INTERNATIONAL ARRANGEMENTS BY THE UNITED STATES TO SLOW ASYLUM APPLICANTS

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In 2019, the United States, by the use of economic pressure, obtained agreements from Mexico and the Northern Triangle countries to help the U.S. slow applications for asylum. This paper examines the agreements and the circumstances leading to their negotiation. It examines their legality under international law.

I. BACKGROUND

A. Context

A major problem in U.S. policies toward immigration from Mexico and Central America has been an unwillingness by some U.S. administrations, especially the Trump administration, to invest in attacking the sources behind migration: poverty, violent crime, gangs and transnational organized crime, and drug trafficking, which is fueled by the demand in the U.S. for drugs and guns exported by the U.S. or bought in the U.S. and brought across the border. Instead, the Trump administration has adopted a very restrictive immigration policy: drastically cutting the refugee cap, prohibiting migrants passing through another country from seeking asylum in the United States, increasing immigration enforcement, and increasing immigrants’ hardships by separating parents from young children, and not providing proper housing and care to them.

The Trump administration’s policy puts the Northern Triangle countries – Guatemala, El Salvador, and Honduras – along with Mexico in the crosshairs. These countries account for the top four nationalities detained at the U.S.-Mexico border. The Trump administration has pressured the Northern Triangle countries to restrict Central American migration through bilateral agreements with each other. In particular, this paper focuses on the “Remain in Mexico” (or Migration Protection Protocols or MPP) and the Asylum Cooperation Agreements, also known as the safe third party countries.

B. Homeland Security Signs MOC on Border Security Cooperation with N. Triangle Countries While Trump Administration Cuts U.S. Assistance

On March 28, 2019, Secretary of Homeland Security Kirstjen M. Nielsen signed, on behalf of the United States, a Memorandum of Cooperation (MOC) on border security cooperation in Central America. Almost simultaneously, U.S. President Donald Trump said that he was planning on cutting U.S. assistance to the three countries and has threatened to close the border with Mexico.


3 This section is excerpted from Bruce Zagaris, While DHS Calls for Cooperation with the Northern Triangle, President Trump Seeks to Cut Aid and Close the Border, 35 INT’L ENFORCEMENT L. REP. 144 (April 2019).

The MOC and the End of US Aid

The Department of Homeland Security (DHS) Secretary Nielsen met with Guatemalan Minister of Government Enrique Degenhart, Honduran Security Minister Julian Pacheco, and Salvadoran Minister of Justice and Public Security Mauricio Landaverde

The MOC – the first ever multilateral compact on border security – has the goal of improved synchronized cooperation between the countries to strengthen border security, prevent the formation of new migrant caravans, and address the root causes of the migration crisis through synchronized efforts. It touches on the following: human trafficking and smuggling; combating transnational criminal organizations and gangs; expanding information and intelligence sharing; and strengthening air, land, and maritime border security.

The signatories will pursue each of these focus areas through an array of agreed-upon initiatives. Technical working groups with representatives from each country will monitor the initiatives and ensure they are carried out expeditiously. The law enforcement groups will meet periodically throughout the year, with Secretary Nielsen and the Northern Triangle Ministers continuing to meet in the coming months to ensure continued momentum.

Secretary Nielsen expressed her gratitude for the continued collaboration and partnership of the three countries as they work to slow the increased irregular migration and develop a regional approach to addressing the ongoing humanitarian and security emergency at the southern border of the U.S.

Notwithstanding Secretary Nielsen’s expression of gratitude to the three governments, late on March 28, 2019, U.S. President Donald Trump notified Congress that it intends to reprogram $450 million in aid to the three countries and has already sent instructions to embassies in the region.5

In 2016, after an increased number of Central American children came to the Texas border, the Obama administration doubled aid to the region to approximately $750 million. The aid targets violence and insecurity as well as governance and corruption. Much of the aid is disbursed through U.S. civil-society organizations.6

The initiatives of the U.S. and other governments against transnational organized crime in Central America can be classified in eight areas: whole-of-government solutions; interdiction of criminal flows; targeting of transnational criminal organization leaders; use of the military in a domestic law enforcement; institutional reform within law enforcement; targeting the financial flows and resources of organized criminal groups; prison control and reform; and binational and multinational cooperation against organized crime.7 The MOC is a non-binding document that essentially entails a commitment to continue ongoing talks and cooperation efforts on security and law enforcement.

Threat to Close U.S.-Mexican Border

6 Id.
On March 31, 2019, President Trump threatened to close the border with Mexico, notwithstanding warnings that shutting the border would cause immediate economic damage to U.S. consumers and businesses while not slowing much the flow of migrants into the U.S.\(^8\)

Clearly, cutting aid to the three Northern Triangle countries and shutting the border with Mexico would exacerbate the problem since the violence, insecurity, and lack of opportunities in the three countries stimulate the demand to emigrate to the U.S. The lack of a comprehensive and bipartisan approach to immigration continues to deteriorate the U.S. institutions and processes by which the U.S. government is able to deal with the migration crisis.

Among the effects of closing the border or “large sections of the border,” as President Trump announced on March 29, the U.S. Chamber of Commerce said on April 1 that it would threaten approximately $1.7 billion of goods and services crossing the border daily, nearly half a million legal workers, students, shoppers, and tourists.

U.S. industries, including agriculture and auto depend on Mexico for trade, both by selling goods and services into Mexico and by using Mexican materials in their products. Automakers would be especially impacted since closing the border would disrupt supply chains for auto parts. Many manufacturers of flat-screen TVs, computer hardware, and medical devices are set up in Mexico. The apparel industry sources many raw materials from the U.S. and sews them into finished products in Mexico.\(^9\)

U.S. consumers depend on Mexico for fresh fruit and vegetables, packaged foods, and beer while Mexico depends on the U.S. for soybeans, corn, dairy products, chickens, beef, and other goods.

The border cities are tied together in all kinds of ways. Because Northern Mexican cities depend on trade with the U.S., an extended border closing would lead to mass unemployment and would likely cause more attempts to migrate to the U.S.\(^10\)

The Mexican administration of Andrés López Obrador, who campaigned as a defender of the poor and downtrodden, has sought to be kinder and gentler towards migrants. Detentions and deportations have declined and his administration has incorporated more migrants into Mexican society through more humanitarian visas and work permits. However, his policies are putting pressure on the Northern Mexican border cities, which are experiencing a surge and overwhelming shelters.\(^11\)

Hence, the Mexican government is under pressure from both the Trump administration and the border states and cities in Mexico. Meanwhile, the contradictions between signing an MOC while simultaneously terminating aid to the three signatory countries and threatening to close large portions of the Mexican border indicate the large uncertainties in U.S. policies on securing the border and combating transnational crime south of its border.

On April 4, 2019, widespread opposition to his threat to close the border caused President Trump to decide against the move. Instead, he issued Mexico a “one-year warning.” The threats exacerbated tensions with

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\(^8\) David J. Lynch, Maria Sacchetti and Joel Achenbach, *Threat to close border is pressed*, WASH. POST, Apr. 1, 2019, at A1, col. 3.


\(^10\) Id.

Mexico just as Mexico was trying to help the Trump administration convince Congress to ratify the U.S.-Mexico-Canada trade deal. On April 1, 2019, the Department of Homeland Security (DHS) reallocated 750 officers due to a “growing security and humanitarian crisis at the border.” The reassignments caused significant delays by removing agents who inspect cargo vehicles as they enter the U.S.

On April 7, Nielsen, the DHS secretary, resigned after a meeting with President Trump. In weeks before her resignation, President Trump asked Nielsen to close the ports of entry along the border and to stop accepting asylum seekers, which Nielsen found ineffective and inappropriate. In a cabinet meeting, Trump criticized her continuously, resulting in her preparation of a resignation letter and telling colleagues that she had no reason to stay any longer. By the end of the week she had reconsidered her position.

President Trump said Kevin K. McAleenan, the commissioner of U.S. Customs and Border Protection, will become the acting DHS secretary. On April 8, 2019, Judge Richard Seeborg of the U.S. District Court in San Francisco issued a preliminary injunction against the implementation of a new Department of Homeland Security (DHS) policy concerning non-Mexican asylum seekers arriving in the U.S. from Mexico. The “Migrant Protection Protocols” (MPP) policy requires such persons, with certain exceptions, to be “returned to Mexico for the duration of their immigration proceedings,” rather than either being detained for expedited or regular removal proceedings, or issued notices to appear for regular removal proceedings.

Judge Seeborg explained that that statute vesting DHS with authority in some circumstances to retain certain aliens to a “contiguous territory” does not apply to the individual plaintiffs or others similarly situated. Even assuming the statute could or should be applied to the individual plaintiffs, they have met their burden to enjoin the MPP on the basis that it lacks sufficient protections against aliens being returned to places where they face undue risk to their lives or freedom. Judge Seeborg refused the request of the U.S. government to limit the injunction to his judicial district, as opposed to the entire U.S.

On April 12, 2019, the U.S. Court of Appeals for the 9th Circuit temporarily blocked Judge Seeborg’s ruling from taking effect. It set a deadline of April 16 for civil liberties groups to file arguments on why asylum policy should be on hold, as well as an April 17 deadline for the government to argue why it should remain in place.

On April 16, 2019, Attorney General William P. Barr issued a decision directing immigration judges to stop allowing some asylum seekers to post bail while they wait to have their cases adjudicated.

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14 Zolan Kanno-Youngs, Maggie Haberman, Michael D. Shear and Eric Schmitt, Secretary Is Out as Border Influx Sours President, N.Y. TIMES, Apr. 8, 2019, at A1, col. 5.
15 Jacey Fortin, Trump Picks Border Chief As Successor in the Interim, N.Y. TIMES, Apr. 8, 2019, at A15, col. 6.
18 Reis Thebault and Michael Brice Saddler, Barr orders bail withheld from some asylum seekers, in policy reversal, WASH. POST, Apr. 17, 2019, at A10, col. 1.
On May 7, 2019, the Ninth Circuit Court of Appeals overturned a lower court’s injunction on the administration’s policy officially known as the Migration Protection Protocols.¹⁹

U.S. migration enforcement undergoes almost daily major enforcement initiatives, all emanating from the executive branch and then undergo litigation.

II. MIGRATION ENFORCEMENT AGREEMENTS

This section looks at a main mechanism to slow asylum applicants: the ACAs or third safe country agreements.

A. U.S. Concludes Asylum Cooperation Agreements with Guatemala and Mexico²⁰

On June 1 and 7, 2019, the Trump administration concluded migration enforcement agreements with Guatemala and Mexico.

Guatemala

On June 1, 2019, the then Kevin K. McAleenan, the acting secretary for the Department of Homeland Security (DHS), signed a two-year agreement with Guatemala to send up to 80 homeland security agents to Guatemala to help train the local authorities and combat human trafficking rings.²¹

DHS officials will work as “advisers” to Guatemala’s national police and migration authorities, attempting to disrupt and interdict human smuggling operations. The idea is to cut off popular routes to the U.S. and deter migrants from starting their trips north through Mexico.²²

The U.S. and Guatemala have signed a Memorandum of Cooperation. DHS says the agreement permits “concrete actions” including “law enforcement training and collaboration to improve criminal investigations.”²³

In a predawn raid on May 29, the investigators joined Guatemalan policy to break a human trafficking ring. Guatemala served 10 arrest warrants, including for Luis Augusto Torres Rosales, known as “Bimbo.” Authorities suspect him of illegally transporting dozens of migrants from El Salvador and Honduras through Guatemala to Mexico.

According to McAleenan, his agency is sending dozens of Border Patrol agents to Guatemala to help the local authorities build checkpoints and ensure incoming migrants from Honduras or El Salvador are carrying legal


²⁰ This section is taken from Bruce Zagaris, Trump Administration Concludes Migration Enforcement Accords with Guatemala and Mexico, 35 INT’L ENFORCEMENT L. REP. 221 (June 2019).


²² Nick Miroff and Kevin Sieff, U.S. will deploy DHS agents and investigators to Guatemala-Mexico border, WASH. POST, June 1, 2019, at A13, col. 1.

²³ Id.
immigration documents. The U.S. agents will move from their current stations along the U.S. northern and southwestern borders to Guatemala.\textsuperscript{24}

Guatemala Interior Minister Enrique Degenhart Guatemala planned to implement DNA testing for Guatemalans leaving the country through its northern border “in the very near future.” He said the goal was to ensure that migrants were not traveling with children who were not their own.\textsuperscript{25}

Sometimes migrants have tried to travel with the children of friends or neighbors to take advantage of a loophole in the U.S. immigration system that permits families to avoid detention and quick deportation.

According to Degenhart, U.S. Department of Homeland Security is assisting the Guatemalan government to start a family fraud unit to stop such arrangements before the children leave Guatemala.\textsuperscript{26}

\textit{Mexico}

On June 7, 2019, the U.S. Department of State released a U.S.-Mexico Joint Declaration on Migration Enforcement. It contains prefatory languages that, due to the dramatic increase in migrants moving from Central America through Mexico to the United States, both countries recognize the vital importance of quickly resolving the humanitarian emergency and security situation.\textsuperscript{27}

\textit{Mexican Enforcement Surge}

Mexico agreed to take unprecedented action to increase enforcement to curb irregular migration. It agreed to include the deployment of its National Guard throughout Mexico, giving priority to its southern border. Mexico is acting decisively to dismantle human smuggling and trafficking organizations as well as their illicit financial and transportation networks. In addition, the U.S. and Mexico committed to strengthen bilateral cooperation, including information sharing and coordinated actions to better protect and secure their common border.

\textit{Migrant Protection Protocols}

The U.S. agreed to immediately expand the implementation of the existing Migrant Protection Protocols across its entire southern border. Hence, persons crossing the U.S. southern border to apply for asylum will be rapidly returned to Mexico where they may await the adjudication of their asylum claims.

In response, Mexico agreed to authorize the entrance of all of those individuals for humanitarian reasons, in compliance with its international obligations, while they await the adjudication of their asylum claims. Mexico agreed to offer jobs, healthcare, and education.

The U.S. committed to work to accelerate the adjudication of asylum claims and to conclude removal proceedings as expeditiously as possible.

\begin{itemize}
\item \textsuperscript{24} Kanno-Youngs, supra.
\item \textsuperscript{25} Kevin Sieff, \textit{Guatemala says it is working with the United States to tighten borders}, WASH. POST, June 6, 2019, at A15, col. 1.
\item \textsuperscript{26} \textit{Id.}
\item \textsuperscript{27} U.S. Department of Statement, U.S.-Mexico Joint Declaration, June 7, 2019 \url{https://www.state.gov/bureaus-offices/under-secretary-for-political-affairs/bureau-of-western-hemisphere-affairs}
\end{itemize}
Further Actions

Both governments also agreed that, if the measures adopted do not have the expected results, they will take further actions. Hence, the U.S. and Mexico will continue their discussions on the terms of additional understandings to address irregular migration flows and asylum issues, to be completed and announced within 90 days, if necessary.

Ongoing Regional Strategy

The two governments reiterated their prior statement of December 18, 2018 that both countries recognize the strong links between promoting development and economic growth in southern Mexico and the success of promoting prosperity, good governance, and security in Central America. Both governments welcomed the Comprehensive Development Plan started by the Mexican government in concert with the Governments of El Salvador, Guatemala, and Honduras to promote these goals. The U.S. and Mexico agreed to lead in working with regional and international partners to build a more prosperous and secure Central America to address the underlying causes of migration, so that citizens of the region can build better lives for themselves and their families at home.

Analysis

Trump administration officials had demanded that Mexico support changes in asylum rules that would permit the U.S. to more readily reject asylum seekers from the Northern Triangle. Mexico has resisted the demand due to the political and economic cost. Instead, Mexico agreed to increase participation in the Migrant Protection Protocols (MPPs). The MPPs are under challenge. Civil rights groups have sued to invalidate them because they allegedly violate the rights of the migrants who are sent to wait in Mexico, thereby depriving them of access to lawyers. While a federal judge blocked the program, as mentioned above, an appeals court has allowed the Trump administration to proceed with them while the court challenge is under adjudication.

An important limitation of Mexico’s deployment of its National Guard to the border is that the National Guard has just been created for drug trafficking. The first National Guard recruits had been scheduled to graduate in late June with formal operations to start June 30. The members of the National Guard are composed of the Federal Police and the policing units of the army and navy. They are not accustomed to treating people with a human rights approach, especially for children migrating alone into Mexico.

On June 9, 2019, President Trump claimed that secret, undisclosed elements exist to the new agreement with Mexico as he tried to deflect criticism that he achieved less than he had claimed. On June 10, 2019, the Mexican foreign minister said no secret immigration deal existed. There appears a significant disagreement.

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29 Id.
between the Mexican and U.S. officials about what the negotiators actually agreed to concern further action and the possibility of implementation.\textsuperscript{32}

The ongoing regional strategy arises from the priority of Mexico and the UN Economic Commission for Latin America and the Caribbean. They believe the only long-term solution to the immigration crisis is in opening new areas of opportunity for the hundreds of thousands of Central Americans who decide to migrate. Recently, the Trump administration has acted to undermine this approach. By assigning slightly more than $180 million in funding for the three Northern Triangle countries in 2019, less than 2 percent of the amount Mexico would like to see the U.S. provide, and then announcing that he would suspend all aid to the three countries as punishment for their supposed inaction to prevent the migrant exodus.\textsuperscript{33} In fact, the Trump administration on the one hand and Mexico-Northern Triangle governments, as well as international organizations, on the other hand, are talking past each other.

Undoubtedly, the threat by President Trump to impose tariffs unless Mexico made changes in its migration policy and the continued threats to take more action is likely to cause long-term damage to U.S.-Mexican ties.\textsuperscript{34} As the Mexican government and private sector realize the unreliability of the U.S. suppliers and markets, they will increasingly diversify their suppliers (e.g., Argentina and Brazil for agriculture).

The threat of tariffs and the imposition of tariffs exacerbate the migration problem, because as Mexico’s economy deteriorates due to the threats, the economic instability decreases Mexico’s capacity for enforcement, especially since Mexico already has difficulty controlling its organized crime and risks causing migrants of its own.\textsuperscript{35}

With respect to Guatemala, the failure of the Trump administration to support the UN Commission against impunity in Guatemala (CICIG) in the context of the then President Jimmy Morales’ efforts to dismantle it means that the most effective mechanism against corruption, organized crime, and gangs is in danger of dissolution.\textsuperscript{36} Last fall when President Morales barred Iván Velásquez, the head of the International Commission against Impunity in Guatemala (CICIG), from Guatemala, the countries in the G-13 group, the largest donors to Guatemala, released a statement expressing disappointment with that decision and the closure of CICIG. The U.S. was the only member of the G-13 not to sign the statement. The CICIG closed on September 3, 2019.\textsuperscript{37}

To the extent the National Guard deployment impedes illegal cross-border migration, some of the would-be migrants will take more remote, perilous routes, including by sea. The need to take sea routes will benefit organized-crime groups which are best equipped to manage and profit from the new migratory routes.\textsuperscript{38}

\begin{footnotes}
\item[33] León Krauze, The regional immigration solution Trump is thwarting, WASH. POST, June 2, 2019.
\item[34] Mary Beth Sheridan and Kevin Sieff, Mexico uneasy after reprieve, WASH. POST, June 9, 2019, at A1, col. 3.
\item[35] Carla A. Hills, Sorry, but tariffs won’t stop migrants, WASH. POST, June 9, 2019, at A22, col. 5.
\item[36] For background on the Moreno government’s efforts to close CICIG and the silence of the U.S. government, see Bruce Zagaris, Guatemala Denies Visas to CICIG Officials as U.S. Stands Silent, 34 INT’L ENFORCEMENT L. REP. 493 (Oct. 2018).
\item[37] Mary Beth Sheridan, U.S. apathy helped kill anti-corruption effort in Guatemala, WASH. POST, June 15, 2019, at A7, col. 1.
\item[38] Semple, supra.
\end{footnotes}
dissolution of CICIG eliminates the only force in Guatemala that is capable of investigating and prosecuting gangs and organized crime.

B. U.S.-Guatemala Asylum Cooperation Agreement

On July 16, 2019, Guatemala and the United States signed an agreement that would designate Guatemala as a safe third country for individuals seeking asylum in the United States despite issues in Guatemala about its legality and ability of Guatemala to implement.

The White House still has not released the details of the agreement. President Trump announced the agreement in an unscheduled appearance in the Oval Office with Enrique Degenhart, the Guatemalan minister of government and the acting homeland security secretary Kevin McAlleenan.

Prior to signing the agreement, the Guatemalan Constitutional Court ruled that President Jimmy Morales required approval from the Guatemalan Congress to sign the accord, something the Guatemalan executive branch did not receive. According to some analysts, Morales can circumvent the ruling by taking the position that the arrangement is not a treaty, but only an executive agreement. After the ruling by the Constitutional Court, Morales canceled his scheduled meeting to sign the agreement in the White House.

Jordán Rodas, Guatemala’s human rights prosecutor, stated that the minister of interior who signed the agreement “does not have the power to sign an agreement of this nature.” If he determined the agreement was not legal, he said he would demand the Constitutional Court suspend its implementation.

Opponents of the agreement are likely to challenge the agreement in U.S. courts because they argue Guatemala does not qualify as a “safe” country due to its high levels of violence.

In Guatemala, analysts have suggested President Morales authorized the agreement in hopes of securing support from the Trump administration with respect to allegations of financial crime against Morales concerning his 2015 electoral campaign. Until now, presidential immunity has protected Morales, but he loses it in January when his term as President ends. Morales has denied the charges against him.

After the signing, U.S. officials said the agreement could take effect within weeks. The announcement surprised Guatemalan politicians and leaders at immigration advocacy groups.

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41 *Id.*


43 Kim, Sieff and Hauslohner, *supra*.

44 Sheridan, *supra*.

Critics have observed that international and U.S. law clearly mandates the “safe third” country to be a truly safe place where migrants would not be in jeopardy. The country must have a “full and fair” system of protections that can accommodate asylum seekers who are sent there. Critics observe Guatemala has fulfilled neither requirement.

Critics also observe that the State Department’s reports on Guatemala warn about rampant gang activity and state that murder is common in Guatemala, which has an ineffective police force. A Guatemalan public statement about the agreement said the United States would allocate temporary agricultural work visas to Guatemalans. The statement also mentioned that Morales negotiated the agreement “to counter grave economic and social repercussions.”

The agreement would force thousands of Hondurans and Salvadorans to apply for asylum in Guatemala even though Guatemala is one of the region’s poorest countries, which battles in some places to defeat transnational gangs, including MS-13.

In 2017, Guatemala had 259 asylum applications, a tiny number compared to the U.S. and Mexico. Guatemala did not approve even one application, in part because it is still developing institutions to review the cases.

McAleenan tried to assuage fears of Guatemala’s lack of capacity by stating that the agreement, once implemented, would slowly start with the “least vulnerable” groups, namely single adults, not children. McAleenan said individuals who claim fear would still be eligible for withholding of removal, a lesser form of protection.

The Trump administration said it is prepared to spend $40 million to develop Guatemala’s ability to establish an asylum system, including case workers, shelters, and so forth.

Just before the agreement was signed, Secretary of State Mike Pompeo criticized the agreement in a closed-door meeting with President Trump, McAleenan, and several other aides. Pompeo characterized the agreement as flawed and a mistake. He told Trump the Guatemalan government did not have the ability to implement its terms, but McAleenan disagreed. McAleenan predicted that many migrants would return to their home countries rather than seek asylum there.
Before the agreement can take effect, the Trump administration must certify that Guatemala can provide migrants access to a “full and fair” asylum system, or similar protection.\(^\text{52}\)

On August 7, 2019, Pompeo accepted the resignation of Kimberly Breier, assistant secretary of state for the Western Hemisphere since October. According to a senior administration official, Breier was concerned by communications by White House policy adviser Stephen Miller, who perceived her insufficiently committed to publicly defending the Guatemala-U.S. safe-third-country agreement.\(^\text{53}\)

The U.S.-Guatemala “safe-third-country agreement” would make asylum seekers ineligible for protection in the United States if they had traveled through Guatemala and did not first apply for asylum there. U.S. authorities would be permitted to return those migrants to Guatemala.\(^\text{54}\)

The U.S.-Guatemala agreement supplements the June 7 U.S.-Mexico agreement which allows Migrant Protection Protocols to expand, so the U.S. can send asylum applicants who cross the border back to Mexico to await processing there under the program. In addition, since October 1, U.S. Customs and Border Protection agents have brought 850,000 immigrants into custody.\(^\text{55}\)

The legal questions about the validity of the U.S.-Guatemala agreement from international enforcement law protection are due to the lack of a safe environment in Guatemala, its patent lack of capacity to process and protect asylum applicants, and the domestic law issues in both Guatemala and the U.S. guarantee that the agreement will undergo a series of legal challenges. The way in which the U.S. government has pressured the scandal-ridden government of Morales to sign the agreement, notwithstanding the order of the Guatemalan Constitutional Court and objections from Trump’s own cabinet members and many immigration policy experts, risks further sullying the reputation of the U.S. government for upholding the rule of law.

Sure enough, the questions posed from the agreement have resulted in confusion and uncertainty among asylum seekers. Human rights advocates say migrants have been shipped in planes without communication of where they are going or what they should do once they arrive. As a result, most migrants do not know that they only have 72 hours to apply for asylum in Guatemala once their plane touches down, and they are subsequently told they must fill out a “Voluntary Return” form and return home. These advocates from various human rights organizations, including the office of the UN High Commissioner for Refugees (UNHCR), says they have recorded dozens of cases of asylum seekers who were misled by the U.S. since the agreement was implemented just a few weeks ago. These organizations claim they have expressed their concerns to the appropriate U.S. and Guatemalan authorities.\(^\text{56}\)

C. **U.S.-Honduras Asylum Cooperation Agreement**\(^\text{57}\)

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\(^\text{52}\) Id.


\(^\text{55}\) Miroff, supra.

\(^\text{56}\) Kevin Sieff, ‘Where are we? What are we supposed to do now?’, THE WASH. POST, January 15, 2019.

On September 25, 2019, the United States Department of Homeland Security (DHS) and the Honduras government announced an asylum agreement that will enable U.S. immigration authorities to send asylum applicants from the border to Honduras. The agreement was signed by Honduras’ minister of foreign affairs during the United Nations General Assembly in New York.

A joint statement announced both countries’ commitment to implementing the Agreement between the Government of the United States of America and the Republic of Honduras for Cooperation in order to continue building stronger border security and law enforcement cooperation.

According to the joint statement, the “agreement incorporates the framework of applicable international conventions for individuals seeking protection to execute a more humanitarian approach to addressing out-migration from Honduras. It takes into account the economic capabilities of Honduras for implementation, as well as cooperation with the United States and international organizations. Both countries will periodically review implementation of this agreement and make the necessary adjustments or consider the potential expansion of cooperation to ensure its success.”

The DHS Acting Secretary at the time Kevin McAleenan said that, once the agreement takes affect, it will further increase asylum and protection capacity in Honduras. Using best practices developed by the U.S. and the international community, the two countries will collaborate to increase protection options for vulnerable populations. The U.S. and Honduras will work together to ensure that these vulnerable populations are not victimized by smugglers.

During the last 11 months before the signing of the agreement, more than 250 Hondurans have crossed the U.S. border. Many filed asylum applications that have added to the rising number of asylum cases before U.S. courts.

The agreement follows one month after U.S. prosecutors named Honduran President Juan Orlando Hernández as a co-conspirator in a drug case. U.S. prosecutors described the brother of the president as “a violent, multi-ton drug trafficker” after he was arrested in Miami last year. He has pleaded not guilty to weapons and drug charges, but was subsequently convicted.

The indictment charges include that approximately $1.5 million in drug money was used to finance Hernández’s 2013 presidential campaign, paying for bribes and gifts to politicians who furnished their support.

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59 Daniella Silva, *U.S. signs asylum deal with Honduras that could force migrants to seek relief there*, NBC NEWS, Sept. 5, 2019.
61 Id.
62 Id.
63 Miroff, *supra*.
64 Id.
65 Id.
Hernández was re-elected in 2017 after a disputed vote count. A United Nations investigation found that 23 people died in the ensuing protests, at least 16 of them at the hands of security forces.\(^{66}\)

President Hernández, 50, has denied any involvement in drug crimes. He claims traffickers angered by his tough anti-crime policies and extraditions have made the allegations against him. In particular, he strongly denied the allegations connecting him to drug lord Joaquín Guzmán, also known as El Chapo, characterizing the accusations “100% false, absurd and ridiculous.”\(^{67}\)

Already in early 2019, 30,000 people from Africa, South America, Cuba, and Haiti have entered Honduras. The number was predicted to have reached 70,000 by the end of the year. According to the Honduran newspaper, LA PRENSA, 57 percent of the migrants came from Cuba.\(^{68}\)

The agreement could result in 26,000 migrants or more each year that Honduras must host pending their asylum application, with applications taking years to process.\(^{69}\)

According to the joint statement, U.S. and Honduras reaffirm their commitment to combat mutual threats, including terrorism, transnational criminal organizations and gangs, drug trafficking, and trafficking persons. Both governments promised to promote economic prosperity, regional stability, democratic institutions, and the protection of human rights for the benefit of both nations.\(^{70}\)

Immigrant and international human rights officials have denounced the U.S. asylum agreements with Guatemala, El Salvador, and Honduras as a flagrant violation of longstanding U.S. legal protections given to persons fleeing persecution. Trump administration officials said their goal is to deter migrants from using U.S. humanitarian programs in order to avoid detention and deportation at the border.\(^{71}\)

Michelle Brané, director of migrant rights and justice at the Women’s Refugee Commission, said on Twitter that the Trump administration is “continuing to undermine human rights and endanger thousands of families, women, men, and children.” Brané said “Honduras is one of the most dangerous countries in the world...It is the opposite of what we are supposed to stand for.”\(^{72}\)

**D. U.S.-El Salvador Asylum Cooperation Agreement\(^{73}\)**

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70 Homeland Security, Joint Statement, supra.

71 Miroff, supra.

72 Silva, supra.

On September 20, 2019, the United States and El Salvador governments signed a Protection Cooperative Agreement. The Acting Secretary of the U.S. Department of Homeland Security, Kevin K. McAleenan signed on behalf of the United States. The Minister of Foreign Affairs, Alexandra Hill Tinoco, signed on behalf of El Salvador.

According to a joint statement, the Agreement recognizes El Salvador’s recent decision to join the Comprehensive Refugee Response Framework. It states it will use U.S. and international best practices to “enhance collaboration on building protection capacity and increase protection options closer to home for vulnerable populations.”

The two governments commit to responding to “the issue of irregular migration in a joint and humane way that will contribute to greater prosperity and security of the region.” The Agreement shows the partnership between both governments “to discourage dangerous irregular migration across Central America toward the U.S. and to combat transnational criminal organizations, strengthen border security, and reduce human trafficking and smuggling.”

Once the Agreement becomes effective, it will further expand the capacity of protection systems in the region. The joint statement does not state when the agreement will take effect and what will be required.

The Cooperative Agreement follows the Letter of Intent signed by Acting Secretary McAleenan with the Government of El Salvador last month in San Salvador to intensify bilateral cooperation in key areas.

Once the agreement is implemented, the U.S. will be able to return asylum applicants from Nicaragua, Cuba, and other countries passing through El Salvador on their way to the U.S. The U.S. is planning to develop an asylum system in El Salvador and the Northern Triangle, seeking to fund the effort through U.N. refugee agencies. In 2018, UN data shows only 18 people applied for asylum in El Salvador.

A leading journal in El Salvador observes that the country with the most asylum applicants in 2018 has now agreed to accept asylum applicants that Trump rejects.

The joint statement expresses that “(i)n recent months, Acting Secretary McAleenan has also forged partnerships with Mexico, Guatemala, El Salvador, Honduras and Panama to disrupt human and drug smuggling operations and address the crisis at the U.S.-Mexico border.”

While the agreement aligns with the administration’s “third country” asylum rule, that term was not used in the press conference between the two signatories announcing the agreement.

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The obligation for asylees to look for refuge in the countries from which they flee contradicts the travel warnings of the U.S. Department of State. As of January 28, 2019, the State Department issued a travel advisory with respect to El Salvador, advising:

“Reconsider travel to El Salvador due to crime...Violent crime, such as murder, assault, rape, and armed robbery, is common. Gang activity, such as extortion, violent street crime, and narcotics and arms trafficking, is widespread. Local police may lack the resources to respond effectively to serious criminal incidents.”78

Various international human rights organizations observe that a country with the sixth highest number of persons seeking asylum in 2018 does not meet the conditions to protect asylees in its territory.

Charanya Krishnaswami, the advocacy director for the Americas at Amnesty International USA, criticized the agreement, stating: “This agreement makes a mockery of the right to asylum. People should not be forced to seek safety in countries where they will not be safe. She continued that “El Salvador has one of the highest rates of violence in the world, including gender-based violence so rampant that Amnesty International declared it one of the most dangerous countries in the world to be a woman. It is not safe for its own citizens, much less for asylum-seekers.”79

In addition to the concerns about security, the question of El Salvador’s capacity to process asylum requests exists. Since 2002, El Salvador has a law to determine the condition of refugees. The law created a commission (CODER) to adjudicate asylum requests.

Sources from the Ministry of Foreign Relations say the Unit of Internal Legal Studies of the Ministry has the responsibility of legal formalities of CODER, but only one technician is directly working with asylum requests for the whole country.80

Oscar Chacón, director of the Alliance of the Americas, said it is irresponsible for governments to sign an asylum agreement, because El Salvador cannot provide security and humanitarian help to the asylum applicants when the same population is displaced internally and flees the country because they cannot find such conditions within their own territory.81

El Salvador President Bukele has requested the United States to provide relief to the 200,000 Salvadorans living in the U.S. with temporary protected status (TPS) for 20 years. A court injunction has blocked the Trump administration’s efforts to remove those protections. However, the status expires in January 2020.82

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80 Zablah, supra.
81 Id.
82 Kanno-Youngs and Malkin, supra.
Salvadorans are the parents of an estimated 200,000 children U.S.-citizenship, so their having to return to El Salvador would be a heavy burden on El Salvador and the families, since it would separate the individuals having to return from their children and other close family members.

Until now, the U.S. has unsuccessfully sought agreements with Panama and Mexico.

On September 20, Hill again said that although the Salvadorans subject to TPS need help, neither she nor McAleenan said they were part of the agreement.

Another U.S.-El Salvador migration initiative is to strengthen the military capacity of Salvadoran troops patrolling the border. Already the Trump administration has succeeded in having Mexico militarize its border area. Police and officials for the Salvadoran Migration patrol 154 border points. Minister of Justice and Public Security Rogelio Rivas said the strengthened militarization of the border areas has arisen from meetings with the U.S. government, which is partially financing the strengthened militarization.

In particular, the strategy to strengthen border patrols occurred in October 2018 when thousands of Central Americans started marching in caravans toward the United States. The U.S. government has contributed $150,000 and provided training. In response to the caravans in March, Trump ordered a cut in foreign assistance to the Northern Triangle countries as a protest to the inaction by the governments to the caravans. Thereafter, in June Mexico militarized its southern frontier.

Notwithstanding the hardship imposed on the asylum applicants, the U.S.-El Salvador migration agreement and border patrols will reduce the number of asylum applicants that the U.S. government must process. Eventually, faced between the choice of applying for asylum in El Salvador or one of the Northern Triangle countries and staying home, would-be applicants will increasingly stay home. While the arrangements enable the Trump administration to achieve its goals of reducing migration from the Northern Triangle, the arrangements subvert the longstanding multilateral asylum arrangements and the liberal order that has stood for decades.

While the Trump administration has suspended aid programs to the Northern Triangle countries, China has signed 13 cooperation agreements on infrastructure, investment, science, technology, education, culture, and tourism. In July 2018, Salvador Sánchez Cerén, presented a bill to the legislature that would create the legal framework for a special economic zone encompassing 26 municipalities along the southeastern coast. The plan was designed for the Chinese.

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83 Miroff, supra.
84 Id.
85 Zolan Kanno-Youngs and Elisabeth Malkin, Pact With El Salvador Aims to Deter Migrants, N.Y. TIMES, Sept. 21, 2019, at A6, col. 4.
86 Nelson Rauda Zablah and John Washington, El Salvador launches its border patrol and joins together a regional wave of complacency towards Trump (El Salvador lanza su patrulla fronteriza y se une a ola de complacencia regional a Trump), EL FARO, Sept. 15, 2019.
87 Id.
Last year China started disbursing a $150 million assistance package for El Salvador, including buying 10 trucks for the water agency of San Salvador and donating 15,000 laptops to public schools. Nevertheless, the Cerén Administration did not have the support to bring the bill to a vote. Initially, Bukele did not support the special economic zone.\textsuperscript{89} It remains to be seen what the Bukele administration’s policy will be as it is caught between the competing policies of the U.S. and China.

III. US Will Send Mexican Asylum Seekers to Guatemala\textsuperscript{90}

On January 6, 2020, the same day the Department of Homeland Security (DHS) confirmed it plans to send some Mexican asylum seekers to Guatemala to slow or block migration to the United States, Mexico’s Secretary of Foreign Relations issued a statement saying it disagreed with the U.S.’s proposal to send as many as 900 Mexican nationals to Guatemala within the next month.\textsuperscript{91}

On January 4, 2020, Ashley Caudill-Mirillo, deputy chief of the asylum division at the U.S. Citizenship and Immigration Services, sent a directive to the field offices that the inclusion of Mexicans in the Guatemala agreement was “effective immediately.”\textsuperscript{92}

On January 6, 2020, two DHS officials said over the weekend asylum officers were informed that Mexican migrants were now “amenable” to transfer to Guatemala under the Asylum Cooperative Agreement (ACA) signed in July between the U.S. and Guatemala.\textsuperscript{93}

Initially the U.S.-Guatemala agreement was described as a so-called safe-third-country agreement. Kevin M. McAleenan, the acting secretary of DHS at the time the agreement was signed in July 2019, said its purpose was to prevent migrants from the long and dangerous journey to the U.S. However, Mexicans do not travel to Guatemala and then back through Mexico to apply for asylum.\textsuperscript{94}

The ACA provides that to ensure protection to asylum applicants, those applicants the U.S. transfers to Guatemala, the latter will not return or expel applicants for protection in Guatemala, unless the application is abandoned by the applicant or Guatemala formally rejects the asylum application administratively.\textsuperscript{95}

Alejandro Giammattei will assume his role as Guatemala’s president later in January. He has said he will review the agreement.\textsuperscript{96}

\textsuperscript{89} Id.

\textsuperscript{90} This section is taken from Bruce Zagaris, US Will Send Mexican Asylum Seekers to Guatemala, 36 INT’L ENFORCEMENT L. REP. (Jan. 2019).

\textsuperscript{91} Wendy Fry, Mexico responds to U.S. plan to send Mexican asylum-seekers to Guatemala, S. DIEGO UNION-Tribune, Jan. 7, 2020.

\textsuperscript{92} Patrick J. McDonnell, Molly O’Toole, Mexico balks at U.S. plan to send Mexican asylum seekers to Guatemala, LOS ANGELES TIMES, Jan. 7, 2020.


\textsuperscript{94} Id.

\textsuperscript{95} Rebecca Salamacha, US pursues policy to send Mexican asylum-seekers to Guatemala, JURIST, Jan. 8, 2020.

\textsuperscript{96} Kanno Youngs, supra.
When asked if the Trump administration had consulted Mexico before issuing the directive, DHS officials did not respond. On January 7, Mexican President Andrés Manuel López Obrador said he had “no information” on the matter.97

Also on January 7, Martha Barcena, the Mexican ambassador to the U.S., said the U.S. did not consult with Mexico and her government cannot agree with the decision.98

In Guatemala, Alejandra Mena, a spokeswoman with the government’s immigration institute, said the “agreement involves the transfer of Hondurans and Salvadoreans only.”99

On January 6, the Mexican Foreign Secretariat released a statement, expressing its opposition, and saying it “will work to offer better options to the Mexicans who could be affected.”100

In effect, the new policy prevents Mexicans and any asylum seeker arriving at the U.S.-Mexico border who is not Guatemalan from seeking protection in the U.S., transporting them more than 1,000 miles south to Guatemala instead.101

May 2018 marked the height of the crossings, apparently motivated by multiple policies aiming to prevent Central Americans from applying for asylum in the U.S. However, violence has caused many to go north. According to Customs and Border Protection, approximately 17,000 Mexicans were caught crossing between ports of entry in October, a 24 percent increase since July.

As a result, DHS has searched for methods to slow the rising flow in the last month, including starting a pilot program in El Paso to expedite the adjudications of Mexican migrants seeking asylum.102

In December, Ken Cuccinelli, the acting duty Homeland Security secretary, tweeted that U.S. officials were contemplating removing Mexican nationals applying for asylum to Guatemala.103

While U.S. officials started implementing the ACA with a “pilot program” in El Paso, limited at first to single adults, on December 10, the U.S. quietly started placing Central American families applying for asylum in the U.S. to Guatemala for the first time.104

Immigration lawyers and officials in the U.S. and Mexico said the new policy is legally questionable. Jesús Alejandro Ruiz Uribe, Baja California’s federal delegate who serves as a liaison between the government of Baja

97 McDonnell, O’Toole, supra.
98 Id.
99 Id.
100 Id.
101 Id.
102 Kanno-Youngs, supra.
103 McDonnell, O’Toole, supra.
104 Id.
California and Mexico’s president, characterized the new policy as intended to support a political narrative right before President Donald Trump’s re-election campaign.\textsuperscript{105}

The Guatemalan Migration Institute will process the applicants even though it has a staff of eight, which handled just 262 applications in 2018.

Aaron Reichlin-Melnick, the policy counsel at the American Immigration Council, said the inclusion of Mexicans undermines the initial justification of U.S.-Guatemala ACA.\textsuperscript{106}

Already on January 2, 2020, U.S. Customs and Border Protection for the first time started turning around migrants seeking asylum in Arizona and sending them to Nogales, Mexico to await U.S. court hearings, thereby forcing them to learn of the dates of the hearings and then arrange their own transportation to attend asylum hearings. The trip is approximately eight hours by car, so clearly a number of asylum applicants will not be able to attend their hearings, since many are without funds and have young children for whom they must care.\textsuperscript{107}

Clearly the expansion of the “remain in Mexico” policy and the sending of Mexicans to Guatemala for asylum adjudication is intended to discourage and eliminate as many asylum applicants as possible. Given the comparatively long distance between the U.S.-Mexico border, the comparative lack of resources and training in Guatemala to care for asylum applicants and to adjudicate a large number of new applications, the new U.S. policy to send Mexican applicants to Guatemala violates the letter and spirit of asylum accords under international law. The policy is likely to undergo challenges in the U.S. and perhaps internationally.

IV. Validity under International Law

Given the comparatively long distance between the U.S.-Mexico border, the comparative lack of resources and training in Guatemala to care for asylum applicants and to adjudicate a large number of new applications, the new U.S. policy to send Mexican applicants to Guatemala violates the letter and spirit of asylum accords under international law, notwithstanding claims in the interim rule that the ACAs are consistent with international law. In particular, the 1951 Refugee Convention, non-refoulement forbids states from expelling or returning a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”\textsuperscript{108} The 1984 Convention against Torture also forbids refoulement, expanding its strength and application, providing that states cannot “expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”\textsuperscript{109}

The claims that the ACAs are consistent with international law are based on the presumption that the Northern Triangle countries have the capacity to fairly and fully adjudicate asylum applications while furnishing adequate care of asylee applicants. The policy of sending Mexican nationals to Guatemala is likely to undergo

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\textsuperscript{105} Fry, supra. \\
\textsuperscript{106} Kanno-Youngs, supra. \\
\textsuperscript{107} Michelle Hackman and Alicia A. Caldwell, U.S. Expands ‘Remain in Mexico’ Policy, WALL ST. J., Jan. 3, 2020, at 3. \\
\textsuperscript{108} Convention and Protocol Relating to the Status of Refugees, July 28, 1951, A. 33. \\
\textsuperscript{109} Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 26, 1987, A. 3.
\end{flushleft}
challenges in the U.S. and perhaps internationally. The new agreements violate asylum norms in a way other agreements do not: they send refugees into the danger they were fleeing.

A safe third country is mean to be safe and provide a means whereby states can send refugees to an alternative (third) destination without sending them home, a practice that is prohibited under international law. The terms of the U.S.-N. Triangle ACAs require asylum-applicants who pass through Guatemala, El Salvador, or Honduras on their way to the U.S. (which anyone traveling by land must do) could be returned from the U.S. border to one of those countries, so long as they are not a citizen of that country. Mexico has refused to sign a similar agreement. Nevertheless, the Trump administration has started implementing the Migrant Protection Protocols, a new set of rules with regard to Mexico. The MPP requires asylum-seekers who reach the U.S. Southern border to stay in Mexico while they wait for the U.S. to process their claims. The new wrinkle to the ACA and MPP is that the U.S. is planning to send Mexican applicants to the Northern Triangle countries.\textsuperscript{110}

The European Union’s Dublin Regulation requires that all asylum-applicants entering the EU apply for asylum in the first country in which they arrive in the EU. The 2016 EU-Turkey arrangement has a “safe third country” element, providing certain migrants transiting Turkey en route to Greece may be returned (though migrants are still permitted to apply for asylum when they reach the EU). Similar to the MPP, the EU has stated it will explore the use of “regional disembarkation platforms” so that refugees must wait in another country while their asylum claims are adjudicated.

Unless the Dublin Regulation, the Trump Approach has several provisions violating international law. First, the Dublin Regulation specifies the countries in the EU that will offer asylum to applicants with valid claims, whereas the ACAs with the Northern Triangle countries require that the U.S. will not provide asylum to certain individuals with valid claims. In other words, in many ways the EU’s Schengen countries operate as a single governing body, in which there exist common laws, a single currency, and freedom of movement across states.

To the contrary, there is no single market between the U.S. and the Northern Triangle countries. Instead, the agreements with the Northern Triangle countries provide that the U.S. will not give asylum to certain people. If applicants cannot afford a plane ticket to reach the Southern border, the U.S. will not hear their case. This policy violates the 1951 convention on refugees, requiring states to provide asylum to those who qualify without discrimination.\textsuperscript{111}

The most important defect with the ACAs and MPP is that they send asylum applicants trying to escape the gangs, transnational organized crime, and violence right back into jurisdictions with the same problems. For instance, asylum applicants who must stay in Mexico are vulnerable to kidnapping, extortion, and violence by the gangs in Mexico. The U.S. State Department has issued its highest level of security warnings against travel to some of the cities in Mexico where migrants are being kept.

Sending refugees to dangerous places undermines the basis of the international asylum regimes: the norm of non-refoulement. Non-refoulement prohibits states sending individuals to any territory in which a threat of persecution or torture exists -country of origin or otherwise. The non-refoulement principle in the 1951 Refugee Convention prohibits states from expelling or returning a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality,

\textsuperscript{110} Stephanie Schwartz, \textit{Trump’s deals with Central American countries could unravel the global refugee system as we know it}, SLATE, Oct. 17, 2109 \url{https://slate.com/news-and-politics/2019/10/refugees-trump-third-country-refoulement.html}.

\textsuperscript{111} \textit{Id.}
membership of a particular social group or political opinion.” In addition, the 1984 Convention against Torture also forbids refoulement, in some ways expanding its strength and application, providing that states cannot “expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Such grounds include a “consistent pattern of gross, flagrant or mass violations of human rights.”

While the Dublin Regulation and the EU-Turkey agreement can be criticized for diminishing the spirit of refugee law and endangering refugees by requiring them to apply for asylum in one or more countries, it at least does not refoule them. In contrast, the U.S. ACAs with the Northern Triangle countries and the MPP blatantly deny that non-refoulement is the rule the U.S. needs to follow – at least with respect to those applicants from certain countries.

The duty of a country receiving asylum applications to properly determine if a country is actually a safe third country is set forth in a recent decision of the Grand Chamber of the European Court of Human Rights. On November 21, 2019, the Grand Chamber of the European Court of Human Rights issued its judgment in Ilias and Ahmed v. Hungary. The facts were that two migrants from Bangladesh, after transiting through several countries, including Serbia, reached a Hungarian land border transit zone and requested asylum. Pending the adjudication of their application, Hungarian authorities held them in the transit zone, adjacent to Serbia. After Hungary rejected their asylum applications, they expelled them to Serbia, determining it as a safe third country. The applicants challenged the decision to send them to Serbia under Article 3 ECHR (prohibition of torture or inhuman or degrading treatment), claiming that the authorities did not properly examine their claim that they faced a real risk of ill treatment in Serbia. With regard to Article 3, the Grand Chamber held that Hungary “failed to discharge its procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision before removing the applicants to Hungary.” The Court did not rule on the substantive issue of whether Serbia was indeed a safe third country, as that is not the role of the Court. The Court reasoned that the Hungarian authorities had failed in their duty under Article 3 to assess the risks of the applicants not having proper access to asylum proceedings in Serbia or being subject to chain-refoulement, which could have been seen them being sent to Greece, where conditions in refugee camps had already been found to be in violation of Article 3.

Meanwhile, on January 14, 2020, House Judiciary Chairman Jerrold Nadler (D-NY), along with Subcommittee on Immigration and Citizenship Chair Zoe Lofgren (D-CA) and six other Subcommittee Members, announced the start of an investigation into how the Administration’s "zero tolerance" immigration policy has morphed into a policy whereby refugees and asylum seekers are being kept in Mexico indefinitely and without due process or access to counsel. The announcement occurred on the one-year anniversary of the introduction of the Keep Families Together Act, which came in response to the Trump administration’s family separation policy that led to over five thousand children being separated from their families upon entry into the United States. The letter, sent to Acting Department of Homeland Security (DHS) Secretary Chad Wolf, demands the Department turn over any information regarding the development and execution of the Migrant Protection Protocols (MPP), also known

112 Supra, note 105.
113 Supra, note 106.
114 Id.
115 Application no. 47287/15 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-198760%22]}. 
as the "Remain in Mexico" policy, which threatens the health and safety of legitimate asylum seekers—including women, children, and families.116