

Is Guatemala Safe for Refugees and Asylum Seekers?

The Trump Administration is pursuing an agreement with Guatemala under which the United States would turn away asylum seekers from Honduras, El Salvador and other countries, and send them to Guatemala. The Guatemalan government would then conduct asylum assessments and provide for their protection. Such a “safe third country” agreement or similar arrangement would endanger refugees and violate U.S. law.

Guatemala falls far short of the legal requirements that would permit U.S. officials to treat it as a safe third country for the purpose of turning back asylum seekers. Rather than returning refugees to a country that can’t or won’t protect them, the United States should support stronger refugee protection across the region and uphold its own asylum and refugee legal obligations. This factsheet explains the concept of safe third country agreements under U.S. law and why Guatemala does not meet the legal requirements for a safe third country.

What is a “safe third country”?

Under a safe third country agreement, the United States and another country recognize that both countries effectively protect refugees seeking asylum. With an agreement in place, asylum seekers who request protection in the United States after first passing through the “safe” country may be returned there to seek refuge.

Congress has spelled out three requirements that must be met before U.S. officials and agencies can block refugees from asylum on these grounds. **Specifically, to be a safe third country, the Immigration and Nationality Act requires that the country must:**

- Guarantee asylum seekers protection from persecution:** The country must be a place where the refugee’s “life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.”
- Provide access to “full and fair” procedures to assess asylum requests:** The country must afford “access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.”
- Agree to be designated a safe third country:** The country must have entered into a bilateral or multilateral safe third country agreement with the United States.

Canada is the only country that has a safe third country agreement with the United States. Signed in December 2002, the agreement went into effect in December 2004. As a result, asylum seekers who enter the United States after passing through Canada will be returned and permitted to request asylum there unless they qualify for an exception to the agreement.

Guatemala does not meet safe third country legal requirements:

Refugees are not adequately protected in Guatemala.

Many of Guatemala’s own citizens are fleeing violence and other failures of state protection in Guatemala to seek refuge in other countries. According to the U.N. Refugee Agency (UNHCR), in 2018 alone 33,000 Guatemalans

fled their country and filed applications for asylum in the United States. More than 86,000 asylum applications by Guatemalans are currently pending adjudication worldwide.

The [Congressional Research Service](#) reports that Guatemala has some of the highest levels of violence, inequality, and poverty in the region. Guatemala “remains among the most dangerous countries in the world” according to the State Department’s [Overseas Security Advisory Council](#) with an “alarmingly high murder rate.” Guatemala has the third highest [femicide](#) rate in the world.

Refugees in Guatemala are at risk not only due to their inherent vulnerabilities as refugees, but also on account of their race, nationality, gender, sexual orientation, gender identity and other reasons. Various groups – including indigenous people, LGBTQ persons, women targeted for violence, and children threatened by deadly gangs – face persecution that forces them to seek protection outside the country. The U.S. State Department’s own [human rights report](#) reveals that 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 and children from other countries are exploited for sex trafficking in Guatemala, as the U.S. [2019 Trafficking in Persons Report](#) confirmed. Guatemalan police, military, and elected officials have been placed under investigation for paying children for sex acts, facilitating child sex trafficking, or protecting venues where trafficking occurs. [Human Rights Watch](#) reports that children and young adults are also targets of gang violence.

[Corruption and extortion](#) are rampant and, the Guatemalan government [lacks effective mechanisms](#) to investigate and punish abuse and corruption, particularly in the wake of its efforts to [shut-down](#) the U.N.-backed anti-corruption commission (CICIG). As a result, many are unprotected by the authorities.

Many refugees are left unprotected due to lack of access to full and fair procedures

Refugees returned to Guatemala would also be at grave risk of being sent back to their countries of persecution given deficiencies in the country’s refugee protection system.

Guatemala’s tiny asylum system does not have the ability to assess, adjudicate and manage the cases of the many Honduran, Salvadoran, and other asylum seekers that the Trump Administration wants to send there. Between January and November 2018, [only 262](#) people applied for refugee status in Guatemala—and that miniscule number represented a 75 percent increase from the prior year. Since 2015, Guatemala has received only about [92 cases](#) a year for asylum processing. In [2018](#), Guatemala’s National Migration Institute (*Instituto Nacional de Migración*) approved only 20 asylum claims. In total 12 officials within the Office of International Migration Affairs (*Oficina de Relaciones Migratorias Internacionales*) and the National Refugee Commission (*Comisión Nacional para Refugiados*) work on the asylum process in Guatemala, and only three staff interview asylum applicants, according to information provided to Human Rights First by the Office of International Migration Affairs. Given that roughly [50,000 Hondurans and Salvadorans](#) applied for asylum in the United States in 2018, the Trump administration is potentially trying to send well over this number to Guatemala each year—numbers that the Guatemalan system would be incapable of handling.

The State Department [reports](#) that UNHCR concluded that Guatemala’s mechanisms for identifying and referring asylum seekers for refugee assessments are “inadequate,” meaning that the country leaves asylum seekers at risk of deportation back to their countries of persecution. Neither migration officers nor police authorities are [adequately trained](#) on the laws and rules relating to protecting refugees.