



Submitted via <http://www.regulations.gov>

December 18, 2019

Andrew Davidson, Chief,
Asylum Division, Refugee Asylum and International Operations
U.S. Citizenship & Immigration Services,
20 Massachusetts Avenue NW, Suite 1100
Washington, D.C. 20529-2140

Lauren Alder Reid, Assistant Director,
Office of Policy, Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2616
Falls Church, VA 22041

**RE: USCIS Docket No. USCIS–2019–0021; RIN 1615–AC49
EOIR Docket No. 19–0021; A.G. Order No. 4581–2019; RIN 1125–AA98
Implementing Bilateral and Multilateral Asylum Cooperative Agreements
Under the Immigration and Nationality Act**

Dear Mr. Davidson and Ms. Alder Reid:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments in strong opposition to the Interim Final Rule (IFR) issued on November 19, 2019 entitled, “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act.” This rule violates international and domestic law, and eviscerates the protections the United States guarantees to those fleeing persecution and torture. Moreover, a change of this magnitude, which fundamentally undermines the asylum process in the United States, should not have been issued as an IFR. This rule will be a stain on American history and we urge you to immediately rescind it.

CLINIC embraces the core Gospel value of welcoming the stranger. CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs. CLINIC is the largest nationwide network of nonprofit immigration programs, with approximately 375 affiliates in 49 states and the District of Columbia. Through its affiliates, CLINIC advocates for the just and humane treatment of asylum seekers through direct representation, pro bono referrals, and engagement with policy makers.

I. Returning Asylum Seekers to Dangerous Countries Undermines the Purpose of Asylum

The purpose of the U.S. asylum system is to offer protection to those fleeing persecution in accordance with obligations the United States has accepted under international law.¹ Until recently the United States has been the world leader in resettling refugees,² and has generally been seen as a beacon of hope for the most vulnerable around the world.

The IFR issued on November 19, 2019 allows the U.S. government to send asylum seekers who arrive at the southern border of the United States to countries with which the United States has “asylum cooperative agreements.” The U.S. government has signed such agreements with the Northern Triangle countries of Guatemala, Honduras, and El Salvador.³ Since the IFR was issued, the United States has already begun sending asylum seekers to Guatemala⁴ and has announced it will soon send others to Honduras⁵ and El Salvador. However, the President of El Salvador has admitted that his country does not have capacity to process these asylum seekers.⁶ Most Central American asylum seekers are fleeing international criminal organizations such as the MS-13 and Calle 18, gangs which have reach throughout Central American and beyond.

The Immigration and Nationality Act (INA) section 208(a)(2)(A) allows the U.S. government to enter into Safe Third Country Agreements. That provision of the INA states that a noncitizen is not eligible for asylum:

if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's

¹ See *E. Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 857 (N.D. Cal. 2018) *appeal pending*, (“Congress enacted the Refugee Act of 1980, including 8 U.S.C. § 1158, ‘to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. No. 6577, to which the United States acceded in 1968.’ *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 436-37, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987).”

² “After the United States adopted the Refugee Act of 1980, it resettled more refugees than every other country in the world combined for more than 30 years in a row. That ended when the United States took in only 33,000 refugees in 2017, fewer than half of the 69,000 accepted by other countries, according to the Pew Research Center.” Noah Lanard, *The United States Is No Longer the World Leader in Resettling Refugees: For the first time, Canada Is Now No. 1*, MOTHER JONES, Jan. 23, 2019, <https://www.motherjones.com/politics/2019/01/the-united-states-is-no-longer-the-world-leader-in-resettling-refugees/>.

³ 84 Fed. Reg. 63995.

⁴ Geneva Sands et al, *Trump Administration Begins Deporting Asylum Seekers to Guatemala*, CNN, Nov. 21, 2019, <https://www.cnn.com/2019/11/21/politics/guatemala-asylum-agreement/index.html>.

⁵ “The U.S. is preparing to send asylum seekers to Honduras, even if they are not from the Central American country, and effectively end their chances of seeking asylum in the United States, according to documents obtained by the Los Angeles Times.” Molly Hennessy-Fiske and Molly O’toole, *U.S. to Send Asylum Seekers to Honduras, Bypassing American Asylum*, LOS ANGELES TIMES, Dec. 16, 2019 <https://www.latimes.com/world-nation/story/2019-12-16/us-poised-to-send-asylum-seekers-to-honduras>.

⁶ “President Nayib Bukele: . . . We don't have asylum capacities, but we can build them.

Sharyn Alfonsi [CBS News]: But you don't have it now.

President Nayib Bukele: We don't have it now.”

Sharyn Alfonsi, “*Our Whole Economy Is In Shatters*”: *El Salvador's President Nayib Bukele on the Problems Facing His Country*, 60 MINUTES, Dec. 15, 2019, <https://www.cbsnews.com/news/el-salvador-president-nayib-bukele-the-60-minutes-interview-2019-12-15/>.

nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which *the alien's life or freedom would not be threatened* on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have *access to a full and fair procedure* for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States. [emphasis added.]

Notably, nowhere in the IFR rulemaking does the Department of Homeland Security (DHS) or the Department of Justice (DOJ) allege that Guatemala, Honduras, or El Salvador are safe. Indeed, the agreements the United States entered into are called “asylum cooperative agreements,” not “Safe Third Country Agreements.” As such, they are not permitted under the INA.

Moreover, the agencies have issued an IFR, not giving the public an opportunity to provide feedback or express concerns before this drastic change in procedure was implemented. This regulation threatens to end asylum as we know it in the United States. It contravenes Congress’s clear will in codifying an asylum regimen, and it violates the Administrative Procedure Act by radically redefining the U.S. asylum system without going through a notice and comment process.

To date the United States has only entered into a Safe Third Country agreement with Canada. As the current rulemaking notes, entering into that process involved a two-year negotiation between Canada and the United States to ensure that the agreement would be fairly implemented.⁷ There was little concern at the time that Canada met the definition of “safe” or that it had adequate personnel and processes in place to fairly adjudicate asylum applications of those subject to the agreement. Moreover the terms of the Canada-U.S. Safe Third Country Agreement itself provides for numerous exceptions to the rule, including exempting asylum seekers who are not at ports of entry and those with close relatives in the other country.⁸ Most importantly, however, Canada was not, and is not, a country from which large numbers of its citizens are fleeing persecution. Since 2010 the highest number of asylum seekers in the United States from Canada has been 9, and most years the number has been 5, 4, or 0.⁹

By way of contrast, for each of the past four years reported—2015, 2016, 2017, and 2018—three of the top four countries from which asylum was granted in the United States were El Salvador, Honduras, and Guatemala; only China had a higher number of asylum grants.¹⁰ These asylum seekers won their claims, in spite of efforts by the administration to restrict asylum eligibility for Central Americans,¹¹ because the countries they fled were so dangerous. Doctors without Borders

⁷ 84 Fed. Reg. 64005.

⁸ See, generally, UNHCR, *Monitoring Report Canada - United States “Safe Third Country” Agreement*, 29 December 2004 – 28 December 2005, <https://www.uscis.gov/sites/default/files/archive/appendix-a.pdf>.

⁹ Department of Homeland Security, *Refugees & Asylees 2018 Data Tables*, <https://www.dhs.gov/immigration-statistics/refugees-asylees>.

¹⁰ U.S. Department of Justice, Executive Office for Immigration Review, *Statistics Yearbook, Fiscal Year 2018*, Table 15 at 29, <https://www.justice.gov/eoir/file/1198896/download>.

¹¹ Katie Benner and Caitlin Dickerson, *Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum*, THE NEW YORK TIMES, June 11, 2018, <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

has reported that these countries are experiencing “unprecedented levels of violence outside of a war zone.”¹²

Each of these Northern Triangle countries is subject to travel warnings by the U.S. Department of State to U.S. citizens. The Department of State warns Americans to reconsider travel to most of Honduras and states U.S. citizens should not travel to one region.¹³ The Department of State (DOS) warns Americans to exercise increased caution in traveling to El Salvador.¹⁴

In Guatemala—the country to which the United States has already begun sending vulnerable asylum seekers, DOS has a general warning to exercise increased caution, but advises U.S. citizens to reconsider travel to five regions.¹⁵ The reason for these warnings is, “Violent crime, such as armed robbery and murder, is common. Gang activity, such as extortion, violent street crime, and narcotics trafficking, is widespread. Local police may lack the resources to respond effectively to serious criminal incidents.”¹⁶ Moreover, as of August 2019, the Guatemalan asylum office has not resolved any cases in 2019 and employs only four people.¹⁷

Sending these most vulnerable people, often children and families, to dangerous countries in which they have no ties is a scourge on our history as being a world leader in accepting refugees and on our tradition of being a country founded on faith-based values. Pope Francis recently said “It is not just about migrants: it is about putting the last in first place.”¹⁸ This principle derives directly from the new testament in which Matthew states, “whatever you do to the least of these brothers and sisters of mine you do to me” (Matthew Ch. 25, v40.)

The United States has long been the world leader in protecting refugees; we are now, not only turning our backs on the most vulnerable, but delivering them into harm’s way.

¹² Doctors Without Borders, *Forced to Flee Central America’s Northern Triangle: a Neglected Humanitarian Crisis*, updated, June 14, 2017, https://www.msf.org/sites/msf.org/files/msf_forced-to-flee-central-americas-northern-triangle_e.pdf.

¹³ U.S. Department of State, *Honduras Travel Advisory*, June 24, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/honduras-travel-advisory.html>

¹⁴ U.S. Department of State, *El Salvador Travel Advisory*, Oct. 1, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html>

¹⁵ U.S. Department of State, *Guatemala Travel Advisory*, Feb. 28, 2019,

¹⁶ *Id.*

¹⁷ David C. Adams, *Guatemala’s “Embryonic” Asylum System Lacks Capacity To Serve As Safe U.S. Partner, Experts Say*, UNIVISION NEWS Aug. 2, 2019, <https://www.univision.com/univision-news/immigration/guatemalas-embryonic-asylum-system-lacks-capacity-to-serve-as-safe-u-s-partner-experts-say>. (“Its asylum section has only four officers and hasn’t resolved a case this year, according to the United Nations High Commission on Refugees (UNHCR) in Guatemala. The office received only 262 asylum requests in 2018 and 204 so far in 2019, with 423 cases awaiting a decision.”).

¹⁸ Pope Francis, *Pope’s Message For 2019 World Day Of Migrants And Refugees: Full Text*, Vatican News, May 27, 2019, <https://www.vaticannews.va/en/pope/news/2019-05/pope-francis-message-world-day-migrants-refugees-full-text.html>.

II. Conclusion

For all of the reasons discussed above, CLINIC urges that the rule change allowing the United States to send asylum seekers to countries with which it has entered into an “asylum cooperative agreement” be withdrawn.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, Director of Advocacy, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Anna Marie Gallagher". The signature is written in a cursive, flowing style.

Anna Marie Gallagher
Executive Director