



Insight

An Update on Asylum Laws and Policy Changes at the Border

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Today, the United States and Mexico are assessing the success of their June agreement to step up enforcement against unauthorized border crossers. This agreement aimed to dramatically reduce the influx of Central American migrants traveling through Mexico to the United States.

While [within historical norms](#), unauthorized crossings have increased significantly in the past year. Over [593,000](#) individuals have been apprehended as of May 2019, two-thirds of which were either unaccompanied children or families. This is the largest number of border crossers since 2007, when 611,000 were apprehended, most of which were single adults. The number of families that have crossed the border this year is more than three times the number of family crossings in all of last year – a change driven by a swell of asylum seekers fleeing violence in Honduras, Guatemala, and El Salvador.

In response, the Trump Administration, Congress, and Mexico have made several changes to border operations and the asylum process. The following details these changes, as well as outlines the next steps for the United States and Mexico in facing this new challenge.

“Remain in Mexico” Policy

Many individuals caught crossing the border illegally are eligible for expedited removal, a removal process that does not give them the right to an immigration hearing. This is not the case for asylum seekers. Individuals found to have a credible fear of persecution in their home countries are entitled to a hearing where an immigration judge will rule on their eligibility for asylum. The immigration court system, however, currently faces a backlog of [875,000 cases](#), resulting in an average wait time of two years before individuals facing deportation have their court date.

The Department of Homeland Security (DHS) recently instituted a [new policy](#), called the Migration Protection Protocols (MPP), which allows asylum seekers to be returned to Mexico while awaiting their immigration hearings. The new “Remain in Mexico” policy was rolled out early this year and is accelerating: of the [17,000 asylum seekers](#) returned to Mexican border towns since January, [5,000](#) were returned in June alone. While the Mexican government has been supportive of the policy, reports suggest that resources to house these migrants are scarce and asylum seekers may be facing [dangerous conditions](#) during their stay in Mexico.

Before MPP, border crossers awaiting immigration court hearings were held in U.S. holding facilities. The law does not allow children, however, to be held in immigration detention for [more than 20 days](#). Apprehended families with children are therefore eligible for release into the United States pending their immigration hearings, as well as certain adults not convicted of crimes or considered to be a “flight risk.”

A policy allowing for the release of eligible migrants is more cost-effective for the U.S. government. But the president has been critical, claiming it allows border crossers to disappear into the United States and never

report to their hearing. According to the [latest available data](#), however, 89 percent of asylum seekers reported to court in FY2017. Only 11 percent of asylum seekers were issued removal orders *in absentia* – meaning they failed to appear for their hearing. Among all the unauthorized immigrants facing deportation, 28 percent were issued removal orders *in absentia*.

Administrative Changes to Asylum Eligibility

The Trump Administration has also made targeted changes to U.S. law to dissuade individuals from seeking asylum in the United States. In June 2018, then-Attorney General Jeff Sessions ruled that individuals facing persecution from other individuals, such as victims of gang violence or domestic violence, do not qualify for asylum, arguing instead that an asylee must be facing persecution from a state government. This ruling was later [overturned](#) by a U.S. district court.

In the same vein, Attorney General William Barr [barred the temporary release](#) of asylum seekers who are found to have credible fear of persecution or torture, mandating instead that they remain in detention – a ruling that by law cannot apply to families with children. AG Barr’s order was also [overturned](#) by a U.S. federal judge, who argued that it violates asylum seekers’ constitutional right to due process.

President Trump instructed DHS to [alter the U.S. asylum-seeking process](#), with a July 28 deadline to implement these changes. The president’s directives would institute a new fee for asylum applications and shorten the time by which asylum applications must be processed. It would also prevent nearly half of asylum seekers from legally working in the United States while their application is pending and prevent U.S. immigration judges from considering additional types of relief for asylum applicants, such as [Temporary Protected Status \(TPS\)](#).

Most recently, the Department of Homeland Security instituted a [new rule](#) preventing individuals from applying for asylum in the United States if they first traveled through a “safe country” in which they did not seek asylum. While the rule was [overturned](#) by a federal judge shortly after being issued, the Supreme court [recently ruled](#) that it can go forward. The U.S. rule does not mandate that Mexico accept these asylum seekers; however, it will effectively prevent all Central American migrants from seeking refuge in the United States unless they were first denied asylum in Mexico.

Emergency Federal Aid

Faced with overcrowded holding facilities and the incapability of the U.S. government to care for families with children, Congress passed [a bill](#) this month providing emergency federal aid. A total of \$4.6 billion was appropriated, with the bulk (\$2.9 billion) allocated to the Office of Refugee Resettlement – the agency tasked with caring for unaccompanied children and children separated from their families. Congress also authorized funds for U.S. Customs and Border Protection and Immigration and Customs Enforcement, which house unauthorized adults and families, as well as the Executive Office for Immigration Review, which rules on asylum cases. Congress allocated further funds to the Army, Marine Corps, Air Force, and National Guard.

U.S.-Mexico Agreement

On June 7, following a threat from President Trump to impose tariffs on all imports from Mexico (valued at nearly [\\$350 billion](#) in 2018), the United States and Mexico reached [an agreement](#) to stem the flow of border crossers. Mexican officials pledged to take several steps to increase immigration enforcement, including deploying the national guard to its southern border with Central America. Mexico also agreed to support the

United States' "Remain in Mexico" policy by accepting individuals who are waiting for U.S. judges to rule on their asylum claims and [offering jobs](#) to Central Americans who seek asylum in Mexico.

It remains to be seen how effective these measures will be. President Trump has indicated that if he does not see a significant drop in unauthorized border crossers, he will require Mexico to sign a "safe third country" agreement by September. This agreement would make Mexico the "first country of asylum" for individuals traveling up from Central America, meaning all Central American applicants will be denied asylum in the United States because they should have instead sought refuge in Mexico.

There would be several issues with such an agreement, even if Mexico is willing. First, Mexico is ill equipped to absorb these migrants, both because of its relatively weaker economy and a lack of infrastructure. Mexico has also experienced [increasing levels of violence](#) itself, making it a questionable place of refuge. Therefore, a safe third country agreement would likely have two effects: to create a crisis in Mexico similar to the one currently faced by the United States, and to discourage Central Americans from fleeing violence at all.

Alternatively, the United States and Mexico have also [expressed support](#) for a Mexican-led development plan in El Salvador, Guatemala, and Honduras. Such an approach would address the border crisis at its source, help to stabilize Central America and reduce the need for individuals to seek asylum.