably be considered to serve **the public interest, which must consider the best interest of the child.**

The "best interest of the child" is a foundational principle in United States law, requiring that decisions affecting children give primary consideration to their safety, stability, and overall well-being. Although not codified as a single, overarching provision within the Immigration and Nationality Act, the principle is deeply embedded in American jurisprudence. The Supreme Court has repeatedly recognized the constitutional dimension of family integrity and parental rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, emphasizing the fundamental liberty interest parents and children share in maintaining their family unit. *See*, e.g., *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982).

Congress has likewise incorporated child-centered protections into federal immigration law. For example, the Trafficking Victims Protection Reauthorization Act expressly requires that determinations concerning unaccompanied children account for their best interests. Moreover, hardship-based forms of relief under the INA inherently reflect this principle by directing adjudicators to consider the severe impact removal would have on U.S. citizen children.

Accordingly, in evaluating DHS's request to pretermit asylum and remove Lima to a third country, **this Court not only has the authority but the obligation to consider the profound consequences such action would have on her one-year-old U.S. citizen child. Forcing a separation of the family unit or compelling a U.S. citizen child to reside in an unsafe third country would directly contravene the child's best interests and undermine the longstanding public policy favoring family unity and child protection.** It is therefore firmly within the public interest for Lima to proceed with her asylum application in the United States, thereby safeguarding the constitutional and humanitarian values that the immigration system is designed to uphold.

G. 8 C.F.R. § 1240.11(h)(2) Is *Ultra Vires* and Cannot Bar a Grant of Withholding of Removal or CAT to Respondent's Country of Origin.

8 C.F.R. § 1240.11(h)(2) states, in relevant part, that an asylum applicant subject to an ACA "is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act, or for withholding of removal or CAT protection in the United States" unless certain exceptions apply. The statute on which the regulation purports to rely, 8 U.S.C. § 1158(a)(2)(A), simply has no text that speaks to an ACA being a bar to a withholding of removal or CAT claim to Respondent's country of origin. The plain reading of the statute is that asylum is the only relief that is precluded if an ACA applies. Having no foundation in the text of the statute, 8 C.F.R. § 1240.11(h)(2) is *ultra vires* and cannot bar Lima's existing withholding of removal and CAT claims for Guatemala. Therefore, the Court should deny DHS's Motion to Pretermit and adjudicate Lima's applications for withholding and CAT protection from Guatemala.

Even if the regulation is applied to the case in light, Lima qualifies for the exceptions it provides, and the Immigration Judge has the authority to determine: a) the agreement does not apply to Lima; b) it is in the public interest for the alien to receive asylum in the United States; c) it is more likely than not that he or she would be persecuted on account of a protected ground or tortured in the third country – for all the aforementioned reasons – being therefore eligible to apply for asylum, withholding of removal or CAT protection in the United States.

H. Respondent Has a Due Process Right to a Full and Fair Hearing and Pretermission Is Inappropriate Because Issues of Fact Are in Dispute.

Section 240(b)(4)(B) of the INA, 8 U.S.C. § 1229a(b)(4)(B) (2018), provides that an alien in removal proceedings "shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government".

Additionally, Section 240(c)(4)(B) of the INA, 8 U.S.C. § 1229a(c)(4)(B), establishes that, "in determining whether the applicant has met the applicant's burden, the trier of fact shall weigh the credible testimony along with other evidence of record". This sets forth the Immigration Judge's obligation to evaluate the testimony of the Respondent and any witnesses and weigh them along with other evidence of record before determining if Respondent has met the burden of proof of his eligibility for asylum.

Regulatory implementation of these statutory provisions to applications for asylum, withholding of removal and withholding or deferral of removal under the CAT, provide that the immigration judge shall decide the application for asylum or withholding of removal "**after an evidentiary hearing to resolve factual issues in dispute**". 8 C.F.R. § 1240.11(c)(3) (2025). Furthermore, during this evidentiary hearing, "the alien shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf." 8 C.F.R. § 1240.11(c)(3)(iii). This guarantees credibility to an extent a written statement or application does not fulfill.

The foregoing statutory and regulatory provisions collectively safeguard the Respondent's fundamental right to a full and fair hearing. They ensure that the Respondent is afforded a meaningful opportunity to present testimony, documentary evidence, and witnesses in support of any applications for relief, and to examine, challenge, and rebut any evidence introduced by the Department of Homeland Security. In doing so, these provisions codify the adversarial nature of removal proceedings and protect the respondent's right to develop the record before an impartial adjudicator.

Furthermore, **due process in immigration proceedings requires that respondents be afforded a meaningful opportunity to be heard**. In *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), the Supreme Court articulated the foundational principle that procedural due process guarantees an opportunity to be heard "at a meaningful time and in a meaningful manner."

Issues such as credibility, the existence of a well-founded fear of persecution, the requisite nexus to a protected ground, and the evaluation of country conditions are inherently factual in nature and require the development of testimony and evidentiary record. These determinations depend on the applicant's detailed account, responsiveness under questioning, and the context provided through supporting documentation. They cannot be properly resolved in the abstract or through summary disposition, but instead require a full evidentiary hearing where the facts can be meaningfully examined and tested.

Consistent with these principles, the Fifth Circuit has held that noncitizens in removal proceedings are entitled to a fundamentally fair hearing. In *Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018), the court reiterated that, as a general rule, due process requires that an alien

be afforded a fair opportunity to be heard. This constitutional guarantee is not merely formal; it requires procedures that meaningfully allow the Respondent to present his case and that guard against arbitrary or fundamentally unfair adjudication.

The Ninth Circuit reached a similar conclusion in *Oshodi v. Holder*, 729 F.3d 883 (9th Cir. 2013) (en banc), holding that due process includes the right to an oral live testimony in cases where credibility is a critical factor. In that case, the Circuit held that, by denying the Respondent the opportunity to testify about his past persecution, the IJ was precluded from conducting a proper "totality of the circumstances" credibility analysis. *See Oshodi v. Holder*, 729 F.3d 883 (9th Cir. 2013) (en banc).

Together, these authorities confirm that a respondent's right to due process inherently requires a full evidentiary hearing. Such a hearing ensures that the respondent may testify under oath, present evidence in support of the application, rebut evidence introduced by DHS, introduce witnesses' statements and cross-examine those presented by the Government.

Additionally, *Matter of H-A-A-V*, 29 I&N Dec. 233 (BIA 2025) recognizes the above-mentioned statutory and regulatory provisions, but considers they do not require a full evidentiary hearing "**if there are no factual issues in dispute**".

In the case that originated that ruling, the IJ confirmed with counsel there were no disputed issues of fact and Respondent did not provide a particular social group or other protected ground as basis of his claim. Here, unlike the precedent relied upon by DHS, material factual issues remain in dispute and must be resolved through Respondent's testimony. These issues include, but are not limited to: whether either country will receive Lima and afford a "full and fair procedure" for seeking asylum or equivalent protection, whether the two ACA countries raised are places where Lima runs the risk of persecution or torture, and whether it is in the public interest for Lima to receive asylum in the United States.

Furthermore, the present case is materially distinguishable from *Matter of H-A-A-V* because Lima clearly articulated the legal grounds upon which her applications for relief are based and presented prima facie evidence of eligibility for asylum, withholding of removal and protection under CAT, including a personal declaration and country conditions reports.

Accordingly, **Respondent does not qualify for pretermission under *H-A-A-V,* and the application must instead proceed to a full evidentiary hearing consistent with governing statutory and regulatory protections.**

The BIA in *C-I-G-M-* relies on the nonbinding preamble to the regulation rather than any text of the regulation or statute itself to suggest that a withholding of removal or CAT claim for an ACA country may be resolved without a full evidentiary hearing. *Matter of C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291, 296 (BIA 2025), at 296. Not only is there no statutory or regulatory text to support swift pretermission of protection claims for ACA countries, but the BIA's suggestion is *dicta* because it was not essential to the holding in the case. The suggestion is also inconsistent with the BIA's own holding in *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025), which **permits pretermission only after viewing factual allegations "in the light most favorable to the respondent" to determine if they give rise to prima facie eligibility for relief**. *Id*. at 238. Here, the facts regarding the dangers posed to Lima in Honduras and Ecuador, properly viewed in the most favorable light, clearly give rise to a prima facie case for withholding of removal and CAT claims for those countries.

Moreover, the Court's own policy memorandum on pretermission references 8 C.F.R. § 1240.11(c)(3) for the proposition that evidentiary hearings are necessary to resolve disputed issues of fact. *See* Sirce E. Owen, EOIR, Pretermission of Legally Insufficient Applications for Asylum (Apr. 11, 2025). Clearly, DHS's motion implicates issues of fact that are in dispute. Therefore, pretermission is inappropriate, and any claims should move forward to a full Individual Hearing.

I. Alternatively, the Court Should Provide Lima Additional Time to File Additional Claims and Evidence for Protection Against Removal to Ecuador and Honduras.

If the Court finds that any of the ACAs do apply, Lima respectfully requests more time to prepare her withholding of removal and CAT claims for the applicable ACA countries. Lima's claims are based on her fear of return to Guatemala. Given DHS's own delay in raising the ACAs and the resulting lack of notice, Lima respectfully requests additional time to file her application and evidence for withholding of removal and CAT for the applicable ACA country or countries.

The "reasonable opportunity" afforded to the Respondent should be meaningful, not illusory. *See C-I-G-M-*, 29 I&N Dec. at 295-96.

IV. CONCLUSION

The Court should deny DHS's Motion to Pretermit for all of the aforementioned reasons and permit Lima's applications for relief to be considered in full at an Individual Hearing.

Respectfully Submitted,

Natalia Vieira Santanna (Bar N. 337502)
Attorney at Law
P.O. Box 7528
Oakland, CA 94601
Counsel for Respondent

Exhibit list

Exhibits:	Pages:
Exhibit 1	
Department of State: Agreement Between the United States of America and Honduras, with Joint Implementation Plan	1-32
Exhibit 2	
SFRC Democratic Staff Report: Cruelty, Coercion, and Legal Contortions: The Trump Administration’s Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador	33-66
Exhibit 3	
Asher Abraham Quevedo Lima's Birth Certificate (Proof of U.S. Citizenship)	67

Exhibit 1

MIGRATION AND REFUGEES

Agreement between the
UNITED STATES OF AMERICA
and HONDURAS

Signed at Washington March 10, 2025

Entered into force June 25, 2025

With Joint Implementation Plan signed
June 18 and 20, 2025

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF HONDURAS FOR COOPERATION IN THE EXAMINATION OF PROTECTION REQUESTS

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF HONDURAS, hereinafter referred to individually as a Party or collectively as the Parties,

CONSIDERING that Honduras is a party to the main international human rights instruments, particularly 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"). The United States of America is a party to the 1967 Protocol and other relevant international instruments to which Honduras is also a party, and reaffirming the Parties' obligations to provide protection to eligible refugees physically present in their respective territories, in accordance with their obligations under these instruments, subject to the reservations, understandings, and declarations of the Parties;

RECOGNIZING in particular the Parties' obligations to comply with the principle of non-refoulement established in the 1951 Convention and the 1967 Protocol, as well as in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on December 10, 1984 (the "Convention against Torture"), subject to the Parties' respective reservations, understandings, and declarations of the Parties, and reaffirming their obligations to promote and protect human rights and fundamental freedoms in accordance with their international obligations;

RECOGNIZING AND RESPECTING each Party's obligations under their national laws, policies, instructions, and agreements;

HIGHLIGHTING that the United States of America and Honduras offer asylum and refugee protection systems that are consistent with their obligations under the 1951 Convention and the 1967 Protocol, and are committed to cooperation and the sharing of responsibilities regarding protection applicants;

DESIRING to preserve access to asylum and refugee status or equivalent temporary protection as an essential instrument of international refugee protection, while seeking to prevent fraud in the protection system, which undermines its legitimate purpose, and determined to strengthen the integrity of that institution and the public support on which it depends;

CONVINCED that relations between States can enhance international refugee protection by promoting the orderly management of asylum, refuge, or protection requests by the responsible authority and the principle of responsibility-sharing;

AWARE that responsibility-sharing must ensure in practice that individuals in need of international protection are identified and that violations of the fundamental principle of non-refoulement are avoided, and therefore determined to ensure that each eligible protection applicant under their jurisdiction has access to a full and fair protection determination procedure;

AGREE as follows:

ARTICLE 1

Definitions for the purpose of this Agreement:

1. **"Protection Request"** means a request by an individual to the government of a Party to receive protection in accordance with its obligations under the 1951 Convention, the 1967 Protocol, or the Convention against Torture, in accordance with the laws and policies of each Party, or any other equivalent temporary protection available under Honduran immigration law.

2. **"Protection Applicant"** means any individual who submits a Protection Request in the territory of one of the Parties in relation to the obligations of each Party.

3. **"Protection Determination System"** means the set of laws and administrative and judicial practices used by each national government of each Party to adjudicate Protection Requests.

4. **"Unaccompanied Minor"** means a Protection Applicant who has not yet reached eighteen years of age and who does not have a parent or legal guardian present and available to provide care and custody in the country where the Unaccompanied Minor is found, whether in the United States or in Honduras.

ARTICLE 2

This Agreement does not apply to Protection Applicants who are citizens or nationals of Honduras, or who, having no country of nationality, are habitual residents of Honduras.

ARTICLE 3

1. In order to ensure that Protection Applicants have access to a Protection Determination System, or equivalent temporary protection, Honduras shall not return or expel a Protection Applicant referred by the United States until a final administrative decision has been made on the individual's Protection Request. In accordance with its national legislation and international obligations, it is expected that Honduras will determine a procedure to resolve the possible abandonment of requests by individuals transferred under this Agreement.

Honduras reserves the right to accept any Protection Applicant removed under the terms of this Agreement.

2. The acceptance of all individuals transferred under this Agreement will be at the discretion of Honduras.

3. Except for the individuals described in paragraphs 1 and 2 of Article 4 and paragraph 2 of Article 5, Honduras shall examine, in accordance with its Protection Determination System, the Protection Request of any individual who submits such a request in Honduran territory after arriving at a port of entry or crossing a border between ports of entry of the United States on or after the entry into force of this Agreement. The Parties shall respect the decisions of each in relation to Protection Determinations made in accordance with their respective national laws.

4. The United States shall apply this Agreement with respect to Unaccompanied Minors in accordance with its domestic laws and international obligations.

ARTICLE 4

1. The responsibility for determining the outcome of the Protection Request lies with the United States when the United States determines that the individual:

   a. Is an Unaccompanied Minor; or

   b. Arrived in the territory of the United States:

      i) With a valid visa issued or with another valid admission document, other than transit, issued by the United States; or

      ii) Without being required to obtain a visa to enter the United States.

2. Honduras shall not dispute any decision by the United States that determines an individual qualifies for an exception under Articles 4 and 5 of this Agreement.

3. The Parties shall establish procedures to ensure that the transfers of Protection Applicants to Honduras comply with the obligations set forth in this Agreement and the national laws of each Party.

ARTICLE 5

1. Notwithstanding any provision of this Agreement, either Party may, at its own discretion, examine any Protection Request submitted to that Party when it determines that it is in the public interest to do so.

2. Nothing in this Agreement shall be understood as an obligation for the Parties to accept requests from individuals involved in: Crimes against humanity, drug trafficking, terrorism, human trafficking, smuggling of migrants, child pornography, human rights violations, and any other activity linked to illicit activities, or who are the subject of Interpol notifications.

ARTICLE 6

1. The Parties shall develop standard operating procedures to assist with the implementation of this Agreement.

2. In the event of a conflict or controversy arising from the application of this Agreement, the Parties commit to resolving such matters through dialogue or diplomatic channels.

3. The United States intends to cooperate with Honduras to strengthen institutional capacities with respect to its Protection Determination System.

4. The Parties intend to review this Agreement and its implementation. The first review may be conducted no later than 3 months after the effective date of this Agreement and will be carried out jointly by representatives of each Party.

ARTICLE 7

1. This Agreement shall enter into force upon the exchange of notes by both Parties, indicating that each has completed the necessary internal legal procedures for the entry into force of this Agreement. This Agreement will automatically renew after each one-year period for an additional year, subject to notification at least 30 days prior to its expiration by either Party of its intention not to renew it.

2. Either Party may terminate this Agreement by providing written notice six months in advance to the other Party.

3. Either Party may, immediately upon written notice to the other Party, suspend the implementation of this Agreement in its entirety for an initial period of up to three months. Such suspension may be renewed for additional periods of up to three months by written notice to the other Party. Either Party may, with the written agreement of the other Party, suspend any part of this Agreement.

4. The Parties may agree in writing to any amendment to this Agreement. When so agreed and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement.

5. Nothing in this Agreement shall be interpreted in a manner that obligates the Parties to disburse or commit funds. The implementation of this Agreement shall be subject to the availability of funds and technical capacities of each Party.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments, have signed this Agreement.

DONE at Washington on the 10 of March, 2025, in duplicate in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Michael G. Kozak
Senior Bureau Official
Bureau of Western Hemisphere Affairs
U.S. Department of State

FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS

Eduardo Enrique Reina García
Foreign Minister
Ministry of Foreign Relations and
International Cooperation

ACUERDO ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA Y EL GOBIERNO DE LA REPÚBLICA DE HONDURAS PARA LA COOPERACIÓN EN EL EXAMEN DE LAS SOLICITUDES DE PROTECCIÓN

EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA Y EL GOBIERNO DE LA REPÚBLICA DE HONDURAS, en adelante denominados individualmente como una Parte o colectivamente como las Partes,

CONSIDERANDO que Honduras es parte de los principales instrumentos internacionales de derechos humanos, en particular la Convención sobre el Estatuto de los Refugiados de 1951, hecha en Ginebra el 28 de julio de 1951 (la "Convención de 1951"), y del Protocolo sobre el Estatuto de los Refugiados, hecho en Nueva York el 31 de enero de 1967 (el "Protocolo de 1967"). Los Estados Unidos de América es parte del Protocolo de 1967 y de otros instrumentos internacionales relevantes de los cuales Honduras también es parte, y reafirmando las obligaciones de las Partes de brindar protección a los refugiados elegibles que se encuentren físicamente en sus respectivos territorios, de conformidad con sus obligaciones en virtud de estos instrumentos, con sujetas a las reservas, entendimientos y declaraciones de las Partes;

RECONOCIENDO en particular las obligaciones de las Partes de cumplir con el principio de no devolución establecido en la Convención de 1951 y el Protocolo de 1967, así como en la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, adoptada en Nueva York el 10 de diciembre de 1984 (la "Convención contra la Tortura"), sujeto a las respectivas reservas, entendimientos y declaraciones de las Partes, y reafirmando sus obligaciones de promover y proteger los derechos humanos y las libertades fundamentales de conformidad con sus obligaciones internacionales;

RECONOCIENDO Y RESPETANDO las obligaciones de cada Parte conforme sus leyes nacionales, políticas, instrucciones y acuerdos;

DESTACANDO que los Estados Unidos de América y Honduras ofrecen sistemas de asilo y protección de refugiados que son coherentes con sus obligaciones en virtud de la Convención de 1951 y el Protocolo de 1967, y están comprometidos con la cooperación y la distribución de responsabilidades con respecto a los solicitantes de protección;

DESEANDO preservar el acceso al asilo y el estatus de refugiado o a la protección temporal equivalente, como un instrumento esencial de protección internacional de los refugiados, al tiempo que buscan prevenir el fraude en el sistema de protección, que socava su propósito legítimo, y decididos a fortalecer la integridad de esa institución y el apoyo público del que depende;

CONVENCIDOS de que las relaciones entre los Estados pueden mejorar la protección internacional de los refugiados al promover el manejo ordenado de las solicitudes de asilo, refugio

o protección por parte de la autoridad responsable y el principio de distribución de responsabilidades;

CONSCIENTE de que la distribución de responsabilidades debe garantizar en la práctica, las personas necesitadas de protección internacional sean identificadas y que se eviten violaciones del principio fundamental de no devolución, y, por lo tanto, determinados a garantizar que cada solicitante de protección elegible que se encuentre bajo su jurisdicción, tenga acceso a un procedimiento completo y justo de determinación de protección.

ACUERDAN lo siguiente:

ARTÍCULO 1

Definiciones para el propósito de este Acuerdo:

1. **"Solicitud de Protección"** significa una solicitud de una persona al gobierno de una Parte para recibir protección de conformidad con sus obligaciones en virtud de la Convención de 1951, el Protocolo de 1967 o la Convención contra la Tortura, conforme a las leyes y políticas de cada Parte, o cualquier otra protección temporal equivalente disponible en la legislación migratoria hondureña.

2. **"Solicitante de Protección"** significa cualquier persona que presente una Solicitud de Protección en el territorio de una de las Partes en relación con las obligaciones de cada Parte.

3. **"Sistema de Determinación de Protección"** significa el conjunto de leyes y prácticas administrativas y judiciales utilizadas por cada gobierno nacional de cada Parte con el fin de adjudicar las Solicitudes de Protección.

4. **"Menor No Acompañado"** significa un Solicitante de Protección que aún no ha cumplido dieciocho años y que no tiene un padre o tutor legal presente y disponible para brindarle cuidado y custodia en el país donde el Menor No Acompañado, es encontrado, ya sea en los Estados Unidos o en Honduras.

ARTÍCULO 2

Este Acuerdo no se aplica a los Solicitantes de Protección que sean ciudadanos o nacionales de Honduras, o que, no teniendo país de nacionalidad, sean residentes habituales de Honduras.

ARTÍCULO 3

1. Con el fin de garantizar que los Solicitantes de Protección tengan acceso a un Sistema de Determinación de Protección, o protección temporal equivalente, Honduras no devolverá

ni expulsará a un Solicitante de Protección referido por los Estados Unidos hasta que se haya tomado una decisión administrativa final sobre la Solicitud de Protección de la persona. De conformidad con su legislación nacional y obligaciones internacionales, se espera que Honduras determine un procedimiento para resolver el posible abandono de las solicitudes por parte de individuos transferidos bajo este Acuerdo. Honduras se reserva el derecho de aceptar a cualquier Solicitante de Protección que sea removido bajo los términos de este Acuerdo.

2. La aceptación de todas las personas transferidas en virtud de este Acuerdo quedará a discreción de Honduras.

3. Con la excepción de las personas descritas en los párrafos 1 y 2 del Artículo 4 y el párrafo 2 del Artículo 5, Honduras examinará, de conformidad con su Sistema de Determinación de Protección, la Solicitud de Protección de cualquier persona que presente dicha solicitud en territorio hondureño después de llegar a un puerto de entrada o cruzar una frontera entre puertos de entrada de los Estados Unidos en o después de la fecha de entrada en vigor de este Acuerdo. Las Partes respetarán las decisiones de cada una en relación con las Determinaciones de Protección realizadas conforme a sus respectivas leyes nacionales.

4. Los Estados Unidos aplicará este Acuerdo con respecto a los Menores No Acompañados de conformidad con su legislación nacional y obligaciones internacionales.

ARTÍCULO 4

1. La responsabilidad de determinar el resultado de la Solicitud de Protección corresponde a los Estados Unidos, cuando los Estados Unidos determinen que la persona:

   a) Es un Menor No Acompañado; o

   b) Llegó al territorio de los Estados Unidos:

      i) Con una visa válida emitida o con otro documento de admisión válido, distinto al tránsito, emitido por los Estados Unidos; o

      ii) Sin ser obligado a obtener una visa para ingresar a los Estados Unidos.

2. Honduras no deberá disputar ninguna decisión de los Estados Unidos que determine que un individuo califica para una excepción conforme con los Artículos 4 y 5 de este Acuerdo.

3. Las Partes establecerán procedimientos para garantizar que las transferencias de Solicitantes de Protección a Honduras cumplan con las obligaciones dispuestas en este Acuerdo y las leyes nacionales de cada Parte.

ARTÍCULO 5

1. No obstante, cualquier disposición de este Acuerdo, cualquiera de las Partes podrá, a su propia discreción, examinar cualquier Solicitud de Protección presentada a dicha Parte cuando determine que es de interés público hacerlo.

2. Nada en este Acuerdo, se entenderá como una obligación de las Partes de recibir solicitudes de personas involucradas en: Delitos de lesa humanidad, narcotráfico, terrorismo, trata de personas, tráfico ilícito de migrantes, pornografía infantil, violaciones a los derechos humanos y cualquier otra actividad vinculada a actividades ilícitas, o que sean objeto de notificaciones de Interpol.

ARTÍCULO 6

1. Las Partes desarrollarán procedimientos operativos estándar para ayudar con la implementación de este Acuerdo.

2. En caso de conflicto o controversia derivada de la aplicación de este Acuerdo, las Partes se comprometen a resolver dichos asuntos mediante el diálogo o de canales diplomáticos.

3. Los Estados Unidos tienen la intención de cooperar con Honduras para fortalecer las capacidades institucionales con respecto a su Sistema de Determinación de Protección.

4. Las Partes tienen la intención de revisar este Acuerdo y su implementación. La primera revisión podrá llevarse a cabo a más tardar 3 meses después de la fecha de entrada en vigor de este Acuerdo y será realizada conjuntamente por representantes de cada Parte.

ARTÍCULO 7

1. Este Acuerdo entrará en vigor tras el intercambio de notas por ambas Partes, indicando que cada una ha completado los procedimientos legales internos necesarios para la entrada en vigor de este Acuerdo. Este Acuerdo se renovará automáticamente después de cada período de un año por un año adicional, sujeto a la notificación de al menos 30 días previos a su vencimiento por cualquiera de las Partes de su intención de no renovarlo.

2. Cualquiera de las Partes podrá dar por terminado este Acuerdo mediante notificación escrita con seis meses de antelación a la otra Parte.

3. Cualquiera de las Partes podrá, mediante notificación escrita inmediata a la otra Parte, suspender por un período inicial de hasta tres meses la implementación de este Acuerdo en su totalidad. Dicha suspensión podrá renovarse por períodos adicionales de hasta tres meses mediante notificación escrita a la otra Parte. Cualquiera de las Partes podrá, con el acuerdo por escrito de la otra Parte, suspender cualquier parte de este Acuerdo.

4. Las Partes podrán acordar por escrito cualquier enmienda este Acuerdo. Cuando así se acuerde y sea aprobado de conformidad con los procedimientos legales aplicables de cada Parte, una enmienda constituirá parte integral de este Acuerdo.

5. Nada en este Acuerdo se interpretará de manera que obligue a las Partes a desembolsar o comprometer fondos. La implementación de este Acuerdo estará sujeta a la disponibilidad de fondos y capacidades técnicas de cada Parte.

EN FE DE LO CUAL, los abajo firmantes, debidamente autorizados por sus respectivos gobiernos, han suscrito este Acuerdo.

HECHO en Washington el 10 de marzo de 2025, en duplicado en los idiomas inglés y español, siendo ambos textos igualmente auténticos.

POR EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA

Michael G. Kozak
Alto Funcionario de la Dirección
Dirección de Asuntos del Hemisferio Occidental
Departamento de Estado de los EE. UU.

POR EL GOBIERNO DE LA REPÚBLICA DE HONDURAS

Eduardo Enrique Reina García
Secretario de Relaciones Exteriores
Secretaría de Relaciones Exteriores y Cooperación Internacional

JOINT IMPLEMENTATION PLAN TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF HONDURAS FOR COOPERATION IN THE EXAMINATION OF PROTECTION REQUESTS

Section 1. Purpose of the Initial Joint Implementation Plan

The purpose of the Joint Implementation Plan ("Plan") is to establish the necessary processes and procedures for the implementation of the Agreement between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, signed at Washington March 10, 2025 (hereinafter, "the Agreement").

Section 2. Eligibility of Individuals Transferred

The following criteria govern the eligibility of individuals for transfer to Honduras:

a) Individuals defined by the Agreement in Article 1, Paragraph 2;

b) Individuals subject to exclusion under the terms of the Agreement as:

   i) Unaccompanied minors, as defined by Article 1, Paragraph 4 of the Agreement; Citizens, nationals, or stateless persons whose former habitual residence was Honduras, as described in Article 2 of the Agreement;

   ii) Individuals who are involved in: Crimes against humanity, drug trafficking, terrorism, human trafficking, smuggling of migrants, child pornography, human rights violations, and any other activity linked to illicit activities, or who are the subject of Interpol notifications, as described in Article 5, Paragraph 2 of the Agreement;

c) Individuals who are medically authorized to travel, following the same standards and procedures the Government of the United States of America applies in its deportation processes.

d) The transfer of family units is subject to notification to the Republic of Honduras and confirmation of its capacity to provide the necessary conditions for reception.

Additional procedures are expected to be developed to address the unique circumstances of family units, which may impact eligibility. The individuals transferred to the Republic of Honduras under this Plan are expected to be transferred by the United States of America with the documentation as expected to be provided for in the Annex to this Plan (also known as the Action Plan), duly signed by the individual to which the transfer applies.

e) Until the Governments of the United States and Honduras negotiate further, they intend to use the agreement as follows: (1) limited to nationals of Spanish speaking Latin American countries where travel to Honduras does not require a visa, and (2) no more than ten (10) individuals transferred per month, for a total of no more than 240 in the first two-year period of the agreement. Honduras may accept additional nationalities or exceed the numerical limitations at its discretion. The Governments of the United States and Honduras intend to work in good faith regarding the possibility of broadening this Implementation Plan.

Section 3. Cooperation for Assistance

The Government of the United States of America and the Government of the Republic of Honduras may seek assistance from other actors to support in the development, evaluation, and/or execution of this Plan.

Section 4. Action Plan

This Plan is informed by the Annex to this Plan (also known as the Action Plan) that is expected to establish the processes and procedures for receiving, admitting, and handling Protection Requests.

Section 5. Resources

This Plan and the execution thereof do not commit the financial resources of either the Government of the United States of America or the Government of the Republic of Honduras.

Section 6. Cooperation for Institutional Strengthening

In conformity with Article 6, Paragraph 3 of the Agreement, the United States of America intends to cooperate with the Republic of Honduras to further the goal of strengthening the institutional capacities of the Republic of Honduras as outlined in the Annex (also known as the Action Plan).

The United States further intends to cooperate with Honduras in repatriating individuals whose claims for protection are denied or withdrawn.

Section 7. Period of effectiveness of this Plan

This Joint Implementation Plan becomes effective once the competent authorities of the States Parties to the Agreement have provided notification pursuant to Article 7, Paragraph 1 of the Agreement, and that the necessary internal legal procedures for the entry into force of the Agreement have been completed. This Plan, together with its Annex (also known as the Action Plan), discontinues upon the termination or expiration of the Agreement. The Annex to this Plan is expected to be an integral part of this Plan.

Signed, in duplicate, in the English and Spanish languages.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Date: June 18, 2025
Place: Tegucigalpa

FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS:

Date: 20-06-2025
Place: Tegucigalpa

ANNEX: ACTION PLAN FOR THE JOINT IMPLEMENTATION PLAN FOR THE PROTECTION AGREEMENT (APRO)

RECEPTION, ADMISSION, AND PROCESSING FOR PROTECTION OR VOLUNTARY RETURN OF TRANSFERRED PERSONS

Title I.
Overall Objective and General Provisions

Chapter I.
Overall Objective

To establish procedures for the reception, admission, and processing for protection or voluntary return of persons transferred from the United States, in accordance with the provisions of the Joint Implementation Plan ("Plan") for the Agreement between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, signed at Washington March 10, 2025 ("Agreement").

Chapter II.
General Provisions
Section I.
General Provisions

1. The Government of the United States intends to submit to the Government of Honduras the flight manifest for the persons to be transferred seventy-two (72) hours before their transfer.
2. The Government of Honduras may refuse the transfer of any person whom Honduras believes has committed a crime against peace or a crime against humanity.
3. The Government of Honduras, via its systems, intends to perform a search and verify that the transferred persons meet the eligibility criteria established in the Agreement.
4. The Government of the United States is expected to provide a file of documents to include criminal information established in Chapter II of Title II of this Action Plan for each transferred person directly to the Government of Honduras.
5. The reception of the persons transferred is expected to take place at the Ramon Villeda Morales International Airport and others, in the city of San Pedro Sula and be accompanied by a U.S. Immigration and Customs Enforcement (ICE) - Enforcement and Removal Operations (ERO) officer.
6. The persons received are expected to be sent to a location determined by the Government of Honduras.

7. The Government of the United States intends to conduct a medical screening before departure on those transferred under the Agreement who are delivered to the aircraft consistent with its current policy and procedures.
8. The Government of United States intends to send, along with medical documents and flight manifest, the criminal record of the person being referred for international protection.
9. This Action Plan and the execution thereof do not commit the financial resources of either the Government of the United States of America or the Government of the Republic of Honduras.

Chapter III.
Comprehensive Center for the Care of Protection Applicants

Section I.
Objective

Reception, admission, and processing of protection requests, or voluntary return of persons transferred from the United States pursuant to the Agreement.

Section II.
Administration and Establishment of the Center

The Action Plan is intended to be administered by the National Migration Institute (INM), together with representatives of the Internal Commission for Review, Analysis, and Opinions on Refugee Claims Submitted to the INM and the following institutions:

a. Ministry of Governance, Justice, and Decentralization, through the Deputy Minister of Governance;
b. Ministry of Human Rights;
c. Ministry of Security; and Ministry for Children, Adolescents, and Families, if the reception of family units begins;

Additionally, the Center, in coordination with State institutions, may also arrange to include representatives of agencies with responsibilities in the areas of migration and refugees.

Title II.
Procedures for the Reception and Admission of Protection Applicants

Chapter I.
Procedure Prior to Reception

1. Seventy-two (72) hours prior to a transfer, the Government of the United States intends to send the Government of Honduras the flight manifest of the persons expected to be transferred. The Government of Honduras intends to allow revisions to the flight manifest up to the time of departure from the United States, although any persons not included on the manifest are not expected to be allowed on the flight.
2. The parties, through their systems, intend to collaborate to conduct searches in their databases regarding transferred individuals and verify that they meet the eligibility criteria established in the Implementation Plan, Annex, and Agreement.
3. For all persons transferred, the United States intends to provide the following information, if available:
    - 3.1. Medical documents,
    - 3.2. Criminal records,
    - 3.3. Biographic info,
    - 3.4. Biometric info,
    - 3.5. Nationality,
    - 3.6. Language(s) spoken,
    - 3.7. Information regarding whether the person is accompanied,
    - 3.8. Date of birth,
    - 3.9. Gender, and
    - 3.10. Any reasons given by the alien for leaving his or her home country.
4. The Government of Honduras may decline to accept persons who, according to its current regulations, require a visa to enter the national territory.

Chapter II.
Reception Procedure

1. Each transfer case is to include the following documentation:
    1.1 Flight or transfer manifest; and
    1.2 Medical documents:
        1.2.1 The Government of the United States intends to send a medical document declaring that the transferred person is fit for travel.

2. The Government of Honduras intends to send persons received in Honduras under the Agreement to the locations designated by the Government of Honduras , in the company of INM and Ministry of Human Rights personnel and they can also be accompanied and assisted by personnel of agencies having expertise in this field if the agencies so request.

Chapter III
Admission Procedures

Section I.
Guidance

The transferred persons are expected to receive an orientation from the Government of Honduras concerning:

a. Mechanisms for protection in the country;
b. Assisted Voluntary Return (AVR),; and
c. Remaining in Honduran territory under Central America-4 provisions in applicable cases.

Title III.
Confidentiality

The Governments of Honduras and the United States do not intend to disclose documents, data, and other information provided directly or indirectly under this Plan except in accordance with their respective domestic laws and regulations. The foregoing includes printed, written, oral, and electronic information. Likewise, it is expected that the Government of Honduras and the Government of the United States take measures, such that any counselor, official, specialist, technician, employee, medical staff member, representative, adviser, or agent involved in the provision of services does not disclose the information to which they have access except in accordance with their respective laws and regulations of their Governments.

Title IV.
Evaluation of the Plan

A. Formation of the Commission for Evaluation of the Implementation of the Agreement:
   1. The Commission for Evaluation of the Implementation of the Agreement is intended to be composed of the:

I. Ministry of Foreign Relations and International Cooperation.
II. Ministry of Human Rights.
III. Ministry of Security.
IV. Ministry of Governance, Justice, and Decentralization.
V. National Migration Institute.
VI. Ministry of Health
VII. Ministry of Children, Adolescents and Family

Additional agencies specializing in migration and refugees may be invited.

B. First evaluation:

1. The Parties to the Agreement, pursuant to Article 6(4) of the Agreement, intend to carry out the first periodic evaluation of the execution of the Plan no later than 3 months after the effective date of the Agreement.
2. The evaluation is expected to be initiated through an exchange of diplomatic notes at least fifteen (15) days in advance.
3. Reports and statistics regarding compliance with and execution of the Agreement are intended to be submitted.
4. Progress and challenges related to implementation are expected to be reviewed and analyzed.
5. An evaluation report is expected to be prepared, with conclusions and recommendations.
6. Subsequent evaluations are intended to be scheduled.

Title V.
Public Affairs / Media Relations

Press statements or similar messages related to the announcement of the implementation of the Agreement are expected to be coordinated with the competent bodies in each country.

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PLAN CONJUNTO DE APLICACIÓN DEL ACUERDO ENTRE EL GOBIERNO DE LA REPÚBLICA DE HONDURAS Y EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA PARA LA COOPERACIÓN EN EL EXAMEN DE LAS SOLICITUDES DE PROTECCIÓN

Sección 1. Finalidad del Plan conjunto de aplicación inicial

La finalidad del Plan conjunto de aplicación (el "Plan") es establecer los procesos y procedimientos necesarios para la aplicación del Acuerdo entre el Gobierno de la República de Honduras y el Gobierno de los Estados Unidos de América para la Cooperación en el Examen de las Solicitudes de Protección, suscrito en Washington el 10 de marzo de 2025 (en adelante, "el Acuerdo").

Sección 2. Elegibilidad de las personas trasladadas

Los siguientes criterios rigen la elegibilidad de las personas para ser trasladadas a Honduras:

a) Las personas definidas por el Acuerdo en el párrafo 2 del artículo 1;

b) Las personas sujetas a exclusión conforme a los términos del Acuerdo como:

   i) Menores no acompañados, tal como se definen en el párrafo 4 del artículo 1 del Acuerdo; ciudadanos, nacionales o apátridas cuya antigua residencia habitual fuera Honduras, tal como se describe en el artículo 2 del Acuerdo;

   ii) Las personas que están involucradas en: crímenes de lesa humanidad, narcotráfico, terrorismo, trata de personas, tráfico ilícito de migrantes, pornografía infantil, violaciones de los derechos humanos y cualquier otra actividad relacionada con actividades ilícitas, o que estén afectadas por notificaciones de la Interpol, tal como se describe en el párrafo 2 del artículo 5 del Acuerdo;

c) Las personas con autorización médica para viajar, siguiendo los mismos estándares y procedimientos que aplica el Gobierno de los Estados Unidos de América en sus procesos de deportación.

d) El traslado de unidades familiares está sujeto a notificación a la República de Honduras y confirmación de su capacidad para proporcionar las condiciones necesarias para su recepción.

Se prevé la formulación de procedimientos adicionales en respuesta a las circunstancias singulares de las unidades familiares, que podrían incidir en la elegibilidad. Se prevé que los Estados Unidos de América trasladarán a las personas a la República de Honduras, en el marco del presente Plan, con la documentación dispuesta en el anexo al presente Plan (también conocido como el Plan de acción), debidamente firmada por la persona a la que se aplica el traslado.

e) Hasta que los gobiernos de Estados Unidos y Honduras realicen mas negociaciones, tienen la intención de utilizar el acuerdo de la siguiente manera: (1) limitarse a nacionales / ciudadanos de Países de Habla Hispana de Latinoamérica los cuales no requieran visa para viajar a Honduras y; (2) no mas de diez (10) individuos transferidos por mes, para un total de no mas de 240 en el primer período de dos años del acuerdo. Honduras podrá aceptar otras nacionalidades o exceder las limitaciones numéricas a su discreción. Los gobiernos de Estados Unidos y Honduras tienen la intención de trabajar de buena voluntad con respecto a la posibilidad de ampliar el Plan de Implementación.

Sección 3. Cooperación para la asistencia

El Gobierno de la República de Honduras y el Gobierno de los Estados Unidos de América podrán solicitar asistencia de terceros para la formulación, evaluación o ejecución del presente Plan.

Sección 4. Plan de acción

El presente Plan se fundamenta en el anexo al Plan (también conocido como el Plan de acción) que se espera establezca los procesos y procedimientos para recibir, admitir y tramitar las solicitudes de protección.

Seccion 5. Recúrsos

El presente Plan y su ejecución no comprometen recursos financieros del Gobierno de la República de Honduras ni del Gobierno de los Estados Unidos de América.

Sección 6. Cooperación para el fortalecimiento institucional

De conformidad con el párrafo 3 del artículo 6 del Acuerdo, los Estados Unidos de América tienen la intención de cooperar con la República de Honduras para propiciar la meta de fortalecer las capacidades institucionales de la República de Honduras, tal como se describe en el anexo (también conocido como el Plan de acción).

El gobierno de los Estados Unidos tiene la intención de cooperar con Honduras con la repatriación de personas cuyos reclamos de protección sean denegados o retirados.

Sección 7. Período de efectividad del presente Plan

El presente Plan conjunto de aplicación entrará en vigor una vez que las autoridades competentes de los Estados Partes del Acuerdo hayan notificado de conformidad con el párrafo 1 del artículo 7 del Acuerdo y hayan concluido los procedimientos jurídicos internos necesarios para la entrada en vigor del Acuerdo. El presente Plan, junto con su anexo (también conocido como el Plan de acción), se interrumpirá tras la rescisión o caducidad del Acuerdo. Se prevé que el anexo al presente Plan será parte integral del Plan.

Firmado, por duplicado, en los idiomas español e inglés.

PARA EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA

Fecha: 18 Junio 2025
Lugar: Tegucigalpa

PARA EL GOBIERNO DE LOS LA REPÚBLICA DE HONDURAS

Fecha: 20-06-2025
Lugar: Tegucigalpa

ANEXO: PLAN DE ACCIÓN PARA EL PLAN CONJUNTO DE APLICACIÓN DEL ACUERDO DE PROTECCIÓN (APRO)

RECEPCIÓN, ADMISIÓN Y TRAMITACIÓN PARA LA PROTECCIÓN O EL RETORNO VOLUNTARIO DE LAS PERSONAS TRASLADADAS

Título I.
Objetivo general y disposiciones generales

Capítulo I.
Objetivo general

Establecer procedimientos relativos a la recepción, admisión y tramitación para la protección o el retorno voluntario de personas trasladadas desde los Estados Unidos de América, de acuerdo con las disposiciones del Plan conjunto de aplicación inicial (el "Plan") del Acuerdo entre el Gobierno de la República de Honduras y el Gobierno de los Estados Unidos de América para la Cooperación en el Examen de Solicitudes de Protección (el "Acuerdo").

Capítulo II.
Disposiciones generales.

Sección I.
Disposiciones generales.

1. El Gobierno de los Estados Unidos de América tiene la intención de remitir al Gobierno de Honduras el manifiesto de vuelo de las personas a ser trasladadas con setenta y dos (72) horas de anticipación a su traslado.
2. El gobierno de Honduras podría rechazar la transferencia de cualquier persona que Honduras considere haber cometido un crimen contra la paz o un crimen de lesa humanidad.
3. El Gobierno de Honduras, a través de sus sistemas, tiene la intención de realizar una consulta y verificar que las personas trasladadas cumplan los criterios de elegibilidad establecidos en el Acuerdo.
4. Se espera que el Gobierno de los Estados Unidos proporcione el expediente de documentos incluyendo información criminal establecidos en el Capítulo II del Título II del presente Plan de acción para cada persona trasladada directamente al Gobierno de Honduras.
5. Se espera que la recepción de las personas trasladadas tenga lugar en el Aeropuerto Internacional Ramón Villeda Morales y otros, en la ciudad de San Pedro Sula, con el acompañamiento de un funcionario de la Oficina de Detención y Deportación (ERO, por sus siglas en inglés) del Servicio de Control de Inmigración y Aduanas de los Estados Unidos (ICE, por sus siglas en inglés).
6. Se espera que las personas recibidas sean enviadas a un lugar determinado por el Gobierno de Honduras.

7. El Gobierno de los Estados Unidos tiene la intención de llevar a cabo un examen médico antes de partida de las personas trasladadas de conformidad con el Acuerdo que sean entregadas a la aeronave según su política y procedimientos actuales.
8. El gobierno de los Estados Unidos se dispone a enviar, junto con los documentos médicos y manifiesto del vuelo, los antecedentes criminales de la persona siendo referida para protección internacional.

9. Este Plan de Acción y la ejecución del mismo no comprometen los recursos financieros ya sea del Gobierno de los Estados Unidos de América ni del Gobierno de la República de Honduras.

Capítulo III.
Centro Integral para la Atención de los Solicitantes de Protección

Sección I.
Objetivo

Recepción, admisión y tramitación de solicitudes de protección, o retorno voluntario de personas trasladadas desde los Estados Unidos de conformidad con el Acuerdo.

Sección II.
Administración y establecimiento del Centro

El Plan de acción será administrado por el Instituto Nacional de Migración (INM), junto con representantes de la Comisión Interna de Revisión, Análisis y Opiniones sobre Reclamaciones de Refugiados presentadas al INM y las siguientes instituciones:

a. La Secretaría de Estado en los Despachos de Gobernación, Justicia y Descentralización, a través de la Subsecretaria de Gobernación;
b. La Secretaría de Estado en el Despacho de Derechos Humanos;
c. La Secretaría de Estado en el Despacho de Seguridad; y
d. La Secretaría de Niñez, Adolescencia y Familia, en el momento que se comiencen a recibir unidades familiares.

Además, el Centro, en coordinación con las instituciones estatales, podrá contar también con representantes de organismos con responsabilidades en los ámbitos de migración y refugiados.

Título II.
Procedimientos para la recepción y admisión de solicitantes de protección

Capítulo I.
Procedimiento previo a la recepción

1. Sesente-dos (72) horas antes del traslado, el Gobierno de los Estados Unidos tiene la intención de enviar al Gobierno de Honduras el manifiesto de vuelo de las personas que se espera sean trasladadas. El Gobierno de Honduras tiene la intención de permitir revisiones del manifiesto de vuelo hasta el momento de la salida de los Estados Unidos, aunque no se espera que se permita la entrada en el vuelo a ninguna persona no incluida en el manifiesto.
2. Las partes, a través de sus sistemas, se disponen a llevar a cabo búsquedas en sus bases de datos correspondiente a personas transferidas y verificar que cumplan con los criterios de elegibilidad establecidos en el Plan de Implementación, Anexo y Acuerdo
3. Para todas las personas transferidas, el gobierno de los Estados Unidos se dispone a brindar la siguiente información si estuviese disponible:
   3.1. Documentación Medica;
   3.2. Antecedentes Penales;
   3.3. Información Biográfica;
   3.4. Información Biométrica;
   3.5. Nacionalidad;
   3.6. Idiomas hablados;
   3.7. Información correspondiente a si la persona está acompañada;
   3.8. Fecha de nacimiento;
   3.9. Género, y;
   3.10. Cualquier razón brindada por el migrante por la cual él o ella abandono su país natal.
4. El gobierno de Honduras podría negarse a aceptar personas que, de acuerdo a sus regulaciones actuales, requieran una visa para ingresar al territorio nacional 2.

Capítulo II.
Procedimiento para la recepción

1. Cada caso de traslado deberá incluir la siguiente documentación:
   1.1 Manifiesto de vuelo o traslado; y
   1.2 Documentos médicos:

1.2.1 El Gobierno de los Estados Unidos tiene la intención de enviar un documento médico en el que se declare que la persona trasladada se encuentra en condiciones de viajar.

2. El Gobierno de Honduras tiene la intención de enviar a las personas recibidas en Honduras, en el marco del Acuerdo, a los lugares asignados por el Gobierno de Honduras, acompañadas por personal del INM y de la Secretaría de Estado en el Despacho de Derechos Humanos; también podrán ser acompañadas y asistidas por personal de organismos con experiencia en esta materia si los organismos así lo solicitan.

Capítulo III
Procedimientos para la admisión

Sección I.
Orientación

Se espera que las personas trasladadas reciban orientación del Gobierno de Honduras en relación con:

a. Mecanismos de protección en el país;
b. Retornos voluntarios asistidos (RVA); y
c. Permanencia en territorio hondureño conforme a las disposiciones del Convenio Centroamericano (CA-4) en los casos aplicables.

Título III.
Confidencialidad

Los gobiernos de Honduras y los Estados Unidos no tienen la intención de divulgar documentos, datos u otra información proporcionada directa o indirectamente en el marco del presente Plan, excepto de conformidad con sus respectivas leyes y normas nacionales. Esto incluye información impresa, escrita, oral y la contenida en medios electrónicos. Asimismo, se espera que los gobiernos de Honduras y los Estados Unidos tomen medidas, de tal manera que ningún abogado, funcionario, especialista, técnico, empleado, miembro del personal médico, representante, asesor o agente involucrado en la prestación de servicios divulgue la información a la que tenga acceso, excepto de conformidad con las respectivas leyes y reglamentos de sus gobiernos.

Titulo IV.
Evaluacion del Plan

A. Formación de la Comisión para la evaluación de la aplicación del Acuerdo:

1. Se procura que la Comisión para la evaluación de la aplicación del Acuerdo esté integrada por:
   - I. La Secretaría de Estado en los Despachos de Relaciones Exteriores y Cooperación Internacional;
   - II. La Secretaría de Estado en el Despacho de Derechos Humanos;
   - III. La Secretaría de Estado en el Despacho de Seguridad;
   - IV. La Secretaría de Estado en los Despachos de Gobernación, Justicia y Descentralización; y
   - V. El Instituto Nacional de Migración.
   - VI. Ministerio de Salud
   - VII. Ministerio de Niñez, Adolescencia y Familia

Se podrá invitar a otros organismos especializados en la materia de migración y refugiados.

B. Primera evaluación:

1. Las Partes del Acuerdo, de conformidad con el artículo 6, apartado 4, del Acuerdo, tienen la intención de llevar a cabo la primera evaluación periódica de la ejecución del Plan a más tardar tres meses después de la fecha de entrada en vigor del Acuerdo.
2. Se espera que la evaluación se inicie mediante un intercambio de notas diplomáticas con al menos quince (15) días de antelación.
3. Se prevé presentar informes y estadísticas sobre el cumplimiento y la ejecución del Acuerdo.
4. Se espera que se examinen y analicen el avance y los problemas relacionados con la aplicación.
5. Se espera que se elabore un informe de evaluación con conclusiones y recomendaciones.
6. Se prevé la programación de evaluaciones posteriores.

Título V.
Asuntos públicos y relaciones con los medios de comunicación

Se espera que los comunicados de prensa o mensajes similares relacionados con el anuncio de la aplicación del Acuerdo se coordinen con los órganos competentes de cada país.

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Exhibit 2

CRUELTY, COERCION, AND LEGAL CONTORTIONS:

The Trump Administration's Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador

A Democratic Staff Report
Prepared for the use of the
Committee on Foreign Relations
United States Senate
Monday, January 18, 2021

Cruelty, Coercion, and Legal Contortions: The Trump Administration's Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador

CONTENTS

ANNEXES

- I -
Introduction

Since his first days in office in 2017, President Donald Trump has aggressively exploited the U.S. immigration system to reduce the number of foreigners allowed entry into the United States, and especially to repel refugees, asylum seekers, and other vulnerable migrants in need of protection.[1] From separating migrant children from their parents at the border to decimating the U.S. Refugee Admissions Program to terminating Temporary Protected Status (TPS) for nearly 400,000 individuals at risk of deportation, the president has blocked people fleeing persecution, torture, and other vital threats from protection in the United States and systematically dismantled the institutions that made America a humanitarian leader.[2] The Trump administration implemented these policies despite record levels of forced displacement globally, with 26 million refugees and 4.2 million asylum seekers having fled persecution and conflict at the end of 2019.[3] While these policies have faced legal challenges in U.S. courts, their implementation has trampled on the United States' history as a haven from persecution, betrayed American values, and undermined U.S. global leadership. Our retreat—and the mockery this administration has made of a global protection regime—has made it easier for other countries to shirk their international obligations. The result is a severe weakening of migrant and refugee protections that leaves millions of people more vulnerable and increases instability and the potential for conflict.

One striking example of the effort to eviscerate long-standing American protection policy is the set of agreements the Trump administration signed with El Salvador, Guatemala, and Honduras, the so-called "Asylum Cooperative Agreements" (ACAs). These agreements follow a pattern of unlawful maneuvers designed to close off legal pathways to protection in the United States.[4] Starting in the spring of 2019, the Trump administration began negotiations with Guatemala, Honduras, and El Salvador on the series of agreements, which stem from a little-known "safe third country" provision of U.S. immigration law. The ACAs serve as mechanisms to repel asylum seekers from the United States and relocate them in the signatory Central American countries to pursue asylum claims there. Designed not just to export U.S. refugee obligations, but to do so, for example, by sending Hondurans to Guatemala and Guatemalans to Honduras in a cynical game of musical chairs in one of the most violent regions of the world, the ACAs are particularly damaging both to the people seeking asylum and to America's global leadership.

Since their inception, the ACAs with Guatemala, Honduras, and El Salvador have provoked grave concerns within the U.S. government, within the foreign governments negotiating the agreements, and among external experts. Based on these concerns, and in furtherance of its oversight responsibilities, the Senate Foreign Relations Committee (SFRC) Democratic Staff investigated the ACAs.

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[1] See Annex 1 for definitions of key terms.
[2] Michael D. Shear et al., "'We Need to Take Away Children,' No Matter How Young, Justice Dept. Officials Said," *The New York Times*, Oct. 21, 2020; Nick Miroff, "Trump Cuts Refugee Cap to Lowest Level Ever, Depicts Them on Campaign Trail as a Threat and Burden," *The Washington Post*, Oct. 1, 2020; "Playing Politics with Humanitarian Protections: How Political Aims Trumped U.S. National Security and the Safety of TPS Recipients," Democratic Staff Report, Senate Committee on Foreign Relations, Nov. 7, 2019.
[3] "Global Trends: Forced Displacement in 2019," *United Nations High Commissioner for Refugees (UNHCR)*, June 18, 2020, https://www.unhcr.org/globaltrends2019/.
[4] *See* Annex 2.

This report examines the ACAs' impact on the lives of refugees and asylum seekers, their tenuous foundation in U.S. law, and their role in U.S. foreign policy toward Central America. The Report is based on information gleaned through Committee hearings, travel to the region, rigorous oversight of the State Department, and consultations with international organizations and human rights advocates—information learned despite the Trump administration's obstruction and efforts to hide relevant documentation. Annexes to this report include previously unpublished written material provided by the State Department to SFRC Democratic Staff. The report's annexes also include key documents related to the ACAs that the Trump administration refused to disclose to SFRC, ensuring they are now freely accessible to the public. SFRC Democratic Staff has found the ACAs to be alarmingly abusive in every respect. Specifically, SFRC Democratic Staff found that:

- The ACAs appear to violate U.S. law and international obligations by sending asylum seekers and refugees to countries where their lives or freedom would be threatened;
- Determinations by the Attorney General and DHS Acting Secretary that Guatemala provides "full and fair" access to asylum were based on partial truths and ignored State Department concerns;
- The Trump administration radically distorted the intent and meaning of the "safe third country" provision in U.S. law, constructing the ACAs to function as a broad bar to asylum rather than an exception to the right to seek asylum;
- Asylum seekers transferred from the United States to Guatemala under the ACA were subjected to degrading treatment and effectively coerced to return to their home countries of Honduras or El Salvador, where many feared persecution and harm;
- The White House and DHS used coercive tactics to compel the governments of Guatemala, Honduras, and El Salvador to sign the ACAs; and
- The Trump administration has sought to maintain secrecy, obstruct accountability, and hide its actions from Congress and the American public in its pursuit of ACA implementation.

This report reveals that the ACAs effectively punish people attempting to reach safety in the United States by sending them to highly dangerous countries where access to protection from persecution and violence exists only on paper. **Since implementation of the U.S.-Guatemala ACA began over one year ago, not one of the 945 asylum seekers transferred from the United States to Guatemala has been granted asylum.**[5] Instead, the vast majority have been left with the grievous options of returning to face serious threats of violence and persecution in their home countries, or risking abuse on another journey northward. Although ACA implementation was suspended due to COVID-19, **these counterproductive and unlawful agreements must never resume and must be terminated as soon as possible**.

[5] United Nations High Commissioner for Refugees Guatemala office meeting with SFRC Democratic Staff, Oct. 21, 2020.

- II -
Subverting U.S. Asylum Law

The ACAs provide a disturbing example of how the Trump administration has distorted and deliberately disregarded the intent and statutory language of U.S. asylum law. Although the Refugee Act of 1980 codified the right to seek asylum in the United States, the Trump Administration has taken the one of the few, limited exceptions to this right and applied it far beyond the meaning of the law.[6] Citing the "safe third country" provision in Section 208(a)(2)(A) of the Immigration and Nationality Act (INA), the Trump administration created the ACAs with Guatemala, Honduras, and El Salvador as mechanisms to remove asylum seekers from the United States without due process.[7] Refugees and others in need of protection from torture arriving at the U.S. Southwest border have little chance of remaining in the United States as a result of the ACAs, based on the fraudulent premise that they will have access to protection in Guatemala, Honduras, or El Salvador. The stated purpose of the ACAs is to transfer responsibility to help alleviate "the burdens associated with adjudicating asylum claims."[8]

This goal of *transferring* responsibility distorts the vision Congress had for *sharing* responsibility for refugee protection when it adopted the safe third country provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[9] Prior to the law's enactment, surging numbers of asylum applications prompted some members of Congress to advocate for restrictions on access to asylum in the United States and they considered mandating that asylum seekers be returned to transit countries, such as the United Kingdom, that offered protections similar to the United States.[10] The Immigration and Naturalization Service had proposed a "Discretionary Denial of Asylum" regulation in 1994.[11] The outcome of the immigration reform debate was that Congress rejected mandated returns, and instead agreed on the discretionary safe third country provision as a compromise.[12] The statute states:

> INA Section 208 (a)(2)(A) Safe third country
>
> [The right to apply for asylum in the United States] shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral

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[6] Immigration and Nationality Act, 8 U.S.C. § 1158(a)(1): "In general, any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section…."

[7] *Id.*

[8] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act, 84 Fed. Reg. 63995, Nov. 19, 2019.

[9] *See* Section 604 of Division C of the Omnibus Consolidated Appropriations Act, 1997 (H.R. 3610/P.L. 104-208).

[10] Rep. Romano Mazzoli, *H.R. 1153, H.R. 1355, and H.R. 1679, Asylum Reform Act of 1993*, Hearing before the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees, Asylum and Inspections Reform, Apr. 27, 1993, at 215.

[11] U.S. Department of Justice, Immigration and Naturalization Service, Final Rule, Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization, 59 Fed. Reg. 62295, Dec. 5, 1994.

[12] "Eight Days and Counting: Panel Continues Reform Bill Mark-Up, Promises End is Near," 72 No. 41 Interpreter Releases 1447, Oct. 23, 1995, at 3.

> or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

This provision created an exception to the right to seek asylum with three clear requirements. First, there must be a bilateral or multilateral agreement in place. Second, the Attorney General must determine that the country of removal is a place where the individual's life or freedom would not be threatened on account of a protected ground (race, religion, nationality, membership in a particular social group, or political opinion). With this language, the provision upholds a principle of international human rights law known as *non-refoulement*, which protects asylum seekers and refugees from removal not only to their country of origin but to any country where they would face persecution, torture, or other harm.[13] The provision thus echoes the withholding of removal provision established in the 1980 Refugee Act that implements the *non-refoulement* obligation in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.[14]

Lastly, the safe third country provision requires a determination that the asylum seeker would have access to a "full and fair" asylum procedure or "equivalent temporary protection" in the third country. A recent ruling by the U.S. Court of Appeals for the Ninth Circuit underscored the principle girding the safe third country provision's requirements by stating: "A critical component of [the safe third country provision] is the requirement that the alien's 'safe option' be genuinely safe."[15]

Background: U.S.-Canada Safe Third Country Agreement

Prior to the ACAs, the United States had utilized the safe third country provision only once. The United States signed its first safe third country agreement with Canada in December 2002 after careful consideration of U.S. international legal obligations to protect refugees. The U.S.-Canada Safe Third Country Agreement (STCA) took over ***three years*** of detailed negotiations to enter into force and included substantial consideration of public comments as it sought to fulfill the statute's requirements.[16] In a hearing of the House Subcommittee on Immigration, Border Security, and Claims on

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[13] *See* Annex 1.

[14] 8 U.S.C. § 1231(b)(3)(A) states "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." Article 33 of the 1951 Refugee Convention and 1967 Refugee Protocol states: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

[15] *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 845–47, 859 (9th Cir. 2020). The Ninth Circuit cited as precedent its 1999 *Andriasian v. INS* decision: The safe-place requirements embedded in the safe third country provision "ensure that if [the United States] denies a refugee asylum, the refugee will not be forced to return to a land where he would once again become a victim of harm or persecution"—an outcome which "would totally undermine the humanitarian policy underlying the regulation." *Id.* at 30.

[16] U.S. Department of Justice, Executive Office of Immigration Review, "Asylum Claims Made by Aliens Arriving From Canada at Land Border Ports-of-Entry, 69 Fed. Reg. 69490, Nov. 20, 2004.

the draft agreement, a State Department witness testified that the U.S. and Canadian asylum systems are "two of the world's most generous and are both fully in keeping with international protection standards," and that, "[p]roperly crafted, safe third country agreements are fully consistent with refugee protection obligations under the 1951 Refugee Convention and the 1967 Protocol," including the prohibition on *refoulement*.[17]

The U.S.-Canada STCA applies only to asylum seekers at land ports of entry who have transited or been physically present in the other country or who are in transit during removal from the other country. Notably, it allows access to legal counsel, includes exceptions for family reunification, and invites input from non-governmental organizations (NGOs) and monitoring by the UN Refugee Agency to ensure its consistency with international refugee law.[18] The U.S.-Canada STCA thus stands as an example of faithful interpretation of the safe third country provision enshrined in the INA, even if its execution is now in question in Canada, due to court challenges alleging that the Trump administration's degrading treatment of asylum seekers does not make the United States "safe."[19]

Asylum Cooperative Agreements

By contrast, the Trump administration hastily crafted separate ACAs with Guatemala, Honduras, and El Salvador—with **less than two months** between the start of negotiations and signature for each agreement—and ensured that the agreements provide broad authority to transfer asylum seekers from the United States to the agreed countries. Under these agreements, the United States is responsible for providing asylum screening only to unaccompanied children and individuals arriving with legal status on its territory. Guatemala, Honduras, and El Salvador agreed to receive transfers of any other asylum seekers arriving irregularly at or between U.S. ports of entry, except for their own nationals or stateless habitual residents and convicted criminals.[20]

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[17] Statement of J. Kelly Ryan, Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, U.S. Department of State, *United States and Canada Safe Third Country Agreement*, Hearing before the House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, Oct.16, 2002.

[18] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act, 84 Fed. Reg. 64002-03, Nov. 19, 2019*; see also* Government of Canada, "Final Text of Safe Third Country Agreement," *Refworld*, Dec. 5, 2002, https://www.refworld.org/pdfid/42d7b9944.pdf.

[19] *See Canadian Council for Refugees v. Minister for Immigration and Minister for Public Safety*, 2020 FC 770, Canada Federal Court, July, 22 2020, *available at* https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/482757/index.do. The Court found the agreement invalid, but suspend the effect of the decision for 6 months.

[20] 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, 84 Fed. Reg. 64095, Nov. 20, 2019; *see also* Agreement Between the Government of the United States of America and the Government of the Republic of Honduras on Cooperation Regarding the Examination of Protection Claims, 85 Fed. Reg. 25462, May 1, 2020; *see also* "Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador on Cooperation Regarding the Examination of Protection Claims," https://www.documentcloud.org/documents/6427712-US-El-Salvador-Cooperative-Agreement.html (last visited on Dec. 17, 2020).

The agreements anticipate implementation plans for the transfer process. The implementation plans completed for the Guatemala and Honduras ACAs specify certain nationalities as eligible for transfer and specify the number of transfers and their frequency.[21] The agreements indicate U.S. support for strengthening the "institutional capacities" of Guatemala, Honduras, and El Salvador, and provide for joint evaluation or review three months after entry into force. Although the preambles to the agreements refer to each country's obligations under international law to protect refugees and uphold the principle of *non-refoulement*, there is no mechanism to monitor or enforce these obligations. The agreements therefore make it difficult for the United States to ensure that asylum seekers will not be *refouled* from the country of transfer.[22]Additionally, and in further contrast to the U.S.-Canada STCA, there are no provisions allowing access to legal counsel, exceptions for family reunification, or invitations for input and monitoring by international humanitarian organizations.

Distorting the Law's Meaning and Intent

In creating the ACAs, the Trump administration distorted the intent of the INA's safe third country provision in at least two important ways. First, although the legislative history makes clear that Congress intended the safe third country provision to *return* asylum seekers in the United States to a country of transit, the Trump administration exploited the lack of specificity in the statute, deliberately crafting the ACAs to allow for the *transfer* of asylum seekers with no connection whatsoever to the agreed country of removal.[23] Although they have not yet been implemented in this way, **the ACAs allow asylum seekers of any nationality to be transferred from any location in the United States to the agreed third country, regardless of whether they transited through that country**. Under the ACAs, asylum seekers in the United States could be apprehended at an airport (not just the U.S.-Mexico land border) and forcibly sent to a country they have never transited or visited and where they have no family, friends, or cultural links. For example, the implementation plan for the U.S.-Honduras ACA would allow U.S. authorities to transfer a Brazilian or Mexican asylum seeker to Honduras even if that person never passed through Central America.[24]

Second, although Congress intended the safe third country provision to be used as a limited exception to the right to seek asylum enshrined in U.S. law, **the Trump administration has employed the ACAs as a broad bar to any asylum screening by U.S. officials**.[25] The ACAs deny asylum seekers the opportunity to claim a "credible" fear of persecution or torture that serves as the standards for initial protection screening under U.S. law, and shift responsibility for asylum adjudication onto countries that do not provide full and fair access to asylum. In decisions to remove individual

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[21] "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, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116-EGS (D.D.C. Mar. 27, 2020).
[22] *See*, *e.g.,* Michelle Foster, *Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State*, 28 Michigan J. Int'l L. 223, 263–268 (2007).
[23] *See* Rep. Romano Mazzoli, *H.R. 1153, H.R. 1355, and H.R. 1679, Asylum Reform Act of 1993*, Hearing before the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees, Asylum and Inspections Reform, Apr. 27, 1993, at 215; U.S. Department of Justice, Immigration and Naturalization Service, Final Rule, Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization, 59 Fed. Reg. 62295, Dec. 5, 1994; "Eight Days and Counting: Panel Continues Reform Bill Mark-Up, Promises End is Near," 72 No. 41 Interpreter Releases 1447, Oct. 23, 1995, at 3.
[24] Dagoberto Rodriguez, "Honduras recibirá a migrantes de cinco nacionalidades," *La Prensa*, Jan. 9, 2020.
[25] 8 U.S.C. § 1158(a)(2), titled "Exceptions," lists a series of limited exceptions to the right to seek asylum in the United States as established in 8 U.S.C. § 1158(a)(1).

asylum seekers, the ACAs apply the higher standard of being "more likely than not"—proving a probability greater than 50 percent—that the asylum seeker would face persecution or torture in the third country.[26] The "more likely than not" would normally only be required at a full hearing before an immigration judge on withholding of removal or a Convention Against Torture claim—notably a higher standard than the "well-founded" fear for asylum claims at a full hearing. For asylum seekers without any meaningful connection to the third country under the ACA or without full information that they will be removed to the third country, it could be exceedingly difficult to prove that their fear meets this higher standard.[27]

The administration's approach distorts the discretion to grant asylum codified in the law by turning an exception into a rule that denies any opportunity for asylum in the United States while purporting to uphold the law's prohibition on *refoulement*.[28] According to the UN Refugee Agency, "withholding of removal does not provide an adequate substitute for the asylum process… and does not fully implement [the 1967 Refugee Protocol] Article 33(1)'s prohibition on *refoulement*."[29] This distortion of the law is so egregious that a union of approximately 700 U.S. Citizenship and Immigration Services (USCIS) asylum and refugee officers filed an *amicus brief* in a court challenge to the ACAs, asserting that these agreements force them "to take actions that violate their oath to uphold the nation's laws."[30]

[26] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act," 84 Fed. Reg. 63996, Nov. 19, 2019.

[27] In a brief of *amici curiae* submitted in support of the plaintiffs in *U.T. v. Barr*, the National Citizenship and Immigration Services Council 119, representing approximately 700 asylum and refugee officers tasked with implementing the ACAs wrote: "The stringent 'more likely than not' standard required by the ACA Rule has traditionally been reserved for use in full-scale removal proceedings administered by immigration judges. And for good reason. In those proceedings, applicants are afforded substantial protections, such as a full hearing, notice of rights, access to counsel, time to prepare, and the rights to administrative and judicial review—protections that are not available under the ACA Rule." Brief for National Citizenship and Immigration Services Council as Amici Curiae Supporting Plaintiffs, at 4, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. 2020).

[28] Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A).

[29] Brief for United Nations High Commissioner for Refugees as Amici Curiae Supporting Plaintiffs, at 21, *East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 845-47 (9th Cir. 2020).

[30] Brief for National Citizenship and Immigration Services Council as Amici Curiae Supporting Plaintiffs, *U.T. v. Barr*, at 4, Case no. 1:20-cv-00116 (D.D.C. 2020).

- III -
Bullying Tactics as Foreign Policy

The White House and DHS pushed through the ACAs with bullying tactics and haste, dismissing serious objections by the State Department, Congress, Guatemalan authorities, civil society, and others. From initial negotiations to entry into force, the United States concluded the Guatemala ACA with unusual speed—less than six months—compared to over three years required to complete the U.S.-Canada Safe Third Country Agreement.[31] The Honduras ACA entered into force after less than nine months of negotiations on March 25, 2020.[32] During this intense period, the ACAs dominated U.S. foreign policy in the region, underscoring President Trump's singular focus on curbing irregular migration without regard for humanitarian or other foreign policy interests.

Throughout its tenure, the Trump administration has aggressively pushed migrants and asylum seekers back to Central America. It surged U.S. deportations to Guatemala, Honduras, and El Salvador, even deporting dozens of COVID-positive individuals to Guatemala and exacerbating the pandemic's spread.[33] Under U.S. pressure and with U.S. funding, Mexican National Guard troops forcibly pushed back to Guatemala hundreds of Central American migrants who were part of a caravan headed for the United States in January 2020.[34] SFRC Democratic Staff uncovered a reckless and unauthorized DHS operation in January 2020 to transport Honduran migrants in Guatemala back to the border with Honduras.[35] In March 2019, President Trump disrupted relations with Guatemala, Honduras, and El Salvador by abruptly cutting off most U.S. foreign aid to the three countries, halting over $400 million for programs designed to address poverty, violence, and other drivers of migration to the United States.[36] The White House's suspension of foreign aid instantly weakened the Central American governments' negotiating positions.

According to the DHS timeline of ACA negotiations with the Government of Guatemala, a senior U.S. government delegation "with Executive Leadership from DHS and DOS" began negotiations with Guatemalan government officials during a trip to Guatemala on June 12-13, 2019.[37] Six weeks

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[31] Negotiations on the U.S.-Canada STCA began on December 3, 2001. *See* Statement of J. Kelly Ryan, Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, U.S. Department of State, *United States and Canada Safe Third Country Agreement*, Hearing before the House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, Oct.16, 2002.

[32] Agreement Between the Government of the United States of America and the Government of the Republic of Honduras on Cooperation Regarding the Examination of Protection Claims, 85 Fed. Reg. 25462, May 1, 2020.

[33] TRAC database, "Latest Data: Immigration and Customs Enforcement Removals," queried by citizenship and fiscal year, https://trac.syr.edu/phptools/immigration/remove/ (last visited Oct. 27, 2020); Press Release, Senator Bob Menendez, "Menendez, Durbin Press Trump Administration on Deportation of Covid-19 Positive Migrants," May 2, 2020, https://www.foreign.senate.gov/press/ranking/release/menendez-durbin-press-trump-administration-on-deportation-of-covid-19-positive-migrants.

[34] Kevin Sieff, "U.S.-bound Migrants Clash with Mexican Forces at Guatemala Border," *The Washington Post*, Jan. 20, 2020.

[35] "DHS Run Amok? A Reckless Overseas Operation, Violations, and Lies," Democratic Staff Report, Senate Committee on Foreign Relations, Oct. 13, 2020.

[36] "U.S. ending aid to El Salvador, Guatemala, and Honduras over migrants," *Reuters*, Mar. 30, 2019; *see also* "U.S. Strategy for Engagement in Central America," *Congressional Research Service*, June 30, 2020, https://fas.org/sgp/crs/row/IF10371.pdf.

[37] "Timeline of DHS Engagement with Government of Guatemala re: Asylum Agreement, Asylum Processes and Procedures," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116-EGS (D.D.C. Mar. 27, 2020).

later on July 26, while the State Department was still gathering basic information on the country's asylum capacity and designing programs to help strengthen it, DHS' Acting Secretary and Guatemala's Interior Minister signed the ACA in a ceremony at the White House. Guatemala remained woefully unprepared when ACA implementation began less than four months after the agreement was signed, with the first transfer flight arriving on November 21, 2019.[38]

U.S. negotiations with the government of Guatemala set a precedent that facilitated similarly hasty negotiations with Honduras and El Salvador. Both the Honduras and El Salvador agreements were signed in September 2019 after only two months of negotiations. When SFRC Democratic Staff traveled to the region in October 2019 shortly after the ACAs were signed, officials in El Salvador's office of the Director General of Migration and Immigration said they had not seen the text of the agreement. These two agreements have yet to be implemented.

Internal Government Objections

As negotiations began, on June 12, 2019 the U.S. Embassy in Guatemala City transmitted to Washington a diplomatic cable containing its assessment of the Guatemalan asylum system. Although the assessment approved by the U.S. Ambassador did not expressly object to the Guatemala ACA, it detailed a number of concerns that would preclude the agreement from meeting the law's requirements to uphold the principle of *non-refoulement* and to provide "full and fair" access to asylum. For example, the cable reported concerns that Guatemala "does not provide sufficient safeguards against refoulement," and provided detailed data demonstrating that Guatemala was "among the most dangerous countries in the world."[39]

Within the State Department, concerns about the agreement with Guatemala grew so serious that some of its lawyers resorted to the rarely used "dissent channel" to ensure their concerns reached the highest levels.[40] Secretary Pompeo reportedly voiced last-ditch objections to the agreement two hours before the July 26, 2019 Oval Office signing ceremony, telling President Trump the agreement was flawed and a mistake, and arguing the Guatemalan government would not be able to carry out its terms. He lost the argument to DHS Acting Secretary Kevin McAleenan, however, who persuaded the President that the agreement would stem the flow of migrants to the United States.[41]

In Guatemala, both candidates heading into the nation's presidential run-off election and the Catholic Church explicitly opposed the agreement.[42] Guatemala's human rights ombudsman, Jordán

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[38] *See* Annex 4 (Document 2): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State, to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019; *see also* Geneva Sands, Priscilla Alvarez & Michelle Mendoza, "Trump Administration Begins Deporting Asylum Seekers to Guatemala," *CNN*, Nov. 21, 2020.
[39] Annex 3 (Document 3): U.S. Embassy Guatemala, Diplomatic Cable 19 Guatemala 536, "Assessment of the Guatemalan Asylum System," June 12, 2019.
[40] "Facing the world blindfolded: The dereliction of American diplomacy," *The Economist*, Aug. 13, 2020.
[41] Michael D. Shear & Zolan Kanno-Youngs, "Trump Officials Argued Over Asylum Deal With Guatemala. Now Both Countries Must Make It Work," *The New York Times*, Aug. 2, 2019.
[42] Matthew Borges, "Guatemala high court blocks agreement to have migrants apply for asylum there rather than in US," *Jurist*, July 16, 2019.

Rodas, and other prominent Guatemalans petitioned the Constitutional Court to block the agreement, arguing that "Guatemala utterly lacks the institutions able to offer migrants the minimal conditions with respect to human rights."[43] Guatemala's Constitutional Court issued an injunction on July 14, 2019, instructing the government not to enter into an ACA without approval from the Guatemalan Congress.[44]

High-Level Coercion

President Trump then intensified his coercive tactics, tweeting on July 23 that Guatemala "has decided to break the deal they had with us on signing a necessary Safe Third [sic] Agreement… Now we are looking at the "BAN,"…Tariffs, Remittance Fees, or all of the above."[45] Then-president Jimmy Morales approved the agreement and his Interior Minister Enrique Degenhart signed the ACA on July 26, 2019.[46] The Guatemalan government released a statement explaining that the agreement was signed "with the objective of preventing serious economic and social repercussions."[47]

The lesson was clear for the leaders of Honduras and El Salvador: sign the ACAs or face bullying directly from the U.S. President. Honduran foreign ministry officials expressed misgivings that their government was bowing to pressure from Washington.[48] Nevertheless, two months later, the foreign ministers of El Salvador and Honduras each signed ACAs with the United States that are modeled on the Guatemala ACA on September 20, 2019 and September 25, 2019, respectively.[49]

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[43] *Id.*
[44] *Id.*
[45] Donald Trump, @realDonaldTrump, "Guatemala, which has been forming Caravans and sending large numbers of people, some with criminal records, to the United States, has decided to break the deal they had with us on signing a necessary Safe Third Agreement. We were ready to go. Now we are looking at the 'BAN,'....," July, 23, 2019, https://twitter.com/realDonaldTrump/status/1153641906699681795; *see also* Donald Trump, @realDonaldTrump, "....Tariffs, Remittance Fees, or all of the above. Guatemala has not been good. Big U.S. taxpayer dollars going to them was cut off by me 9 months ago," July 23, 2019, https://twitter.com/realdonaldtrump/status/1153641907781873664.
[46] Urías Gamaro, "Degenhart: Guatemala dará refugio a salvadoreños y hondureños para frenar viajes a EE. UU.," *Prensa Libre*, Aug. 15, 2019.
[47] Gobierno Guatemala, @GuatemalaGob, "Guatemala y Estados Unidos suscriben importante acuerdo de cooperación," July 26, 2019, https://twitter.com/GuatemalaGob/status/1154847498135113728.
[48] David C. Adams, "Honduras and US close to signing new immigration agreements," *Univision*, Sept. 12, 2019.
[49] Colleen Long & Astrid Galvan, "US, El Salvador Sign Asylum Deal, Details to be Worked out," *Associated Press*, September 20, 2019; *see* also U.S. Customs and Border Protection, Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador, Nov. 7, 2019, https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.

- IV -
Trump Administration Secrecy and Obstruction

Despite overtly pressuring foreign countries to enter into the agreements and touting them publicly, the Trump administration refused to disclose details of the ACAs to the public and Congress. Without justification, the Trump administration repeatedly refused congressional requests to review the ACAs and associated documents, including legal determinations allowing the agreements' entry into force, implementation plans, and other annexes. Since their inception in mid-2019, Senator Menendez and dozens of other members of Congress have expressed serious concerns about the ACAs and requested relevant documents related to the agreements and their implementation. Senator Menendez and SFRC Democratic Staff have repeatedly requested relevant documents for over a year. The Trump administration's complete refusal to comply with these requests has indicated a concerted effort to maximize secrecy and obstruct any accountability related to implementation of these agreements. Even after many of the primary documents were disclosed through litigation, the Departments of State and Homeland Security continued to refuse requests to provide them directly to Congress.[50] The Trump administration has continued to refuse to provide primary documents associated with the agreements, including legal determinations allowing the agreements' entry into force, implementation plans, and other annexes. To this day, the administration has refused to even provide a log of such documents so that the public and Congress have clearer knowledge of their existence and the full extent of the legal architecture the administration put into place to subvert the rights of asylum seekers in the United States.

At a SFRC hearing on U.S. Policy in Mexico and Central America in September 2019, in response to a direct request from Senator Menendez, the Acting Assistant Secretary of State for Western Hemisphere Affairs publicly committed to provide copies of "all the migration-related instruments, binding or nonbinding, annexes, appendices, implementation plans, guidance, and other related documents that the administration has signed, agreed to, or otherwise joined" regarding Central America.[51] Following the hearing, Senator Menendez submitted written questions again requesting all relevant ACA documents. The State Department did not respond to these questions until three months later, in late December 2019. The Department's responses were largely inadequate—failing to comply with the request for documents and revealing a disturbing lack of knowledge about the asylum systems of Guatemala, Honduras, and El Salvador. For example, in responses submitted long after all three ACAs had been signed and a month **after implementation had begun in Guatemala, the State Department admitted it was still "seeking specific information" about the budgets and staffing of each government agency responsible for processing asylum claims and could not "yet provide an accurate estimation of Guatemala's asylum processing capacity."**[52] The State Department's responses were so inadequate that SFRC Democratic staff took the highly unusual step of returning the questions to the State Department twice – in January 2020 and again in

[50] *See* Annex 3 for copies of key documents related to the U.S.-Guatemala Asylum Cooperative Agreement.
[51] *U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border*, Hearing before the Senate Committee on Foreign Relations, Sept. 25, 2019.
[52] *See* Annex 4 (Document 2): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Dec. 23, 2019), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

February 2020, offering second and third opportunities to provide substantive information. The official responses from the Trump administration are included in the annex of this report and have not previously been made available for public review.[53]

With growing concern after implementation of the Guatemala ACA began, Senator Menendez and 20 other Democratic senators wrote to the leadership of the Departments of State and Homeland Security in early February 2020 to request information and documents related to the ACAs.[54] The State Department failed to respond to this request at all, and DHS predictably did not produce the requested documentation in its deficient response. After Senator Menendez sent two more letters requesting documents pursuant to the ACAs—to the Assistant Secretary of State for Legislative Affairs in April 2020 and to Secretary Pompeo in May 2020—the State Department still refused.[55] In sum, the State Department and DHS have refused five formal requests by Senator Menendez for documents related to the ACAs, as well as dozens of follow up requests from SFRC Democratic Staff.

Only in February 2020 did the State Department provide SFRC Democratic Staff with limited substantive information about the ACAs in writing. This information raised new concerns about the agreements. For example, the State Department wrote in February 2020—nearly 6 months after the ACA was signed—that: "The Embassy asked but was unable to obtain a[n asylum] capacity estimate from the government [of El Salvador]."[56] The fact that the administration refused to be transparent with Congress has only further fueled distrust in the ACAs' consistency with U.S. laws and foreign policy interests.

[53] *See* Annex 4.
[54] *See* Annex 5 (Document 1): Letter from Senators Menendez, Warren, et al. to Secretary of State Michael Pompeo, Attorney General William Barr, and Acting Secretary of Homeland Security Chad Wolf, Feb. 5, 2020.
[55] *See* Annex 5 (Document 3): Letter from Senator Menendez to Assistant Secretary of State for Legislative Affairs Mary E. Taylor, Apr. 27, 2020; (Document 4): Letter from Senator Menendez to Secretary of State Michael Pompeo, May 27, 2020.
[56] Annex 4 (Document 3): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Feb. 14, 2020), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

- V -
Protection Conditions in Central America's Northern Triangle

There is broad acknowledgement, even within the Trump administration, that Guatemala, Honduras, and El Salvador lack institutional capacity to provide protection to asylum seekers transferred under the ACAs. Although these governments have indicated a willingness to do so, their leaders readily admit that their capacity to protect refugees and asylum seekers is seriously deficient. **Since ACA implementation began one year ago, Guatemala's lack of capacity is confirmed by the numbers: of the 945 asylum seekers whom the United States transferred to Guatemala, not one has been granted asylum.**[57]

Guatemala, Honduras, and El Salvador each joined the *Marco Integral Regional para la Protección y Soluciones* (MIRPS, the Comprehensive Regional Protection and Solutions Framework), a regional, state-led initiative supported through the UN High Commissioner for Refugees and Organization of American States that aims to implement the Global Compact on Refugees adopted in 2017.[58] However, their asylum laws and procedures remain nascent while their people suffer high levels of violence, human rights abuses, and displacement. As Guatemala's then president-elect, Alejandro Giammattei said in August 2019, just after the outgoing government signed the ACA, "I do not think Guatemala fulfills the requirements to be a third safe country. That definition doesn't fit us. If we do not have the capacity for our own people, just imagine other people."[59] Honduras' autonomous National Human Rights Commissioner asserted that Honduras lacks the capacity and resources necessary to provide "dignified treatment" to individuals transferred under the ACA.[60] In response to the question of whether El Salvador was ready to receive asylum seekers through the ACA, President Bukele said in December 2019, "[w]ell, not right now. We don't have asylum capacities, but we can build them."[61]

The State Department acknowledged the need to build these countries' asylum capacities and continued to seek details about their asylum staffing and resources even as DHS began ACA implementation.[62] The State Department's Bureau of Population, Refugees, and Migration poured unprecedented levels of funding into building protection capacity, including asylum capacity, in Guatemala, El Salvador, and Honduras soon after the ACAs were signed.[63] DHS Acting Secretary McAleenan announced the State Department's $47 million contribution to the UN Refugee Agency (UNHCR) and International Organization for Migration (IOM) to help strengthen Guatemala's asylum capacity

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[57] United Nations High Commissioner for Refugees Guatemala meeting with SFRC Democratic Staff, Oct. 21, 2020.
[58] United Nations High Commissioner for Refugees, "About the MIRPS," *Global Compact on Refugees Digital Platform*, Oct. 8, 2020, https://globalcompactrefugees.org/mirps-en/about-mirps.
[59] Sonia Pérez D., "President-elect Says Guatemala Can't do Migrant Deal with US," *AP*, Aug. 14, 2019.
[60] "Acuerdo con EEUU debe ser Aprobado por el Congreso: Roberto Herrera Cáceres," *La Prensa* (Honduras), Nov. 12, 2019.
[61] Sharon Alfonsi, "Our Whole Economy is in Shatters:' El Salvador's President Nayib Bukele on the Problems Facing his Country," *60 Minutes*, Dec. 19, 2019.
[62] Statement of Michael J. Kozak, Acting Assistant Secretary of State, Bureau of Western Hemisphere Affairs, U.S. Department of State, *U.S. Policy in Mexico and Central America: Ensuring Effective Policies to Address the Crisis at the Border*, hearing before the Senate Committee on Foreign Relations, Sept. 25, 2019.
[63] U.S. Department of State, Bureau of Population, Refugees, and Migration, "Fiscal Year 2019 Summary of Major Activities: Year in Review," June 2020, https://www.state.gov/wp-content/uploads/2020/06/FY-2019-PRM-Summary-of-Major-Activities-Year-In-Review.pdf.

on September 23, 2019.[64] In response to a written question from Senator Menendez, the State Department admitted in December 2019—after implementation of the Guatemala ACA had begun—that: "The United States government is actively working with our partners and the Government of Guatemala to better understand its current capacities."[65]

Nascent Institutional Capacity

U.S. officials were fully aware that the asylum systems in ACA countries ranged from extremely weak to non-existent. In Guatemala, the most advanced of the three countries in terms of asylum capacity, the U.S. Embassy's June 2019 assessment of Guatemala's asylum system noted that the *Comisión Nacional para Refugiados* (CONARE, the National Commission for Refugees) had no dedicated full-time staff, that "asylum is only one of their many portfolios," and that these staff lacked sufficient training. The assessment stated that some provisions of Guatemala's Migration Code "may not be fully compatible with the principles of *non-refoulement*," that it "does not clearly state a prohibition on returning individuals who may face torture," and that "documentation issued to refugees lacks recognition by many public and private institutions." SFRC Democratic Staff find that these statements presented red flags regarding the ACA's compliance with the safe third country provision in U.S. law. The embassy further assessed that, "[h]istorically, Guatemala has had capacity to process about 100-150 cases per year," or roughly 8-12 cases per month.[66] This number is alarmingly below the expected 1,620 individual monthly transfers described in the agreement's initial implementation plan or the 945 asylum-seekers actually transferred to Guatemala since the ACA became operational over one year ago.[67]

After Senator Menendez returned the State Department's incomplete responses to his written questions for revision, in July 2020 the State Department submitted evidence to SFRC showing that asylum capacity in Honduras and El Salvador is far weaker than in Guatemala. Neither Honduras nor El Salvador has any full-time staff dedicated to refugee or asylum determinations, according to the State Department. In 2019, Honduras adjudicated only 46 asylum claims and El Salvador adjudicated none.[68] The State Department's 2019 *Country Report on Human Rights Practices* in Honduras stated: "The government has a nascent system to provide protection to refugees, the effectiveness of which had not been fully proven by year's end."[69] The State Department's July 2020 responses to

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[64] "Acting Secretary McAleenan's Prepared Remarks to the Council of Foreign Relations," *U.S. Department of Homeland Security*, Sept. 23, 2019, https://www.dhs.gov/news/2019/09/23/acting-secretary-mcaleenans-prepared-remarks-council-foreign-relations.

[65] *See* Annex 4 (Document 2): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Dec. 23, 2019), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

[66] Annex 3 (Document 3): U.S. Embassy Guatemala, Diplomatic Cable 19 Guatemala 536, "Assessment of the Guatemalan Asylum System," June 12, 2019.

[67] "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, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

[68] Annex 4 (Document 3): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Feb. 14, 2020), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.

[69] Bureau of Democracy, Human Rights, and Labor, "2019 Country Reports on Human Rights Practices: Honduras," *U.S. Department of State*, https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/honduras/.

SFRC Democratic Staff noted that "UNHCR estimates El Salvador can adjudicate five cases per year with its current personnel and resources."[70]

Grave Dangers on the Ground

Beyond their limited institutional capacity, Guatemala, Honduras, and El Salvador are plagued by such high levels of violence, pervasive corruption, and widespread human rights abuses that they cannot reasonably be expected to provide conditions of safety or adequate protection to refugees and asylum seekers. The U.S. Embassy's asylum system assessment described Guatemala as "among the most dangerous countries in the world," citing a homicide rate approaching 22 per 100,000 inhabitants "driven by narco-trafficking activity, gang-related violence, a heavily-armed population, and police/judicial system unable to hold many criminals accountable."[71] The State Department's 2019 *Country Report on Human Rights Practices* in Guatemala noted that "[v]iolence against women, including sexual and domestic violence, remained widespread and serious," and also identified violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals as a major concern.[72] In August 2020, a transgender asylum seeker in Guatemala was killed after fleeing gender-based violence and persecution by gangs in El Salvador.[73] As a result of these dangerous conditions, by the end of 2019 more than half a million Guatemalans had fled their homes, including over 142,000 refugees and asylum seekers and over 200,000 internally displaced persons.[74]

Conditions in Honduras and El Salvador are even more dangerous, with gang violence persisting throughout both countries, the highest rates of femicide in the entire Western Hemisphere, and serious violence and threats against LGBTI persons, according to the State Department's 2019 Country Reports on Human Rights Practices.[75] Honduras' murder rate increased in 2019 to 41.2 homicides per 100,000 individuals and El Salvador had 36 homicides per 100,000 people.[76] In El Salvador, according to a 2020 U.S. Department of State Overseas Security Advisory Council (OSAC) report, "[v]iolent, well-armed street gangs … concentrate on street-level drug sales, extortion, arms trafficking, murder for hire, carjacking, and aggravated street crime."[77] By the end of 2019, violent conditions in Honduras had compelled over 247,000 Hondurans to flee internally and nearly 150,000

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[70] Annex 4 (Document 3): Responses from Assistant Secretary Kirsten D. Madison and Acting Assistant Secretary Michael G. Kozak, U.S. Department of State (Feb. 14, 2020), to Questions for the Record Submitted by Ranking Member Bob Menendez, Senate Committee on Foreign Relations, Sept. 25, 2019.
[71] Annex 3 (Document 3): U.S. Embassy Guatemala, Diplomatic Cable 19 Guatemala 536, "Assessment of the Guatemalan Asylum System," June 12, 2019.
[72] U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, "2019 Country Reports on Human Rights Practices: Guatemala," https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/guatemala/.
[73] "Death of transgender asylum seeker in Guatemala highlights increased risks and protection needs for LGBTI community," *United Nations High Commissioner for Refugees (UNHCR)*, Aug. 6, 2020, https://www.unhcr.org/en-us/news/press/2020/8/5f2bb1494/death-transgender-asylum-seeker-guatemala-highlights-increased-risks-protection.html.
[74] "Global Trends: Forced Displacement in 2019," *United Nations High Commissioner for Refugees (UNHCR)*, June 18, 2020, https://www.unhcr.org/globaltrends2019/*; see also* "GRID 2020: Global Report on Internal Displacement," *Internal Displacement Monitoring Centre*, Apr. 2020.
[75] "Latin America, the Caribbean and Spain (19 countries): Femicide or feminicide, most recent data available (In absolute numbers and rates per 100.000 women)," *Gender Equality Observatory for Latin America and the Caribbean*, https://oig.cepal.org/en/indicators/femicide-or-feminicide.
[76] Parker Asmann & Eimhin O'Reilly, "InSight Crime's 2019 homicide round-up," *InSight Crime*, Jan. 28, 2020.
[77] "El Salvador 2020 crime & safety report," *U.S. Department of State Overseas Security Advisory Council*, March 31, 2020.

Hondurans to flee the country entirely as refugees and asylum seekers. At the same time, over 450,000 Salvadorans were internally displaced by the end of 2019, and nearly 180,000 Salvadorans sought protection abroad as refugees and asylum seekers.[78] Taken together, the nearly 470,000 refugees and asylum seekers from Guatemala, Honduras, and El Salvador represent a six-fold increase over the past five years.[79]

International Condemnation

In light of these dangerous conditions and weak institutional capacities, international condemnation of the ACAs has been swift and unrelenting. While ACA negotiations were underway on July 23, 2019, the Inter-American Commission on Human Rights (IACHR) expressed concerns about U.S. policies toward Central American migrants, with specific attention to the ACAs, stating:

> The acts of violence and human rights violations that the IACHR has monitored … regarding Guatemala show that these countries would not comply with conditions necessary to offer the security guarantees that a safe third country must guarantee. This agreement could increase the conditions of vulnerability for migrants and refugees and could expose them to greater risks than those that led them to move originally.[80]

As soon as the Guatemala ACA was published in the Federal Register, the Office of the UN High Commissioner for Refugees (UNHCR) issued a statement expressing its "serious concerns" and calling the ACA "an approach at variance with international law that could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers." UNHCR described the asylum systems of Guatemala, Honduras, and El Salvador as "still very nascent."[81]

Non-governmental human rights advocates have condemned the ACAs even more forcefully. Amnesty International called them "'unsafe third country' agreements because that is in fact what they are."[82] The American Immigration Council said the Guatemala ACA "will place thousands of asylum seekers at risk in a country ill-prepared to process a high volume of applications for protection and with safety problems of its own."[83] Refugees International stated it "sees the ACAs not, as the [Federal Register publication] suggests, an attempt to 'share the burden' of protection between countries,

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[78] "GRID 2020: Global Report on Internal Displacement," *Internal Displacement Monitoring Centre*, Apr. 2020; *see also* "Global Trends: Forced Displacement in 2019," *United Nations High Commissioner for Refugees (UNHCR)*, June 18, 2020, https://www.unhcr.org/globaltrends2019/.

[79] "UNHCR Global Report 2019: The Americas," *United Nations High Commissioner for Refugees (UNHCR),* https://reporting.unhcr.org/sites/default/files/gr2019/pdf/04_Americas.pdf#_ga=2.143638197.1456126713.1603124234-507706218.1582099492.

80 "IACHR Expresses Deep Concern about the Situation of Migrants and Refugees in the United States, Mexico, and Central America," Inter-American Commission on Human Rights, July 23, 2020, https://www.oas.org/en/iachr/media_center/PReleases/2019/180.asp.

[81] "Statement on new U.S. asylum policy," *UNHCR*, Nov. 19, 2019, https://www.unhcr.org/en-us/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html.

[82] Charanya Krishnaswami, Advocacy Director for the Americas at Amnesty International USA, Interview with Noah Lanard, *Mother Jones*, Feb. 28, 2020.

[83] Royce Murray, "Why a Safe Third Country Agreement with Guatemala is Unsafe and Unworkable," *Immigration Impact*, July 29, 2019, https://immigrationimpact.com/2019/07/29/why-a-safe-third-country-agreement-with-guatemala-is-unsafe-and-unworkable/#.X5sR3YhKgdV.

but as an effort by the United States to shift the responsibility of protection to those countries less able to bare it."[84] Physicians for Human Rights warned that the Guatemala ACA "violates the provisions of U.S. law which prohibit 'safe third country' relocation of asylum seekers unless that third country can ensure their protection from persecution and guarantee a full and fair asylum process."[85]

[84] Andrew Davidson & Lauren Alder Reid, "Refugees International Opposes Asylum Cooperative Agreements with Guatemala, El Salvador, and Honduras," *Refugees International*, Dec. 23, 2019.
[85] "U.S. government's new 'safe third country' deal with Guatemala puts asylum seekers at grave risk," *Physicians for Human Rights*, Nov. 20, 2019.

- VI -
Implementation in Violation of Human Rights

To fulfill the safe third country provision under U.S. law and enable ACA implementation, the Attorney General and DHS Secretary each had to make a determination that transferred migrants would not be *refouled* and that the country of transfer provides "full and fair" access to asylum.[86] These determinations would ensure that the United States fulfills its obligations under international laws to uphold the principle of *non-refoulement* as well as the right to seek asylum. Given the highly dangerous conditions in Guatemala, Honduras, and El Salvador, and the fact that their asylum systems are nascent at best, Senator Menendez and SFRC Democratic Staff sought to understand how Attorney General William Barr and DHS Acting Secretary McAleenan determined that the law's requirements had been met. As documents obtained by SFRC Democratic Staff show, both officials signed memoranda attesting, "I find that the Guatemalan refugee protection system satisfies the 'access to a full and fair procedure' requirement of INA section 208 (a)(2)(A)."[87] Although the Honduras ACA took effect on March 25, 2020 and the El Salvador ACA took effect on December 15, 2020, and despite repeated requests by Senator Menendez and SFRC Democratic Staff, the Trump Administration has continued to hide the determinations by the Attorney General and DHS Secretary that enabled that agreements' entry into force.

Determinations Based on Partial Truths

The determinations for the Guatemala ACA relied entirely on laws and procedures that exist only on paper, never grappling with inconvenient facts on the ground demonstrating that Guatemala is largely unsafe for asylum seekers. The Department of Justice memo drafted by Gene Hamilton, counselor to the Attorney General, and the corresponding DHS memo, relied on responses to detailed questionnaire, that the Government of Guatemala produced with coaching by Trump administration officials.[88] The memos ignored significant concerns about gaps in Guatemalan domestic law, minimal operational capacity, and dangerous country conditions that the U.S. Embassy clearly identified. The memos also failed to consider whether processes outlined in existing laws are routinely implemented. SFRC Democratic Staff's analysis finds that:

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[86] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of Justice, Executive Office of Immigration Review, Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act, 84 Fed. Reg. 63997, Nov. 19, 2019.

[87] Annex 3 (Document 1): Memorandum from the Attorney General re "Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)," Nov. 7, 2019, at 2; Annex 3 (Document 2): Memorandum from the Secretary re "Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)," Oct. 16, 2019, at 2.

[88] *See* Annex 3 (Document 1): Memorandum from the Attorney General re "Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)," Nov. 7, 2019, at 2; *see also* Annex 3 (Document 2): Memorandum from the Secretary re "Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(A)," Oct. 16, 2019, at 2; *see also* 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; Questions Regarding Access to Full and Fair Procedures, Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

- The Attorney General and DHS Acting Secretary's determinations cite Article 46 of Guatemala's Migration Code as fulfilling its *non-refoulement* obligations under the Refugee Convention and Protocol, but fail to consider the gaps identified in U.S. Embassy's assessment related to *non-refoulement* and torture;
- Both determinations cite Article 12 of Guatemala's Migration Code as guaranteeing that all migrants are not to be subject to "any form of violence," yet fail to acknowledge the extreme levels of violence faced by citizens and non-citizens across the country;
- Neither determination considers whether violent gangs committing persecution in Honduras and El Salvador would threaten asylum seekers transferred to Guatemala;
- Neither determination discusses the deadly risks faced by women and LGBTI individuals in Guatemala; and,
- Neither determination considers whether refugee protection would suffer if the volume or speed of transfers far exceeds Guatemala's capacity to process asylum claims and provide reception services, as envisioned in the implementation plan.

Degrading Conditions During Transfer

Within days of DOJ and DHS issuing their determinations, DHS proceeded with implementation despite clear risks to individuals' safety and with little consideration for overwhelming Guatemala's capacity. The initial implementation plan agreed to between the Trump administration and Guatemalan authorities to transfer asylum seekers from the United States to Guatemala limited transfers to adult nationals of Honduras and El Salvador.[89] Shortly after transfer flights began, however, DHS began sending families with children in apparent violation of the agreed implementation plan. The agreement exempts unaccompanied children and the implementation plan makes exceptions for persons with special needs and certain health conditions.[90] However, other highly vulnerable asylum seekers, such as LGBTI individuals and survivors of gender-based violence, were transferred under the Guatemala ACA because neither the text of the agreement, the implementation plan, nor the guidance to DHS asylum officers referring individuals for ACA transfers provides such humanitarian exceptions.[91]

Additionally, ACA transfers arrive at the same reception center at the airport just outside Guatemala City that receive deportees from the United States, including convicted criminals.[92] When ACA implementation began in late November 2019, this reception center was still under construction following an infusion of $1 million from USAID.[93]

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[89] "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, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).
[90] Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning Cooperation Regarding the Examination of Protection Claims, 84 Fed. Reg. 64095, Nov. 20, 2019.
[91] U.S. Citizenship and Immigration Services, US-Guatemala Asylum Cooperation Agreement (ACA) Threshold Screening Guidance for Asylum Officers and Asylum Office Staff, Nov. 19, 2019.
[92] "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, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020)
[93] International Organization for Migration (IOM) Central America Meeting with Senate Foreign Relations Committee Democratic Staff, Oct. 16, 2020.

The Trump administration's rush to implement the ACA exposed both U.S. officials' cruel treatment of asylum seekers and Guatemala's lack of institutional capacity and experience in refugee protection. Migrants transferred under the ACA described abusive conditions and degrading treatment while in the custody of U.S. Customs and Border Patrol (CBP), including being denied medical care and children being separated from their parents.[94] CBP agents grievously misinformed asylum seekers, telling them the United States "wasn't giving asylum anymore," and denied them meaningful access to an attorney.[95] Of those who received accurate information, many without English language skills or legal counsel misunderstood and believed they would be able to apply for U.S. asylum from Guatemala.[96] ACA transferees were shackled and transported on the same flights as criminal deportees.[97]

Coercion and Fear in Guatemala

Once in Guatemala, many ACA transferees, including small children, waited hours on the tarmac without adequate food, water, or medical assistance.[98] At the airport, transferees were required to tell immigration officials whether they intended to apply for asylum in Guatemala, seek assistance from the International Organization for Migration to return to their country of origin, or depart on their own.[99] After their initial decision, transferees only had 72 hours to change their status. This arbitrary 72-hour deadline, imposed by Guatemalan authorities, forced transferred individuals and families to make major decisions about their future under intense time pressure and without sufficient information. Guatemalan officials initially refused to allow NGOs to provide information or assist migrants at the reception center.[100] The Guatemalan government provides no money to civil society organizations to care for ACA transferees after their arrival.[101]

Given the dangerous and intimidating conditions they faced, it is not surprising that very few asylum seekers transferred under the ACA actually applied for asylum in Guatemala. The degrading treatment, arbitrary time pressure, and inadequate information provided both in the United States and in

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[94] Maya Srikrishnan, "Border Report: Complaints Detail Abuses Against Asylum-Seekers in U.S. Custody," *Voices of San Diego*, Feb. 24, 2020, https://www.voiceofsandiego.org/topics/news/border-report-complaints-detail-abuses-against-asylum-seekers-in-u-s-custody/.

[95] Cora Currier, "Redirecting Asylum-Seekers from U.S. to Guatemala was a cruel farce, report finds," *The Intercept*, May 19, 2020.

[96] Rachel Schmidtke, Yael Schacher, & Ariana Sawyer, "Deportation with a Layover: Failure of protection under the U.S.-Guatemala Asylum Cooperative Agreement," *Refugees International,* May 19, 2020, https://www.refugeesinternational.org/reports/2020/5/8/deportation-with-a-layover-failure-of-protection-under-the-us-guatemala-asylum-cooperative-agreement.

[97] Nick Miroff, "ICE Air: Shackled deportees, air freshener and cheers. America's one-way trip out," *The Washington Post*, Aug. 10, 2019; *see also* Reynaldo Leaños Jr., "Asylum-Seekers Reaching U.S. Border are Being Flown to Guatemala," *NPR*, Mar. 11, 2020.

[98] Rachel Schmidtke, Yael Schacher, & Ariana Sawyer, "Deportation with a Layover: Failure of protection under the U.S.-Guatemala Asylum Cooperative Agreement," *Refugees International,* May 19, 2020, https://www.refugeesinternational.org/reports/2020/5/8/deportation-with-a-layover-failure-of-protection-under-the-us-guatemala-asylum-cooperative-agreement.

[99] "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, Annex 1: Initial Implementation Plan; Phased Initial Implementation Plan," Doc. 85, *U.T. v. Barr*, Case no. 1:20-cv-00116 (D.D.C. Mar. 27, 2020).

[100] International Organization for Migration (IOM) Central America Meeting with SFRC Democratic Staff, Oct. 16, 2020.

[101] Schmidtke, Schacher, & Sawyer, *Deportation with a Layover*, at 30.

Guatemala, all contributed to a coercive context for asylum seekers' decision-making that was further compounded by fear of the country's high levels of violence, and the psychological traumas of persecution and displacement. Of the 945 asylum seekers transferred to Guatemala under the ACA, only 18 (less than two percent) are actively pursuing asylum claims there, and not one has received a decision.[102] Many transferred asylum seekers said they felt unsafe in Guatemala and that their only option was to return to Honduras or El Salvador where at least they could access support networks while they decide their next move. One Honduran woman transferred under the ACA said: "Guatemala? It's the same as Honduras. The difference is that in Guatemala I don't have relatives."[103] Another Honduran woman said of the gang members who threatened to kill her and her son: "Guatemala is the first place they would look for me." She went into hiding in Honduras following her ACA transfer to Guatemala.[104]

Table 1: ACA Transfers to Guatemala, November 2019 - March 2020[105]

Total ACA Transfers	945	
Indicated protection concerns	108 of 130	83%
ACA Asylum applications	34	3.5%
Abandoned	16	1.6%
Active	18	1.9%
Guatemala ACA asylum decisions	0	0

Neither the State Department, DHS, or any other component of the U.S. government is responsible for monitoring the safety of asylum seekers transferred to Guatemala under the ACA. Without an ability to follow up, **it is difficult to confirm, but seems highly likely that there are specific cases in which the ACA has violated the prohibition on *refoulement* in U.S., Guatemalan, and international law.** Civil society groups were able to interview only 130 ACA transferees upon reception in Guatemala, but found that a large proportion (108 out of 130) indicated they had protection concerns.[106] Based on this assessment, a rate of protection concerns of 83 percent and an asylum application rate of less than two percent, it is clear to SFRC Democratic Staff that the vast majority of asylum seekers transferred under the Guatemala ACA did not have "full and fair" access to asylum.

[102] UNHCR Guatemala meeting with SFRC Democratic Staff, Oct. 21, 2020.
[103] Kirk Semple, "Asylum Seekers Say U.S. is Returning Them to the Dangers They Fled," *The New York Times*, March 17, 2020.
[104] *Id.*
[105] UNHCR Guatemala meeting with SFRC Democratic Staff, Oct. 21, 2020. The percentages reflected on this table are based on the number of individuals that UNHCR and its partners were able to interview and not on the total number of ACA transfers.
[106] *Id.*

COVID-19 and Displacement Trends

The outbreak of the COVID-19 pandemic resulted in border closures and travel restrictions around the world, including Guatemala's decision to suspend ACA implementation. Although the Honduras ACA entered into force on March 25, 2020 and the El Salvador ACA entered into force on December 15, 2020, the requisite determinations by the Attorney General and the DHS Acting Secretary of "full and fair" access to asylum in Honduras and El Salvador have not been made available to Congress or the public. The COVID-19 pandemic has delayed the start of ACA transfer flights from the United States to Honduras. Still, international organizations and NGOs have expressed concern that the Honduras ACA's implementation plan indicates it would apply to nationals of Mexico, Guatemala, El Salvador, Brazil and Nicaragua, noting that two asylum seekers from Nicaragua were brutally murdered in Honduras in 2019.[107] Surging migrant apprehensions at the U.S. southern border, ongoing migrant caravans from Central America, and other data show that anti-immigrant policies have not had the deterrent effect intended by the Trump administration.[108] Evidence of Guatemala ACA transferees re-grouping to journey again towards the United States demonstrates the futility of "burden shifting" policies when asylum seekers are forced to flee persecution, violence, and other grave threats to their lives and freedom at home and throughout the region. Dangerous conditions in Central America, compounded by economic contractions related to COVID-19 and the devastating impact of Hurricanes Eta and Iota, are push factors more powerful than U.S. immigration policy.[109]

[107] "Human Rights First Warns Against Implementation of Honduras Asylum Agreement During Pandemic," *Human Rights First*, Apr. 30, 2020, https://www.humanrightsfirst.org/press-release/human-rights-first-warns-against-implementation-honduras-asylum-agreement-during; *see also* "Cuerpos de nicaragüenses refugiados en Honduras son enviados a su país," *La Tribuna*, June 29, 2019, https://www.latribuna.hn/2019/06/29/cuerpos-de-nicaraguenses-refugiados-en-honduras-son-enviados-a-su-pais/.

[108] Nick Miroff, "Migrant Arrests at the U.S. Border Rose to a 13-month High in September," *The Washington Post*, Oct. 14, 2020.

[109] Natalie Kitroeff, "Two Hurricanes Devastated Central America. Will the Ruin Spur a Migration Wave?" *The New York Times*, Dec. 4, 2020.

- VII -
Conclusion, Findings, and Recommendations

During negotiations with the Trump administration, the Government of Guatemala sought to change the name of the agreement from "safe third country agreement" to "Cooperation Agreement for the Assessment of Protection Requests."[110] In agreeing to this request, the Trump administration's decision to remove the word "safe" from the name of all three agreements was an implicit acknowledgement that Guatemala, Honduras, and El Salvador are not actually *safe* for the transfer of asylum seekers. In this way, the name change suggests that the agreements do not comply with the "safe third country" provision of U.S. law.

As the Trump administration pursued the ACAs, it shrouded the details of the agreements in secrecy and obstructed oversight by members of Congress, attempting to hide its callous abuse of the human rights of vulnerable people. President Trump's bullying tactics bruised U.S. relations in the region, and resulted in agreements that the governments of Guatemala, Honduras, and El Salvador do not have the capacity to implement. But the most shameful aspects of the ACAs are their grave consequences for refugees and asylum seekers who—under the Guatemala ACA—suffered degrading treatment and were coerced into situations where their lives and freedom remain in danger.

In an era of historic levels of forced displacement in the Western Hemisphere and around the world, the ACAs are especially cruel and counterproductive. They distort U.S. asylum law and accompany a series of pernicious policies to exclude asylum seekers and refugees from protection in the United States. As the director of the American Immigration Lawyers Association, Ruben Reyes said: "The purpose of this administration's policy with asylum seekers is to put one more finger around the necks of refugees…[t]o try and make it so difficult, so onerous, so awful that they just give up."[111]

The ACAs inflict harm not only on the lives of individuals and families, but on U.S. national interests. Eighteen states and the District of Columbia called the Guatemala ACA "inimical to the interest of the States and the public in ensuring that those in need of protection are not sent into the hands of their persecutors," and noted "asylees' significant economic and community contributions."[112] Former White House chief of staff Denis McDonough has said that "the United States' historic commitments to refugees, immigration, and asylum are sources of great strength rather than sources of weakness or threat."[113] When the United States demonstrates leadership in protecting refugees and asylum seekers, other countries often follow suit, taking critical steps toward global cooperation to address instability and resolve conflicts and crises. Simply put, protection of refugees and asylum seekers is in the interest of the American public and U.S. national security.

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[110] Sam Levin, "Trump Says Agreement Reached with Guatemala to Restrict Asylum Seekers," *The Guardian*, July 26, 2019.
[111] Megan Janetsky, "Asylum Seekers in Limbo Look to US election With Hope and Fear," *Al Jazeera*, Nov. 1, 2020.
[112] Amicus Curiae Brief of the States of California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia in Support of Plaintiffs' Motion for Summary Judgment and Permanent Injunction, *U.T. v. Barr*, at 12, Case no.1:20-cv-00116 (D.D.C. 2020).
[113] "Denis McDonough on the Future of Migration," Georgetown Journal of International Affairs, Nov. 30, 2018, https://www.georgetownjournalofinternationalaffairs.org/online-edition/2018/11/29/denis-mcdonough-on-the-future-of-migration.

The Trump administration views the ACAs as a model to be replicated with other countries around the world.[114] This is precisely the opposite of what needs to happen. Shifting responsibility for refugee protection onto countries so dangerous their own citizens are fleeing *en masse* only demonstrates inhumanity and cruelty while exacerbating the dire conditions that fuel the ongoing global forced migration crisis. Especially in an era of unprecedented levels of forced displacement around the world, these harmful policies must end. The United States must terminate the ACAs. Congress must pass legislation to clarify its intent and strengthen accountability for legitimately *safe* third country agreements. More broadly, U.S. policies must restore our leadership in upholding the right to seek asylum and in protecting refugees at home and around the world. The latter is imperative to truly and sustainably increase responsibility sharing with other countries so that future safe third country agreements might be possible, but more importantly, so that refugees and asylum seekers find protection and displacement crises are resolved.

PRINCIPAL FINDINGS:

- **The ACAs appear to violate U.S. law and international obligations by posing serious risks of *refoulement*. Guatemala, Honduras, and El Salvador are not safe places for refugees and asylum seekers as the law underpinning these agreements requires.** These countries are among the most dangerous countries in the world. High levels of violence, especially gang violence and gender-based violence, pose grave risks for many refugees and migrants. All three countries have "nascent" asylum systems that lack institutional capacity to screen asylum seekers transferred under the ACAs and to uphold their legal obligations to protect refugees from *refoulement*.

- **Of the 945 asylum seekers transferred to Guatemala under the ACA since November 2019, to date not one has been granted asylum.** The numbers underscore the fact that asylum seekers subject to the ACA lack access to asylum and remain doubly at risk of *refoulement* to Guatemala as their country of transfer and to their country of origin.

- **Determinations by the Attorney General and DHS Acting Secretary that Guatemala provides "full and fair" access to asylum were based on partial truths and ignored critical State Department input and widely held information about the country's general level of violence.** They relied on a paper review of the country's Migration Code that failed to consider the U.S. Embassy's assessment of Guatemala's asylum capacity and dangerous conditions, as well as other evidence that Guatemala does not meet the requirements of the safe third country provision in U.S. law.

- **The Trump administration radically distorted and willfully disregarded the intent and statutory language related to safe third country agreements.** Although Congress intended the safe third country provision to *return* asylum seekers in the United States to a safe country of transit, the Trump administration crafted the ACAs to allow asylum seekers of any nationality to be *transferred* from any location in the United States to the agreed third country. The ACAs serve not as an exception to the right to seek asylum enshrined in U.S. law, but as a broad bar to any asylum screening by U.S. officials.

[114] Elliot Spagat, "Top Trump Advisor Wants More Nations to Field Asylum Claims," *Associated Press*, Oct. 24, 2020.

They deny asylum seekers the opportunity to claim a reasonable fear of persecution, and hold them to the higher standard of being "more likely than not" to face persecution or torture in the country of removal.

- **Asylum seekers transferred to Guatemala under the ACA were subjected to degrading treatment and effectively coerced to return home where many feared persecution and harm.** Although a large proportion of transferees indicated protection concerns, they were not fully informed about their right to seek asylum, lacked legal counsel, and faced arbitrary deadlines and other conditions that precluded "full and fair" access to asylum. DHS did not provide guidance to exempt highly vulnerable asylum seekers from transfer, such as LGBTI individuals and survivors of gender-based violence. Transferring responsibility for asylum processing exacerbates the problem of forced displacement rather than resolving it.

- **The White House and DHS used coercive tactics to hastily conclude the ACAs**, dismissing serious objections by Guatemalan authorities, civil society, the State Department, and others. The State Department took a subordinate role in ACA negotiations. President Trump rejected State Department concerns, and bullied the government of Guatemala into signing the agreement with threats of visa sanctions and tariffs.

- **The Trump administration continues to maintain secrecy and obstruct accountability in its pursuit of ACA implementation.** It has repeatedly refused to provide documents related to the ACAs to Congress for over a year and failed to respond fully to written questions from Senator Menendez and SFRC Democratic Staff.

RECOMMENDATIONS:

1. **The Biden administration must immediately terminate the Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador**: Pending termination, the United States should immediately suspend all implementation. Any future consideration of countries for negotiation of safe third country agreements (STCAs) should not occur without a set of clear criteria established by the State Department, in consultation with international and non-governmental organizations, as to what is a safe place for the transfer of asylum seekers. STCA negotiations should not begin until such criteria are met.

2. **Congress must ensure it plays a more active role in the enactment and implementation of all future safe third country agreements, either by:**
    a. Passing legislation requiring the State Department to submit the details of a Safe Third Country Agreement to Congress for review and for Congress to approve or disapprove each agreement; or
    b. Requiring the Secretary of State to submit to Congress a certification before the transfer of aliens pursuant to a Safe Third Country Agreement begins that such country meets certain requirements prior to the use of relevant appropriations.

3. **Congress must amend INA Section 208(a)(2)(A) to:**
    a. Ensure that asylum seekers are not transferred to safe third countries that they have not transited or to which they have no meaningful connection;

b. Require that the Secretary of DHS, in consultation with the Secretary of State, establish in each future safe third country agreement clear and specific criteria for exceptions based on humanitarian and public interests;
c. Require determinations concerning whether a potential safe third country provides "full and fair" access to asylum to be made jointly by Secretary of State, Attorney General, and Secretary of Homeland Security, and that it be informed by input from the United States Ambassador, to the relevant country; and
d. Authorize judicial review of executive branch safe third country determinations.

4. **The DHS Inspector General and Office of Civil Rights must investigate and review abusive conditions and degrading treatment of ACA transferees**: Without discrimination, asylum seekers in custody at the U.S. southern border should be treated with dignity and respect for human rights. They should be provided accurate and full information by trained USCIS asylum officers about their right to seek asylum in the United States, and be allowed access to legal counsel and language interpretation. U.S. officers must make special accommodations in their treatment of highly vulnerable asylum seekers such as pregnant women, LGBTI individuals, survivors of gender-based violence, and children.

5. **U.S. foreign policy toward Central America should take a holistic approach to addressing the drivers of forced displacement:** Rather than the Trump administration's singular focus on stemming irregular migration, U.S. policies and programs should aim to reduce gang violence and gender-based violence, to combat corruption and strengthen access to justice, and to reduce poverty and protect human rights, particularly for LGBTI individuals and other marginalized populations. The State Department should continue to strengthen asylum systems, responses to internal displacement, resettlement processing, and other protection mechanisms in Central America through support to international organizations and should authorize Migration and Refugee Assistance funding to NGOs working in the region.

6. **The Governments of Guatemala, Honduras, and El Salvador should dedicate resources to strengthen their capacity to protect refugees, asylum seekers, and internally displaced persons:** They should implement national action plans to advance the Comprehensive Regional Protection and Solutions Framework (*MIRPS*) in coordination with international organizations.

ANNEX 1

Definitions of Key Terms

Refugee: A refugee is "any person who is outside of any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[115] This definition under U.S. law largely mirrors the refugee definition outlined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Having acceded to the Refugee Convention and Protocol, Guatemala, Honduras, and El Salvador agreed to this definition. They also have adopted the broader refugee definition under the 1984 Cartagena Declaration, which includes "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."[116]

Asylum-Seeker: The UN Refugee Agency defines an asylum-seeker as an individual who is seeking international protection and whose request for asylum has not yet been finally decided on.[117] Although not every asylum-seeker will ultimately be recognized as a refugee, every refugee was initially an asylum-seeker.

Migrant: The International Organization for Migration defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) the length of the stay.[118]

Protection: In the context of international humanitarian action, the Inter-Agency Standing Committee defines protection as "all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e., international human rights law, international humanitarian law, international refugee law)."[119] Protection includes measures to stop or prevent violence, abuse, coercion and deprivation of civilians affected by crises as well as efforts to restore safety and dignity to their lives. Governments have primary responsibility for the protection of persons on their territory. Major protection chal-

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[115] *See* INA 101(a)(42), 8 U.S.C. § 1101(a)(42).
[116] *See* Article III(3) of the Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, Nov. 22, 1984, https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html.
[117] UN High Commissioner for Refugees, *The 10-Point Plan in Action, 2016 - Glossary*, Dec. 2016, https://www.refworld.org/docid/59e99eb94.html.
[118] United Nations, Global Issues, "Migration," https://www.un.org/en/sections/issues-depth/migration/index.html (last visited Dec. 16, 2020).
[119] Inter-Agency Standing Committee, "Policy: Protection in Humanitarian Action," Oct. 2016, at 2.

lenges for refugees and asylum seekers often include barriers to asylum, lack of access by humanitarian organizations to those in need of assistance, gender-based violence, family separation, and forcible recruitment into armed groups, among others.

Non-refoulement: A cardinal principle of refugee protection codified in Article 33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, *non-refoulement* most commonly refers to the obligation or principle of not returning a refugee to a territory where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion, although the concept could apply to broader forms of harm as well. Article 3 of the 1984 Convention Against Torture contains a *non-refoulement* obligation with respect to torture. The principle of *non-refoulement* applies not only with respect to the individual's country of origin but to any country where he or she would face persecution. Properly applied, the principle protects those who are seeking international protection even if they have not been formally recognized as a refugee.[120] Indeed, the threat of *refoulement* is often a concern where a country lacks effective systems or procedures for determining refugee status or conducts mass deportations. The United States implements its *non-refoulement* obligations through a provision on withholding of removal in INA Section 241(b)(3).

[120] UN High Commissioner for Refugees, *Note on Non-Refoulement (Submitted by the High Commissioner)*, 38th Session, Aug. 23, 1977, http://www.refworld.org/docid/3ae68ccd10.html.

ANNEX 2

Legal Challenges to Trump Administration Immigration Policies

The Trump administration has pursued a series of restrictive immigration policies that have faced serious challenges in U.S. courts. While not an exhaustive list, the policies facing legal challenges below indicate a pattern of unlawful maneuvers to close pathways for refugees and asylum seekers in need of protection in the United States.

1. Family Separation at the U.S.-Mexico Border

The lawsuit ***Ms. L v. ICE*** and a writ for habeas corpus was filed in the U.S. District Court for the Southern District of California on February 26, 2018 by an asylum seeker from the Democratic Republic of Congo who was forcibly separated from her then-six-year old daughter. Represented by the American Civil Liberties Union, the plaintiff sued U.S. Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), and other government agencies for the forcible separation of over 2,000 asylum-seeking families who arrived at the southern border without documentation. In June 2018, the judge issued a preliminary injunction requiring U.S. immigration authorities to reunite most separated families within 30 days and to reunite children younger than age five within two weeks, however the Trump administration continued to separate families. The case is ongoing in the district court.[121]

2. State and Local Consent for U.S. Refugee Admissions Program

On November 21, 2019, HIAS, Inc., Church World Service, Inc., and Lutheran Immigration & Refugee Service, Inc. filed the lawsuit ***HIAS, Inc. v. Trump*** in the U.S. District Court for the District of Maryland. The plaintiffs, challenged the "Enhancing State and Local Involvement in Refugee Resettlement" Executive Order 13888, alleging that this action by the Trump Administration violates the Refugee Act of 1980, the Administrative Procedure Act (APA), and principles of federalism. The plaintiffs argued that Executive Order 13888 makes an unprecedented change to the refugee resettlement process by mandating that refugees not be resettled in the United States unless the state and locality where they are to be resettled take the affirmative step of providing written consent. On January 15, 2020, Judge Peter J. Messitte granted the plaintiffs' motion for a preliminary injunction and ultimately issued a nationwide injunction enjoining Executive Order 13888. The Fourth Circuit affirmed the nationwide preliminary injunction on January 8, 2021.[122]

3. Termination of Temporary Protected Status

The lawsuit ***NAACP v. DHS*** was filed in the U.S. District Court of Maryland on January 24, 2018. Represented by its own counsel, the NAACP challenged DHS' November 2017 termination of Temporary Protected Status (TPS) for Haitians living in the United States. On March 23, 2020, the judge granted the defendants' motion to stay proceedings due to the interconnected nature of parallel litigation and the COVID-19 pandemic. This case is ongoing.[123]

Nine TPS recipients and five U.S. citizen children of TPS holders filed the class action lawsuit

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[121] *See Ms. L. v. United States Immigration & Customs Enf't ("ICE")*, 415 F. Supp. 3d 980 (S.D. Cal. 2020).

[122] Miriam Jordan, "Judge Halts Trump Policy That Allows States to Bar Refugees," *The New York Times*, Jan. 15, 2020; s*ee also HIAS, Inc. v. Trump*, 415 F. Supp. 3d 669 (D. Md. 2020); Ann E. Marimow, "Trump's Refugee Resettlement Policy Blocked by Federal Appeals Court," *Washington Post*, Jan. 8, 2021; *see also HIAS, Inc. v. Trump,* Case no. 20-1160, 2021 WL 69994 (4th Cir. Jan. 8, 2021).

[123] *See NAACP v. United States Dep't of Homeland Sec.*, Case No. 18-0239, 2020 U.S. Dist. LEXIS 49818 (D. Md. 2020).

Ramos et al v. Nielsen in the U.S. District Court in the Northern District of California on March 12, 2018. The plaintiffs argued that the new DHS rule for determining whether to end TPS designations for immigrants from countries facing various crises violated their rights under the Fifth Amendment as well as requirements set out by the APA. On October 3, 2018, the judge granted a preliminary injunction in which the court determined that plaintiffs would suffer irreparable harm, including family separation and being forced to move back to countries where neither the children nor adults have any remaining ties. DHS subsequently appealed the decision to the Ninth Circuit. On September 14, 2020, the Ninth Circuit vacated the preliminary injunction having found that the district court did not have jurisdiction to review the plaintiffs APA claim because the TPS statute itself states that the Secretary of Homeland Security possesses full and unreviewable discretion in designating foreign states under the statute. After vacating the preliminary injunction, the Ninth Circuit remanded the case to the district court for further proceedings. The plaintiffs are likely to challenge the Ninth Circuit's decision.[124]

Four noncitizens, on behalf of a proposed class of Temporary Protected Status recipients, filed the lawsuit ***Moreno v. Nielsen*** against DHS and the U.S. Citizenship and Immigration Services (USCIS) on February 22, 2018. The case was filed in the U.S. District Court for the Eastern District of New York to challenge the defendants' denial of their applications for lawful permanent resident status. On May 18, 2020, the court denied the plaintiffs' motion for a preliminary injunction. The court stated that the plaintiffs failed to make a "strong showing" of irreparable harm needed to obtain injunctive relief. The case is ongoing.[125]

4. Asylum Cooperative Agreements

On January 15, 2020, the lawsuit ***U.T. v. Barr*** was filed in U.S. District Court for the District of Columbia by six plaintiffs, along with the Tahirih Justice Center and Las Americas Immigrant Advocacy Center. Represented by the Americans Civil Liberties Union, National Immigrant Justice Center, Center for Gender & Refugee Studies, and Human Rights First, the lawsuit challenged the Trump Administration's new policy of removing asylum seekers to Guatemala pursuant to an "asylum cooperative agreement." The plaintiffs alleged that the government's new policy violated the APA, the Immigration and Nationality Act (INA), and Foreign Affairs Reform and Restructuring Act of 1998 (FARRA). The case is ongoing.[126]

5. The "Interim Final Rule"

The East Bay Sanctuary Covenant, Al Otro Lado, Innovation Law Lab, and the Central American Resource Center in Los Angeles filed the lawsuit ***East Bay Sanctuary Covenant v. Barr*** with the U.S. District Court in the Northern District of California on July 16, 2019. Represented by the American Civil Liberties Union, Southern Poverty Law Center, and the Center for Constitutional Rights, the plaintiffs challenged an interim final rule promulgated by the Attorney General and Acting Secretary of Homeland Security, which made noncitizens who transit through another country prior to reaching the southern border of the United States ineligible for asylum. On July 24, 2019, the plaintiffs' motion for a preliminary injunction to prevent the government from taking any further action to implement the interim final rule was granted by the court. On August 16, 2019, the Ninth Circuit denied a stay for the application of the injunction inside its boundaries, but granted

[124] *See Ramos v. Nielsen*, 975 F.3d 872 (9th Cir. 2020).
[125] *See Moreno v. Nielsen*, 460 F. Supp. 3d 291 (E.D.N.Y. 2020).
[126] *See U.T. v. Barr*, Case no. 1:20-cv-00116-EGS (D.D.C. 2020).

the stay for all locations outside the Ninth Circuit. On September 9, 2019, the judge granted the plaintiffs' motion to restore the nationwide scope of the injunction, which was subsequently appealed by the defendants. The Supreme Court stayed the re-instated injunction on September 11, 2019 pending the Ninth Circuit's decision on the appeal.[127] The Ninth Circuit affirmed the injunction in July 2020 and the case is ongoing.[128]

6. Migrant Protection Protocols

On February 14, 2019, Innovation Law Lab and its co-plaintiffs filed the lawsuit ***Innovation Law Lab v. Wolf*** before the U.S. District Court for the Northern District of California. Co-plaintiffs of Innovation Law Lab include Al Otro Lado, Central American Resource Center of Northern California, Centro Legal de la Raza, University of San Francisco School of Law Immigration & Deportation Defense Clinic, and Tahirih Justice Center. The co-plaintiffs alleged that the Trump administration's Migrant Protection Protocols, commonly referred to as the "Remain in Mexico" policy, violates the INA, the APA, and the United States' duty under domestic and international law to not return people to dangerous conditions. On April 8, 2019, the district court judge ruled that the policy is unlawful and temporarily blocked its implementation. On May 7, 2019, the Ninth Circuit stayed the lower court's injunction. While a panel of the Ninth Circuit held that the policy is unlawful and lifted the stay in February 2020, the Supreme Court ultimately granted the federal government's application for a stay of the lower court's preliminary injunction that had blocked the implementation of the "Remain in Mexico" policy on March 11, 2020. The stay will remain in place until the Supreme Court resolves the government's appeal from the Ninth Circuit proceedings.[129]

7. Revisions to Existing Asylum Practices

On December 21, 2020, Pangea Legal Services and Immigration Equality filed separate lawsuits, ***Pangea Legal Services v. DHS*** and ***Immigration Equality v. DHS***, in the U.S. District Court for the Northern District of California to block the implementation of a final rule issued by the Department of Homeland Security and the Department of Justice on December 11, 2020. The rule, scheduled to go into effect on January 11, 2021, would have radically changed U.S. legal standards for asylum claims, including by barring aliens from asylum if they spent significant time in a third country before arriving in the United States, and effectively establishing a presumption against asylum claims rooted in gender-based persecution.[130] On January 8, 2021, the court granted a nationwide preliminary injunction against the rule pending further proceedings, in part based on the likelihood of irreparable harm without injunctive relief.[131]

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[127] *Barr v. East Bay Sanctuary Covenant,* 140 S. Ct. 3 (Sept. 11, 2019).
[128] *East Bay Sanctuary Covenant v. Barr*, Case no. 10-16485, (9th Cir. 2020).
[129] Stephen Manning, "Innovation Law Lab v. Wolf," *Innovation Law Lab*, Feb. 28, 2020, https://innovationlaw-lab.org/cases/innovation-law-lab-v-wolf/; *see also* Ramon Valdez, "U.S. Supreme Court Allows 'Remain in Mexico' To Stay In Effect, *Innovation Law Lab*, Mar. 11, 2020, https://innovationlawlab.org/press-releases/u-s-supreme-court-allows-remain-in-mexico-to-stay-in-effect/.
[130] Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80274, 8 C.F.R. parts 208, 235, 1003, 1208, 1235 (Dec. 11, 2020).
[131] *Pangea Legal Services. v. U.S. Dep't of Homeland Sec.*, Case no. 20-Cv-09253-JD, 2021 WL 75756, at *1 (N.D. Cal. Jan. 8, 2021).

Exhibit 3

STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORD

COUNTY of CONTRA COSTA
MARTINEZ, CALIFORNIA

1202407008441

CERTIFICATE OF LIVE BIRTH
STATE OF CALIFORNIA
USE BLACK INK ONLY

STATE FILE NUMBER | LOCAL REGISTRATION NUMBER

THIS CHILD

1A. NAME OF CHILD - FIRST	1B. MIDDLE	1C. LAST
ASHER	ABRAHAM	QUEVEDO LIMA

2. SEX	3A. THIS BIRTH (SINGLE, TWIN, ETC.)	3B. IF MULTIPLE, THIS CHILD 1ST, 2ND, ETC.	4A. DATE OF BIRTH - MM/DD/CCYY	4B. HOUR - 24 HOUR CLOCK TIME
MALE	SINGLE	-	10/25/2024	1932

PLACE OF BIRTH

5A. PLACE OF BIRTH - NAME OF HOSPITAL OR FACILITY	5B. STREET ADDRESS - STREET AND NUMBER, OR LOCATION
CONTRA COSTA REGIONAL MED CTR	2500 ALHAMBRA AVE
5C. CITY	**5D. COUNTY**
MARTINEZ	CONTRA COSTA

NAME OF PARENT

6A. NAME OF PARENT - FIRST	6B. MIDDLE	6C. LAST - BIRTH NAME	6D. ☐ MOTHER ☒ FATHER ☐ PARENT	7. BIRTHPLACE - STATE/ COUNTRY	8. DATE OF BIRTH
YEISON	ESTIV	QUEVEDO MONZON		GUATEMALA	11/03/1996

NAME OF PARENT

9A. NAME OF PARENT - FIRST	9B. MIDDLE	9C. LAST - BIRTH NAME	9D. ☒ MOTHER ☐ FATHER ☐ PARENT	10. BIRTHPLACE - STATE/ COUNTRY	11. DATE OF BIRTH
CRYSTEL	ESTEPHANIA	LIMA VARELA		GUATEMALA	09/18/2005

INFORMANT AND BIRTH CERTIFICATION

I CERTIFY THAT I HAVE REVIEWED THE STATED INFORMATION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

12A. PARENT OR OTHER INFORMANT - SIGNATURE
YEISON QUEVEDO
CRYSTEL ESTEPHANIA LIMA VARELA

12B. RELATIONSHIP TO CHILD
FATHER
MOTHER

12C. DATE SIGNED
10/27/2024
10/27/2024

I CERTIFY THAT THE CHILD WAS BORN ALIVE AT THE DATE, HOUR, AND PLACE STATED.

13A. ATTENDANT/CERTIFIER - SIGNATURE AND DEGREE OR TITLE
ROSA ALEJANDRE, SMRT

13B. LICENSE NUMBER
RESIDENT

13C. DATE SIGNED
10/28/2024

13D. TYPED NAME, TITLE AND MAILING ADDRESS OF ATTENDANT
YIHUI YANG, MD
2500 ALHAMBRA AVE, MARTINEZ, CA 94553

14. TYPED NAME AND TITLE OF CERTIFIER IF OTHER THAN ATTENDANT
ROSA ALEJANDRE, SMRT

LOCAL REGISTRAR

15A. DATE OF DEATH - MM/DD/CCYY	15B. STATE FILE NO. - STATE USE ONLY	16. LOCAL REGISTRAR - SIGNATURE	17. DATE ACCEPTED FOR REGISTRATION - MM/DD/CCYY
		ORI TZVIELI, MD	10/31/2024

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA } SS

CERTIFIED COPY OF VITAL RECORDS
DATE ISSUED 12/13/2024 JR

000071607

This is a true and exact reproduction of the document officially registered and placed on file in the office of the CONTRA COSTA COUNTY DEPARTMENT OF HEALTH SERVICES.

Ori Tzvieli, MD
CONTRA COSTA COUNTY HEALTH OFFICER

This copy not valid unless prepared on engraved border displaying seal and signature of Contra Costa County Health Officer.

ANY ALTERATION OR ... THIS CERTIFICATE