

Policy Analysis & Descriptions

Asylum

Asylum is a right that is enshrined in both US law and international law. Any person fleeing from their country due to poverty, war, generalized violence (including domestic and sexual violence), climate change, or a myriad of other factors should be able to arrive at the US border, explain that they fear for their life, and be admitted for a credible fear interview with an asylum officer. Asylum seekers should be able to live freely and in dignified conditions while they adjudicate their cases, have access to free or low-cost legal services, be able to work legally, and have a meaningful chance of winning asylum and ultimately becoming citizens.

Reasonable alternatives to asylum (such as obtaining a visa, lawful permanent residency, etc.) should exist for those who may not qualify for asylum but still wish to resettle in the US.

The right to seek and obtain asylum has been blocked by the Trump administration at every turn, making it almost impossible to win a case and subjecting thousands of people to violent deportation. Thousands of people are unable to even present themselves to make their asylum claim, leaving them stuck in Mexico and unsure of what lies ahead. Asylum is a sacred covenant and it is unequivocally the responsibility of the US government to honor and uphold this right.

Metering

When asylum seekers (primarily people from Cuba, Central America, and Africa) arrive at the border and attempt to cross into the US at a port of entry, they are turned away by Customs and Border Protection and told to put their name on a list maintained by Mexican authorities. This practice began in October of 2018. The lists are maintained in northern Mexican cities like Juarez, Tijuana, and Nuevo Laredo and contain tens of thousands of names, meaning that asylum seekers must wait for months in unstable conditions before they can even present an initial claim. Increasingly, Mexican asylum seekers fleeing from Mexico are being turned back at the bridges and told to wait, meaning that they are left to fend for themselves in the very country they are fleeing.

Migrants who are forced to wait on the metering list often become desperate and choose to cross irregularly between ports of entry. This is incredibly dangerous and has led to deaths by dehydration or drowning in canals.

Migrant Protection Protocols/Remain in Mexico

Beginning in January 2019, Customs and Border Protection began sending asylum seekers back to northern Mexican cities after their initial asylum claims had been processed. Over 42,000 people are now waiting in Mexico for their cases to be adjudicated. They are allowed to cross back into the US in order to attend scheduled court hearings but are then sent back to Mexico, often spending the night in detention first.

Mexico has insufficient infrastructure to support such a large influx of people. Shelter space is extremely limited, meaning that thousands of families with children are sleeping on the streets. Violent crimes against migrants, including kidnapping, theft and rape, are common. Work permits are not widely available, so migrants either cannot work or must work illegally. It is incredibly difficult for people to connect with attorneys and other legal services and there is essentially no legal orientation or education about how the asylum system works in the US.

No exceptions are made for especially vulnerable populations such as LGBTQ individuals, pregnant women, people with disabilities, etc. These groups face special danger in Mexico and are unable to access the services and communities they need to stay safe and healthy.

Asylum seekers are often sent back even when they express fear of returning to Mexico or have been victims of crime there.

The Remain in Mexico program is being challenged in the court system, but the Trump administration has continued to expand it and is pushing to make it permanent.

Access to Due Process

Asylum seekers are increasingly unable to present themselves at ports of entry to assert their fear of returning to their home country. If they are allowed to enter the US and are processed, they should have a “credible fear interview” with a trained asylum officer to explain their circumstances. However, Border Patrol agents have recently begun performing credible fear interviews at certain points along the border. This plan was instituted because Border Patrol agents are much harsher in their assessments and reject more asylum seekers. Agents lack the training needed to deftly handle interviews with extremely vulnerable people and they are mostly male, meaning that women fleeing sexual violence may hesitate to speak out about their reason for seeking asylum.

Immigrant legal services are extremely limited and expensive, meaning that many asylum seekers must represent themselves in court. Asylum law is one of the most complicated branches of the law and barriers to representing oneself, such as lack of understanding of the law, not speaking English, speaking an indigenous language, or not having transportation to and from the courthouse, are often insurmountable.

Asylum seekers sent back to Mexico under the Migrant Protection Protocols have an even harder time obtaining legal representation or understanding the legal process. Many American lawyers are unwilling to cross into Mexico to meet with clients, and those who do take clients in Mexico face danger and long wait times to get back into the US. Basic educational programs, such as know-your-rights trainings held in courthouses, have been curtailed, leaving many people with no understanding of where their case stands or what they must do to prepare for it.

Asylum seekers in the Remain in Mexico program are regularly told to present themselves at the international ports of entry at 4:30am in order to attend their 9:30 am court hearing. They must find their own transportation to the bridges and navigate dangerous areas in the middle of the night.

These obstacles to due process contribute to overwhelming rates of asylum denial, leaving people with no further recourse and subject to deportation back to the countries they fled.

Asylum Ban and Safe Third Country Agreements

The Trump administration announced an asylum ban earlier this summer that allows the US to reject asylum claims from people who transited through another country (i.e. Mexico) on their way to the US. What this means is that if a Central American or non-Mexican asylum seeker travels through Mexico before reaching the US and does not seek asylum there first, their asylum claim will be rejected outright once they reach the US. It is unclear what this will mean for the thousands of people who have patiently waited on the metering list for their initial claim to be heard, but it will put a further barrier in the way

of justice and due process. The Supreme Court recently upheld the legality of the asylum ban pending further legal action.

The administration has also signed agreements with Guatemala, Honduras and El Salvador that place further obstacles in the way of asylum seekers. A “safe third country” agreement with Guatemala mandates that anyone who first passes through Guatemala before reaching the US must claim asylum there first before applying in the US. While the US-Guatemala agreement has been signed but not officially implemented at the time of this writing, it would be another devastating obstacle to those seeking safety and peace in the US.

No one who studies Central America would characterize Guatemala as a safe country. Indeed, Guatemala is currently one of the top sending countries to the US due to violence, poverty, instability and climate change. Its asylum system is incredibly under-resourced and Guatemala has no capacity to receive thousands of vulnerable people when it already struggles to protect the human rights and safety of its own population.

The recent agreements with Honduras and El Salvador allow the US to deport people there if they transited through those countries on their way to the US. Like Guatemala, Honduras and El Salvador are top sending countries and have little to no capacity to safely receive and process asylum claims.

Conclusion

The right to asylum is experiencing death by a thousand cuts. Human beings are being sent back to danger and returned to the places they fled from with no regard for their vulnerability and life experiences. Due process has become a fiction. Asylum is not a privilege; it is a right. We must fight to uphold and expand this sacred covenant with all those who seek safety and a better life in the United States.