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Factsheet: Southern Border Policies Harming Asylum Seekers

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The Trump Administration has attempted shut down access to asylum at the U.S. southern border through a combination of policies all of which are at odds with the Refugee Act and our international obligations under the Refugee Protocol and the Convention Against Torture. Below is an overview of the status of some of the most significant of these policies implemented that harm asylum seekers.

Asylum Ban 1.0 (Entry Ban) – In November 2018, the Administration sought [via proclamation](#) and an [interim final rule](#) to ban individuals who did not enter the United States through an official port of entry (POE) from receiving asylum. In [East Bay Sanctuary Covenant v. Trump](#), the U.S. District Court for the Northern District of California issued a temporary restraining order and, later, a preliminary injunction. On February 28, 2020 the Ninth Circuit [affirmed](#) the district court’s orders. While the government moved for stays of the temporary restraining order and preliminary injunction, the district court, Ninth Circuit, and Supreme Court have thus far denied these requests. Thus, Asylum Ban 1.0 is not currently in effect. It was also successfully challenged in [O.A. v. Trump](#).

Migrant Protection Protocols (MPP) – Beginning in January 2019, the Administration instituted the “Remain in Mexico” policy – officially titled the “Migrant Protection Protocols” – whereby the U.S. government forcibly returns asylum seekers arriving at the southern border without documents to wait in Mexico for the duration of their U.S. immigration proceedings. The government stated that it would not return asylum seekers to Mexico who would be in danger there, but the screening process to assess their risk is completely inadequate, and there are countless reports of [human rights abuses](#) against migrants under MPP in Mexico. Additionally, while limited exceptions exist for unaccompanied children, pregnant women, and people with serious medical issues, the Administration has returned such individuals to Mexico. CGRS, the ACLU, and the Southern Poverty Law Center challenged this policy in [Innovation Law Lab v. Wolf](#). Although the policy has been temporarily halted by federal courts, and we won an injunction against the program in Ninth Circuit Court of Appeals, MPP is still being implemented due to a stay issued by the Supreme Court, which later granted the government’s petition for certiorari in October 2020. While the MPP policy remains in effect, due to the COVID-19 pandemic, court hearings have been suspend since March 23, 2020 and will remain suspended until certain [criteria](#) set by the administration are met.

Asylum Ban 2.0 (Transit Bar) – Known also as the “Third Country Transit Bar,” this policy denies asylum to all non-Mexican nationals, including unaccompanied minors, entering the United States at the southern border, leaving them with only the opportunity to apply for withholding and CAT protection. [The interim final rule](#), effective July 16, 2019, bars asylum to anyone who transited a third country *en route* to the southern border unless they (a) applied for protection from persecution or torture in a third country and received a final judgment denying such protection; or (b) satisfy the definition of “victim of a severe form of trafficking in persons” in 8 C.F.R. § 214.11. On June 30, 2020 district court judge Timothy Kelly issued an opinion and order in [Capital Area Immigrants’ Rights \(CAIR\) Coalition v. Trump](#), vacating the transit bar. Less than a week later, the Ninth Circuit Court of Appeals [affirmed](#) a preliminary injunction suspending the policy in [East Bay Sanctuary Covenant v. Barr](#). While the injunction in this challenge remains on hold pending review by the Supreme Court, the order in [CAIR Coalition v. Trump](#) stands and thus the policy is not currently in effect. However, the administration has published a new [regulation](#) that will reinstate the transit ban starting on January 11, 2021, unless the policy is halted again before then in the courts.

Asylum Cooperative Agreements (ACAs) – The Administration has signed agreements with [Guatemala](#), [El Salvador](#), and [Honduras](#) to enable the U.S. Government to remove asylum seekers to these countries rather than process their claims in the United States. In [U.T. v. Barr](#), CGRS, ACLU, the National Immigrant Justice Center, and Human Rights

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First have challenged the November 19, 2019 joint [interim final rule providing a procedural framework for current and future ACAs](#), USCIS [guidance to Asylum Officers on the Guatemala ACA](#), and the U.S. Government's categorical designation of Guatemala as a safe third country. Currently, the "amenable population" of individuals subject to the Guatemala ACA includes Salvadorans and Honduras, with over 1,000 nationals of these countries, including women and children, removed to Guatemala to date. On December 2020, the Trump administration announced that the ACAs with Honduras and El Salvador were finalized, signaling the impending implementation of both agreements. While the ACAs remain in effect, due to the COVID-19 pandemic, Guatemala has [refused](#) to accept transfers.

Prompt Asylum Claim Review (PACR) & Humanitarian Asylum Review Process (HARP) – [Media reports](#) indicate that secretive joint initiatives of the Department of Justice (DOJ) and Department of Homeland Security (DHS) seek to condense the complex and sensitive asylum adjudication process from a matter of months to 10 days or less and to force asylum seekers to navigate the immigration system while detained in deficient CBP facilities at the border, where they are denied meaningful access to counsel, or to country conditions information and other resources necessary to corroborate their claims. According to information revealed by [DHS](#), PACR applies to adults and family units from Guatemala, El Salvador and Honduras who are subject to the Transit Ban, and HARP applies to Mexican family units. Under both policies, individuals are provided only 24 hours to contact an attorney or another person of their choosing before moving forward with their credible fear interviews. These policies were challenged by the ACLU in *Las Americas Immigrant Advocacy Center v. Wolf*. More information on the case can be found [here](#).

CDC Order Suspending Introduction of Persons from a Country Where a Communicable Disease Exists – Citing the COVID-19 pandemic, on March 20, 2020 the Centers for Disease Control (CDC) issued an order and interim final rule limiting the entry of certain persons into the United States for public health reasons. While the measure was supposed to be temporary, on October 2020 the CDC issued a [final rule](#) and a new [order](#) extending the policy indefinitely. For its part, DHS has [determined](#) that asylum seekers lacking proper documentation are not engaged in essential travel. Per leaked [U.S. Customs and Border Protection \(CBP\) guidance](#), border officials return asylum seekers, including unaccompanied minors, apprehended along the southern border back to Mexico or other countries, without asking if they fear persecution or torture or providing any other due process protections. This policy violates domestic and international law and has effectively shut down asylum along the southern border. Congressional leaders and a number of advocacy organizations have [condemned](#) this policy. UNHCR and WHO have advised that governments can manage border restrictions in a manner which protects public health while respecting international human rights and refugee protection standards, including *non-refoulement*. CGRS, along with co-counsel, filed [G.Y.J.P v. Wolf](#), [J.C.C.B. v. Wolf](#), and [P.J.E.S. v. Wolf](#), all challenges to the border expulsions policy, specifically as it applies to unaccompanied minors.