

Asylum Denied, Families Divided: Trump Administration's Illegal Third-Country Transit Ban

One year ago, on July 16, 2019, the Trump administration issued a rule barring asylum for virtually all refugees who travel through another country on their way to seek protection at the southern border of the United States. It has done immense harm. Under the transit ban, the Trump administration has prevented refugees from seeking and receiving asylum, returned them to persecution, kept them in detention, left them in limbo in the United States, and separated them from their children.

On June 30, 2020, a federal court in Washington DC vacated the ban, and in early July 2020, in a separate suit, the U.S. Court of Appeals for the Ninth Circuit upheld a preliminary injunction against the ban. But rather than abandon this illegal and inhumane policy, the Trump administration is doubling down. It is proposing additional changes to U.S. regulations that would deny asylum to refugees who travel through other countries and expand this ban to all asylum seekers, whether or not they initially sought protection at the southern border.

The third-country transit asylum ban, and its proposed extension, are blatant attempts to circumvent the law. Congress has enacted specific measures to protect refugees who travel through other countries. Refugees are barred from asylum based on their travel only if they have “firmly resettled” in another country or if the United States has a formal return agreement with a country where refugees are both safe from persecution and have access to fair asylum procedures. Yet under the Trump administration’s transit ban and its proposed rules, refugees are ineligible for asylum due to their flight through other countries, unless they somehow manage to meet prohibitively restrictive exceptions.

The transit ban has inflicted enormous suffering on refugees and their families. Asylum seekers have been summarily deported in secretive border proceedings where officers used the ban to improperly raise the screening standard set by Congress. Torture-survivors and asylum seekers in immigration detention facilities from Cameroon, Ghana, Jamaica, and other countries, including many LGBTQ people, have been denied both asylum and the ability to bring their families to safety. Refugees from a range of countries such as Cuba, Honduras, Nicaragua, and Venezuela—already forced to wait many months in acute danger in Mexico under the “Migrant Protection Protocols” (MPP)—have been denied asylum and separated from their families. Immigration and Customs Enforcement (ICE) has used the ban to deny asylum seekers from release from detention regardless of their eligibility for parole.

Since March 2020, the administration has exploited the COVID-19 pandemic as a pretext to indefinitely block virtually all asylum seekers at the southern border, flouting U.S. refugee laws and treaty obligations. As a result, many asylum seekers who would have been subjected to the transit ban during expedited removal have been illegally expelled. While many immigration hearings have been postponed due to coronavirus-related court closures, some have gone forward, leading to additional transit ban denials. There is little doubt that the Trump administration will, if given the chance, continue to use the transit ban or similar proposed rules to deny refugees asylum and to prevent them from bringing their families to safety in the United States.

This report is based on interviews with dozens of asylum seekers and attorneys, asylum cases handled by Human Rights First’s attorneys and pro bono partners, immigration court decisions, credible fear determinations, federal court filings, government data, observation of immigration court hearings for the Laredo and Brownsville MPP tent courts in late 2019, and media reports.

Our key findings:

- ☑ **The Trump administration has used the transit ban to deny asylum to hundreds of refugees and many more would be denied under similar proposed rules.** While neither the Department of Justice (DOJ) nor the Department of Homeland Security (DHS) track or disclosure figures, Human Rights First has identified more than 130 refugees denied asylum because of the ban. But falling asylum grant rates indicate that **more than 500 non-Central American refugees were likely denied asylum because of the transit ban** in just four months following its implementation. **Asylum grant rates have declined by 45 percent for Cameroonian asylum applicants, 32 percent for Cubans, nearly 30 percent for Venezuelans, 17 percent for Eritreans, and 12 percent for Congolese (DRC)** compared to the year before the ban took effect. Such denials will continue, if the administration's proposed rules move ahead or if the transit ban is reinstated.
- ☑ **The transit ban has caused the United States to deny asylum to persecuted pro-democracy advocates, torture survivors, and people targeted due to their sexual or gender identities including many determined by immigration judges to be refugees under U.S. law.** Some asylum seekers have been denied all relief and ordered deported due to the transit ban. They include a Venezuelan opposition journalist and her one-year-old child and a Cuban asylum seeker who was beaten and subjected to forced labor due to his political activity. Many others have been recognized as refugees but denied asylum including a Cameroonian man tortured by the military, an LGBTQ woman from Honduras who was beaten, repeatedly raped, and kidnapped by gangs because of her sexual orientation, a Cuban political activist detained, beaten, and threatened with death for supporting the *Damas de Blanco* (Ladies in White), a Cuban opposition movement founded by female relatives of jailed dissidents, and a Venezuelan opposition supporter kidnapped and tortured by pro-government forces. These refugees were afforded only the very limited and deficient form of protection known as withholding of removal.
- ☑ **The transit ban separates families and leaves spouses and children stranded in danger.** Under the ban, an asylum seeker who manages to receive withholding of removal or protection under the Convention against Torture (CAT) cannot bring family to safety in the United States. Families seeking asylum together may also be separated unless each family member, including children, meets the heightened requirements for withholding or CAT. Families facing likely permanent separation due to the transit ban include a Cameroonian man tortured by the military whose wife and child are in hiding in Cameroon and a Venezuelan opponent of the Maduro regime.
- ☑ **The administration has used the transit ban in conjunction with other policies, such as fast-track deportation programs, to improperly raise the credible fear standard set by Congress and rig preliminary fear screenings.** As a result, **positive credible fear rates dropped precipitously to just 37 percent** during FY 2020 (thru June 2020)—**50 percent lower than in the prior year.** **Because of the transit ban, asylum seekers found not to meet what Congress intended to be a low credible fear threshold include** an asylum seeker from the Democratic Republic of Congo beaten by police when she sought information about her jailed husband and a Central American woman whose partner abused her and killed one of her children.
- ☑ **DHS and some immigration judges are perversely applying the transit ban to deny asylum to asylum seekers who were blocked by DHS before the ban took effect.** Among the refugees denied asylum because of the transit ban are individuals who sought protection before the ban existed but who were subjected to the administration's policy of "metering" (reducing the number of asylum seekers accepted at ports of entry) and/or sent to Mexico under MPP.

- ☑ **The Trump administration is using the transit ban to override legal parole and release criteria and unnecessarily jail asylum seekers for prolonged periods.** DHS and DOJ have deployed the transit ban to keep detained asylum seekers who are eligible for release on parole or bond, claiming they pose a flight risk because the ban renders them ineligible for full humanitarian protections. Under this perverse logic, many asylum seekers, including those later recognized by immigration judges as refugees, have been jailed for many months. DHS continues to block releases even as COVID-19 surges in crowded ICE facilities. As of July 4, 2020, over 3,600 asylum seekers who passed fear of persecution screenings remain detained; most are likely subject to the transit ban. In addition, DHS is refusing to release some refugees even after they have been granted humanitarian protection while DHS appeals those decisions.
- ☑ **The ban prevents refugees who have won relief from integrating into the United States, leaving them in permanent limbo.** These refugees face obstacles to integration such as inability to bring their children and spouse to the United States, fear of living under a permanent removal order, lack of permanent legal status, lifelong check-ins with ICE officers, baseless threats of imminent deportation, and denial of access to benefits crucial for integration and self-sufficiency.

Human Rights First urges the Trump administration and/or a next administration to:

- ☑ **Rescind the interim final rule implementing the third-country transit asylum ban and other proposed regulations that include transit asylum bans.**
- ☑ **Cease all other policies and practices that violate U.S. asylum and immigration law and U.S. Refugee Protocol obligations,** including the March 20, 2020 Centers for Disease Control and Prevention (CDC) order and its extension, MPP, asylum turn-backs, “metering” at ports of entry, the proposed June 15, 2020 asylum regulation, the July 9, 2020 asylum regulation, and all attempts to send asylum seekers to other countries, including El Salvador, Honduras, Guatemala and Mexico, that do not meet the legal requirements for safe-third country agreements.

Human Rights First recommends that Congress:

- ☑ **Defund** implementation of all Trump administration policies that deny humanitarian protections to refugees in violation of U.S. law and treaty obligations, including the third-country transit asylum ban, “metering” at ports of entry, MPP, fast-track deportation programs, asylum-seeker transfer agreements, and expulsions under the CDC order.
- ☑ **Hold oversight hearings** on the third-country transit asylum ban and the administration’s other illegal efforts to deny asylum to refugees seeking protection in the United States.
- ☑ **Direct DHS and DOJ to create tracking mechanisms** for all fear screenings and asylum applications affected by the third-country transit asylum ban and **publicly release data** on these cases disaggregated by country of origin, gender, age, family make-up, representation, detention status, and other factors.

Refugees Denied Asylum and Ordered Deported

The administration’s July 16, 2019 third-country transit asylum bar bans refugees at the southern border from receiving asylum if they transited through a third country en route to the United States even if they have well-founded fears of persecution. The ban applies to *all* non-Mexican asylum seekers and has already been used by the administration to deny asylum likely to hundreds of refugees, including those from Cameroon, Cuba, El Salvador, Ghana, Guatemala, Honduras, Jamaica, Nicaragua, Venezuela, and elsewhere. Neither DHS nor DOJ

have released data on (nor appear to have any system to track) cases of asylum seekers whose applications are denied because of the third-country transit asylum bar.

As of July 15, 2020, Human Rights First has identified at least 134 individuals denied asylum because of the third-country transit asylum bar. Many have been recognized as refugees by immigration judges but were denied asylum under the transit ban. They may remain in the United States for the time being (in a kind of legal limbo termed “withholding of removal” where they live under continued threat of deportation) without the ability to reunite with family or receive lasting asylum and residency status in the United States. **Others denied asylum under the transit ban—including refugees with well-founded fears of persecution—have been ordered deported back to their countries of feared persecution after being found not to meet the heightened withholding standard.** As the figures discussed below indicate, this tally is surely a vast undercount of the number of refugees subject to the third-country transit asylum ban¹ and denied protection. These numbers would continue to rise were the transit ban reinstated and would increase significantly if the administration’s proposed regulations to expand the transit ban were implemented.

Indeed, this asylum ban has likely resulted in the denial of asylum to hundreds of refugees over the past year. Government data analyzed by Syracuse University’s Transaction Records Access Clearinghouse ([TRAC](#))³ shows:

- A sudden decline in overall asylum grant rates for non-Central Americans (from 45.1 percent in the year preceding its implementation to 41.5 percent between December 2019 and March 2020) indicates that an additional **500 non-Central American asylum seekers were denied asylum in just four months** (December 2019 to March 2020), **likely due to the transit asylum ban.**
- As Table 1 shows, **immigration court asylum grant rates declined by 45 percent for Cameroonian asylum applicants, 32 percent for Cubans, nearly 30 percent for Venezuelans, 17 percent for Eritreans, and 12 percent for Congolese (DRC)** since December 2019, compared to the year before the third-country transit asylum ban began to affect refugee claims. Some nationals of these [countries](#) seek asylum at the southern border, as visas that would enable them to travel directly to the United States are not issued for the purpose of seeking asylum.

| | Dec. 2018 – Nov. 2019 | Dec. 2019 ² – Mar. 2020 | Percent change |
|--------------------|-----------------------|------------------------------------|----------------|
| Cameroon | 80.6% | 44.0% | - 45.4% |
| Cuba | 44.4% | 30.0% | - 32.4% |
| DRC | 52.6% | 46.2% | - 12.2% |
| El Salvador | 17.5% | 16.6% | - 4.9% |
| Eritrea | 68.1% | 56.6% | - 17.0% |
| Guatemala | 13.9% | 12.8% | - 7.7% |
| Honduras | 12.2% | 10.6% | -12.9% |
| Venezuela | 66.7% | 46.8% | - 29.9% |

Source: [TRAC](#), Asylum Decisions

¹ For instance, [thousands](#) of non-Mexican inadmissible individuals were processed at ports of entry, many of whom are likely asylum seekers, in FY 2020. This includes at least 3,300 [Cubans](#) (as of February 2020, after which CBP removed information on inadmissible Cubans from its website), 1,000 [Cameroonians](#), 340 Russians, and 171 Congolese (DRC) – the vast majority of whom are asylum seekers.

² Although the transit asylum ban went into effect in September 2019, Human Rights First assessed its impact from December 2019 due to a lag in adjudication of affected cases. Based on Human Rights First’s representation of and research on detained asylum seekers and those under MPP, immigration courts hearing those cases began to issue decisions affected by the transit ban around November 2019 and in larger numbers by December 2019. Because cases in non-detained immigration courts took, for instance, [532](#) days on average to complete in FY 2019, few non-detained cases subject to the bar have been adjudicated.

³ As of June 3, 2020, [TRAC](#) has stopped updating its Asylum Decisions tool following the release of April 2020 data by EOIR that was “too unreliable to be meaningful or to warrant publication” and has warned that “any statistics EOIR has recently published on this topic may be equally suspect.” TRAC has issued [repeated warnings](#) to EOIR about the significant problems with the data it releases to the public.

The vast majority of asylum seekers subject to the transit ban can seek only withholding of removal under the Immigration and Nationality Act (INA) and protection under CAT, as explained in the box below. But these highly deficient forms of protection from deportation are not adequate substitutes for asylum, and the criteria to receive these forms of relief is far more onerous than for asylum. Thus, even if an immigration judge finds that a refugee subject to the transit ban has a well-founded fear of persecution (the standard for asylum), that individual will be deported unless they meet the much higher requirement of proving that they are more likely than not to suffer persecution or torture.

Asylum, Withholding of Removal, and U.N. Convention Against Torture Protection Explained

Under U.S. immigration law, refugees who fear harm in their home country can request asylum as well as two other lesser forms of protection from an immigration judge: withholding of removal or protection under CAT – an international treaty banning torture, which the U.S. ratified in 1994. These very limited measures provide only temporary protection from return to the country of feared harm. They do not provide essential protections such as bringing a spouse and children to safety in the United States, legal status of asylee, or the ability to later apply for permanent legal residence.

Asylum: To be granted asylum in the United States, an applicant must show that he or she meets the definition of a “refugee” under U.S. law and that none of the bars to asylum in U.S. law apply. A refugee is a person who has suffered past persecution or has a well-founded fear of future persecution because of his or her race, religion, nationality, political opinion, or membership in a particular social group and is outside of his or her country. This fear may be well-founded, as the U.S. Supreme Court has explained, if there is as little as a 10 percent chance of suffering persecution.

Withholding of Removal: This lesser form of protection requires a showing of an even higher risk of harm. Withholding of removal protects only those refugees who prove that they would face a more than 50 percent chance of persecution on account of one of the protected grounds. While some bars to asylum, such as the one-year-filing deadline, do not apply to withholding, the standard to qualify is much more difficult to meet.

Convention Against Torture: Protection under CAT, another lesser form of temporary relief from deportation, protects only people who fear torture. A person seeking CAT protection must establish a more than 50 percent chance that he or she would be tortured if returned to their home country. The applicant does not have to show the torture would be on account of a protected ground but must prove that government authorities would be responsible for or would know about the torture and allow others to carry it out.

Under a Transit Ban, Refugees with Well-Founded Fears of Persecution May be Deported

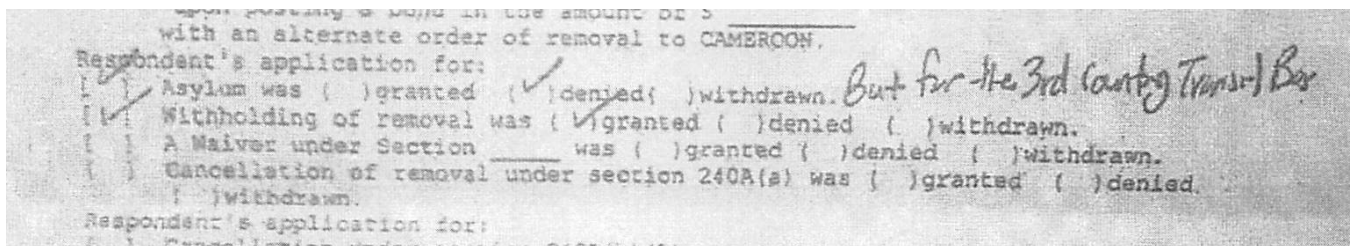
Barring refugees from asylum, as a transit ban does, places them at risk of deportation to persecution. For instance, where an immigration judge finds that a refugee subject to a transit ban faces a one-in-three chance of persecution, the refugee would not receive asylum (due to the transit ban) and would not qualify for withholding or CAT protection. Yet, the United States joined the Refugee Protocol, and Congress adopted the Refugee Act of 1980, to ensure that refugees with well-founded fears of persecution would not be deported. Further, refugees who have suffered severe past persecution, including torture, will not qualify for protection under a transit ban unless they show that they fear future harm that is more likely than not to occur – a high standard that not all will be able to meet. Indeed, refugees received withholding of removal and CAT protection in very limited circumstances. In FY 2018 (the latest year with available data) immigration judges granted only about six percent of withholding and less than five percent of CAT applications, according to government statistics.

Because of the third-country transit asylum bar, some asylum seekers with well-founded fears of persecution have already been **denied all relief and ordered deported**, including:

- A Venezuelan journalist and her one-year-old infant who were attacked by Venezuelan government officials were denied all relief and ordered deported at the Laredo MPP tent court in January 2020. An immigration judge at the Fort Worth Adjudication Center found the family ineligible for asylum due to the transit ban and concluded that they did not merit withholding or CAT. According to their attorney, Rolando Vazquez, the judge concluded that if the woman's persecutors intended to kill her and her child, they would have done so during the attack she had suffered before fleeing Venezuela.
- A Cuban asylum seeker politically opposed to the Cuban government was denied asylum in January 2020 as a result of the third-country transit asylum bar and was found to not have met the much higher withholding standard. He is awaiting deportation to Cuba, and is now detained in the Pine Prairie, Louisiana immigration detention center.
- In June 2020, on the same day the transit ban was vacated by a federal court, a Cuban man who had been detained in Cuba, beaten, and fired for his anti-regime political opinion was denied asylum at the Oakdale immigration court due to the transit ban. At his final hearing, the immigration judge explicitly refused to consider any arguments regarding asylum because of the transit ban. The man told Human Rights First, **"I felt in that moment that everything I had suffered, all my efforts to get out of Cuba, being detained in Mexico, everything that happened to me . . . w[as] just dismissed in less than an hour."** He remains detained at Pine Prairie detention center, where he has been held for over 10 months.
- In March 2020, a Nicaraguan student activist, who had been shot at during a protest against the Ortega government, had his home vandalized, and was pursued by the police, was denied asylum due to the transit ban during a hearing at the Brownsville MPP court. The immigration judge found the young man did not meet the heightened requirements for withholding of removal or CAT protection and ordered him deported to Nicaragua.
- An LGBTQ Honduran asylum seeker, who has been detained at Pine Prairie detention center for more than five months, was denied all relief and ordered deported under the transit ban in March 2020. He told Human Rights First: "In Honduras, I was threatened and assaulted because I was gay. I was attacked by both gangs and the police. After being threatened in June 2019, I decided to flee Honduras, to seek asylum to protect my life . . . **I cannot return to my country because I would be in danger, but I can't have liberty here either. I only want an opportunity to stay here and be free."**
- A Cuban man, who was seeking asylum due to political persecution, including forced labor and physical assaults suffered in Cuba, was denied asylum under the transit ban and ordered deported in early February 2020 after an immigration judge for the Brownsville MPP tent court found that the man did not meet the heightened withholding/CAT standard. The man, who was detained pending appeal, had also been kidnapped in Reynosa after being returned to Mexico under MPP, according to Zaida Kovacsik, the attorney representing him on appeal.
- A gay, HIV-positive asylum seeker from Nicaragua who experienced severe abuse and death threats on account of his sexual orientation, HIV status, and political opinion was denied asylum due to the transit ban. The immigration judge found that the man, who was unable to find an attorney to represent him, had not met the higher burden for withholding/CAT and ordered him removed. The man has been detained since August 2019, according to the organization Immigration Equality, which is providing the man pro se assistance as he appeals the decision.

Because of the third-country transit asylum bar many people who otherwise meet the legal requirements for asylum are being **denied asylum** and are only given the totally inadequate withholding of removal relief, including:

- In May 2020, **asylum was denied to an Anglophone Cameroonian woman whose father, nephew, uncle, and son were killed in Cameroon**, where the government has jailed, tortured and murdered English-speaking Cameroonians in an attempt to suppress the Anglophone region's independence movement. An immigration judge at the Varick immigration court found that the woman, whose eight-year-old son had been shot and killed in front of her and whose home was burned down by a unit of the Cameroonian military, did not qualify for asylum under the transit ban.
- An Anglophone Cameroonian refugee who was brutally tortured by the military for his opposition politics was denied asylum because of the transit ban at the Adelanto immigration court in May 2020.
- In February 2020, an immigration judge at the Pearsall immigration court denied asylum, due to the transit ban, to a Cameroonian refugee who was detained and beaten during a government crackdown on Anglophone teachers and activists, according to his attorney, Sara Ramey, with the Migrant Center for Human Rights.
- A Cameroonian man who was detained and tortured in Cameroon for over a year without being brought before a court or charged with a crime was denied asylum in February 2020 because of the transit ban. The immigration judge presiding over the hearing for the man, who was detained in the LaSalle detention center, wrote on the withholding of removal order, included in part below, that she would have granted asylum "but for the 3rd country transit bar."



- A prominent Venezuelan business owner and supporter of Juan Guaido's opposition party was denied asylum in January 2020 at the Boston immigration court because of the asylum transit bar. The man had been kidnapped and tortured by government-affiliated groups in Cuba for his pro-opposition activities.
- An LGBTQ man from Ghana seeking protection from persecution on account of his sexual orientation was denied asylum due to the transit ban in January 2020 in the Tacoma immigration court. The judge stated that asylum would have been granted but for the transit ban, according to the man's attorney, AnnaRae Goethe, with the Northwest Immigrant Rights Project.
- During a hearing in the El Paso MPP immigration court, a Nicaraguan student protester was denied asylum due to the transit ban in January 2020. The woman had been shot at and tear gassed by police in Nicaragua, had rocks thrown at her, and received death threats due to her political activism.
- A Honduran family with three children (ages 11, 8, and 3) was denied asylum in the Brownsville MPP court in January 2020 because of the transit ban. Their attorney reported that the family had been threatened and badly beaten after the mother participated in political protests in Honduras.
- A Cuban woman who had been attacked by government officials when she refused to participate in an annual government commemoration of the Cuban revolution was denied asylum in the Brownsville MPP court in January 2020 due to the transit ban, according to her attorney Kou Arie Sua.

- In December 2019, an immigration judge denied asylum, solely due to the transit ban, to a lesbian refugee from Honduras who was beaten, repeatedly raped, and kidnapped in Honduras by gangs because of her sexual orientation, according to her attorney. The U.S. State Department has reported that impunity for violence against LGBTQ persons remains a significant problem in Honduras with 92 percent of crimes going unpunished.
- An unrepresented Cuban political activist and her two sons (ages 18 and 20) were denied asylum due to the transit ban at the Laredo MPP court during a hearing in December 2019 observed by Human Rights First. The woman had been detained, beaten, and threatened with death for supporting the *Damas de Blanco* (Ladies in White), a Cuban opposition movement founded by female relatives of jailed dissidents, and for using her home to support women persecuted by the police.

Litigation Challenging the Transit Ban

On June 30, 2020, a federal court in Washington D.C. vacated the third-country transit asylum ban, finding that it was issued in violation of the Administrative Procedure Act (APA). On July 6, 2020, in a separate lawsuit, the U.S. Court of Appeals for the Ninth Circuit upheld a preliminary injunction issued by a district court that had been stayed by the U.S. Supreme Court in September 2019 pending appeal. The Ninth Circuit found that the transit ban violates the U.S. asylum statute because the rule “does virtually nothing to ensure that a third country is a ‘safe option’” and concluded that rule was also arbitrary and capricious under the APA.

In another suit against the transit ban, a federal court in November 2019 separately enjoined the government from applying the transit asylum ban to individuals who attempted to seek asylum at a port of entry prior to July 16, 2019, but were subjected to the so-called practice of “metering” in which U.S. border officers turn away asylum seekers at ports of entry forcing them to wait often for months before being permitted to request asylum. A temporary stay of that order by the Ninth Circuit was lifted in early March 2020. Thus, at time the transit ban was vacated in late June 2020, it should not have applied to asylum seekers who were subjected to metering before the ban was announced.

Postponements of immigration court hearings due to COVID-19, including in detention centers, have left thousands of asylum seekers who would have been subject to the third-country transit asylum ban waiting for adjudication. When hearings resume in full, and if the unlawful transit bar is back in effect or the proposed asylum regulations are implemented, the vast majority of individuals seeking protection in the United States will be categorically denied asylum. Some of the asylum seekers still waiting on final adjudication of their cases but likely to be barred from asylum because of a transit ban include:

- An Eritrean asylum seeker who fled torture and forced military service is subject to the third-country transit asylum bar because he reached the United States to seek protection in December 2019 after the ban went into effect. If the current or proposed transit ban is in effect at the time his case is decided, he would be denied asylum and blocked from reuniting with his three children (ages nine, six, and three), who remain in Eritrea.
- In November 2019, a Somali asylum seeker, who had been tortured and his parents and siblings murdered in Somalia because of their clan status, was told during his credible fear interview that he was barred from asylum due to the transit ban. Although he met the higher screening standard used for withholding of removal, he has been detained for 8 months in the Pearsall detention center after being denied bond and due to his asylum hearing being repeatedly postponed because of COVID-19 court closures. He would be ineligible for asylum under a transit ban.

- A Russian asylum seeker who fled Russia in the spring of 2019 after being interrogated, brutally beaten, and threatened by Russian authorities is likely to be denied asylum, if the transit ban or the proposed asylum regulations are in effect at the time of his hearing. The man, who was targeted for his opposition political activity, sought protection in the United States at the southern border with his family, who would also be automatically ineligible for asylum under the transit ban rule.

Permanently Separating Families

The administration's third-country transit asylum ban is ripping apart families, leaving asylum seekers' spouses and children permanently stranded in danger. In fact, one of the primary and certainly intentional impacts of the transit ban is to prevent refugees—who have been determined by immigration judges to qualify for protection under U.S. law—from bringing their families to safety in the United States. In addition, the ban divides families who sought asylum together where, for instance, a parent is granted withholding of removal but the rest of the family is ordered deported back to the country where that parent has been determined to face a very high likelihood of persecution. In MPP cases, families can be separated at the border with some family members granted withholding while others are sent alone to Mexico. These separations occur because refugees subject to the transit ban are barred from asylum, which means that their families do not qualify for automatic protection as “derivative asylees.” The deficient relief of withholding of removal and CAT protection do not provide a way for families to be reunified in the United States – a fact that the architects of the transit ban certainly know full well.

The transit ban ignores the long-standing recognition of the importance of family unity and the danger that family members of refugees often face. Under U.S. [law](#), people who apply for asylum in the United States may include their spouse and children on their asylum applications. Family members who are in immigration court proceedings together automatically receive asylum status when a principal applicant is granted asylum. Refugees granted asylum may also petition to bring their spouse and children to the United States who are outside the country. However, because refugees subject to the transit ban are barred from asylum, their family members cannot receive derivative asylum status in immigration court nor are they eligible to be brought to the United States as derivative asylees.

Under the transit ban, asylum seekers recognized as refugees are being separated from family members who were with them in immigration court proceedings but not granted relief. Due to the transit ban, each family member, including children and infants, must independently qualify for protection under the heightened withholding of removal or CAT standard. Even when a parent is granted these lesser forms of humanitarian protection, their children must be found independently eligible for relief to stay in the United States. At the same time, the Attorney General has also sought to limit asylum and withholding of removal for people at risk of persecution because of their [family](#) relationships – making it even more difficult for children and infants of refugee families to receive humanitarian protection under the transit ban.

Recognized refugees whose spouse or children have been denied all relief and ordered deported due to the third-country transit asylum ban include:

In April 2020, a Cuban doctor seeking asylum based on political persecution in Cuba was [denied](#) asylum because of the transit ban and ordered deported while her husband, who is also a doctor, was granted withholding of removal. The couple were held at different detention centers after seeking asylum at the Nogales port of entry together, and their cases were heard by different immigration judges. The woman remains detained at the Eloy detention center pending an appeal, while her husband was released from detention.

- The [18-year old daughter](#) of a Venezuelan refugee was denied all relief, separated from her father, and returned alone to Mexico in January 2020 even though her father was recognized as a refugee, but granted only withholding due to the transit ban, by an immigration judge during a Brownsville MPP

hearing. The father, who had fled Venezuela after being kidnapped and beaten for refusing to work for the Maduro regime, returned there to rescue his daughter who was threatened by the same people who had attacked him. The man told [BuzzFeed News](#), **“She’s a young girl and knowing she’s alone in Matamoros is unbearable. The whole reason I went back to Venezuela was to get her because her life is worth more than mine and now she’s alone in Mexico.”** He added, “I already lived one nightmare in Venezuela and another here.”

- In December 2019, three Venezuelan children (an eight-year-old and four-year-old twins) were denied all relief and ordered removed under the transit ban even though their mother was recognized as a refugee and granted withholding of removal at the Laredo MPP immigration court. The family suffered numerous attacks by pro-government groups including bullets fired at their home and written threats, including one that said the woman would bathe in the blood of her children. Nevertheless, the immigration judge concluded that the children had not independently established eligibility for refugee protection at the heightened withholding of removal or CAT standard.

Refugees granted the limited and inadequate relief of withholding of removal who are separated from family members stranded in the countries these refugees fled, include:

- An Anglophone Cameroonian refugee who was brutally tortured by the Cameroonian military, which has engaged in the wide-spread arrest, detention and torture of Cameroonians advocating for independence of the English-speaking region of the country, was denied asylum solely because of the transit ban. The man was granted withholding by the Adelanto immigration court in May 2020 but without asylum cannot reunify with his wife and child, who are in hiding in Cameroon because of the threats they face.
- Because of the transit ban, a Cuban musician and critic of the Cuban government, who was jailed and beaten in Cuba, was denied asylum in the El Paso immigration court in February 2020, preventing him from reuniting with his wife and two children who remain in Cuba, according to his immigration attorney Arvin Saenz.
- A Cameroonian refugee denied asylum at the Las Vegas immigration court in February 2020 due to the transit ban is permanently separated from his nine-year-old daughter who is in danger in Cameroon where she lives with his sister, who was herself recently attacked. Because he received the limited protection of withholding of removal, the man cannot petition to bring his daughter to safety in the United States. He told Human Rights First: **“It is something really disturbing. Every day I have to think about it . . . I never wished for my daughter to live like that.”**
- Due to the transit ban, a Cameroonian refugee fleeing political persecution was denied asylum in January 2020 at the Tacoma immigration court, leaving him unable to reunite with his wife and seven children. Reflecting on the reality that he may never see his family again, he told Human Rights First: **“It’s making me sick. It’s traumatizing that I have to live my life without my family. They aren’t safe in Cameroon and there’s no way that I can help them.** Life is coming to an end for me and my family as a family, so I feel very much disturbed. I continue to pray to God that he performs one of his miracles and I can see my family again and feel the love that we had.” Recently, one of the man’s cousins was shot by the military in Cameroon, further terrifying him for the safety of his family.
- A Venezuelan refugee who was denied asylum due to the transit ban by an immigration judge in the Laredo MPP court in October 2019 is now likely permanently separated from his three children who remain in Venezuela. He was detained and tortured by former police colleagues because he refused an order to arrest people protesting the Maduro regime. Because the man was denied asylum due to the ban and received only withholding of removal, he cannot bring his children to the United States to join him and his mother and sister who also fled persecution in Venezuela.

Perversely Denying Asylum to Refugees Who Tried to Follow the Administration’s Metering and MPP “Rules”

While for years President Trump and administration officials have exhorted asylum seekers to go to ports of entry and wait to request asylum, the administration is cynically using the third-country transit asylum ban to deny asylum to refugees who have attempted to follow the administration’s ever-shifting dictates and illegal policies. Indeed, under the transit ban, asylum is being denied to refugees who attempted to seek protection in the United States *before* the rule went in to effect but were prevented from requesting asylum because of the administration’s illegal policy of “metering” (*i.e.* reducing the processing of asylum seekers at ports of entry) and/or because they were returned to Mexico under MPP. Some immigration judges have read the broad language of the transit ban as requiring them to deny asylum to these individuals even though they originally attempted to request asylum prior to July 16, 2019 when the rule went into effect.

On November 19, 2019, a federal district court granted a preliminary injunction barring the administration from applying the transit asylum ban to individuals “unable to make a direct asylum claim at a U.S. POE [port of entry] before July 16, 2019 because of the Government’s metering policy, and who continue to seek access to the U.S. asylum process,” which the court deemed “**quintessentially inequitable.**” On December 4, 2019, the Ninth Circuit granted an emergency stay of the district court’s order, which was subsequently lifted on March 5, 2020.

Yet even with the injunction in place, some immigration judges denied asylum based on the transit ban to refugees who initially sought or attempted to seek asylum in the United States before July 16, 2019. Refugees who arrived at U.S. ports of entry months before the transit ban was implemented but who were forced to wait on metering lists have been denied asylum as a result of the rule. In addition, some immigration judges have denied asylum to individuals placed in MPP and returned to Mexico *prior* to the transit ban, as these adjudicators consider these individuals subject to the transit asylum ban because they entered the United States for MPP hearings after July 16, 2019.

Many refugees have been denied asylum under the third-country transit asylum ban after Customs and Border Protection (CBP) blocked them from requesting asylum at ports of entry prior to July 16, 2019, including:

- An Anglophone Cameroonian teacher who had been arrested, beaten, and detained for months in Cameroon was denied asylum at the Pearsall immigration court in February 2020 due to the transit ban despite having been turned away by CBP after attempting to request asylum at the Del Rio port of entry in early July 2019, according to his attorney, Sara Ramey.
- A Jamaican LGBTQ refugee who fled persecution based on his sexual orientation was denied asylum in February 2020 at the Adelanto immigration court under the transit ban even though he presented documentary evidence and testified that he had been subjected to metering prior to July 16, 2019 at the San Ysidro port of entry. The immigration judge ruled that the evidence was insufficient and granted him only withholding of removal, stating that he would have received asylum but for the transit ban.
- In January 2020, an immigration judge at the Oakdale immigration court applied the transit ban to a Cuban asylum seeker who initially sought asylum at a port of entry in April 2019. The immigration judge ruled that only an official U.S government document would suffice to establish that the man had been subjected to metering even though CBP does not appear to record this information nor issue such documents.
- A Cameroonian refugee was denied asylum at the Tacoma immigration court in January 2020 due to the transit ban even though he had been blocked from requesting protection at a port of entry in early July 2019 due to CBP’s illegal practice of metering. Despite presenting proof in court of his daily efforts to

determine whether CBP would permit him to seek asylum, the immigration judge told him that his hands were tied and denied asylum.

- An LGBTQ Honduran refugee who was beaten, raped, and kidnapped in Honduras due to her sexual orientation was denied asylum in December 2019 at the Adelanto immigration court due to the transit ban despite having been metered at the San Ysidro port of entry prior to July 16, 2019.
- In December 2019, while the injunction on applying the transit ban to asylum seekers subject to metering was in place, Human Rights First court observers witnessed an immigration judge presiding over Laredo MPP tent court hearings repeatedly deny asylum to Cuban refugees who had been turned away at ports of entry prior to July 16, 2019 due to metering. The judge erroneously stated that the transit ban applied to *applications* for asylum *filed* on or after July 16, 2019, rather than to the date of the asylum applicant's arrival or entry to the United States.

Asylum seekers returned by DHS to Mexico under MPP prior to July 16, 2019, who waited in Mexico for their U.S. asylum hearings as directed by the administration have also been denied asylum under the transit ban. Some immigration judges hearing MPP cases interpreted the ban to apply to any asylum seeker with an MPP hearing scheduled after July 16, 2019 – resulting in arbitrary denials of asylum based on the immigration judge assigned to the case. For instance, an El Paso judge denied asylum to an asylum seeker placed in MPP before July 16, 2019 due to the transit ban because the person's final asylum hearing took place in October 2019, reasoning, in a written decision shared with Human Rights First, that “the text of the rule does not distinguish between initial and subsequent dates of entry or arrival.” Other examples of asylum seekers in MPP denied asylum due to the transit ban and its expansive reading include:

- Married Cuban doctors who entered the United States to seek asylum before July 16, 2019 but were returned to Mexico by DHS under MPP were denied asylum. An El Paso immigration judge granted withholding of removal in November 2019 after concluding that entering the United States to attend MPP hearings after July 16, 2019 subjected them to the transit ban, according to their attorney Nico Palazzo with Las Americas Immigrant Advocacy Center.
- An unrepresented Honduran refugee who was returned to Mexico under MPP was denied asylum in February 2020 at the Brownsville MPP tent court because of the transit ban even though he entered the United States in May 2019 to seek asylum. When the man asked why he was subject to the rule, the judge responded only that this was the law and granted him only withholding of removal – separating the man from his wife and one-year-old child in Honduras.
- A Nicaraguan activist who was beaten and received death threats after participating in protests in Nicaragua was denied asylum at the El Paso MPP immigration court in January 2020, although he had entered the United States to seek asylum prior to July 16, 2019 and was returned to Mexico by DHS under MPP. Recognizing that the man qualified as a refugee, the immigration judge granted him withholding of removal.

Prolonged Jailing

The administration has used the third-country transit asylum ban to override parole criteria applicable to asylum seekers and callously prolong the detention of asylum seekers even as the COVID-19 pandemic rapidly spreads in ICE detention facilities. In some cases, DHS has refused to release asylum seekers from detention even after they were granted asylum or withholding of removal – instead detaining them during appeals of these decisions and even attempting to deport individuals granted withholding to third countries where they had no permanent status. For example:

- In January 2020, DHS deported an unrepresented Cuban man to Mexico days after an immigration judge denied him asylum due to the transit ban but granted him withholding of removal – meaning that he was determined to be a “refugee” who qualified for U.S. protection. DHS returned this Cuban refugee to Mexico even though he feared harm in Mexico and had no permanent legal status there.⁴ Attorneys with The Florence Immigrant and Refugee Rights Project in Arizona assisted the man to present himself again at a U.S. port of entry. He is currently detained in the La Palma correctional center six months after being determined by a U.S. court to be a refugee.
- DHS continues to detain a transgender Guatemalan woman at the Eloy detention center after she was denied asylum solely because of the transit ban but granted withholding of removal. Even though DHS did not appeal the decision, ICE still refuses to release the woman as she challenges the denial of her request for asylum, according to attorneys at The Florence Immigrant and Refugee Rights Project.
- ICE continued to jail a Cuban man at the Port Isabel detention center for seven months after he had been recognized as a refugee and granted withholding of removal by an immigration judge in Brownsville in November 2019. The man was denied asylum solely because of the transit ban. He was released in June 2020 only after his attorneys filed suit in federal court.
- DHS needlessly detained a Ugandan woman for a week after she was granted asylum while the agency decided whether to challenge the judge’s decision. In February 2020, an immigration judge found the woman eligible for asylum despite her having requested asylum after July 16, 2019 because she had been subjected to metering, which prevented her from requesting asylum before the ban took effect. The woman, who suffered arbitrary arrest and imprisonment by the police in Uganda due to her political opinion, was further traumatized by her detention in the United States according to her attorneys at The Florence Immigrant and Refugee Rights Project.

DHS has also denied release based on the transit ban for asylum seekers held in detention while waiting for immigration court proceedings. The agency refused to parole arriving asylum seekers who sought protection at a port of entry and were subject to the transit ban on the basis that these asylum seekers were presumptively ineligible for asylum, which DHS speciously claimed made them a flight risk. DHS similarly asserted during immigration bond hearings that asylum seekers subject to the transit ban pose a risk of flight, and many judges denied bond or set bond at levels that are impossibly high for asylum seekers to pay. As a result, asylum seekers needlessly languish in immigration detention centers for many months, even though many have ultimately been recognized as refugees by immigration courts and could have instead been safely living with family, friends, or other sponsors in the community.

For years DHS has been denying parole to asylum seekers eligible for release in violation of ICE’s 2009 parole directive. In fact, multiple federal courts have found blanket denials of parole by ICE to violate the law. The administration’s latest attempt to punish and deter asylum seekers by holding them in detention during the entire course of asylum proceedings is all the more distressing given the rapid spread of COVID-19 in these facilities that further endangers the lives of asylum seekers. **As of July 4, 2020, ICE was holding over 3,600 asylum seekers who had passed fear of persecution screenings, the vast majority of whom are eligible for release on parole or bond.**

Asylum seekers denied parole because ICE labeled those subject to the transit ban a flight risk include:

- A Cameroonian woman whose father, nephew, uncle, and eight-year-old son were murdered in Cameroon was denied parole due to the transit ban and needlessly detained for more than five months before being recognized as a refugee and granted withholding of removal. The woman was among

⁴ See *Ibarra-Perez v. Howard*, 2020 WL 3440298 (D. Ariz June 23, 2020).

dozens of detainees, many of them Cameroonian asylum seekers, transferred from the T. Don Hutto facility to a detention center in Mississippi, far from her attorney, after protests in March 2020 against inadequate medical care and the indefinite confinement of asylum seekers, many of whom were eligible for parole.

- ICE officers at the El Paso Service Processing Center denied parole to a Venezuelan LGBTQ asylum seeker who had been shot in Venezuela. ICE informed his attorney, Nico Palazzo, that an internal directive instructed ICE officers to consider individuals subject to the transit ban as a flight risk and deny them parole. Instead of being released from detention, this asylum seeker was detained for four months.
- A Cuban asylum seeker who was sexually assaulted in Cuba before fleeing the country was denied parole by ICE officers at the El Paso Service Processing Center due to the asylum transit ban. ICE officers told the man's attorney that the man was considered a flight risk, under an internal ICE directive, because he is subject to the transit ban. As a result, he was held in detention for six months.
- A Cuban asylum seeker who was beaten and imprisoned in Cuba for her political opinion was denied parole in November 2019 because, according to the parole denial form, the “exceptional, overriding factor[]” of her ineligibility for asylum under the transit ban “militate[s] against parole.” The woman spent more than six months in the Karnes County and T. Don Hutto detention centers where she suffered mistreatment by guards and difficulty getting medical attention for a pre-existing condition as COVID-19 spread through ICE detention facilities. In March, she was denied asylum due to the transit ban and found not to meet the heightened withholding/CAT standard by the San Antonio immigration court. She did not appeal the decision, despite being terrified to be returned to Cuba, because she was too afraid to remain in detention as the coronavirus continued to spread.
- ICE repeatedly denied parole to a Cameroonian woman subject to the transit ban who was beaten, arrested, and tortured by the authorities for participating in a peaceful protest in Cameroon. After an immigration judge recognized her as a refugee and granted her withholding of removal, the woman was finally released after seven months of being needlessly jailed at the Adelanto detention center. ICE had previously refused to grant her parole, asserting that the woman was a flight risk under the transit ban. While the woman was also eventually given a bond hearing (pursuant to the Ninth Circuit's decision in *Rodriguez*), the immigration judge imposed a \$12,000 bond, also labeling the woman a flight risk due to the transit ban; she could not pay this amount and thus remained detained throughout her asylum proceedings.

Asylum seekers denied bond or who had high bond amounts set because DHS and immigration judges considered them to be a “flight risk” due to the transit ban, include:

- An LGBTQ Honduran asylum seeker has been detained for more than five months in Pine Prairie detention center after being denied bond in January 2020 by an immigration judge who found the man presents a flight risk because he is ineligible for asylum due to the transit ban, according to his bond attorney, Rose Murray. The man told Human Rights First, “**The judge said that I could not receive bond because of the new law, without even reviewing the four letters of support I submitted.**” The attorney for the government just looked at his computer and agreed.”
- In December 2019, an immigration judge for the Pine Prairie detention center denied bond to a Cuban asylum seeker who had been arrested and detained, physically assaulted, and fired in Cuba because of his political opinion, finding the man to be a flight risk due to his presumptive ineligibility for asylum under the transit ban and in spite of multiple letters of support from U.S. citizen family members. He has been detained in Pine Prairie since September 2019 and was denied asylum due to the transit ban in June 2020.

- A Venezuelan asylum seeker beaten by the police in Venezuela was denied bond in January 2020, as an immigration judge found the man presented a flight risk since he is only potentially eligible for withholding of removal and CAT protection due to the transit ban. The man submitted multiple letters from family and friends in the United States willing to host and support him.

Further Rigging Fear Screenings

The Trump administration is using the asylum transit ban to evade the credible fear screening standard set by Congress, labeling essentially all asylum seekers (other than Mexicans) at the border as failing these screenings, and instead subjecting them to an improperly elevated screening. The Trump administration is applying the third-country transit bar in tandem with other policies that rig the preliminary fear screening process against asylum seekers. The predictable, and indeed certainly planned, result was to block asylum seekers subject to the transit ban at the credible fear stage and deport many back to the countries they have fled without letting them apply for asylum or have an asylum hearing.

Following the June 30, 2020 federal court decision overturning the July 2019 travel ban, DHS reportedly instructed officers conducting credible fear interviews to stop applying the transit ban. However, DOJ and DHS officials have not allowed asylum seekers subjected to the transit ban who were determined not to have met the transit ban's heightened screening standard an opportunity for a fear screening under the credible fear standard set by Congress. As a result, these asylum seekers remain detained and/or facing deportation without a chance to apply for asylum before an immigration judge.

During the year in which it was in effect, the transit ban and other policies intended to elevate the credible fear standard and manipulate the credible fear process significantly lowered the pass rate. **Positive credible fear rates plummeted by 45 percent from an average of 67.5 percent (May to September 2019) to 37 percent (October 2019 to June 2020) after the U.S. Supreme Court lifted a stay on the third-country transit asylum ban in September 2019** and as the administration began to use other fast-track deportation programs to limit access to counsel, according to U.S. Citizenship and Immigration Services (USCIS) data. The current 37 percent **positive credible fear determination rate is 50 percent lower than in fiscal year 2019** and a significant departure from credible fear rates during the Obama and George W. Bush administrations, when they averaged 78 percent.⁵

For decades potential bars to asylum were not assessed at the credible fear stage given that recently arrived asylum seekers, the vast majority of whom are unrepresented during these interviews, are not in a position to address the complex legal issues and factual questions these bars entail during a preliminary screening. However, under the transit ban, asylum seekers placed by DHS in expedited removal were blocked from passing credible fear interviews if the officer conducting the interview determined the transit ban applied. Remarkably, this determination was made during the interview itself. Officers conducting fear screenings first questioned asylum seekers on their travel route to apply for protection in the United States and then immediately decided whether the transit ban applies and if the individual qualified for one of the extremely limited exceptions. Officers often abruptly informed asylum seekers subject to the ban that they were ineligible for asylum and would be assessed under the much higher screening standard for reasonable fear interviews for individuals with prior deportation orders.

Below are examples from credible fear interview summaries provided to Human Rights First of statements read to asylum seekers after an officer conducting the interview determined the individual was subject to the transit ban. These materials make clear that the transit ban effectively turns what is supposed to be a credible fear screening

⁵ See U.S. Commission on International Religious Freedom ([2001–03](#)); USCIS ([2004–13](#), [2014](#), [2015](#), [2016](#), [2017](#), [2018](#), [2019](#), [2020](#)).

into an interview in which the asylum seeker must meet a different—higher—burden in order to even be permitted to apply for U.S. protection:

If applicable read the following Orientation Memo

The purpose of the remainder of the interview is to determine if you have a reasonable fear of persecution or torture. If it is determined that you have a reasonable possibility of being persecuted or tortured in the country to which you will be ordered removed, you will receive a Notice to Appear for a hearing in immigration court for consideration of your claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture. If it is determined that you do not have a reasonable possibility of being persecuted or tortured, then you may ask to have an immigration judge review that decision. During that immigration judge review, you may also request review of the determination that you do not have a credible fear of persecution because you are barred from asylum under 8 CFR § 208.13(c)(4).

Q: Did you understand that information?

A: Yes i didn't ask because I didn't stay I just came here and asked for asylum here so im asking not to be deported to my country I want asylum here I cannot go back to my country

| | |
|--|------------|
| <p><input checked="" type="checkbox"/> Explanation of Bar for Asylum</p> <p>There is a new regulation in the US stating that people who enter the US after July 16, 2019 do not qualify for asylum in the US if they did not previously apply for asylum in one of the countries they passed through to get to the US.</p> <p>Because you entered after this date and did not apply for asylum in any of the countries that you passed through, you are not eligible for asylum in the US. However, there is another process similar to asylum called withholding of removal, which you may be eligible for.</p> | <p>OK.</p> |
| <p>Read: The purpose of the remainder of the interview is to determine if you have a reasonable fear of persecution or torture. If it is determined that you have a reasonable possibility of being persecuted or tortured in the country to which you will be ordered removed, you will receive a Notice to Appear for a hearing in immigration court for consideration of your claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture. If it is determined that you do not have a reasonable possibility of being persecuted or tortured, then you may ask to have an immigration judge review that decision. During that immigration judge review, you may also request review of the determination that you do not have a credible fear of persecution because you are barred from asylum under 8 CFR § 208.13(c)(4).</p> | |

CREDIBLE FEAR INTERVIEW – CLAIM

Based on your testimony so far, you are barred from asylum under 8 CFR § 208.13(c)(4), and therefore you will be unable to establish a credible fear with respect to an application for asylum. The purpose of the remainder of the interview is to determine if you have a reasonable fear of persecution or torture. If it is determined that you have a reasonable possibility of being persecuted or tortured in the country to which you will be ordered removed, you will receive a Notice to Appear for a hearing in immigration court for consideration of your claim for withholding of removal under section 241(b)(3) of the Act, or for withholding or deferral of removal under the Convention Against Torture. If it is determined that you do not have a reasonable possibility of being persecuted or tortured, then you may ask to have an immigration judge review that decision. During that immigration judge review, you may also request review of the determination that you do not have a credible fear of persecution because you are barred from asylum under 8 CFR § 208.13(c)(4). So we will now actually begin discussing your claim. It is in your best interest to keep

Announcing that an asylum seeker is ineligible for asylum during the middle of interview before even asking any questions regarding persecution in the individual's home country understandably creates confusion and anxiety for many asylum seekers, as the first example above indicates. A declaration from an attorney assisting asylum seekers at the Dilley family detention center also notes that these abrupt announcements create fear for asylum seekers. In one case, for instance, after an asylum seeker was informed that she was ineligible for asylum under the transit ban, the woman's daughter "proceed[ed] to cry, uncontrollably, out of fear that she would be deported to harm and her case was being denied."⁶

Indeed, the stakes of these interviews are incredibly high. Asylum seekers determined by DHS not to meet the artificially elevated screening standard are subject to deportation without an opportunity to have their request for asylum heard during a full asylum hearing. Some of these asylum seekers include:

- In November 2019, DHS decided that an asylum seeker from the Democratic Republic of Congo had failed to pass her screening interview and would not be allowed to even apply for asylum in the United States. The Congolese woman reported that she had been beaten by police in her country when she sought information about her husband, who had been jailed and tortured due to his political activity. Citing the transit ban, the DHS officer determined she was ineligible for asylum and subjected her instead to the artificially elevated screening standard. The officer concluded the Congolese woman did not meet that higher screening standard and as a result, she was ordered deported to Congo without an asylum hearing. Seven months later (as of late June 2020), she remains detained by ICE pending deportation.
- In late 2019, an Angolan asylum seeker and his 12-year-old daughter, who had been raped while transiting through Mexico, did not pass their fear screening. The DHS interviewing officer told the man that his daughter's rape was irrelevant, found the family to be subject to the asylum transit ban and determined that they did not meet the transit ban's higher preliminary screening standard.

In addition, in May 2019, the administration began deploying CBP border enforcement officers to conduct some fear interviews, including at family detention centers, instead of the USCIS officers trained to adjudicate asylum applications. Thus far in FY 2020 (through June 2020), **CBP officers have found asylum seekers established a credible fear in just 30 percent of cases – 20 percent lower than the already reduced positive credible fear rate for interviews conducted by USCIS officers**, according to USCIS data. Allowing CBP officers, who are not suited to carrying out sensitive, legally complex, non-adversarial screenings of often traumatized asylum seekers, undermines the safeguards intended to protect refugees.

⁶ *M.M.V. v. Barr*, 19-cv-02773, (D.D.C. Jan. 13, 2020), Dkt. No. 67, Declaration of Shalyn Fluharty, para. 25.

In a further step to rig the fear screening process, in late 2019 the administration also placed some Central American asylum-seeking families and single adults who were subject to the third-country transit asylum ban in the Prompt Asylum Claim Review (PACR) program – effectively blocking them from legal representation while subjecting them to horrible conditions in CBP custody. This fast-track deportation program jails asylum seekers in CBP holding cells at the border during the credible fear process, where families and adults frequently report being provided insufficient or inedible food and water, lack of basic sanitation, and inability to sleep, because of overcrowding, lack of adequate bedding, notably cold conditions, and lights that are kept on all night. Attorneys are prohibited from visiting clients in person and legal services organizations are not permitted to give legal orientations in CBP facilities. Individuals in these programs are reportedly provided only 30 minutes to an hour to attempt to contact a lawyer or family members before their interview. As of late February 2020, some 2,500 families and adults had been placed in PACR, according to Congressional testimony by Acting CBP Commissioner Mark Morgan, and many of them have been rapidly deported after being found to not meet the heightened fear screening standard under the transit ban, including these women and children:

- In late March 2020, DHS applied the transit ban to a 16-year-old girl who fled attempts by a Salvadoran gang, which exercises control over large swaths of the country, to traffic and sexually exploit her. The DHS officer determined that she did not meet the unduly high fear screening standard applied by DHS under the transit ban. The girl and her mother were held in CBP custody under PACR and did not have access to legal counsel until after their case was already decided, according to their attorney, Max Brooks with Las Americas Immigrant Advocacy Center.
- An indigenous Guatemalan woman fleeing gender-based violence, who was also threatened by a narco-cartel in Mexico, was placed in PACR in March 2020 and found not to have met the heightened screening standard under the third-country transit asylum ban. She was deported without even being allowed to apply for asylum, according to attorney Linda Corchado of Las Americas, who spoke briefly to the woman by telephone while the woman was being held in a border patrol station in Texas.
- Nine Central American women and their children were summarily deported in February 2020 without being allowed to apply for asylum after they were subjected to the PACR fast-track deportation program and transit ban, which was used to artificially elevate their screening interview requirements. These cases, reported to Human Rights First, included an indigenous Guatemalan asylum seeker who was sexually assaulted because of her ethnicity and a Central American woman subjected to severe domestic violence by an abuser who killed one of her children. DHS found that they had not met the improperly high screening standard imposed by the transit ban, according to Karla Vargas, an attorney with the Texas Civil Rights Project who spoke with the women by phone and provided support to their attorney Thelma Garcia. The attorney believed that these women would have met the credible fear standard.
- In early January 2020, an indigenous woman who fled Guatemala after repeated threats to kidnap her six-year-old daughter was forced to sleep on the floor of a CBP cell with her daughter for over two weeks under the PACR program. She was deported after DHS determined the family did not meet the transit ban's heightened fear screening standard, according to attorney Linda Corchado.

Empty Exceptions

The few exceptions to the asylum bar are essentially insurmountable and fail to take into consideration the danger asylum seekers face in the countries they transit to reach the southern U.S. border. The exceptions are narrowly limited to individuals who: (a) were denied asylum in a country of transit, (b) are victims of severe forms of trafficking, or (c) did not pass through a country that has signed the Refugee Convention, Refugee Protocol, or CAT. Because Mexico is a party to these treaties, the third exception is meaningless on its face.

The third-country transit ban does not include an **exception for unaccompanied children**, who Congress has exempted from other asylum bars, including safe-third country agreements and the one-year-filing deadline.

The exception for individuals who have been denied asylum in a transit country does not provide a meaningful exception, as it fails to capture the reality that few refugees apply for asylum in transit countries because their lives or safety would be at risk there and/or they are not protected in transit countries from forced return to their countries of persecution, as discussed below.

Further, the exception for victims of “severe forms of trafficking” is rarely used and narrowly applied. For instance:

- While an El Paso immigration judge in November 2019 noted that a family of Cuban asylum seekers subject to the transit ban had testified to being trafficked in Mexico, the judge did not seek to further develop the record on this point during their hearing and did not fully analyze their testimony in his written decision, finding merely that the family “did not provide the Court with evidence to demonstrate” they met the exception, in a written decision shared with Human Rights First.
- In late March 2020, DHS found that a 16-year-old girl who fled attempts by a Salvadoran gang to traffic and sexually exploit her was subject to the transit ban even though she had been a victim of trafficking, according to her attorney Max Brooks. Review of a summary from the credible fear interview indicates that the officer narrowly considered the exception as applying only to trafficking that occurs directly during an asylum seeker’s flight – an element not required by the exception.

Permanent Limbo

Refugees denied asylum and granted only withholding of removal or CAT protection face major barriers to rebuilding their lives in the United States, are left without a pathway to citizenship, and are often separated from their families. Refugees who receive these deficient forms of protection have in fact been ordered deported and must indefinitely live in the United States under the threat that the U.S. government could seek to reopen their cases and remove them at any moment. Unlike asylum, withholding of removal and CAT protection do not entitle the individual to automatic work authorization. Individuals must apply for and renew work permits, a process that often requires the assistance of a lawyer and has become subject to increasingly significant processing delays.

Refugees who receive withholding or CAT protection due to the transit ban report numerous barriers to establishing a stable life in the United States, including inability to reunite with family, long delays in obtaining work authorization, barriers to accessing health care and other support while they search for work, difficulty obtaining an identification card, threats of deportation by ICE officers, and the uncertainty of remaining in limbo without a path to permanent legal status.

- In May 2020, ICE released an unrepresented Cameroonian refugee who had been held in detention for over six months but failed to release him with his important court documents, including the judge’s order granting him withholding of removal. As a result, the man is unable to even apply for permission to work to be able to support himself until ICE returns his documents, which the attorney assisting him since his release, Kristy White from Solidarity, has repeatedly requested.
- A Cameroonian anti-government activist who was granted only withholding of removal in February 2020 because of the transit ban told Human Rights First, “**I’m really quite in limbo right now.**” Ineligible for most government support to individuals with asylum and unable to find a job to support himself until his work authorization request is approved, he reported to Human Rights First, “Even though I was happy to leave the [detention] facility I really have a lot to think about. I’m thinking about my status of being here. The work permit—how long will I have it? The work permit procedure—how long?”

- ICE attempted to prevent a Cameroonian woman granted withholding of removal due to the transit ban in May 2020 from even receiving work authorization. After being recognized as a refugee by an immigration judge, ICE released the woman with a parole document that stated she was not permitted to work. The woman’s attorney was able to correct this error, but refugees without legal counsel might well have been blocked from the ability to work to support themselves.
- A lesbian Honduran woman recognized as a refugee but denied asylum because of the transit ban in December 2019 has faced a host of difficulties in integrating into the United States. She has no identity documents because ICE refuses to return her passport, a common practice with individuals who receive withholding. As a result, she has been unable to obtain other identity documentation, making it even more difficult to apply for the extremely limited assistance available to refugees who have not received asylum.
- ICE officers have terrorized some recipients of withholding with unfounded threats to deport them. While withholding of removal is not a permanent legal status, an individual with withholding cannot be deported unless that status is revoked by an immigration judge. Nonetheless, multiple attorneys reported that ICE officers threaten to deport recognized refugees denied asylum merely because of the transit ban. ICE officers in New Jersey repeatedly told a woman granted withholding due to the transit ban that she would be deported, even going so far as visiting her home to repeat this threat, according to her attorney.
- A Cameroonian refugee denied asylum due to the transit ban in January 2020 and unable to petition for his wife and seven children suffers from the anxiety of potentially permanent separation from his family, who remain in danger. He told Human Rights First, **“Life is coming to an end for me and my family as a family . . . people are truly affected by these laws. If they can make some adjustments to the law, taking to heart that families are being separated, that would be good.”**

Violates U.S. Law and Treaty Obligations

The INA protects refugees with well-founded fears of persecution from return to their country of persecution and ensures that asylum seekers can apply for such protection regardless of their nationality, travel route, or place of entry or arrival to the United States (8 U.S.C. § 1158(a)(1)). Congress delineated specific and limited exceptions to this general rule in situations where an asylum seeker was “firmly resettled” (8 U.S.C. § 1158(b)(2)(A)(vi)) in a third country on the way to the United States, or where a “safe third country” (8 U.S.C. § 1158(a)(2)(A)) agreement is in place to allow for the person’s return. Under federal law, safe third country agreements can only be entered into where refugees in the third country would be safe from persecution and have access to a full and fair procedure for adjudication of their protection claims. The third-country transit asylum bar is entirely inconsistent with those statutory provisions and beyond what Congress has authorized the administration to do.

Promulgating the asylum bar as an interim final rule also violates the APA. The administration claimed that issuing the transit ban without the standard notice and comment period was necessary to avoid a surge of migrants who might have learned of changes in immigration policy prior to implementation and would otherwise interfere with the foreign affairs of the United States. Yet, on July 18, 2019, the acting head of CBP publicly stated that the transit ban was being implemented as a pilot project at only two Border Patrol stations—severely undermining the administration’s stated rationale for issuing the bar as an interim rule. Indeed, in vacating the transit ban, the district court in Washington, D.C. held that the administration’s claimed exceptions to standard rulemaking lacked a valid justification and that the rule was issued in violation of the APA.

Further, the third-country transit asylum bar violates international refugee law by “significantly rais[ing] the burden of proof on asylum seekers beyond the international legal standard,” as the UN Refugee Agency noted, subjecting refugees with well-founded fears of persecution to *refoulement* at both the screening stage and after the full adjudication of their protection claims.

Despite its clear illegality, the transit ban, like many of the administration's policies, was a blatant attempt to deny protection to as many refugees as possible before it could be blocked by a U.S. court.

Disregards Dangers in Transit Countries

As noted above, the transit ban violates the safe third country provision under U.S. law, which permits the return of asylum seekers to third countries only under formal agreements to countries where refugees are protected from persecution and would have access to a fair asylum adjudication systems. The transit ban also fails to include an exception for individuals who have passed through countries where their lives would have been in peril, even though many transit countries en route to the southern U.S. border—including Guatemala, El Salvador, Honduras, and Mexico—are among the most dangerous in the world. Applying the transit ban to asylum seekers who passed through unsafe third countries inhumanely punishes them for not seeking refugee status in countries where they could not find safety.

Overwhelming evidence shows, including U.S. Department of State reports and the 1,114 reports of kidnappings, rapes, and violent attacks on asylum seekers in MPP documented by Human Rights First, show that many asylum seekers face serious danger in Mexico.

- The U.S. Department of State reported in its 2019 assessment of human rights in Mexico that police, military, state officials, and criminal organizations engage in unlawful or arbitrary killings, forced disappearance, torture, and arbitrary detention. Armed groups carry out kidnappings and murders of migrants. The human rights report also indicated that migrants are victimized by police, immigration officers, and customs officials. Mexico includes five regions that are designated by the Department of State as a Level Four threat, the highest threat assessment and the same level assigned to Afghanistan, Iran, Libya, and Syria. Human Rights First found that there are now over 1,114 reports of kidnappings, rapes and other attacks against migrants trapped in Mexico under MPP, which is only the tip of the iceberg because most attacks are not reported to the media, attorneys, or human rights organizations. Requiring asylum seekers to apply for asylum in Mexico is inhumane given the dangers that migrants face in Mexico.
- Asylum seekers who do not speak Spanish, including indigenous language speakers, would be even more vulnerable to danger because they are easily identifiable as migrants. Human Rights First has identified numerous transit-ban affected cases where non-Spanish speakers are ineligible for asylum because they did not apply for protection in Mexico, including a Russian man who was persecuted by his government and arrived at the southern border with his family.

Nor would asylum seekers be safe in other common transit countries, such as Guatemala, El Salvador, or Honduras, which have among the highest murder rates in the world.

- **Guatemala** “remains among the most dangerous countries in the world” with an “alarmingly high murder rate,” according to the U.S. State Department. It has the third highest femicide rate in the world.
- **Honduras** also has one of the highest murder rates in the world. There are an estimated 7,000-10,000 gang members operating in Honduras, and along with drug traffickers they commit killings, kidnappings, and human trafficking. The U.S. State Department reported that migrants, including refugees, are vulnerable to abuse by criminal groups.
- **El Salvador** also has one of the world's highest homicide rates. Violence in El Salvador is akin to those in the “deadliest war zones around the world.” The country has *the highest* femicide rate in the world.

For particularly vulnerable asylum seekers, these countries pose an even greater risk to their lives.

Asylum seekers fleeing death and persecution in their home countries are likely to face serious danger in transit countries, particularly individuals who may be targeted because of their gender, sexuality, race and/or ethnicity.

- Rape, femicide, violence against women, trafficking in persons, violent attacks against LGBTQ persons, and gang recruitment of displaced children are all serious problems in **Guatemala**.
- Women, girls, and LGBTQ individuals face high levels of violence in **Honduras**. Between January and October 2017 alone, the Center for Women’s Rights recorded 236 violent deaths of women in Honduras. The State Department’s 2019 Trafficking in Persons Report for Honduras found that “Women, children, LGBTI Hondurans, migrants, and individuals with low education levels are particularly vulnerable to trafficking.”
- According to the U.S. State Department, violence against women is a “widespread and serious problem” in **El Salvador** and laws against rape are not effectively enforced. Amnesty International reported that El Salvador is one of the most dangerous countries to be a woman. LGBTQ individuals are targeted for homophobic and transphobic violence in El Salvador, including at the hands of gangs and the police. Gangs forcibly recruit children and force women, girls, and LGBTQ individuals into sexual slavery. Human trafficking is a widespread problem in El Salvador, and LGBTQ individuals are at a particularly high risk of being victims of trafficking.
- African and Afro-descendent asylum seekers and migrants in Mexico frequently face xenophobia and racially-motivated violence and human rights violations, including by Mexican authorities. Violence against indigenous people is widespread in Mexico, where indigenous women are “among the most vulnerable groups in society.” Indigenous people and members of Afro-descendent communities face violence and threats in Honduras, as do indigenous communities in El Salvador and Guatemala.
- Asylum seekers fleeing gang violence in the Northern Triangle are unlikely to be safe in any country in the Northern Triangle. According to UNHCR, gang activity crosses borders in the Northern Triangle, and asylum seekers fleeing from one Northern Triangle country to another increasingly report gang violence and threats.

ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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ACKNOWLEDGEMENTS

This report was written by Eleanor Acer, Catherine Crooke, Rebecca Gendelman, and Kennji Kizuka. Research was conducted by Robyn Barnard, Crooke, Gendelman, and Kizuka. Research assistance was provided by Graysen Airth. Jennifer Quigley and David Mizner contributed edits to the report. We are grateful for the support of the Mary A. McCarthy Yale Public Interest Fellowship. Human Rights First thanks the donors and foundations who provide invaluable support for the organization's research on access to asylum and representation of asylum seekers. We are thankful to all the practitioners, organizations, and experts that provided information to inform this report. Particularly, we thank the numerous asylum seekers who bravely shared their stories in hopes of bettering the system for all those who seek protection and refuge in the United States.