

A Snapshot of Asylum Policies at the Border: October 2020

There is not just one, but many, asylum policies and practices that impact the US-Mexico border. Individually and collectively, each policy has made it confusing and difficult, if not impossible, for individuals fleeing violence, conflict and persecution- on account of race, nationality, religion, political opinion and/or social group- to seek asylum in the United States. Irrespective of our obligations to protect children, [approximately 9,000 to date](#) have been turned away at our border and rapidly returned to danger. Amidst the chaos of numerous overlapping policies in operation at the border, Covid-19 has come to define the border as the overarching threat to the sanctity of our asylum system.

This document offers a brief explanation of the key asylum policies that are currently impacting the border as of October 1, 2020, starting with the most recent policy that has allowed the administration to use the mask of our public health crisis to effectively end asylum at the border for the foreseeable future.

Center for Disease Control Order (CDC Order)

On March 20, the CDC issued an [“Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists \(CDC Order\).”](#) The CDC Order prohibits anyone without documentation from entering the United States, [purportedly on public health grounds](#). The CDC Order does not prohibit individuals with travel documents or the flow of economic goods from entering the U.S. In practice therefore, the only individuals that are targeted by the CDC Order are asylum seekers, including unaccompanied children and families.

The CDC Order is subject to review every 30 days and was extended by the administration for an additional 30 days on April 20, 2020. Then, [on May 20, 2020](#), the CDC amended its original order. The amended CDC Order allows for the border to be shut to asylum seekers until the CDC determines that the public health threat no longer exists. Since May 2020, the order has been extended by [DHS every month](#). On September 18, 2020, via Twitter, [DHS Acting Secretary Wolf](#) announced that it was extending the CDC Order until October 21, 2020.

The CDC Order has brought an indefinite end to asylum at the border. From March-June 2020, Customs and Border Patrol (CBP) officials only allowed [2 individuals to seek](#) asylum in the United States and thousands of adults and at least [1,000 unaccompanied children](#) were denied due process and expeditiously expelled and returned to dangers that they fled from in their home countries.

Despite letters sent from [members of Congress](#) and NGO’s to DHS, the agency has not been open and transparent with respect to how many children, families, and individuals it has expelled at the border. Recently DHS was compelled to present records in relation to *Flores* litigation. Documents that DHS and HHS officials filed in support of the government’s Ninth Circuit stay request in *Flores* have disclosed that between, March 20 and September 9, 2020, [CBP expelled more than 159,000 individuals along the Southwest border pursuant to Title 42](#). Included in this total number of expulsions are children. And CBP reports that it has [expelled 8,800 unaccompanied children](#).

Migrant Protection Protocols a/k/a “Remain in Mexico”

The U.S. Department of Homeland Security (DHS) [began implementing](#) the [Migrant Protection Protocols](#) (MPP), also known as “Remain in Mexico,” on January 29, 2019. The essential feature of MPP

is to return non-Mexican asylum seekers who arrive at a port of entry along the United States' southern border to border towns in Mexico to wait until the conclusion of their immigration cases in U.S. immigration courts. Mexican nationals are excluded from MPP. To date, over [65,000](#) asylum seekers have been sent to dangerous border towns in Mexico under MPP, including [16,000 children and at least 500 infants](#).

Prior to the pandemic, [unsanitary living conditions, the lack of due process along with long wait times for MPP cases](#) to come before immigration judges were some of the many concerns raised by immigrant advocates. As the immigration court backlog grows, and the MPP courts remain [indefinitely closed](#), [immigration attorney's](#) fear that most MPP cases will take years which is alarming when considering the dangers asylum seekers face.

The US State Department has designated many parts of Mexico, like the border town of [Tamaulipas](#), with a Level 4 Advisory, "Do Not Travel," which is also the same advisory that DOS designates war zones like [Syria](#). As of [May 13, 2020, Human Rights First reports](#) that there were 1,114 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against asylum seekers and migrants forced to return to Mexico by the administration, included in reported attacks are [265 cases of kidnapping and/or attempted kidnapping](#) of children returned to Mexico.

Unsurprisingly, the dangerous conditions in Mexico has led to [family separation](#). In some instances, children have become separated from their parents due to kidnappings and disappearances. In other cases, children have been driven out of despair to flee their makeshift refugee camps or shelters, with and without their parent's knowledge, and made the difficult journey to the border alone. And, as [KIND reports](#), children who arrive at the border with an adult other than their parent (aunt, uncle, grandparent) have been separated under MPP, whereby the adult is returned to Mexico and the child is designated unaccompanied and taken into government custody inside the United States.

As of [July 17, 2020, CBP](#) reported that [approximately 64,000](#) individuals have been placed in MPP and only 523 individuals in MPP were granted asylum or withholding of removal under the Convention Against Torture. In contrast, over [50,000 individuals lost their cases](#) and were expelled from the U.S.

Asylum Cooperative Agreements (ACAs)

In 2019 the United States entered into [Asylum Cooperative Agreements \(ACAs\)](#) with Guatemala, Honduras, and El Salvador. The ACAs between the Northern Triangle governments allow for U.S. immigration officials to send individuals from the Northern Triangle nations arriving at the U.S./Mexico border back to a Northern Triangle country, rather than allowing them to apply for asylum in the United States. All three countries signed ACAs after President Trump cut off all U.S. foreign assistance citing the countries' inadequate efforts to stem irregular migration.

[Guatemala](#) is currently the only country complying with the ACAs. [MPI reports](#) that by February 25, 2020, "more than 700 migrants from El Salvador and Honduras had been removed under the agreement, a number that appears almost double the tally on January 31, 2020."

On November 19, 2019, the Department of Justice and the Department of Homeland Security (DHS) adopted a joint interim final rule ("IFR") [2] titled ["Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act."](#) The IFR authorizes DHS and DOJ

officials to implement the ACAs made between the United States and Guatemala, Honduras, and El Salvador.

Asylum Ban 2.0

On July 16, 2019, the administration issued an [interim final rule](#), “Asylum Eligibility and Procedural Modifications,” commonly referred to as either the “third country transit ban” or “Asylum Ban 2.0.” Under this rule, all individuals who enter, attempt to enter, or arrive to the United States across the southern border are deemed ineligible for asylum if they have transited through at least one country outside of their country of origin, and have not applied for protection in that country.

The rule was struck down in two court rulings, one [ruling from a federal court in Washington, D.C.](#) and the other in July 2020, [East Bay Sanctuary Covenant v. Trump](#). Judges in both cases held that the administration’s rule invoking the “third country transit ban,” violated U.S. immigration laws and unlawfully sidestepped a public comment period before taking effect. The [East Bay Sanctuary Covenant](#) ruling made the additional point to say that the rule was “arbitrary and capricious.”

Prompt Asylum Claim Review (PARC) and the Humanitarian Asylum Review Process (HARP) [PARC/HARP]

[Prompt Asylum Claim Review \(PARC\) and the Humanitarian Asylum Review Process \(HARP\)](#) are two pilot programs that the Department of Homeland Security launched in October 2019 in El Paso, Texas and then expanded across the border February 2020. HARP applies to Mexican nationals and PARC applies to everyone else. Both programs by design share the same goal - to expeditiously process asylum at the border and deport individuals that fail to establish a credible fear of return. PARC/HARP is reportedly intended to apply to individuals subject to Asylum Ban 2.0, the ban that bars most migrants traveling to the U.S. Southern land border from seeking asylum unless they are first denied asylum in one of the countries they passed through on their way to the U.S. According to AILA, [“the rule effectively ends the possibility for Central American asylum seekers to seek asylum in the U.S first.”](#)

Many [asylum seekers](#) being processed at the border are subjected to the [asylum transit ban](#), which blocks asylum eligibility for those who traveled through another country before reaching the United States. As a result, Central Americans are especially impacted by the ban. They are only eligible for a more limited form of relief (withholding of removal) under a heightened fear screening standard that is much harder to meet.