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## Fear Mongering and Alternative Facts: The Trump Administration's Attacks on Asylum

America as a safe haven: this vision is central to the country's ideals and identity. And it's rooted in reality. The United States has a long history of providing refuge to victims of persecution. The United States helped spearhead the effort to draft the 1951 Refugee Convention in the wake of World War II and later ratified the Refugee Protocol. Over the years, the country has been a resettlement leader, and Congress created the U.S. asylum system to assess the eligibility for refugee protection of applicants in or arriving in the United States.

The Trump Administration is breaking with this proud tradition. Its rhetoric and actions are leading the United States to turn away, deny protection to, and punish refugees in violation of U.S. treaty obligations and American ideals. While its cutbacks to resettlement and its bans on refugees from majority-Muslim nations have received the most attention, the administration is also targeting asylum.

Refugees seeking asylum have been illegally turned away at U.S. borders, denied release from immigration jails even when they do not warrant continued detention, and criminally prosecuted for "illegal" entry despite U.S. treaty prohibitions on penalizing refugees. Other Trump Administration actions undermine due process and fair asylum adjudications.

Attorney General Jeff Sessions, for example, has taken steps to encourage immigration judges to deprive asylum seekers of asylum hearings and to potentially deny protection to some refugees—

including women who have suffered domestic violence.

Spewing rhetoric that falsely paints asylum seekers as frauds, security threats, and dangerous criminals, administration officials tout extreme changes to U.S. laws as the answer to manufactured dangers and demand these changes as the price for legislation to help the Dreamers. Anti-refugee and anti-asylum rhetoric—often coming from political appointees heading the very agencies that adjudicate asylum claims—sends a signal that agency leaders are attempting to influence adjudicators' asylum decisions.

### Administration Statements

Trump Administration statements and policy announcements relating to asylum deceptively ignore the major reason for the increase in protection requests: the refugee and displacement crises originating in El Salvador, Guatemala, Honduras, and, more recently, [Venezuela](#). Deadly dangers are forcing people to flee in search of protection, as the [U.N. Refugee Agency](#) and [human rights organizations](#) have detailed. Asylum claims have also risen sharply in [other countries](#) in the region, including in Costa Rica, Panama, and Belize. The number of asylum applications in Mexico rose by 678 percent from 2013 to 2016, as Human Rights First documented in a [July 2017 report](#).

Ignoring these facts, Trump Administration officials paint the increase in U.S. asylum applications as evidence of fraud. Here are just a few examples of administration statements attacking or

misleadingly maligning asylum seekers and the U.S. asylum system:

- **January 2017: President’s executive orders portray refugees and asylum seekers as threats:** Within days of taking office, President Trump, claiming that refugees were security threats, traveled to the Pentagon to sign a January 27 executive order to halt the resettlement of refugees. In his [January 25 executive order on the border](#), the president directed increased detention, criminal prosecutions, and other actions against asylum seekers at the southern border. The order characterized those seeking protection at the southern border as a “surge of illegal immigration” and proclaimed that “illegal immigration presents a clear and present danger.”
- **April and May 2017: Sessions ignores refugee protection and directs increased criminal prosecutions:** In two memoranda, Attorney General Jeff Sessions [instructed](#) federal criminal prosecutors to prioritize prosecutions for migration offenses along the southern border and pursue first-time entrants. Even though his directions effectively targeted people seeking U.S. refugee protection, he ignored the refugee crises and U.S. refugee protection treaty obligations.
- **May 2017: General Kelly disparages asylum seekers:** In defending the controversial deportation of a Honduran asylum seeker and her young child, General John Kelly, then serving as Secretary of the Department of Homeland Security (DHS), not only got the facts of the mother’s case wrong, but he falsely [painted her](#), and the “overwhelming” majority of other asylum seekers, as liars—raising concerns he was using alternative facts.
- **October 12, 2017: Sessions portrays asylum seekers as frauds:** Attorney General Jeff Sessions traveled to immigration court headquarters to make a [speech](#) that inaccurately claimed the asylum system was “overloaded with fake claims,” sending a clear message to the judges who preside over asylum cases.
- **December 12, 2017: Director of U.S. Citizenship and Immigration Services (USCIS) portrays asylum seekers as fraudulent:** At a press conference, the Trump Administration’s USCIS Director, L. Francis Cissna [claimed](#) without evidence that “Thousands of frivolous or fraudulent asylum claimants are released into the country each year...”
- **January 2018: Department of Homeland Security Secretary portrays asylum seekers as “dangerous” and “illegal,” calls protection screening a “loophole”:** Reciting administration talking points, Secretary Kirstjen Nielsen painted asylum seekers as criminals and threats and referred to the credible fear screening standard created by Congress as a [“loophole.”](#) In [January 16 testimony](#) to Congress, Nielsen claimed there has been a “dangerous” increase in “border crossings by families and unaccompanied alien children” and said the administration’s priority was to “close legal loopholes that encourage and enable illegal immigration and increase a corresponding backlog in the courts.”
- **January 30, 2018: President Trump uses “border security” label to describe changes that block access to asylum:** In his State of the Union Speech, President Trump touted changes to U.S. law that would block refugees from seeking asylum and other protections as necessary to “fully secure the border.”

■ **February 15, 2018: DHS depicts asylum as threat to “American safety.”** In a statement titled “We Must Secure the Border and Build the Wall to Make America Safe Again,” DHS depicted the increase in asylum claims as “illegal” immigration and asylum cases as not “meritorious.” The statement omitted any mention of the refugee crises stemming from Central America and Venezuela. DHS’s issuance of statements parroting White House talking points during the February legislative debates has been [criticized](#) as politicizing the agency and undermining its credibility.

■ **February 23, 2018: President Trump portrays refugees and immigrants as “vicious” and a “poisonous snake.”** Reading a poem he had also read during [his campaign](#), the president compared immigrants and refugees to a “vicious” and “poisonous” snake that attacks the “tender” country that takes them in.

### Undermining Asylum and Due Process in the Immigration Courts

The U.S. immigration courts, which adjudicate many asylum cases, fall under the jurisdiction of the Department of Justice (DOJ). With Jeff Sessions at the helm at DOJ, the Trump Administration has taken—and is taking—steps that threaten due process and access to asylum in the U.S. immigration courts.

As detailed by Human Rights First in an October 2017 [report](#) and subsequent updates, these steps include changes that thwart access to counsel, rush cases through adjudications, and signal to immigration judges that they should deny more asylum cases:

■ President Trump’s January 25, 2017 executive order stated that it was executive branch policy to “expedite” determinations regarding eligibility for individuals taken into

immigration custody, raising concerns that the administration planned to rush immigration court hearings.

- On July 31, 2017, the DOJ’s Executive Office for Immigration Review (EIOR) issued a memorandum discouraging immigration judges from granting adjournments, neglecting to mention the need to allow immigrants sufficient time to seek pro bono representation.
- In its October 2017 list of “principles,” the White House revealed plans to impose “performance metrics” or numerical quotas on immigration judges, again raising concerns that immigration judges may be pressured to rush cases through hearings without adequate time for asylum seekers and others to secure counsel or gather evidence. The National Association of Immigration Judges [said](#) the approach constitutes a “huge encroachment on judicial independence.”
- In his October 2017 speech at the headquarters of the immigration courts, Attorney General Sessions appeared to signal to immigration judges that they should deny more cases. Not only did he paint asylum cases as meritless and fraudulent, but he also [inaccurately claimed](#) asylum cases are “seldom” denied and said “we can do so much more,” and “you play a key role.”
- Changes made by the Justice Department to the immigration judge hiring process raise concerns about safeguards against politicized hiring. Career immigration officials appear to have been removed from near-final immigration judge hiring panels.
- In late 2017 and early 2018, the Trump Administration and its Congressional allies supported [legislative proposals](#) that would bar federal funding for legal counsel and curtail immigration court adjournments that are often

necessary to allow asylum seekers and other immigrants to secure pro bono legal representation. Without legal representation, only [one out of every ten](#) asylum seekers win their cases. With counsel, nearly half succeed.

- In March 2018, the Attorney General used his authority to “certify” to himself, and potentially overturn, several decisions of the Board of Immigration Appeals in ways that threaten due process and access to asylum. In one case, Sessions [encouraged](#) immigration judges to deny applications for asylum without a hearing if they find that a written asylum submission does not evince prima facie eligibility for asylum. Such an approach would make a farce of due process. Many asylum seekers do not speak English, are unable to secure legal representation, and are not lawyers who can be expected to know which of the many facts relating to their histories of persecution are most relevant to highly complex U.S. legal standards regarding asylum eligibility.
- In another case, Sessions [certified](#) a case to himself to issue a ruling on a question that he described as whether “being a victim of private criminal activity constitutes a cognizable ‘particular social group’” for purposes of asylum eligibility. Human Rights First and other groups immediately wrote to Sessions to complain about the DOJ’s failure to provide information necessary to allow potential amici to address the issues. Session’s certification in this case raises serious concerns that he may be seeking to block domestic violence survivors as well as other categories of refugees from U.S. asylum.

Human Rights First has long recommended the hiring of additional immigration judges to address the court backlog, which developed over many years, initially sparked by a long-term funding imbalance that left the courts understaffed while immigration enforcement agencies grew

massively, a hiring freeze, and the slow pace of hiring procedures. But the Trump Administration’s agenda and rhetoric make clear that it is using the backlogs as a pretext for advancing policies that deprive people of due process and access to fair asylum adjudications.

### Threats to Fair and Effective Adjudication of Asylum Claims by USCIS

Asylum applications filed “affirmatively” with USCIS are adjudicated by trained asylum officers within USCIS, a component of DHS. The drumbeat of anti-refugee and anti-asylum rhetoric and policy announcements by administration officials—including those who head the agencies entrusted with adjudicating asylum applications—sends a troubling signal to adjudicators.

Over the last year, and in the midst of the Trump Administration’s anti-refugee and anti-asylum rhetoric, USCIS asylum approval rates have plummeted, and processing changes have raised concerns that some asylum adjudications may be rushed, while others will be delayed for years while refugee families face grave risks.

- The asylum approval rate fell from 43.9 percent for calendar year 2016, down to 32.5 percent for calendar year 2017, a drop of 26 percent.
- The asylum approval rate has, in addition, fallen sharply during the first year of the Trump administration—from 41 percent in January 2017 down to 26 to 28 percent during October through December 2017.
- The sharp decline in asylum grant rates is particularly troubling given that many of those seeking U.S. protection have fled in response to a major regional refugee crisis.
- As the UN Refugee Agency has [documented](#), the women and children fleeing Central

America are in need of international protection.

- Other USCIS processing changes may overload adjudicators with too many cases, rush cases through adjudication, and leave others in limbo for years.
- For example, on January 31, 2018, USCIS announced asylum processing changes that prioritize the adjudication of new asylum applications, leaving earlier applications to wait years more, [without including](#) sufficient safeguards to assure timely adjudication of earlier applications in cases where children are stranded at risk abroad or where refugees face other urgent hardships.
- Consistent with the Trump Administration’s talking points, [USCIS’s announcement](#) of this processing change cited the number of asylum applications as though it was evidence of fraud, ignoring the regional refugee crises chiefly responsible for increased filings. USCIS also failed to mention DHS’s decision in 2014 to expand its use of expedited removal against families seeking asylum along the southern border, a move that triggered the growth of the asylum office backlog by diverting asylum officers to conduct credible fear interviews, the protection component of expedited removal.

The asylum and immigration court backlogs will not be resolved without sufficient staffing, and steps should be taken to roll-back the expanded use of expedited removal processing. The Trump Administration however is rewriting history, ignoring the primary causes of both backlogs, and claiming they’re the result of “fraud” in an attempt to bolster their arguments for draconian changes to U.S. law that will block legitimate refugees from asylum.

## Efforts to Gut the Credible Fear Safeguard

When it gave immigration enforcement officers the authority to deport some categories of inadmissible persons under expedited removal procedures, Congress created the “credible fear” screening process as a safeguard so that genuine asylum seekers are not summarily deported and instead are allowed to file applications for asylum through the regular adjudication process.

The Trump Administration is attempting to gut the limited protection safeguards in expedited removal through administrative action, advocacy for legislative changes to the screening standard, misleading data, and talking points characterizing the Congress-created protection screening as a “loophole.”

- The DHS Secretary’s February 20, 2017 memorandum implementing the President’s January 25 executive order took aim at the credible fear screening process, attempting to add requirements on “credible evidence” that signaled an attempt to turn the process into something closer to a full-fledged asylum assessment. As Human Rights First [explained](#), such a move would block more asylum seekers from access to asylum, legal representation, and the time needed to gather the necessary evidence in support of an asylum application. Asylum seekers who have just arrived after often arduous journeys are overwhelmingly unrepresented by legal counsel in their credible fear interviews, do not speak English, and are held in immigration detention. They do not have the ability to gather the kinds of evidence needed to support their claims.
- On February 13, 2017 USCIS issued a [revised lesson plan](#) to retrain its asylum officers on their conduct of credible fear interviews. Human Rights First [warned](#) in

March 2017 that the revisions were inconsistent with U.S. law and put refugees at risk of return to persecution in violation of U.S. legal obligations under the Refugee Protocol. Leon Rodriguez, former Director of USCIS under the Obama Administration, [concluded that](#) “Clearly, a signal is being given to the field here ....”

- The rate at which U.S. asylum officers ruled in favor of asylum seekers in their credible fear determinations fell sharply early last year following these announcements. In fact, while the approval rate for fiscal 2016 was 78.6 percent, it fell to 68 percent in June 2017, before leveling out during the last two months of the fiscal year at about [74.7 and 76.1 percent](#).
- This drop raises serious concerns that asylum seekers with real protection claims have been turned away under expedited removal without being allowed to file an asylum application. A strong pass rate for credible fear screening should be expected as it should not block people genuinely seeking asylum and is being used against people fleeing in search of protection who are being subjected to expedited removal processing. Over the years, the bipartisan U.S. Commission on International Religious Freedom has [reported](#) on many deficiencies in CBP’s implementation of procedures designed to prevent the mistaken deportation of bona fide asylum seekers in the expedited removal process.
- Trump Administration officials have repeatedly [provided](#) misleading information about the credible fear pass rate and used this misinformation to demand changes to the screening standard. Most recently, in its February 2018 budget request to Congress for fiscal year 2019, the Trump Administration [falsely told Congress](#) “USCIS is approving credible fear cases at a rate of 90 percent,”

when actually only 78.6 percent of credible fear cases were approved in fiscal 2016 and [75.05 percent](#) were approved in fiscal 2017.

- DHS Secretary Nielsen, reciting administration talking points, has repeatedly referred to the credible fear screening process as a “[loophole](#)” even though it is a hurdle that asylum seekers must pass just to be allowed to request asylum and have their applications assessed.

### Turning Away Asylum Seekers at the Border

U.S. Customs and Border Protection officers have turned away many asylum seekers at the U.S. southern border, blocking them from access to asylum by refusing to process their protection requests in violation of U.S. law and treaty obligations. As detailed by Human Rights First in a report issued in 2017:

- Numerous attorneys, non-profit and private legal service providers, humanitarian workers, and shelter staff reported that CBP and Mexican officials have told migrants that the United States is no longer accepting asylum claims at its borders.
- One asylum seeker reported that a CBP agent told him, “Trump says we don’t have to let you in,” and another that he was told “[Christians] are the people we are giving asylum to, not people like you.”
- Asylum seekers turned away by CBP agents, including Cubans and Central Americans, have been kidnapped, raped, and robbed upon return to Mexico, and some face continued risk of persecution.
- CBP’s practice of turning away asylum seekers from established ports of entry leaves some with little choice but to attempt

unauthorized and dangerous border crossings.

U.S. laws and treaties prohibit the return of refugees to persecution. Congress created processes to allow individuals to seek asylum, and to protect asylum seekers from being turned away from formal border entry points without being processed for a protection assessment.

### **Punishing Asylum Seekers Through Criminal Prosecutions**

Over the last year the Trump Administration has directed—and the Departments of Homeland Security and Justice are implementing—a barrage of policies and practices that punish those who seek U.S. refugee protection. The president’s January 25 executive order, and subsequent instructions from the attorney general and secretary of homeland security, directed CBP and DOJ to expand criminal prosecutions for migration violations. In the wake of these directions, CBP is sending people who do cross the border in search of refugee protection to be criminally prosecuted for “illegal entry” and “illegal re-entry” in violation of U.S. legal obligations under Article 31 of the Refugee Convention and its Protocol, and DOJ is conducting those prosecutions regardless of the defendants expressed fears of persecution.

As Human Rights First detailed in a January 2018 [report](#):

- Criminal prosecutions of vulnerable migrants and asylum seekers are increasing.
- Asylum seekers make up a significant portion of cases prosecuted for illegal entry or illegal reentry. In a survey, forty-eight percent of defense attorneys who practice along the southern border said that more than half of their clients are asylum seekers.
- In some cases, CBP is separating children from their parents and then sending the parents to be criminally prosecuted. For example, the [Houston Chronicle](#) reported that CBP officers referred a mother and father fleeing political persecution in Venezuela for criminal prosecution for illegal entry and separated them from their fifteen-year-old daughter, who was sent into federal foster custody.
- Some plea agreements force asylum seekers to forego their claims for refugee protection, violating not only Article 31 of the Refugee Convention, but also Article 33’s prohibitions against return to countries of persecution. For instance, not only was a Mexican seeking protection from persecution due to his sexual orientation referred for criminal prosecution by CBP, but DOJ told his lawyers it would increase its recommended criminal sentence if he refused to waive his right to seek asylum.
- Criminal prosecutions thwart access to asylum, sending asylum seekers back to countries where they face persecution, in violation of treaty obligations. Numerous defense and immigration attorneys, as well as humanitarian organizations, reported instances when ICE and CBP failed to refer asylum seekers for credible fear interviews even after they completed their criminal sentence.

During Human Rights First court observations of over 700 cases, no CBP agents, DOJ prosecutors, or federal judges showed deference to the prohibition, under Article 31 of the Refugee Convention, on penalizing asylum seekers for illegal entry— even though DHS’s Office of Inspector General (OIG) raised a concern about DHS referring asylum seekers for prosecution in a 2015 report.

## Punishing Asylum Seekers Through Detention

In his January 25 executive order, President Trump directed DHS to detain immigrants for the “duration” of their proceedings, construct more detention facilities, and end “catch and release,” a phrase the President and his allies apply to virtually any process that allows some individuals to be released from immigration detention facilities.

The Department of Homeland Security, in a February 2017 implementing memorandum, stated that parole authority should be used “sparingly.”

In the wake of these pronouncements, Immigration and Customs Enforcement (ICE) officers are holding asylum seekers in detention facilities longer even in the many cases where detention is not needed to secure appearance for hearings.

As Human Rights First explained in a September 2017 [report](#):

- In the wake of President Trump’s January 25 executive order, parole grants to asylum seekers appear to have plummeted at many detention facilities and jails—including in Illinois, Michigan, New York, the San Francisco Bay Area, Louisiana, and South Texas—with ICE now rarely, if ever, granting parole at these facilities.
- At other detention facilities and jails where parole grants were already rare, including in Arizona, New Jersey, and the Northwest, pro bono attorneys report that parole releases continue to be rare to non-existent.
- Asylum seekers eligible for parole consideration under ICE’s 2009 Asylum Parole Directive are often needlessly held in detention by ICE—for many months or longer—despite meeting release criteria.

- Examples in the report include: a gay man detained for fourteen months after fleeing his West African country; a torture survivor from Burkina Faso detained for seventeen months; a Cuban political opposition activist detained for seven months; a political activist from Singapore detained for seven months; a Honduran grandmother with two U.S. citizen relatives who was denied parole; and a Venezuelan human rights lawyer detained for nearly six months as of release of this report.
- In February 2018, the Trump Administration [told Congress](#) that ICE has “taken a more aggressive posture on parole.”
- In other cases, ICE has refused to set bonds that could allow asylum seekers and other immigrants to secure release from immigration detention or demanded that they pay bonds too high for them to afford, leaving them languishing in detention for many months.

On March 15, 2018, Human Rights First, along with the ACLU, the Center for Gender and Refugee Studies and Covington & Burling LLP [filed a federal lawsuit](#) challenging the Trump Administration’s failure to release asylum seekers from detention even when they meet the parole criteria. Parole grant rates by the ICE offices named in the lawsuit dropped to nearly zero in 2017.

In addition to holding some families in detention facilities for weeks, U.S. immigration enforcement agencies are separating some children from their parents and then sending their parents to detention facilities where they are held for many months.

Statistics show that alternative measures, such as case management programs with community support, are highly effective in assuring appearance for immigration appointments. Asylum

seekers with legal representation overwhelmingly appear at immigration court.

U.S. human rights and refugee protection treaties prohibit the use of immigration detention that is unnecessary, disproportionate or otherwise arbitrary, or that penalizes asylum seekers for unauthorized presence or entry.

## Targeting Families and Children

Trump Administration policies have targeted families and children seeking this country's protection. In March 2017, General Kelly threatened to separate children from their parents and send the parents to immigration detention. Though he appeared to retreat from that threat, subsequent reports reveal that DHS is indeed separating some asylum seeking and migrant children from their parents:

- A [complaint](#) filed in December 2017 documented examples of cases in which children had been separated from their parents and the parents sent to adult immigration detention facilities.
- In January 2018, Human Rights First [reported](#) that many children had been separated from their parents by CBP which then sent their parents to be criminally prosecuted for “illegal entry” or “illegal reentry.”
- In one case, a seven-year old girl was [separated](#) from her mother despite her anguished pleas, after the two arrived at a U.S. port of entry seeking asylum from the Democratic Republic of Congo. The mother was sent to an adult detention facility in California while her young daughter was sent half way across the country to a children's facility in the Chicago area. The mother was only released—after four months in a U.S. detention facility—after the filing of a lawsuit prompted extensive media coverage.

Trump Administration officials, and their allies in Congress, are attempting to secure legislative change that would prevent many children from applying for asylum or other U.S. protections and punish families who seek U.S. protection. These changes include efforts to bar children with well-founded fears of persecution from asylum under the filing deadline bar, deprive them of non-adversarial interviews with asylum officers, and rapidly turn children away at the border unless they pass a brief screening assessment conducted in detention by a border official (not a trained child protection specialist).

The administration has also called for legislative changes that would greatly expand the detention of children—including unaccompanied children and those who are detained with their parents.

The U.S. has faced strong criticism from the international community for its “family detention” policy, which violates U.S. human rights and refugee protection treaties as well as the best interest of the child principle—a basic tenet of both international human rights law and domestic child welfare law.

## Threats to Block Refugees Who Passed through Mexico from Asylum

In his January 25 executive order relating to the border, President Trump proposed to return some border arrivals to “contiguous territories,” such as Mexico, while they await U.S. immigration court hearings.

The Trump Administration has also pursued efforts to block refugees from U.S. asylum if they have traveled through Mexico by designating Mexico a “safe third country”—despite the dangers and lack of protection for refugees there. For instance, the White House's October 2017 list of legislative demands included a change to “[e]xpand the ability to return asylum seekers to safe third countries.” The administration and its allies have supported

legislative proposals that would change U.S. law to allow the DHS Secretary to unilaterally declare Mexico a “safe third country” to which the United States would return refugees.

In March 2018, a Department of Homeland Security official [reported](#) that the Trump Administration aimed to get Mexico to agree to a safe third country agreement and hoped to advance this goal through discussions with the Mexican government.

As Human Rights First detailed in a July 2017 [report](#), Mexico is not a safe country for refugees:

- Refugees and migrants face acute risks of kidnapping, disappearance, sexual assault, trafficking and other grave harms in Mexico;
- Mexican migration officers deport Central Americans who have expressed fear of return despite the country’s *nonrefoulement* and human rights obligations;
- With the sharp rise in asylum filings in Mexico, the Mexican asylum system lacks effective national reach and capacity;
- Deficiencies, barriers, and flaws in the Mexican asylum system leave many refugees unprotected; and
- Children, families, and asylum seekers are detained in violation of Mexico’s human rights and refugee protection commitments.

### Many Anti-Fraud and Other Safeguards Are in Place

There are many effective anti-fraud and security safeguards in the asylum and credible fear processes. In fact, the asylum adjudication system itself is designed not only to identify individuals who qualify for refugee protection, but also to assess the credibility of cases and deny asylum to those that are meritless or fraudulent.

A long list of security threats and criminal perpetrators are also barred from asylum.

The United States should use tools that are actually tailored to identify and prevent fraud and reject changes to laws and policies that block access to asylum assessments for those with genuine fears of persecution or punish those who seek U.S. protection. In addition, the U.S. immigration agencies should create a process by which individuals who are in the country without authorization can put their cases into removal proceedings, a longstanding gap.

### Trump Legislative Priorities Seek to Change U.S. Law to Block and Punish Asylum Seekers

The Trump Administration and its allies in Congress have peddled changes to U.S. immigration law that would, if enacted, block many genuine asylum seekers from applying for asylum, prevent them from securing legal counsel needed to establish their eligibility for asylum, deny them asylum despite well-founded fears of persecution, penalize the victims of violence, and punish those who seek U.S. refugee protection through criminal prosecutions and the imposition of unnecessary, lengthy or disproportionate detention.

Such provisions have been included in various [legislative proposals](#)—such as the Asylum Reform and Border Protection Act of 2017 (H.R. 391), the Securing America’s Future Act (H.R. 4760), and the Criminal Alien Gang Member Removal Act (H.R. 3697).

The harmful changes to asylum law touted by the administration and their allies include provisions that would:

- Further heighten the credible fear standard to essentially turn these screenings into full-blown asylum adjudications even though asylum seekers do not, so soon after arrival,

have the ability to secure legal counsel or the evidence needed to prove their cases.

- Block asylum seekers who pass through Mexico by allowing DHS to unilaterally declare Mexico—a highly dangerous country that often deports refugees back to their countries of persecution—a “safe third country” even without Mexico’s agreement.
- Deny asylum to refugees with well-founded fears of persecution by expanding the asylum filing deadline bar, which has already barred thousands of refugees with well-founded fears of persecution from asylum in the United States. These potential expansions include using the deadline to bar children, restricting its already too narrow exceptions and reducing the time in which applicants—who often don’t speak English, have legal counsel, or know the US legal system—must file.
- Deprive asylum seekers of legal representation by curtailing the adjournments needed to secure pro bono counsel and prohibiting federal government funding of legal representation.
- Subject more asylum seekers—including families with children—to even longer, unnecessary, or disproportionate detention by making it essentially impossible for arriving asylum seekers to secure release on parole.
- Eliminate safeguards and overturn court rulings and settlement agreements that provide and recognize some limits on the use of detention, including the detention of children and the use of prolonged detention.
- Further escalate the criminal prosecution of asylum seekers.
- Bar victims of violent gangs from refugee protection in cases where the applicant has never engaged in criminal activity but may have participated in other activities of a group

believed to be engaged in crime. These provisions would for instance impact asylum seekers such as a bus driver who was forced, at gunpoint, to transport members of a gang in his home country.

### Recommendations for the United States:

- **Address the Regional Refugee Crises:** The Trump Administration and the U.S. Congress should take steps to address the regional refugee and displacement crises. It should strongly support effective initiatives to tackle human rights abuses plaguing refugee-generating countries, support the development of effective asylum systems in Mexico and other countries in the region, and set an example by upholding U.S. refugee protection laws and treaties in the reception and treatment of those seeking refugee protection in the United States.
- **Stop Maligning Asylum and Painting it as a Security Threat:** The Trump Administration should stop treating— and mislabeling— asylum seekers as threats, criminals and frauds. At the same time, it should stop depicting a refugee crisis as a “border security” crisis and a “surge of illegal migration.” Likewise, it should stop calling access to refugee protection, required by U.S. law and treaties, a “loophole.”
- **Halt rights-violating policies:** The Trump Administration and Congress should put a halt to policies and practices that block refugees from accessing the U.S. asylum system and punish those who seek this country’s protection. U.S. agencies should stop turning away asylum seekers at borders, referring them for criminal prosecutions, separating children from their parents, and holding asylum seekers who do not necessitate detention in jails and facilities often for lengthy periods of time.

**■ Ensure Fair Asylum Decision-making:**

Officials who oversee agencies involved in asylum adjudication should stop repeating the White House’s talking points about the merits of asylum cases. DOJ, DHS and USCIS officials should instead ensure due process and effective decision-making, and support—rather than thwart—access to counsel. DOJ should abandon efforts to impose performance quotas on judges, curtail adjournments needed to secure legal representation, or otherwise unjustly rush cases. USCIS should refrain from steps that will rush and undermine fair adjudication, such

as overloading asylum officers with too many cases.

**■ Congress must safeguard asylum.**

Congress should reject draconian legislative proposals that seek to curtail access to asylum adjudication assessments, reduce protection screening safeguards in expedited removal, thwart access to counsel, or further increase immigration detention and criminal prosecutions for migration offenses. Congress should also reduce funding for the overused and abusive use of immigration detention and criminal prosecutions for migration offenses.