

Executive Summary

Women with their children, girls and boys, single adults, and entire families have been fleeing El Salvador, Guatemala, and Honduras to escape an epidemic of violence that has taken hold of their countries in the past several years. The governments of these countries have not been able to control the high rates of murder, rape, domestic violence, gender-based violence, and targeted and organized gang attacks. In a 2015 report, the UN refugee agency UNHCR found not only a five-fold increase in the number of asylum seekers coming from those countries to the United States, but also a thirteen-fold increase in the number of asylum requests to Mexico, Panama, and other countries in the region.¹

Proving asylum in the United States is a difficult and complex legal process. Yet U.S. asylum officers are concluding that nearly 90 percent of asylum seekers from El Salvador, Guatemala, and Honduras (also known as the Northern Triangle) have credible claims, a very high figure that far exceeds the rate for nationals from other parts of the world.² This statistic is borne out in the experiences of AILA member attorneys who have represented about 20,000 people through AILA's partnership in the Artesia Pro Bono Project and the CARA Family Detention Project.³

Instead of recognizing that people fleeing Central America are overwhelmingly asylum seekers who deserve humanitarian protection, the Obama administration has adopted an aggressive enforcement strategy that prioritizes sending a message of deterrence. The tactics include increased apprehensions and detentions, the use of rapid deportation strategies that undermine due process, and recently, raids targeting families and unaccompanied children. The administration has begun refugee protection programs in the Northern Triangle, but these efforts are overshadowed by tactics that severely undermine access to asylum and a meaningful opportunity to seek protection for those coming to the U.S. border.

The U.S. government should not resort to harsh enforcement and deterrence tactics to manage migration flows in an orderly and efficient manner. Adjudicating claims can be done efficiently but also in a way that guarantees due process to those who may qualify for asylum or other legal protection. Already two federal courts have found that the government's use of detention against Central American families violates U.S. legal obligations.⁴ Mothers and children deported back to those countries live in constant fear, have faced further persecution, and have even been killed.⁵ Securing the safety and welfare of our nation can be achieved without imperiling the lives of those fleeing danger.

The administration should implement solutions that restore due process and protect people fleeing violence. A solution begins with giving people the chance to make their claim to a judge rather than subjecting them to fast-track procedures that bypass the courts and undermine due process. In fact, for years judges decided most immigration removal cases. Now, border agents arrest and quickly deport people without giving them a chance to see an asylum officer, let alone a judge. After people are apprehended in the border region, they receive almost no meaningful information about what the law requires them to do or how they should pursue a claim for legal protection. If they are not immediately deported, they face re-traumatizing detention that restricts access to counsel, separates them from loved ones, and rushes adjudication of their claims. If they are not detained, their legal case is calendared on a high priority immigration court "rocket docket" that gives them limited opportunity to seek counsel and prepare their case.

The government does not guarantee representation for asylum seekers, children, or anyone facing removal. Recent statistics show about one-half of children and 70 percent of families lack representation in immigration court.⁶ Having a lawyer makes an enormous difference for those facing removal: Families represented by legal counsel are 10 times more likely to be granted asylum or protection from deportation than those who are unrepresented.⁷

Even with a lawyer, an asylum seeker's case will be reviewed by a deeply flawed asylum system that does not deliver reliable or fair results. Immigration judges render inconsistent interpretations of asylum law and grant asylum at dramatically disparate rates—while nationally, judges grant asylum in 43 percent of all cases, in Atlanta and El Paso, judges grant asylum only two percent and four percent of the time, respectively.⁸ Moreover, thousands of asylum seekers are categorically barred from applying for asylum because of unfair procedural requirements, like the one-year filing deadline for seeking asylum or the reinstatement bar to seeking asylum.

The administration's enforcement and deterrence strategies have undermined due process so severely that Central American families and children who are ultimately able to win asylum do so only by overcoming tremendous obstacles created by the very government that is supposed to protect them. With the lives of thousands at stake, the government must implement reforms to restore due process and to ensure that no family, child, or victim of persecution is ever returned to life-threatening danger.

Summary of Recommendations:

- The Department of Homeland Security (DHS) should improve conditions and processing at U.S. border stations to ensure migrants are screened in a careful and humane fashion while also ensuring that asylum seekers and those needing protection understand their legal obligations and their right to seek legal protection.
- DHS should suspend the use of “fast-track” removal methods, such as expedited removal and reinstatement of removal, and return to using immigration courts to adjudicate immigration removal cases.
- DHS should end family detention and invest instead in cost-effective, community-based case management alternatives to detention that are more humane and will reduce government detention costs while increasing compliance with immigration law.
- Congress should guarantee legal counsel to every individual facing removal who cannot afford counsel. As an interim step, the relevant government agencies should take steps to ensure counsel is appointed for all children, families, and other vulnerable individuals, and in cases where the appointment of counsel is necessary to ensure fair adjudication.
- Congress and the Department of Justice (DOJ) should ensure the immigration court system has the funding and capacity to adjudicate cases effectively and protect due process and the integrity of the court's decisions.
- Congress and the DOJ should reform the asylum system to ensure efficient and consistent adjudication of asylum claims and remove unfair procedural rules that block meritorious asylum claims from even being heard.
- In addition to these U.S.-based reforms, AILA supports efforts to address the underlying conditions contributing to the extreme violence in the Northern Triangle. AILA also urges country governments to expedite implementation of refugee screening, processing, and resettlement efforts to ensure protection for asylum seekers and other vulnerable individuals.