

Central Americans were Increasingly Winning Asylum Before President Trump Took Office

Between fiscal years (FY) 2010 and 2016, the percentage of asylum seekers from the Central American countries of El Salvador, Guatemala and Honduras granted protection rose by 96 percent, according to data from the Syracuse University Transactional Records Access Clearinghouse (TRAC) [Asylum Decision tool](#). This rise was consistent with an upsurge in the power and brutality of the gangs that exercise control over territory throughout those countries as well as extremely high rights of gender-based violence.

However, asylum rates for Central Americans have fallen considerably since President Trump took office, when he [began repeating](#) false [assertions](#) that asylum seekers abuse “loopholes” in the system and “lodg[e] meritless claims.” Former Attorney General Sessions also sought to delegitimize and undermine asylum requests by Central Americans and others requesting protection at the southern border in remarks to immigration court judges (who work under the Attorney General in the Department of Justice (DOJ)). Sessions repeatedly [blamed](#) “fraud and abuse in the asylum system” for immigration court backlogs and inaccurately [claimed](#) that only 20 percent of asylum applications are meritorious.

Then in June 2018 Session’s decision in [Matter of A-B](#)- sent the percentage of Central Americans granted asylum into a nosedive. That decision attempted to block asylum for people seeking refuge from domestic abusers and to further limit asylum for those fleeing other non-government persecutors like the violent gangs who kidnap, rape, and murder people in the territory they control across Central America. A federal court has already [ruled](#) that the government cannot rely on *Matter of A-B*- to issue blanket denials of asylum claims based on domestic and gang-related violence during credible fear screenings.

As this fact sheet demonstrates, **a number of other factors, including representation rates, the judge assigned to a case, and narrow interpretations of law impact the ability of Central Americans to gain asylum.** Nonetheless, the percentage of asylum seekers from Central America and the rest of the world who are granted protection in the United States is significantly higher than the administration falsely claims.

Analysis of government data shows:

Central American Asylum Grant Rates were RISING from 2010 to 2016

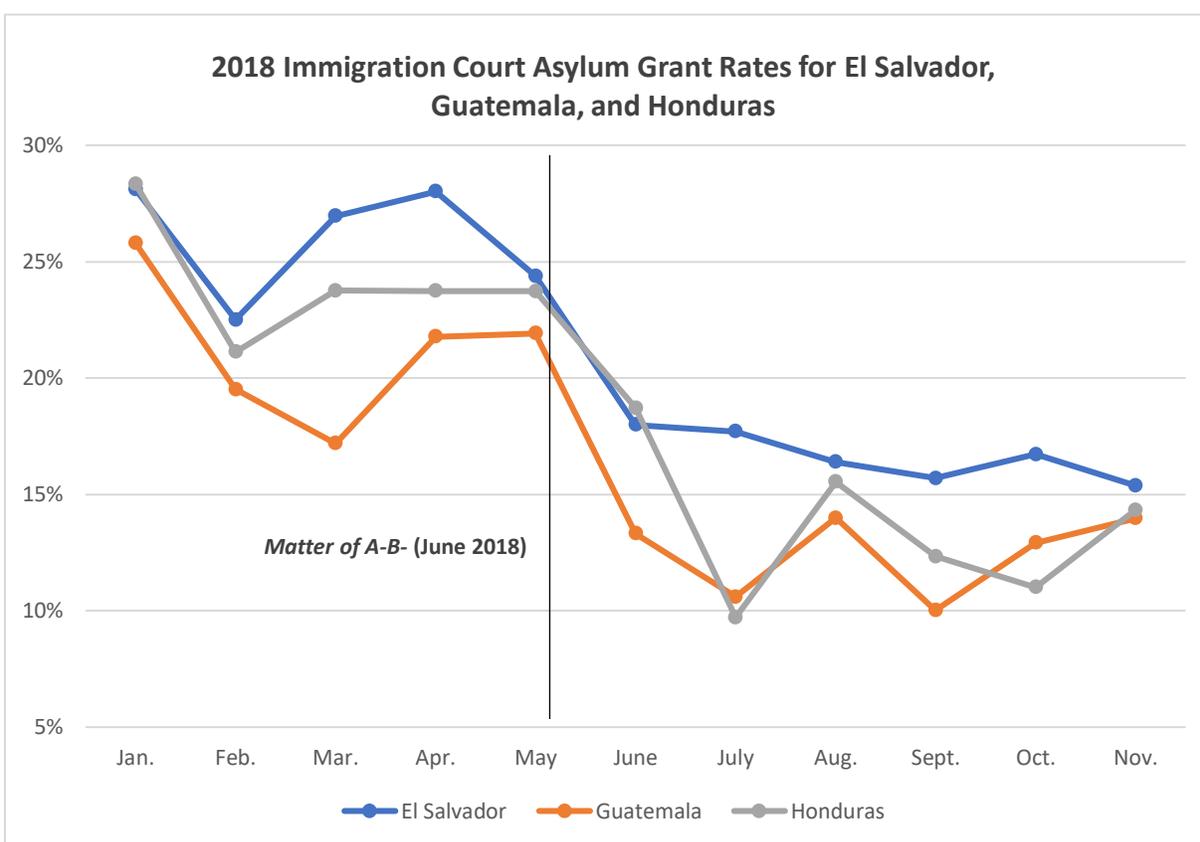
The percentage of asylum seekers granted protection from the Central American countries of El Salvador, Guatemala, and Honduras was on the rise in recent years, increasing from an average grant rate of 13.6 percent in FY 2010 to 26.7 in FY 2016 according to [TRAC data](#)—a **96 percent increase in grant rates**. This increase is consistent with dangerous conditions in the region, including powerful and brutal gangs that control territory throughout the region as well as high levels of gender-based violence, as has been well documented by the [United Nations](#), the [Council on Foreign Relations](#), [Amnesty International](#), and others. However, this upward trend reversed course with the Trump Administration.

The decline in grant rates for Central American asylum applications corresponds with the Trump Administration’s efforts to limit asylum eligibility and accounts for a decline in total asylum grant rates between 2017 and 2018.

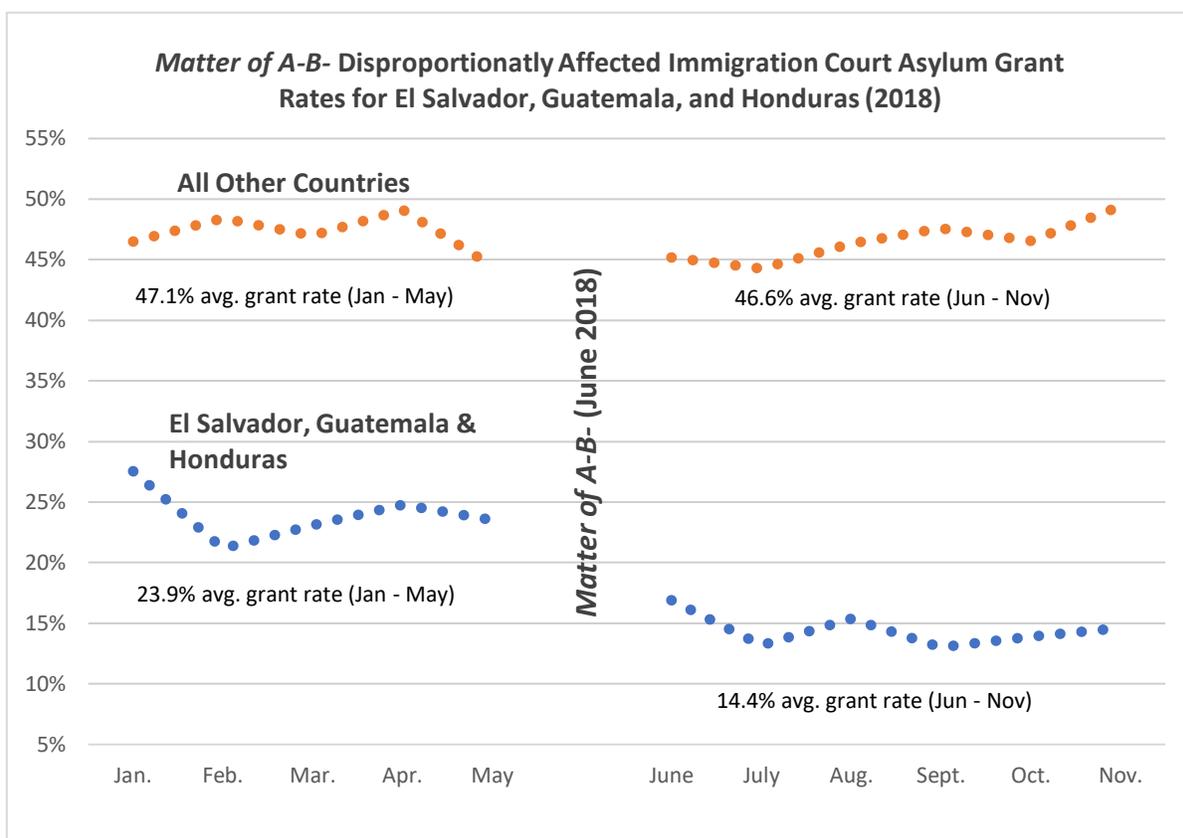
In June 2018, Sessions Unilaterally Narrowed Asylum Eligibility

Attorney General Sessions' decision in *Matter of A-B*, a case he self-certified for review, attempted to rewrite years of asylum law and legal precedent. The decision aimed to block domestic violence survivors and other survivors of persecution by non-state actors from asylum eligibility. A subsequent [policy memorandum](#) from the U.S. Citizenship and Immigration Services stated that, in general, claims based on domestic or gang-related violence would not establish a basis for asylum, refugee status, or a credible fear of persecution. As TRAC [reported](#), the “new hard line on immigration enforcement” established by this decision in mid-2018 caused the grant rate for asylum approvals to drop.

Matter of A-B has Primarily Affected Asylum Seekers from El Salvador, Guatemala, and Honduras



Although *Matter of A-B* did not impose country-specific restrictions on asylum, its impacts fell disproportionately on asylum claimants from El Salvador, Guatemala, and Honduras—the countries President Trump and other administration officials had repeatedly tarred as filing fraudulent and meritless asylum applications. Following *Matter of A-B*, asylum grant rates for these countries fell to an average of 14.4 percent (June to November 2018) compared to a 23.9 percent grant rate in the first five months of 2018—a nearly 10-point drop. All other countries saw virtually no change in grant rate: 47.1 percent to 46.6 across the same periods—a 0.5-point change. The following graph illustrates the disproportionate impact of *Matter of A-B* on Central American asylum claims.



Source: TRAC [Asylum Decision](#) Tool (including data through November 2018)

In December 2018, a federal district court [ruled](#) in a [suit](#) brought by the Center for Gender and Refugee Studies and the ACLU that relying on *Matter of A-B*- to issue blanket denials of asylum claims based on domestic and gang-related violence at the credible fear stage was illegal. As a result, the Department of Homeland Security (DHS) and DOJ issued new [guidance](#) directing asylum officers and immigration judges reviewing credible fear interviews to evaluate each claim “on its own merits.” While any effect of this development on asylum grant rates (as opposed to credible fear interviews) remains to be seen, many asylum seekers who were originally denied protection because of *Matter of A-B*- are currently enduring what may be a months or years-long appeals process.

Asylum Seekers Represented by Legal Counsel are Nearly Four Times More Likely to Win their Cases, Central Americans are Less Likely to Have an Attorney than Asylum Seekers from Other Countries

[TRAC data](#) demonstrates that when asylum seekers had access to legal representation in FY 2018, they were four times more likely to win asylum than those appearing in immigration court without an attorney. Between 2010 and 2018 only about three-quarters of Central American asylum seekers were represented by counsel. This is less than the average for all other nationalities and far lower than representation rates for Chinese asylum applicants, for example, who went to court with an attorney more than 95 percent of the time.

Central American Asylum Seekers Fleeing Gang-Based Persecution Face Uphill Odds Because of Narrow Asylum Interpretations

Narrow interpretations of asylum law can make it difficult for victims of even extreme gang violence and threats, including large numbers of Central American asylum applicants, to gain asylum in the United States. Since the 2008 decision in *Matter of S-E-G*, which denied asylum to Salvadoran youth resisting gang recruitment, the Board of Immigration Appeals and the Attorney General have adopted [requirements](#) and constricted readings of law that limit the possibility of winning asylum for Central American refugees fleeing targeted gang violence. Further, in December 2018, Acting Attorney General Matthew Whitaker [certified](#) a decision to himself for review through which he could attempt to overturn decades of precedent recognizing that individuals targeted because of their relationship to a family member are eligible for asylum.

These asylum limitations put the United States out of step with the approaches of UNHCR—the UN agency tasked with the protection of refugees worldwide—and Canada in addressing Central American asylum claims. UNHCR, for instance, has repeatedly issued specific [guidance](#) on asylum seekers from [El Salvador](#) and [Honduras](#) that recognize the variety of grounds on which victims of organized gang violence are eligible for asylum. These include the expression of a political opinion in opposing gang control and violence as well as membership in groups targeted by gangs because their age, gender, occupation, or past resistance to gangs. A federal [court](#) in Canada reviewing refugee determinations specifically adopted the UNHCR guidelines and found that an unaccompanied Honduran child repeatedly attacked and subjected to gang recruitment attempts was eligible for asylum. Canadian asylum grant rates reflect an understanding that Central Americans fleeing gang violence are in need of international protection. The average approval rate for new asylum claims lodged in Canada by Central Americans between 2014 and 2018 was 63.7 percent, with Salvadorans receiving asylum in 69 percent of decided cases, according to [figures](#) from the Immigration and Refugee Board of Canada.

Asylum Grant Rates Often Depend on the Judge Assigned to the Case

While immigration cases are randomly assigned, the judge an asylum seeker draws can have a major impact on the outcome of the case—a process that has been described as [refugee roulette](#). Some immigration judges deny asylum at extremely high rates—granting only 1 or 2 percent of applications. One judge at the Oakdale Immigration Court has not found a single meritorious asylum claim among nearly 200 asylum applications decided between 2012 and 2017, according to [TRAC](#). In April 2017, then Attorney General Sessions made [changes](#) to the procedures to select new immigration judges that make the hiring process more [susceptible](#) to politicization.

The immigration court with jurisdiction over the asylum seeker can also have a major impact on whether protection is granted. A number of immigration courts have extraordinarily high denial rates. For instance, between 2012 and 2017, El Paso immigration court judges denied asylum 96.2 percent of the time, while judges at the Miami-Krome and Lumpkin detention center courts denied asylum in 93.8 and 96.1 percent of cases, respectively. Many asylum seekers must proceed with their cases while detained because those who request asylum after arriving at an international airport or land port of entry are subject to mandatory detention and increasingly have been [denied release on parole](#) under the Trump Administration.

Immigration Judges Granted Asylum or Related Protection in One Third of Cases in Fiscal Year 2018, Down from 42 Percent in FY 2017

In FY 2018, [TRAC](#) data shows that 34 percent of asylum applicants were successful in their requests for protection before immigration judges. This figure represents a decline from FY 2017, when DOJ data [shows](#) that 42 percent of the asylum applications decided that year resulted in a grant of asylum or withholding of removal—a

related form of protection for people who fear persecution. As noted above, the fall in overall grant rates resulted from the sharp decline in asylum grant rates for Central American claimants following Sessions' decision to restrict asylum through *Matter of A-B-*.

Central American Asylum Seekers Win their Cases over Twice as Often as DHS Claims

In November 2018, DHS released a [fact sheet](#) claiming that only nine percent of individuals from El Salvador, Guatemala, and Honduras who applied for asylum in immigration court qualified for this protection. Kristjen Nielsen, the DHS Secretary, also falsely [asserted](#) that “less than 10%” of asylum seekers from El Salvador, Guatemala, and Honduras receive asylum in immigration court.” But TRAC [data](#) shows that in FY 2016 and 2017 asylum applicants from these countries were found eligible for asylum 26 percent of the time, on average.

More Asylum Seekers are Granted Protection than DOJ Claims

Despite administration [assertions](#) that only 20 percent of asylum claims that begin with a credible fear interview are meritorious, figures from the [DOJ](#) Executive Office for Immigration Review show that 36 percent of these cases were granted asylum by immigration judges in FY 2018. Of 15,852 decisions in 2018 to grant or deny asylum in cases that originated with a positive credible fear determination, 5,653 resulted in a grant of asylum.