

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

Last updated: March 2020

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
March 2020	
Proposed rule seeks to raise fees in immigration court up to 800% and impose historic fee on asylum applications	<ul style="list-style-type: none"> √ The Executive Office of Immigration Review (EOIR), part of the Department of Justice (DOJ), proposed a rule³ to drastically raise fees on applications, motions, and appeals. For example, appeals, which currently cost \$110, would cost \$975 under the proposed EOIR rule. Additionally, EOIR proposes to charge a \$50 fee for asylum seekers—mirroring the proposed rule by the U.S. Citizenship Immigration Services (USCIS) seeking to impose their own fee on asylum applications. (See December 2019 update for more information.) √ Status: Awaiting issuance of the final rule. The comment period for the proposed rule closed on March 30, 2020. NIJC strongly opposes this rule and the imposition of an unprecedented wealth tax on asylum claims.⁴
Customs and Border Protection (CBP)	<ul style="list-style-type: none"> √ When asylum seekers enter the U.S., they have the right to a credible or reasonable fear interview (CFI/RFI) with a trained asylum officer from the U.S. Citizenship Immigration

<p>interferes with asylum seekers' rights to fear-based screenings (A.B.-B v. Morgan)</p>	<p>Services (USCIS). Applying the appropriate, non-adversarial standard in CFIs and RFIs is a matter of life-or-death, as asylum seekers can be summarily deported if they do not pass their CFI. In 2019, CBP entered into an agreement⁵ with USCIS to allow CBP officers to take over CFIs. Unlike USCIS asylum officers, CBP officers are purely trained in law enforcement and have a hostile track record toward asylum seekers.⁶ That is why federal laws and regulations require CBP officers to refer asylum seekers to USCIS asylum officers, not take their place.⁷</p> <p>√ Status: On March 27, 2020, detained families sued⁸ the federal government to vacate the agreement between CBP and USCIS and restore USCIS' role in conducting fear-based interviews. This lawsuit also seeks a preliminary and permanent injunction to stop CBP's interference with asylum screenings altogether.</p>
<p>Trump administration uses COVID-19 pandemic to further ban and detain asylum seekers</p>	<p>√ The White House has submitted a \$45.8 billion emergency supplemental funding request to Congress as the pandemic stretches federal agency funding thin. The request includes \$567 million to fund, in part, up to nine "migrant quarantine facilities" along the border operated by CBP and \$249 million, in part to convert ICE facilities to use for quarantine.⁹ The Trump administration also announced the closure of the U.S. border with Canada and Mexico.¹⁰ There is ample evidence that the pandemic bears no connection from migration from the U.S. Mexico border, while the U.S. and Canada's numbers of viral infections far exceed those of their southern neighbors.¹¹</p> <p>√ Status: Congress has not agreed to fund ICE and CBP quarantine centers to date. However, the border remains closed to all migrants—including asylum seekers and children¹²—in violation of U.S. and international law.¹³ NIJC strongly condemns the administration's exploitation of a public health crisis to further detain and wall off asylum seekers and migrants.¹⁴ These proposals do not heed the advice of public health experts, and instead double down on anti-immigrant policies fueled by xenophobia. The continued and expansive use of detention of migrants and asylum seekers has become a public health hazard, in addition to the flagrant violations of U.S. law and international human rights protections.¹⁵</p>
<p>Board of Immigration Appeals (BIA) decision issues precedent against</p>	<p>√ For years now, the Trump administration has arbitrarily stopped releasing asylum seekers on humanitarian parole, leading to the indefinite detention of thousands of across the country.¹⁶ Some asylum seekers have remained eligible to seek release on a monetary bond.¹⁷ To</p>

<p>release of asylum seekers on bond (<i>Matter of R-A-V-P-</i>)</p>	<p>adjudicate bond requests, immigration judges assess whether the asylum seeker poses any danger to others or national security, or is likely to become a “flight risk”—i.e., fail to appear at subsequent hearings. On March 18, 2020, the Board of Immigration Appeals issued a precedential decision further restricting the opportunity for this already limited category of asylum seekers to seek bond, reasoning that those who do not have ties in the United States, are not currently employed, or may lose their asylum case pose a flight risk.¹⁸</p> <p>√ Status: The decision is in place and operational and certain to justify the indefinite detention of countless asylum seekers.</p>
<p>Court of Appeals reinstates order that protected class of asylum seekers unlawfully “turned back” from asylum transit ban (<i>Al Otro Lado v. Wolf</i>)</p>	<p>√ Back in 2017, a class of asylum seekers sued the Trump administration challenging CBP policy to “turn back” asylum seekers or expose them to metering. Under pretenses that the U.S. was at capacity, CBP routinely turned away asylum seekers in violation of U.S. and international law. In November 2019, a California federal court granted these asylum seekers provisional class certification and a preliminary injunction to protect their access to asylum if they transited through a third country. This injunction was necessary after the Trump administration issued an interim final rule (IFR) barring all non-Mexican asylum seekers who transited through a third country from applying for asylum in the U.S. <i>on or after</i> July 16, 2019—but began applying this ban to the metered class of asylum seekers who had sought entry <i>before</i> July 16, 2019.¹⁹ In December 2019, the Trump administration appealed the district court’s ruling and successfully obtained an emergency stay of the injunction pending appellate review.</p> <p>√ Status: Preliminary injunction upheld on appeal.²⁰ On March 5, 2020, the Ninth Circuit removed the emergency stay and reinstated the district court’s preliminary injunction, protecting “all non-Mexican asylum-seekers who were unable to make a direct asylum claim at a U.S. [port of entry] before July 16, 2019, because of the U.S. Government’s metering policy, and who continue to seek access to the U.S. asylum process.”²¹ This ruling restored the right to seek asylum for the class of asylum seekers who were turned back or metered and barred from seeking asylum before July 16, 2019.</p>
<p>Federal Court vacates administrative asylum directives from USCIS</p>	<p>√ In September 2019, a number of asylum seekers detained with their families in Texas and the non-profit RAICES brought suit in federal court challenging USCIS directives that rushed asylum seekers through the credible fear evaluation process within a day of their arrival at the</p>

acting director because he was not lawfully appointed (*L.M.-M. v. Cuccinelli*)

detention center.²² The directives left families no time to understand their rights and the procedures for those interviews or consult with an attorney and made it nearly impossible for asylum seekers to seek an extension to prepare for the interview or consult with counsel. The legal challenge to the validity of these directives is based on the claim that Acting USCIS Director Ken Cuccinelli was not lawfully appointed under the Federal Vacancies Reform Act and the Appointments Clause of the U.S. Constitution at the time he implemented the policies.

- √ Status: The directives have been vacated by a federal court, but their standing is unclear. On March 1, 2020, the federal court concluded that Cuccinelli was not lawfully appointed to serve as acting director and thus “lacked authority” to issue the asylum directives.²³ The Court did not reach the other legal challenges. There are reports that USCIS staff is operating as though the directives are no longer in effect, but a potential legal challenge is likely forthcoming.²⁴ Confusion about Cuccinelli’s role lives on.²⁵

February 2020

Migrant Protection Persecution Protocols (MPP) remains in full force despite recent litigation and short-lived relief granted by the 9th Circuit Court of Appeals (*Innovation Impact Lab v. Nielsen*)

- √ A full year has passed since MPP (“Remain in Mexico”) was implemented and the human toll is staggering; approximately 60,000 Mexicans have been forced to remain in Mexico in life-threatening conditions while awaiting their court hearings.²⁶ In April 2019, a federal district court enjoined MPP, finding it “lacks sufficient protections against [persons] being returned to places where they face undue risk to their lives or freedom.”²⁷ This decision was stayed, however, pending the government’s appeal to the 9th Circuit Court of Appeals. Meanwhile, Doctors Without Borders issued a report that found 80% of migrants waiting in Nuevo Laredo under MPP to have been abducted by criminal networks and 45% to have suffered violence or violation.²⁸
- √ Status: MPP remains fully operational, with harms continuing unabated. In two decisions both issued on February 28, 2020, the Ninth Circuit removed and then reinstated the injunction against MPP.²⁹ On March 11, 2020, the Supreme Court declined to lift the emergency stay, permitting the continued use of MPP across the U.S.-Mexico border unless the Court denies review of the Ninth Circuit decision or decides the merits against the government.³⁰

Trump Administration further expands new expedited deportation procedures and agreements to deter asylum seekers

√ The Acting Commissioner for CBP testified before Congress in late February that the Department of Homeland Security (DHS) has: put more than 3,700 migrants through HARP and PACR, expedited deportation programs described in more detail below; and removed approximately 700 asylum seekers to Guatemala under the existing Asylum Cooperative Agreement, also described below.³¹

Ongoing reports reveal the massively harmful impact that these programs are unleashing on refugees at the southern border. Asylum seekers forcibly sent to Guatemala under the “asylum cooperative agreements” (ACA) endure squalid conditions that deter many from seeking protection; 75% of the asylum seekers (all of whom are Hondurans and Salvadorans) are women and children.³² Guatemala’s asylum infrastructure is ill-equipped to process the volume of requests it receives, and many asylum seekers fear that they will meet the same persecution they fled from their home country.

√ Status: These programs are fully operational. The legal challenges to PACR/HARP (by the ACLU) and to the ACA (by NIJC and other organizations) are ongoing.³³ The Trump administration extols the “successes” of these programs and seeks their expansion, reporting that they have effectively walled off 95% of asylum seekers who seek lawful entry to the U.S.³⁴

January 2020

CBP begins expanding two new programs to the Rio Grande Valley – **cutting off asylum seekers from accessing legal counsel and rushing** them through the credible fear process³⁵

√ Two new programs – the Prompt Asylum Claim Review (PACR), applying to individuals from countries other than Mexican nationals, and the Humanitarian Asylum Review Process (HARP), applying to Mexican nationals—were initially launched in the El Paso area in October 2019.³⁶ Under the PACR and HARP programs, asylum seekers remain in CBP custody rather than being transferred to Immigration & Custody Enforcement (ICE) for their credible fear processing (the threshold interviews for determining asylum eligibility). PACR and HARP result in asylum seekers being unjustly rushed through the credible fear process and ultimately sent back to dangerous situations. Additionally, asylum seekers are effectively precluded from receiving meaningful help and support from counsel or loved ones due to limited access to phone calls.³⁷ Preliminary rates of CFI passage in these programs are appallingly low because of the due process challenges.³⁸

√ Status: These programs are fully operational. In December 2019, the ACLU filed a federal lawsuit in the U.S. District Court for the District of Columbia, challenging, among other things, the legality of the PACR and HARP programs.³⁹ See February 2020 for more recent status updates.

December 2019

USCIS published proposed rule increasing fees, eliminating most fee waivers, and imposing an unprecedented fee for asylum seekers

√ Besides seeking drastic increases that will disproportionately harm indigent and low-income immigrants, USCIS proposed the introduction, for the first time ever, of fees for affirmative asylum filings and for initial work authorization for asylum seekers.⁴⁰ This rule requires asylum seekers to pay a fee for their asylum application and work authorization. Among the 147 state parties to the 1951 Convention Relating to the Status of Refugees, only three others charge a fee for asylum applications. Any fees imposed on asylum seekers who first arrive may create an unsurmountable barrier and deter countless individuals with *bona fide* claims.

√ Status: Pending issuance of the final rule. NIJC submitted comments strongly opposing the proposed fees, calling for rescission of the proposed rule.

DHS and the DOJ publish a proposed rule **severely curbing the number of individuals who may qualify for asylum**⁴¹

√ This joint proposed rule adds seven new bars to asylum eligibility based on prior conduct or involvement in the criminal legal system, and significantly alters the way immigration adjudicators determine whether allegations of wrongful or criminal conduct render an individual ineligible for asylum.⁴² The proposed rule will severely impact asylum seekers and threatens U.S. compliance with its obligations under international and domestic asylum law.

√ Status: Pending issuance of the final rule. NIJC called for rescission of this joint proposed rule.

November 2019

DHS and DOJ issue IFR,⁴³ effectively immediately, that allows the U.S. to enter into **unsafe third country agreements with**

√ Under these agreements, known as ACAs, individuals would be prohibited from applying for asylum in the U.S. if the following four requirements are met: 1) the U.S. entered into a bilateral or multi-lateral agreement; 2) at least one of the signatory countries is a “third country” for the asylum seeker; the asylum seeker’s “life or freedom would not be threatened in that third country” on account of their race, religion, nationality, political opinion, or particular social

**Honduras, El Salvador,
and Guatemala**⁴⁴
(*U.T. v. Barr*)

group; and 4) the “third country provides [asylum seekers] removed there . . . ‘access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.’”⁴⁵ Under this new rule, asylum officers and CBP would have the discretion to conduct threshold screenings to determine which country will consider an asylum seeker’s claim.⁴⁶

- √ Status: This policy is in effect⁴⁷ but litigation is pending. On January 15, 2020, NIJC and several other organizations filed a federal lawsuit challenging the legality of the so-called “safe third country” agreements. The lawsuit, *U.T. v. Barr*, was filed in the U.S. District Court of Washington D.C. and cites violations of the Refugee Act, Immigration and Nationality Act, and Administrative Procedure Act. Plaintiffs are asylum seekers who fled to the U.S. and were unlawfully removed to Guatemala, as well as organizations that serve asylum seekers.⁴⁸ See February 2020 for more recent status updates.

DHS proposes rule to **double wait time for or block** asylum seekers seeking **work authorization** based on how and when they entered.⁴⁹

- √ If finalized, the proposed rule would, among other changes, extend the time an asylum applicant would have to wait before submitting an application for a work permit from 180 days to 365 days; exclude individuals who did not lawfully enter the U.S. through a port of entry from being eligible to apply for asylum; and exclude individuals who did not file an asylum application within one year of their last entry from being eligible for asylum.⁵⁰ The United States’ legal and moral obligation to protect those seeking safety from persecution includes the obligation to ensure that those seeking and those granted asylum are able to access the benefits and services that enable them to live a full life. Chipping away at the ability of asylum seekers to access this form of relief and the ability to work directly contravenes these obligations.

- √ Status: Awaiting issuance of the final rule. The comment period for the proposed rule closed on January 13, 2020.

USCIS publishes a proposed rule that would **eliminate the 30-day processing time for work permits** given to asylum seekers⁵¹

- √ A delay in the ability to work will cause grave consequences for asylum seekers. Swiftly gaining a work permit is a crucial first step for asylum seekers toward finding stability, safety, and the support necessary to begin rebuilding a full and productive life. Without first receiving a work permit, an asylum seeker would be unable to obtain any form of identification, such as a driver’s license or social security number. This would effectively inhibit their ability to access

social benefits and do things U.S. citizens take for granted such as opening a bank account, getting a library card, or even registering their child for school.

- ✓ Status: Pending issuance of the final rule. NIJC submitted comments opposing this proposed rule on November 8, 2019.⁵²

September 2019

Administration reaches **agreement with Honduras, effectively blocking asylum** seekers from reaching the United States⁵³

- ✓ Similar to a deal reached with Guatemala and El Salvador, this new agreement will enable the U.S. to reject asylum seekers who have not first applied for asylum in Honduras.⁵⁴ Once more, it is clear the Administration has a complete disregard for the underlying reasons many Central Americans flee their home countries. In Honduras, “[t]wo-thirds of its roughly 9 million people live in poverty” with rampant gang and gender-based violence.⁵⁵ Forcing asylum seekers to remain in a country with their persecutor can actually be a matter of life or death.

- ✓ Status: No explicit details about the agreement or when it could be implemented have been released.

Acting Department of Homeland Security (DHS) Secretary McAleenan announces **DHS will no longer allow any arriving asylum seekers** to be **released** into the community⁵⁶

- ✓ Acting Secretary announced that asylum seeking migrant families, who do not express a fear of return to their home country, would no longer be released into the interior of the United States after being arrested and detained by CBP; however, there will be some humanitarian and medical exceptions⁵⁷ For those families who do express a fear, they will be returned to Mexico under MPP policy.⁵⁸ This will only exacerbate the violence and danger asylum seekers stuck in Mexico currently face.⁵⁹

- ✓ Status: The timing and/or details of this new policy is unclear.

United States and El Salvador sign a **bilateral agreement as a way to combat** the flow of

- ✓ In another callous attempt to stop the flow of migration from Central America, the United States has entered into an agreement with El Salvador to have the Central American country develop its asylum process so that migrants will first seek asylum there.⁶¹ Acting DHS Secretary McAleenan stated in a press conference with El Salvador’s foreign minister, Alexandra Hill Tinoco, that the agreement will “provide opportunities [for asylum seekers] to seek protection . . . as close as possible to the origin of individuals that need it . . .”⁶² The

<p>migration from Central America⁶⁰</p>	<p>reality is that El Salvador should be one of the last places for an asylum seeker to be; in fact, the State Department’s travel advisory for El Salvador asks potential visitors to “[r]econsider travel to El Salvador due to crime,” stating “[v]iolent crime, such as murder, assault, rape, and armed robbery is common” and that “[g]ang activity, such as extortion, violent street crime . . . is widespread.”⁶³</p> <p>√ Status: Neither text nor details of the agreement have been formally released and negotiations around the agreement are on-going.</p>
<p>Supreme court allows full implementation of Asylum Ban 2.0⁶⁴ (barring migrants who cross through another country prior to arriving at the U.S. border from asylum eligibility)</p>	<p>√ In July 2019, the administration published an IFR banning all people, including children, who have traveled through another country to reach the United States from applying for asylum. This rule is a de facto asylum ban for nearly all asylum seekers seeking to enter the U.S. through the southern border.</p> <p>√ Status: The rule is now fully in effect, after the Supreme Court stayed a partial Temporary Restraining Order. 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. Barr</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.⁶⁵ 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 September 11th, the Supreme Court issued a decision allowing the ban to be fully implemented during the pendency of litigation.⁶⁶ This case remains pending a final decision by the Ninth Circuit.</p>
<p>July 2019</p>	
<p>All undocumented immigrants in the interior become targets for arrests and deportation through new IFR expanding</p>	<p>√ Pursuant to another major regulatory change implemented as an IFR, 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.⁶⁸ Expedited removal proceedings do allow individuals to seek referral to an immigration court proceeding to seek</p>

<p>procedures that expedite deportation⁶⁷</p>	<p>asylum, but the program has been consistently criticized for officers' failure to identify legitimate asylum seekers, resulting in the return of many to harm.⁶⁹</p> <p>✓ Status: Because of its issuance as an IFR, the expansion of expedited removal is already in place. A lawsuit challenging this inhumane rule was filed on August 6, 2019.⁷⁰</p>
<p>Attorney General Barr certifies yet another case to himself and further diminishes grounds of asylum - <i>Matter of L-E-A</i>⁷¹</p>	<p>✓ Attorney General Barr reversed yet another BIA decision, this time strictly limiting asylum eligibility for individuals targeted and harmed due to their family membership.⁷²</p> <p>✓ 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.</p>
<p>New pilot program gives border patrol officers the authority to conduct credible fear interviews⁷³</p>	<p>✓ 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.</p> <p>✓ Status: 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.⁷⁴ In September 2019, it was reported that CBP agents were beginning to screen families for credible fear, with CBP agents at the Dilley Family Residential Center identifying themselves to children and families as "asylum officers."⁷⁵</p>
<p>The administration announces it has reached a deal with Guatemala to halt the flow of Central American migrants to the U.S.⁷⁶</p>	<p>✓ 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</p>

would likely prompt an unmitigated political and humanitarian crisis in Guatemala, one of the most dangerous countries in the world.⁷⁷

✓ Status: The agreement was published in the Federal Register on November 19, 2019.⁷⁸

May 2019

USCIS issues a memo⁷⁹ 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.⁸⁰ 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.⁸¹

January 2019

MPP a.k.a "Remain in Mexico"⁸²

✓ 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,⁸³ placing asylum seekers at risk for violence, exploitation at the hands of cartels, and death.⁸⁴ Approximately one percent of people returned to Mexico under the program are able to find representation in their court cases⁸⁵ and the program regularly results in family separations.⁸⁶

✓ Status: This policy is in effect and continues to cause massive harms and rights abuses. Human Rights First partners with other human rights organizations to publish a running database of publicly reported kidnappings and violent assaults on asylum seekers forced to return to danger in Mexico through this program.⁸⁷ The program has additionally caused wait times on

the international bridges to increase⁸⁸ and asylum seekers to become so desperate that they cross between ports of entry and suffer injuries or even death.⁸⁹ A lawsuit challenging the policy is on-going (*Innovation Law Lab v. Nielsen*); although the district court issued a preliminary injunction in April 2019⁹⁰ the program continues to be operational.⁹¹ See February 2020 for more recent status updates.

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 proclamation, banned individuals who do not present themselves at a point of entry from applying for asylum.⁹² The proclamation was implemented through an IFR, allowing for immediate implementation without the ordinary notice and comment period usually required for significant regulatory changes.⁹³ The ban imposes an arbitrary geographic restriction on individuals who are fleeing for their lives.

- √ Status: Enjoined; not operational pending ongoing litigation on two fronts. (1) In *O-A v. Trump*,⁹⁴ a Washington, D.C. federal court declared the rule illegal and prohibited its implementation.⁹⁵ On September 30, 2019, the U.S. Government appealed the D.C. federal court’s decision.⁹⁶ No decision has been issued on the appeal. The D.C. federal court’s decision remains in effect during the pendency of this appeal. (2) In *East Bay Sanctuary Covenant v. Trump*, North California federal court imposed a restraining order on the rule. The government immediately appealed and sought an emergency stay before the federal district court, the Ninth Circuit Court of Appeals, and the U.S. Supreme Court—all of whom denied the government’s request and left the restraining order in place until the Ninth Circuit reviewed the merits of the district court’s decision. On February 28, 2020, the Ninth Circuit’s Federal Court of Appeal also ruled in *East Bay Sanctuary Covenant v. Trump* that the rule is unlawful.⁹⁷

September 2018

DHS and the Department of Health and Human Services

- √ 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

<p>(HHS) attempt to dismantle the Flores settlement agreement⁹⁸ and the Trafficking of Victims Protection Reauthorization Act of 2008 (TVPRA)⁹⁹ through the regulatory process¹⁰⁰</p>	<p>detention facilities, and undermine unaccompanied children’s rights to a bond hearing.¹⁰¹ 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 <i>Flores</i> settlement, a binding court settlement providing protections and guidelines related to the timing and conditions of detention for migrant children.¹⁰²</p> <p>√ Status: The final <i>Flores</i> rule was published on August 23, 2019 but is not yet in effect subject to pending litigation.</p>
<p>Official “turn back” (or metering) policy executed by CBP is confirmed in the Office of the Inspector General (OIG) report about family separations¹⁰³</p>	<p>√ 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 2016.¹⁰⁴ 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.”¹⁰⁵</p> <p>√ 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.¹⁰⁶ See March 2020 for more recent status updates.</p>
<p>June 2018</p>	
<p>Then-Attorney General Sessions severely limits the availability of asylum for survivors of domestic violence and gang violence (<i>Matter of A-B</i>).¹⁰⁷</p>	<p>√ Again utilizing his ability to certify BIA cases to himself, Sessions overruled <i>Matter of A-B</i>, 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.¹⁰⁸</p> <p>√ Status: In December 2018, a federal court issued a decision generally preventing the administration from implementing this and other policies.¹⁰⁹ Recently, 21 state attorneys</p>

general¹¹⁰ filed an amicus brief in support of the court’s decision.¹¹¹ The next hearing date regarding the government’s appeal has not yet been set.

April 2018

DOJ requires immigration court judges to comply with **case quotas**¹¹²

- ✓ Despite opposition from the National Association of Immigration Judges,¹¹³ 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 termination¹¹⁴—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.¹¹⁵

Attorney General Sessions introduces the **“zero-tolerance”** policy, triggering widespread **family separations**¹¹⁶

- ✓ 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.¹¹⁷ Subsequently revealed internal government memos show that this policy was explicitly intended to serve as a deterrence mechanism for asylum seekers.¹¹⁸
- ✓ Status: Family separation is still happening on a mass scale despite an Executive Order¹¹⁹ 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).¹²⁰ Separations sometimes involve prosecutions but not always; in other cases¹²¹ 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 status¹²² as justification for separation.

<p>ICE, 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 sponsors¹²³</p>	<ul style="list-style-type: none"> ✓ 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.¹²⁴ 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.¹²⁵ ✓ Status: The agreement is still in place, as is the provision in appropriations law prohibiting enforcement against most sponsors.¹²⁶ Although ORR has made some modifications in the implementation¹²⁷ 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.¹²⁸ Children enduring prolonged detention face numerous barriers to presenting asylum or other claims to relief from removal.
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March 2018

<p>Attorney General Jeff Sessions vacates decision in <i>Matter of E-F-H-L</i>, eviscerating asylum seekers' due process rights in immigration court¹²⁹</p>	<ul style="list-style-type: none"> ✓ In <i>Matter of E-F-H-L</i>, 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 BIA, eviscerating the rights of asylum seekers to testify on their own behalf before they can be denied asylum and/or deported.¹³⁰ ✓ 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.
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July 2017

<p>ICE ends the Family Case Management Program, signaling a concerted policy of prolonged and indefinite detention of asylum seekers¹³¹</p>	<ul style="list-style-type: none"> ✓ 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
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a sponsor and pose no community safety risk.¹³² 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.¹³³

- ✓ 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.¹³⁴ 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 2018.¹³⁵ Both cases are on-going.

February 2017

USCIS raises the threshold for demonstrating **credible fear** in asylum interviews¹³⁶

- ✓ 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,¹³⁷ 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"¹³⁸

- ✓ 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 Executive Office for Immigration Review; Fee Review, 85 FR 11866, available at <https://www.federalregister.gov/documents/2020/02/28/2020-03784/executive-office-for-immigration-review-fee-review>.

⁴ See NIJC's comment here: <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2020-04/Final-Comment-EOIR-Fee-Rule.pdf>

⁵ This memorandum of agreement was obtained in a Freedom of Information Act request by the American Immigration Council and is available at: <https://www.documentcloud.org/documents/6798341-Signed-MOA-by-Morgan-INTC-1647-Redactions-Applied.html>.

⁶ AMERICAN IMMIGRATION LAWYERS' ASSOCIATION, et al., *Office for Civil Rights and Civil Liberties Complaint on CBP's Systemic Denial of Entry to Asylum Seekers*, (Jan. 13, 2017), available at <https://www.aila.org/infonet/crcl-complaint-cbps-systemic-denial-asylum-seekers>.

⁷ See 8 U.S.C. § 1225(b)(1)(A)(ii) & (b)(1)(B); 8 C.F.R. 235.3(b)(4); see also 8 C.F.R. § 208.30.

⁸ Complaint is available at: https://www.tahirih.org/wp-content/uploads/2020/03/Morgan-Complaint_Use-of-CBP-Agents-Asylum-Screenings.pdf.

⁹ See Phil Mattingly and Paul LeBlanc, *White House requests \$45.8 billion in emergency funding due to coronavirus*, CNN (Mar. 18, 2020), available at <https://www.cnn.com/2020/03/18/politics/white-house-additional-funding-coronavirus/index.html>.

¹⁰ See DEPT. OF HOMELAND SECURITY, *Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico*, 85 FR 16547 available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-06253.pdf>; *The Coronavirus Outbreak: U.S. Borders With Mexico and Canada to Close This Weekend*, N.Y. TIMES (Mar. 17, 2020), available at <https://www.nytimes.com/2020/03/20/world/coronavirus-news.html?action=click&module=Spotlight&pgtype=Homepage>.

¹¹ See *The Coronavirus Outbreak: U.S. plans to swiftly turn back people entering from Mexico illegally*, N.Y. TIMES (Mar. 17, 2020), available at <https://www.nytimes.com/2020/03/17/world/coronavirus-update-latest-news.html?action=click&module=Spotlight&pgtype=Homepage#link-28632499>.

¹² See Hamed Aleaziz, *The Trump Administration Is Now Deporting Unaccompanied Immigrant Kids Due To The Coronavirus*, BUZZFEED NEWS (Mar. 30, 2020), available at <https://www.buzzfeednews.com/article/hamedaleaziz/coronavirus-unaccompanied-minors-deported>.

¹³ See U.N. High Commissioner for Refugees, *The COVID-19 Crisis: Key Protection Messages*, REF WORLD.ORG (Mar. 31, 2020), available at <https://www.refworld.org/docid/5e84b9f64.html>.

¹⁴ See NIJC's statement at: <https://immigrantjustice.org/press-releases/nijc-calls-congress-reject-trump-request-fund-quarantine-detention-sites-demands?eType=EmailBlastContent&eId=096ea5f9-6c18-422f-be37-40daf35c350d>.

¹⁵ See Spencer Ackerman, *ICE: No Plan to Free Migrants in Jail, but Will Arrest Fewer Due to Pandemic*, DAILY BEAST (Mar. 19, 2020), available at <https://www.thedailybeast.com/ice-says-it-has-no-plan-to-free-migrants-in-jail-but-will-arrest-fewer-due-to-coronavirus-pandemic>.

¹⁶ See *supra* July 2017 update, referring to litigation in *Damus v. McAleenan* and *Heredia-Mons v. McAleenan*.

¹⁷ See 8 U.S.C. § 1226(a)(2); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

¹⁸ See *Matter of R-A-V-P-*, 27 I&N Dec. 803 (BIA 2020). This decision affirms the troubling pattern of summary dismissals of asylum claims before they reach their merits, a trend already concerning after *Matter of E-F-H-L-* (see March 2018 update).

¹⁹ The case *East Bay Sanctuary Covenant et al. v. Barr* directly challenges this ban. See September 2019 update for more information.

²⁰ For more information, see AMERICAN IMMIGRATION COUNCIL, et al., *Federal Court's Preliminary Injunction Restores Asylum Eligibility for Asylum Seekers Turned Back at Ports of Entry Before July 16, 2019: Frequently Asked Questions* (Mar. 5, 2020), available at https://www.americanimmigrationcouncil.org/sites/default/files/other_litigation_documents/challenging_custom_and_border_protections_unlawful_practice_of_turning_away_asylum_seekers_faq.pdf.

²¹ See *Al Otro Lado v. Wolf*, --- F.3d --- (9th Cir. Mar. 5, 2020) (upholding preliminary injunction issued in *Al Otro Lado, Inc. v. McAleenan*, 2019 WL 6134601, at *17 at *20 (S.D. Cal. 2019)), available at <http://cdn.ca9.uscourts.gov/datastore/general/2020/03/05/19-56417%20-%20Order.pdf>.

²² *L.M.-M. v. Cuccinelli*, No. 1:19-cv-02676-RDM (D.D.C.). Complaint is available here: https://democracyforward.org/wp-content/uploads/2019/09/STAMPED-RECEIVED_Complaint.pdf. See also DEMOCRACY FORWARD, Press Release: Groups Sue Trump Administration, Cuccinelli For Unlawfully Ignoring the Human Toll on Asylum Seekers with New Directives (Sept. 6, 2020), available at <https://democracyforward.org/press/groups-sue-trump-administration-cuccinelli-for-unlawfully-ignoring-the-human-toll-on-asylum-seekers-with-new-directives/>.

²³ *L.M.-M. v. Cuccinelli*, 1:19-cv-02676-RDM, ECF No. 34 (Memorandum Opinion and Order), available at <https://cliniclegal.org/file-download/download/public/2193>.

²⁴ See Hamed Aleaziz, *A Judge Ruled Trump's USCIS Director Wasn't Legally Appointed*, BUZZFEED NEWS (Mar. 1, 2020), available at <https://www.buzzfeednews.com/article/hamedaleaziz/ken-cuccinelli-ucis-appointed-illegally-judge>.

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²⁶ See Declaration of Robert E. Perez (Deputy Commissioner for CBP), included within *Wolf v. Innovation Law Lab*, No. 19-15716, ECF No. 91-1 (Emergency Motion for immediate stay pending disposition of certiorari), available at <https://www.politico.com/f/?id=00000170-8ed6-d5e8-a5f5-cfd7e0b90000>.

²⁷ *Innovation Law Lab v. Nielsen*, No. 3:19-cv-00807-RS, ECF No. 73, available at <https://www.politico.com/f/?id=00000169-fee3-d8fd-a7e9-ffe314940002>.

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²⁹ *Innovation Law Impact Lab v. Wolf*, No. 19-15716, ECF No. 89-1 (Ninth Cir. Opinion reinstating stay of MPP), available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/02/28/19-15716.pdf>; *Id.* at 41-47; see also ECF No. 93 (Order granting emergency request for immediate stay of Feb. 28, 2020 decision pending disposition of petition for certiorari). See also DELIVERED TO DANGER, recording publically reported cases of murder, rape, torture, kidnappings, and other violent assaults (last accessed Mar. 3, 2020), available at <https://deliveredtodanger.org/>.

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³¹ Muzzaffar Chishti & Jessica Bolter, *Interlocking Set of Trump Administration Policies at the U.S.-Mexico Border Bars Virtually All from Asylum*, MIGRATION POLICY INSTITUTE (Feb. 27, 2020), available at <https://www.migrationpolicy.org/article/interlocking-set-policies-us-mexico-border-bars-virtually-all-asylum>.

³² See Noah Lanard, *The Absurdity and Danger of Trump's Deal to Send Asylum Seekers to Guatemala*, MOTHER JONES (Feb. 28, 2020), available at <https://www.motherjones.com/politics/2020/02/the-absurdity-and-danger-of-trumps-deal-to-send-asylum-seekers-to-guatemala/>.

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- ⁴⁶ *Id.*
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