

A Timeline of the Trump Administration’s Efforts to End Asylum

Last updated: August 2019

United States law enshrines the protections of the international Refugee Convention, drafted in the wake of the horrors of World War II. The law provides that any person “physically present in the United States or who arrives in the United States ... irrespective of such alien’s status, may apply for asylum....”¹ Since President Trump’s inauguration, the federal government has unleashed relentless attacks on the United States asylum system and those who seek safety on our shores. Internal memos have revealed these efforts to be concerted, organized, and implemented toward the goal of ending asylum in the United States as we know it.² This timeline highlights the major events comprising the administration’s assault on asylum seekers.

| Date and Event | Policy Description and Status |
|--|--|
| July 2019 | |
| Asylum Ban 2.0 ³ (barring migrants who cross through another country prior to arriving at the U.S. border from asylum eligibility) | <ul style="list-style-type: none"> ✓ The administration published an Interim Final Rule banning all people, including children, who have traveled through another country to reach the United States from applying for asylum. ✓ Status: The rule is partially in effect and partially blocked. A federal district court judge in California issued a Temporary Restraining Order on July 16, 2019 in California in <i>East Bay Sanctuary Covenant et al. v Trump</i>, finding the ban to likely violate the asylum provisions of U.S. federal law and raising concerns regarding the administration’s failure to allow for notice-and-comment rulemaking.⁴ The government appealed to the U.S. Circuit Court of Appeals for the Ninth Circuit, which kept the injunction in place only with regard to the geographic region covered by the Ninth Circuit (California and Arizona) and allowed the government to implement the rule across the rest of the southern border. On August 26th, the government |

petitioned the Supreme Court to intervene and allow implementation of the rule nationwide during the remainder of the litigation. That petition remains pending.⁵

All undocumented immigrants in the interior become targets for arrests and deportation through new Interim Final Rule expanding procedures that **expedite deportation**⁶

✓ Pursuant to another major regulatory change implemented as an Interim Final Rule, any undocumented individual who cannot prove to have been continuously present in the U.S. for at least two years can be placed in a fast-track deportation process, without the opportunity to plead their case in front of an immigration judge or get the help of an attorney.⁷ Expedited removal proceedings do allow individuals to seek referral to an immigration court proceeding to seek asylum, but the program has been consistently criticized for officers' failure to identify legitimate asylum seekers, resulting in the return of many to harm.⁸

✓ Status: Because of its issuance as an Interim Final Rule, the expansion of expedited removal is already in place. A lawsuit challenging this inhumane rule was filed on August 6, 2019.⁹

Attorney General Barr certifies yet another case to himself and further diminishes **grounds of asylum** - *Matter of L-E-A*-¹⁰

✓ Attorney General Barr reversed yet another BIA decision, this time strictly limiting asylum eligibility for individuals targeted and harmed due to their family membership.¹¹

✓ Status: This ruling effectively limits, or in some cases eliminates, the possibility of even presenting a claim for asylum for individuals who are fleeing harm on the basis of their membership in a particular family.

New pilot program gives **border patrol officers** the authority to conduct **credible fear interviews**¹²

✓ Stephen Miller has been promoting the implementation and expansion of a pilot program that would allow CBP officers, rather than trained asylum officer working under USCIS supervision, to conduct credible fear interviews. Requiring asylum seekers, recently arrived and fleeing fresh trauma, to articulate their fear of return to uniformed CBP officers will certainly mean that many asylum seekers will be forcibly returned to harm and death.

✓ Status: Unclear when this proposal will be formally implemented. Mark Morgan, Acting Chief of CBP, testified to Congress in July 2019 that CBP officers are currently undergoing training in order to conduct these types of interviews.¹³

The administration announces it has reached a **deal with Guatemala** to halt the flow of Central American migrants to the U.S.¹⁴

- √ In July the U.S. government announced it had reached an agreement with the government of Guatemala. Although the details are uncertain, the administration seems to consider the agreement to set the stage for a “safe third country” agreement that would require all asylum seekers arriving at the southern border who passed through Guatemala, other than Guatemalans, to be transferred to Guatemala to present an asylum claim there. The announcement of the agreement has prompted widespread condemnation in both countries, as it appears to constitute a back-door sealing of the southern border to asylum in the U.S. and would likely prompt an unmitigated political and humanitarian crisis in Guatemala, one of the most dangerous countries in the world.¹⁵
- √ Status: Unclear whether or when the regulations and agreements necessary to implement the agreement will be finalized.

May 2019

USCIS issues a memo¹⁶ attempting to undercut **protections provided to unaccompanied children** during the asylum process

- √ The memo undermines the few but essential protections provided to unaccompanied children in their asylum proceedings, including exemption from the one-year filing deadline and non-adversarial asylum interviews with an asylum officer, by requiring immigration adjudicators to continually re-adjudicate a child’s designation as unaccompanied.¹⁷ These new procedures undoubtedly impact children’s ability to effectively access their right to asylum by stripping away protections specifically designed to reflect the vulnerability of children who arrive at a border alone.
- √ Status: The memo became effective June 30, 2019. In August 2019, a federal district court issued a Temporary Restraining Order prohibiting USCIS’s implementation of the memo.¹⁸

April 2019

The White House releases a memo calling for regulations that would

- √ Such regulations would include adding fees to the asylum application and work permit application, precluding asylum seekers from working lawfully during their asylum proceedings, and placing a 180 day limit for cases to be completely adjudicated with an immigration court, among others.²⁰

change **asylum policies** to be drafted within 90 days¹⁹

✓ Status: The 90-day deadline was July 29, 2019. There are rumors that one DOJ regulation has been or will soon be sent to the Office of Management and Budget (OMB) for review but the details of any pending rule are far from certain.

January 2019

Migrant Protection Protocols (MPP) a.k.a “Remain in Mexico”²¹

✓ The MPP program constituted a dramatic undermining of the foundation of the U.S. asylum system by systematically returning asylum seekers who have been inspected at a port of entry and put into removal proceedings to Mexico to await their proceedings. Since its inception, the program has been implemented at ports of entry all across the southern border,²² placing asylum seekers at risk for violence, exploitation at the hands of cartels, and death.²³ Approximately one percent of people returned to Mexico under the program are able to find representation in their court cases²⁴ and the program regularly results in family separations.²⁵

✓ Status: This policy has caused wait times on the international bridges to increase²⁶ and asylum seekers to become so desperate that they cross between ports of entry and suffer injuries or even death.²⁷ A lawsuit challenging the policy is on-going (*Innovation Law Lab v. Nielsen*); although the district court issued a preliminary injunction in April 2019²⁸ the program continues to be operational because of a stay of the injunction issued by the Ninth Circuit Court of appeals in May 2019.²⁹

November 2018

Asylum Ban 1.0 (barring migrants who cross between ports from asylum eligibility)

✓ In response to groups of asylum seekers from Central America arriving in the fall of 2018 (known colloquially as caravans), the administration, via Executive Order, banned individuals who do not present themselves at a point of entry from applying for asylum.³⁰ The Executive Order was implemented through an Interim Final Rule, allowing for immediate implementation without the ordinary notice and comment period usually required for significant regulatory changes.³¹

√ Status: In *O-A v. Trump*,³² a Washington, D.C. federal court declared the rule illegal and prohibited its implementation.³³ An appeal to this ruling is highly likely.

September 2018

DHS and the Department of Health and Human Services (HHS) attempt to **dismantle the Flores settlement agreement**³⁴ and the Trafficking of Victims Protection Reauthorization Act of 2008 (TVPRA)³⁵ through the regulatory process³⁶

√ DHS and HHS both issued notices in the federal register of a proposed rule that would, among other things, allow for the indefinite detention of families, enable DHS to self-license family detention facilities, and undermine unaccompanied children’s rights to a bond hearing.³⁷ Despite receipt of more than 100,000 comments on the proposed rule, DHS and HHS proceeded to publish the rule in final form in August 2019, with few meaningful changes from the proposed rule. The publication marks the latest step in the administration’s ongoing efforts to irreparably alter the *Flores* settlement, a binding court settlement providing protections and guidelines related to the timing and conditions of detention for migrant children.³⁸

√ Status: The final *Flores* rule was published on August 23, 2019 and will go into effect on October 22, 2019; litigation challenging the final rule is expected imminently.

Official **“turn back” (or metering)** policy executed by CBP is confirmed in the Office of the Inspector General (OIG) report about family separations³⁹

√ The OIG report stated that the practice of metering, which constitutes the turning-back of asylum seekers at ports of entry where they are forced to wait in haphazardly operated queues amounting to weeks or months of delay, had been a tactic used by CBP going back to 2016.⁴⁰ This policy “compounds other longstanding border-wide tactics that CBP has implemented to prevent migrants from applying for asylum in the U.S., such as lies, intimidation, coercion, verbal abuse, physical force, outright denials of access, unreasonable delays, and threats—including the threat of family separation.”⁴¹

√ Status: Litigation challenging the legality of metering is pending in the U.S. District Court for the Southern District of California, where the judge has rejected the government’s second attempt to dismiss the case (*Al Otro Lado v. McAleenan*).⁴²

June 2018

Then-Attorney General Sessions severely limits the availability of asylum for **survivors of domestic violence and gang violence** (*Matter of A-B*).⁴³

- ✓ Again utilizing his ability to certify BIA cases to himself, Sessions overruled *Matter of A-B*, effectively limiting the availability of asylum to most individuals fleeing gender-based violence or violence at the hands of gangs and making it easier for ICE counsel to argue for deportation.⁴⁴
- ✓ Status: In December 2018, a federal court issued a decision generally preventing the administration from implementing this and other policies.⁴⁵ Recently, 21 state attorneys general⁴⁶ filed an amicus brief in support of the court’s decision.⁴⁷ The next hearing date regarding the government’s appeal has not yet been set.

April 2018

The Department of Justice (DOJ) requires immigration court judges to comply with **case quotas**⁴⁸

- ✓ Despite opposition from the National Association of Immigration Judges,⁴⁹ this policy requires immigration judges to make final rulings on 700 cases per year (about three per day) with repercussions—either being sent to a different immigration court or termination⁵⁰—if they do not comply. With judges under pressure to rush through court proceedings, the policy threatens the ability of asylum seekers to properly prepare and present their case.
- ✓ Status: This policy went into effect in the fall of 2018. The combination of this and several other unprecedented policies have resulted in chaos in the immigration court system, including increasing the backlog crisis by 25 percent rather than cutting down the number of pending cases that continues to creep closer to one million.⁵¹

Attorney General Sessions introduces the “**zero-tolerance**” policy, triggering widespread **family separations**⁵²

- ✓ The “zero tolerance” policy, announced by Sessions via memo, required that all arriving migrants, including asylum seekers, be referred to the DOJ for criminal prosecution for illegal entry or reentry. What resulted was the mass systemic separation of families, as parents were prosecuted and children were taken into custody, causing irreversible, life-long trauma to over 2,600 children.⁵³ Subsequently revealed internal government memos show that this policy was explicitly intended to serve as a deterrence mechanism for asylum seekers.⁵⁴
- ✓ Status: Family separation is still happening on a mass scale despite an Executive Order⁵⁵ issued in July 2018 that allegedly ended the zero-tolerance policy and despite a court order enjoining

the practice (more than 900 separations in the year following the court order).⁵⁶ Separations sometimes involve prosecutions but not always; in other cases⁵⁷ the Department of Homeland Security (DHS) cites vague and often unsubstantiated reasons such as the parent's criminal history, gang affiliations, or even medical issues such as HIV status⁵⁸ as justification for separation.

ICE, Customs and Border Protection (CBP), and the Office of Refugee and Resettlement (ORR) enter into an **agreement to share information** obtained from unaccompanied children amongst the three agencies, and inserting ICE into the approval process for reunification of unaccompanied children with sponsors⁵⁹

- ✓ The administration intended the information sharing agreement to provide ICE with the information it needed to target, arrest, and deport family members attempting to reunite with children entering the United States unaccompanied.⁶⁰ ICE arrested more than 300 potential sponsors from the date of the agreement until an appropriations bill prohibiting most arrests of sponsors was signed into law.⁶¹
- ✓ Status: The agreement is still in place, as is the provision in appropriations law prohibiting enforcement against most sponsors.⁶² Although ORR has made some modifications in the implementation⁶³ of this agreement, the fear it instilled in immigration communities remains; with many family members too afraid to come forward as sponsors, children remain in ORR custody for prolonged periods.⁶⁴ Children enduring prolonged detention face numerous barriers to presenting asylum or other claims to relief from removal.

March 2018

Attorney General Jeff Sessions vacates decision in *Matter of E-F-H-L*, eviscerating asylum seekers' **due process rights** in immigration court⁶⁵

- ✓ In *Matter of E-F-H-L*, Sessions utilized a provision of law that was used only sparingly under previous administrations to certify to himself and then overturn a decision of the administrative appellate body known as the Board of Immigration Appeals (BIA), eviscerating the rights of asylum seekers to testify on their own behalf before they can be denied asylum and/or deported.⁶⁶
- ✓ Status: In full force. Individual applicants may challenge the application of the case in the Circuit Courts of Appeal, but for the vast majority of immigrants who are unrepresented, this option is far out of reach.

July 2017

U.S. Immigration and Customs and Enforcement (ICE) ends the Family Case Management Program, signaling a concerted policy of **prolonged and indefinite detention** of asylum seekers⁶⁷

- ✓ The Family Case Management Program allowed some asylum seekers to remain in the community during their asylum proceedings while receiving case management services including referrals to legal and social services. The Trump administration terminated the policy for blatantly political reasons in April 2017, and subsequently unrolled a de facto policy of the prolonged and indefinite detention of asylum seekers—in violation of ICE’s own policy directive requiring that the agency release asylum seekers on humanitarian parole if they have a sponsor and pose no community safety risk.⁶⁸ By the summer of 2019, ICE’s own data revealed it to be jailing approximately 9,000 immigrants who had already been found to have a credible or reasonable fear of persecution or torture.⁶⁹
- ✓ Status: ICE is facing federal litigation for its systemic violation of its own parole guidance. In August 2018, a federal court in *Damus v. McAleenan* ordered ICE to resume individualized release considerations in five field offices, an order plaintiffs have had to go back to court to enforce.⁷⁰ In *Heredia-Mons v. McAleenan*, plaintiffs have produced evidence that only two of 130 cases out of the New Orleans ICE Field Office were granted in 2018.⁷¹ Both cases are on-going.

February 2017

U.S. Citizenship and Immigration Services (USCIS) raises the threshold for demonstrating **credible fear** in asylum interviews⁷²

- ✓ This new guideline ordered asylum officers to be stricter in assessing claims of fear made during “credible fear interviews,” the threshold interview that is required before an asylum seeker is allowed to present their claim to an immigration judge. Immigration law experts warned that the heightened standards would result in erroneous deportations of asylum seekers back to harm or death.
- ✓ Status: The implementation of this policy quickly resulted in a high rate of denials,⁷³ causing a significant rise in deportations of those with meritorious asylum claims they were never permitted to present fully.

January 2017

Trump issues **Executive Order** 13767, “Border Security and Immigration Enforcement Improvements”⁷⁴

✓ The Executive Order, which was issued along with a parallel Executive Order focusing on immigration policies in the interior of the United States, put forth a blueprint for many of the anti-asylum and anti-immigrant policies the administration has implemented since, including the construction of a border wall, the increased and prolonged jailing of asylum seekers, and the increased use of expedited deportation procedures.

✓ Status: Implementation is ongoing. Many of these policies, including expanded expedited case processing and the prolonged detention of asylum seekers, have already been actualized.

¹ 8 U.S.C. § 1158(a)(1).

² Anne Flaherty and Quinn Owe, ABC NEWS, *Leaked Memo Shows Trump Administration Weighed Separating Families at the Border, Sen. Merkley wants Nielsen investigated for perjury*, Jan. 18, 2019, available at <https://abcnews.go.com/Politics/leaked-memo-shows-trump-administration-weighed-separating-families/story?id=60459972>.

³ Third-Country Asylum Eligibility Rule, 84 Fed. Reg. 33829 (published July 16, 2019).

⁴ Vishnu Kannan, *Court Grants Preliminary Injunction in Challenge to Asylum Ban*, LAWFARE, July 24, 2019, available at <https://www.lawfareblog.com/court-grants-preliminary-injunction-challenge-asylum-ban>.

⁵ Amy Howe, *Government Seeks Emergency Relief on Asylum Rule*, SCOTUSBLOG, Aug. 26, 2019, available at <https://www.scotusblog.com/2019/08/government-seeks-emergency-relief-on-asylum-rule/>.

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⁷ Vanessa Romo, *Trump Administration Moves to Speed Up Deportations with Expedited Removal Expansion*, NPR, July 22, 2019, available at <https://www.npr.org/2019/07/22/744177726/trump-administration-moves-to-speed-up-deportations-with-expedited-removal-expan>.

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⁹ *ACLU v. McAleenan*, No. 19-cv-2369 (D.D.C. filed 2019) (complaint for declaratory and injunctive relief).

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