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New Asylum Cooperative Agreements Put Asylum Seekers in Danger

Re: Comment on 8 CFR Part 208 [Docket Numbers USCIS-2019-0021 and EOIR Docket No. 19-0021] RINs 1615-AC44 and 1125-AA98 Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act.

Dear Mr. Davidson and Ms. Reid,

I am writing on behalf of Physicians for Human Rights (PHR) to express our strong objections to the proposed rule: 8 CFR Part 208 [Docket Numbers USCIS-2019-0021 and EOIR Docket No. 19-0021] RINs 1615-AC44 and 1125-AA98 Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act.

PHR is an international non-governmental organization that for more than 30 years has used science and the uniquely credible voices of medical professionals to document and call attention to severe human rights violations around the world.

In this Public Comment, PHR argues that **the agreements with El Salvador, Guatemala, and Honduras violate U.S. and international law on the right to seek asylum and pose a serious risk to the safety of those seeking protection in the United States.**

The bilateral Asylum Cooperative Agreements provide a framework within which the U.S. government can send asylum seekers from the U.S.-Mexico border to countries in which they are likely to face grave risks. These agreements violate the provisions of U.S.



law which prohibit “safe third country” relocation of asylum seekers unless that third country can ensure their protection from persecution and guarantee a full and fair asylum process.¹ The new agreements also violate the principle of non-refoulement in international law, which holds that states should not return asylum seekers to places where they could be subjected to “great risk, irreparable harm, or persecution.”²

PHR Has Documented the Myriad Threats Asylum Seekers Will Face in Northern Triangle Countries

PHR medical experts have conducted hundreds of forensic medical evaluations for Guatemalan, Honduran, and Salvadoran asylum seekers which have corroborated their testimonies of persecution.

PHR’s research and documentation also show how asylum seekers who came from or relocated to all three countries faced grave threats or violence, directly calling into question this new policy.

In PHR’s October 2019 report [“If I went back, I would not survive.”](#) PHR documented the cases of asylum seekers fleeing violence in Mexico and Central America, including seven individuals from El Salvador and seven from Honduras. All of the evaluated asylum seekers provided credible accounts and corroborating evidence that they fled persecution that resulted in significant trauma. Several of these asylum seekers endured multiple forms of persecution and trauma, reflecting the compounding violence in several countries that drives so many from this region to seek asylum.

- 16-year-old Adriana lost a pregnancy when her boyfriend, who was connected to local gangs in El Salvador, beat her. He told Adriana’s mother that “blood would flow” if they tried to denounce the gang to the police.
- Juana, a 27-year-old-transgender woman from El Salvador, faced widespread discrimination and persecution. Her family no longer spoke to her, and she could

¹ 8 U.S.C. § 1158(a)(2).

² Convention on Refugees, United Nations High Commissioner for Refugees; Office of the United Nations High Commissioner for Human Rights, “The Principle of Non-Refoulement under International Human Rights Law,” <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>; David Weissbrodt and Isabel Hortreiter, “The Principle of Non-Refoulement: Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties,” Scholarship Repository: University of Minnesota Law School, 1999, https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty_articles; Convention for the Protection of All Persons from Enforced Disappearance, <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>; 1951 Geneva Convention Relating to the Status of Refugees, Article 33 (1); see e.g. *MSS v. Belgium and Greece*, 30696/09, European Court of Human Rights, 1, 12 (2011) <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-103050%22%7D>; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Inter-American Court of Human Rights, Advisory Opinion OC 21/14 of August 19, 2014, 1, 83, http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.



not get a job. Police officers often harassed her, and she was sexually assaulted by two officers. When she threatened to report the incident, they replied “We hope you do. Then it will be worse for you next time,” demonstrating the lack of accountability of state security forces in El Salvador. Juana screened positive for post-traumatic stress disorder (PTSD), which is seen at high rates among transgender asylum seekers, as well as the broader transgender community.

- Jorge, 60, was attacked by gang members in Honduras who broke his clavicle with a baseball bat after he tried to rescue his nephews from recruitment into the gang. A PHR medical expert found that Jorge screens positive for post-traumatic stress disorder and moderate depression.
- Javier, Rosa, and their three children fled El Salvador after gang members beat Javier when he missed a monthly payment of protection money to the gang. Javier reported symptoms of PTSD, severe depression, and anxiety.
- Sergio, Romina, and their two sons fled from Honduras to Guatemala after an attack by members of organized crime. Their son Antonio, 8, was attacked by two men with a machete. His attackers missed killing him by just a few centimeters when they hurled the weapon at the boy as he rode on the back of a motorcycle with his parents. Sergio told PHR that, after two months in Guatemala, he was again found by the very men they had fled, so his family then went to the U.S.-Mexico border to seek protection in the United States. Sergio did not undergo a full clinical evaluation, but Romina screened positive for major depression and post-traumatic stress disorder. Antonio screened positive for PTSD and anxiety.

PHR’s June 2019 report, [“There is No One Here to Protect You.”](#) analyzed more than 180 physical and psychological evaluations of children seeking asylum in the United States. The vast majority of the children evaluated – 89 percent – were from the Northern Triangle countries of El Salvador (36 percent), Guatemala (19 percent), and Honduras (34 percent). Children reported that they survived direct physical violence (78 percent) and sexual violence (18 percent), threats of violence or death (71 percent), and witnessing acts of violence (59 percent) in their home countries.

PHR’s clinicians documented negative physical aftereffects of this abuse: from musculoskeletal, pelvic, and dermatologic trauma to severe head injuries. 76 percent of children were suspected to have or diagnosed with at least one major mental health issue, most commonly post-traumatic stress disorder (64 percent), major depressive disorder (40 percent), and anxiety disorder (19 percent). This violence was most often gang-related (60 percent), but a significant portion of children (47 percent) faced violence perpetrated by family members. Children also reported that their government authorities were unable or unwilling to provide effective protection from harm.



The extreme levels of pervasive violence described by more than 160 children from the Northern Triangle of Central America – El Salvador, Guatemala, and Honduras – further demonstrate the harms that will flow from the U.S. administration’s decision to send asylum seekers to those countries.

Data on Violence from the Northern Triangle Shows the Same Patterns

In PHR’s October 2019 report [“If I went back, I would not survive.”](#) PHR lays out the patterns of violence in Central America, which makes the Asylum “Cooperative” Agreements even more worrisome. These policies ignore the serious un-checked violence and weak government institutions that are unable or unwilling to protect their people as major factors pushing asylum seekers to the United States.

- Despite a recent drop in homicide rates, El Salvador remains one of the most violent countries in the world, with 62 murders per 100,000 people, almost 12 times the U.S. rate. Two thirds of these murders are gang-related. El Salvador’s state security forces have instituted harsh anti-gang tactics that routinely involve excessive use of force, arbitrary arrests, and extrajudicial executions. They conduct raids without warrants on homes of young Salvadoran men who have been profiled as suspected gang members due to their gender, age, and neighborhood.
- While Honduras halved its homicide rate in 2018, it still stood at 42.8 per 100,000 people in 2017, and eight violent massacres took place in the country in the first two weeks of 2019 alone.
- Although Guatemala is a gateway for Salvadorans and Hondurans trying to reach the United States’ southern border, the grim realities of its violent crime statistics underscore its unsuitability as a place of refuge for asylum seekers. Guatemala’s homicide rate of 22.4 per 100,000 is more than four times the U.S. rate, and more than 97 percent of crimes go unsolved.
- Some groups are particularly at risk: Central American youth are 10 times more likely to be killed when compared to children in the United States as they become victims to gangs, state security forces, and organized crime. Gangs especially seek out young recruits, as they can more discreetly smuggle drugs and weapons, or collect extortion payments. Taxi drivers often are forced to carry illicit goods or act as informants in neighborhoods controlled by rival gangs. Women are especially vulnerable: two out of three women killed in Central America are murdered solely because of their gender, a pattern of violence known as “femicide.” Those who resist forced prostitution and/or becoming sexually enslaved by gangs risk being killed. The LGBTI (lesbian, gay, bisexual, transgender, and intersex) community also faces threats, arbitrary arrests, killings, and other violence by state and non-state actors.



In PHR's June 2019 report, [“There is No One Here to Protect You.”](#) PHR described the extreme gaps between laws designed to protect children and enforcement mechanisms.

- The Northern Triangle countries – El Salvador, Guatemala, and Honduras have laws in place to protect children, but enforcement remains a challenge. El Salvador, Guatemala, and Honduras have criminalized child abuse, but it remains a serious problem in all three countries, with an extremely high rate of impunity for crimes against children in Guatemala. Domestic violence is against the law in El Salvador and Honduras, however, domestic violence laws are poorly enforced in El Salvador, and punishments for domestic violence vary widely in Honduras. Guatemala and El Salvador have enacted statutory rape laws, but Honduras does not even have a law criminalizing statutory rape. Reports indicate that the sexual exploitation of minors remains a problem in El Salvador and Honduras. The U.S. State Department reported that rape laws were ineffectively enforced in both El Salvador and Guatemala in 2018. In spite of the existence of regional and national laws which should protect children, these laws are not adequately enforced, which may amount to failure of state obligation to protect children.
- Responses to gang violence in the region mostly take the form of punitive security policies with names like “Iron Fist” and “Zero Tolerance”, which rely on mass arrest, incarceration, and militarized policing, with reports of police brutality and extrajudicial killings. Alternative approaches such as safe school initiatives, specialized services, and violence prevention measures are positive, but chronically underfunded and limited in capacity. High-level initiatives to end corruption and impunity for violence, such as the UN’s Commission against Impunity in Guatemala, though widely popular, face political opposition and an uncertain future.

Finally, the danger of sending asylum seekers to Northern Triangle countries is underscored by numbers from the U.S. asylum system. More than 8,400 individuals from Northern Triangle countries were granted asylum in the United States in 2017, including almost 2,000 people from Honduras, almost 3,000 from Guatemala, and more than 3,400 from El Salvador.³ The U.S. government itself, in its grants of asylum, has recognized how unsafe these countries are for those fleeing persecution. The State Department has issued Level Two travel alerts (Exercise Increased Caution) for El Salvador and Guatemala and a Level Three alert (Reconsider Travel) for Honduras.⁴ The

³ Nadwa Mossaad, Department of Homeland Security Office of Immigration Statistics, “Annual Flow Report: Refugees and Asylees: 2017,” March 2019, https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2017.pdf.

⁴ U.S. Department of State, Bureau of Consular Affairs, “El Salvador Travel Advisory,” October 1, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html>; U.S. Department of State, Bureau of Consular Affairs, “Guatemala Travel Advisory,” February 28, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/guatemala-travel-advisory.html>; U.S.



Honduras page on the State Department website warns, “Violent crime, such as homicide and armed robbery, is common. Violent gang activity, such as extortion, violent street crime, rape, and narcotics and human trafficking, is widespread. Local police and emergency services lack sufficient resources to respond effectively to serious crime.”⁵

It is a human right for those fleeing persecution to seek asylum, a right that the United States is obligated to guarantee under international treaties to which it is a party and under U.S law. For decades, the United States has provided due process for those applying for asylum who have escaped torture, killings, and persecution, regardless of how they arrived at the country. The new Asylum Cooperative Agreements clearly violate U.S. obligations under both domestic and international human rights law. We urge you to reverse these dangerous policies immediately.

Sincerely,

Donna McKay
Executive Director
Physicians for Human Rights

Department of State, Bureau of Consular Affairs, “Honduras Travel Advisory,” June 24, 2019, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/honduras-travel-advisory.html>.

⁵ Ibid.