



**Statement for the Record by the Center for Gender and Refugee Studies  
(CGRS)**

**"The Biden Border Crisis: Part III"**

**House Judiciary Subcommittee on Immigration Integrity, Security, and  
Enforcement**

**May 23, 2023**

The Center for Gender & Refugee Studies (CGRS) defends the human rights of refugees seeking asylum in the United States. We undertake strategic litigation to advance sound asylum laws and protect due process rights. Our current docket includes federal lawsuits challenging anti-asylum border policies, including the "circumvention of lawful pathways" rule and high-impact appellate cases that present opportunities to restore paths to protection. Additionally, we provide free expert consultation, comprehensive litigation resources, and cutting-edge training nationwide to attorneys and advocates working with asylum seekers. We also advocate for the fair and dignified treatment of asylum seekers and promote policies that honor our country's legal obligations to refugees.

We are deeply concerned that current policies stand in violation of the United States' treaty obligations with respect to refugees as well as our own domestic law. We implore Congress to return to the bipartisan consensus in favor of refugees reflected in the Refugee Act of 1980.

We appreciate this opportunity to provide a statement for the record.

**Congress must recognize that the ability to apply for asylum in the United States cannot be conditioned on the use of the faulty CBP One app**

The new "circumvention of lawful pathways" rule, more accurately termed an asylum ban, requires all asylum seekers at the southwest border and adjacent coastal waters to make an appointment using a government app or be deemed ineligible for asylum. There are only very narrow exceptions to this rule, even though the app is severely flawed, making its use nearly impossible for many if not most asylum seekers. Worse, the number of appointments available is woefully insufficient, forcing people to wait in extremely dangerous conditions in northern Mexico until they are lucky enough to get an appointment. We documented problems with the use of this app in the attached March 2023 report, *Making a Mockery of Asylum: The Proposed Asylum Ban, Relying on the CBP One App for Access to Ports of Entry, Will Separate Families and Deny Protection*.

## **Congress must recognize that the ability to apply for asylum in the United States cannot be conditioned on first being denied asylum in another country**

One of the few exceptions to the requirement of using the CBP One app to schedule an appointment is to apply for asylum and be denied in another country on the applicant's way to the United States. As explained in our [comment](#) on the notice of proposed rulemaking, this aspect of the asylum ban violates international and domestic law governing the notion of "safe third countries." It also fails to account for dangerous conditions in Mexico and other common transit countries, as well as their utter lack of functioning asylum systems. Our April 2023 report *Far From Safety: Dangers and Limits to Protection for Asylum Seekers Transiting Latin America*, attached, documents the inability of the nine most common transit countries to provide protection.

### **Conclusion**

Federal law and our treaty commitments require the United States to ensure that noncitizens are not returned to countries where they face persecution or torture. Congress must ensure through oversight and appropriations that the inhumane and unlawful "circumvention of lawful pathways" rule is ended.



## **Making a Mockery of Asylum: The Proposed Asylum Ban, Relying on the CBP One App for Access to Ports of Entry, Will Separate Families and Deny Protection**

*March 27, 2023*

Since passage of the 1980 Refugee Act, individuals fleeing persecution and torture have been legally authorized to seek asylum protection at the U.S.-Mexico border at or between official ports of entry (POEs). Recognizing that asylum seekers often leave their homes in haste with nothing but the proverbial shirt on their back, U.S. domestic law—in conformity with treaty obligations—does not penalize individuals for not having proper entry documents. On this point, the asylum statute is clear: any noncitizen “who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...), irrespective of [their] status, may apply for asylum.” 8 U.S.C. § 1158(a)(1). The Refugee Convention, to which U.S. law conforms, is equally unequivocal, prohibiting states from imposing penalties on refugees for their manner of entry. Article 31(1). Moreover, U.S. law does not require asylum seekers to make an advanced appointment to make their claim for protection. Nor does it require they apply for protection in a transit country without ensuring that country is capable of providing safe haven.

For the last three years, starting with the Trump administration and continuing with President Biden, the U.S.-Mexico border has been closed to asylum seekers under the pretext of the COVID-19 pandemic (through a policy known as Title 42). During its tenure, Title 42 has caused untold harms and death, forcing hundreds of thousands of asylum seekers to wait at the border for months and even years in vulnerable and [violent conditions](#), only to expel most of them back to the very dangers they escaped to countries such as [Haiti](#) and [Cameroon](#) with no fear screening whatsoever. A series of other draconian measures further attempted to deter individuals from exercising their legal right to seek asylum even prior to Title 42. While these policies may have reduced the numbers of individuals seeking protection at the U.S.-Mexico border, it has not resolved the root causes of refugee flight—instead only offshoring the suffering to our neighbors to the south.

With Title 42’s impending end, scheduled for [May 11, 2023](#), the Biden administration recently announced a proposed rule to restrict asylum. Misleadingly called the [Circumvention of Lawful Pathways](#) rule, the proposed rule makes a mockery of asylum by all but eliminating critical pathways to safety in the United States. If adopted in its current form, the rule would

bar individuals and families from seeking asylum at the U.S.-Mexico border if they traveled through Mexico or another country and did not apply for, and receive a denial of, asylum there. This restriction is predicated neither on the actual safety of asylum seekers nor on those countries' capacity to hear asylum seekers' claims. It is, rather, a thinly veiled attempt at total deterrence, and yet another abrogation of the United States' duty to those fleeing harm.

One of the only exceptions to the ban—which has nothing to do with the individual's claim for protection—is having made an appointment on a newly released smartphone app, [CBP One](#). But, as described herein, making an appointment on CBP One sits out of reach for most asylum seekers languishing in northern Mexico border towns. Beyond requiring access to a smartphone and adequate Wi-Fi or cell service, the app has been riddled with tech glitches since its inception. The administration has done little to nothing to ensure that the affected communities can navigate the app; the factsheet on the Department of Homeland Security's website is wholly inadequate. Families have been forced to separate to obtain one of a very limited number of appointment slots. And many suffer harms in Mexico while they wait.

The information in this report was compiled from interviews conducted by students from the University of California College of the Law, San Francisco's Haiti Justice Partnership, in collaboration with attorneys and advocates from the Center for Gender & Refugee Studies (CGRS), the Haitian Bridge Alliance (HBA), and the École Supérieure Catholique de Droit de Jérémie (ESCDROJ). Over the course of four days—March 4-5 and 11-12, 2023—the delegation spoke with 194 individuals and family units living in shelters or other informal housing arrangements in Tijuana regarding their experiences using the app as well as protections (un)available to them in Mexico and other transit countries en route to the United States.

All names have been changed in this report to protect the identity of the interviewees.

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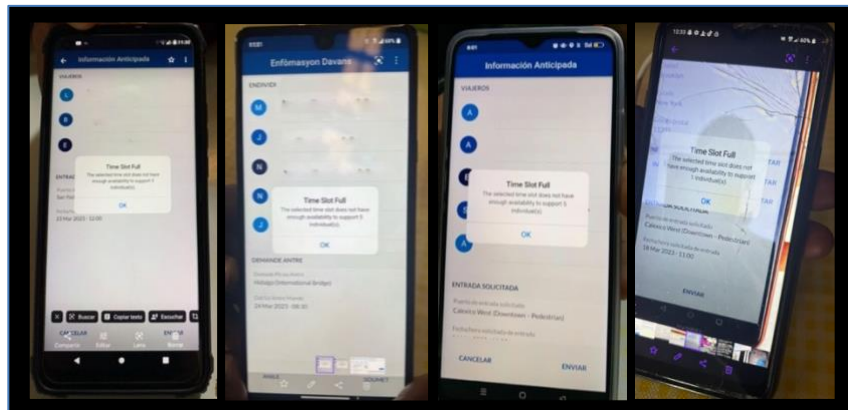
## I. The CBP One App is Too Flawed to Fix

### A. Limited Appointments Cause Stress and Confusion

In the proposed rule, the administration cynically claims that asylum seekers can avoid the ban by adhering to “legal pathways” by taking advantage of a special parole program for [certain nationalities](#), or by making an appointment on the CBP One app. Using this language, the administration distorts the law, implying it is unlawful to seek asylum by approaching a POE without proper documents or entering outside a POE. Neither international nor domestic law imposes such conditions on seeking protection; and these so-called “legal pathways” are unavailable to the vast majority of asylum seekers, as documented throughout this report. Most of those interviewed had been attempting to schedule an appointment for one month or longer since registering on the app.

First, many individuals do not know about or qualify for the parole program, because they are not nationals of a beneficiary country or they do not have a valid passport or sponsor in the United States. Or even if they might qualify, they cannot wait safely in Mexico for their parole applications to be adjudicated.

And second, the focus of this report, successfully scheduling an appointment on CBP One in advance entails complying with a litany of insurmountable requirements. Asylum seekers must have a smartphone; they must have high-speed data access; they must be able to read and understand the language the app is offered in (indeed, illiterate and elderly asylum seekers are unable to access protection alone); and they must also possess a degree of tech literacy to navigate a poorly designed app by virtually any metric. Perhaps most importantly, in addition to the above, asylum seekers require a stroke of luck to secure one of the extremely limited appointments that by all accounts go within minutes of opening each morning. The delegation spoke with hundreds of people over the course of four days, very few of whom were able to secure an appointment.



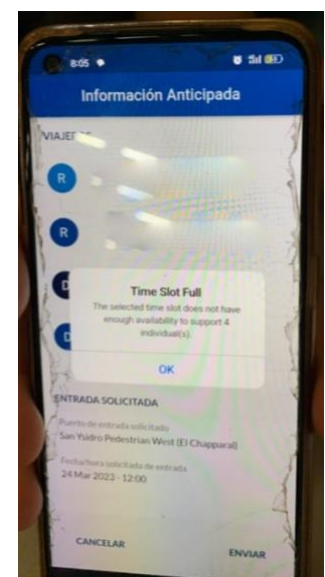
**The Perez Family:** A family of four fled Cuba due to political persecution. The mother, *Ignacia*, was diagnosed with stage three cervical cancer while en route to the United States. The family successfully scheduled an appointment via the app, but was kidnapped in Mexico and held for one month, so missed the appointment. *Ignacia* was beaten and repeatedly raped while they were held. Their twin seven-year-olds are suffering from panic attacks and are having difficulty sleeping due to the trauma they have experienced. Despite daily attempts, they have been unable to successfully schedule again due to technical issues and the paucity of appointments. There is no mechanism for this family to notify the U.S. government of their circumstances to reschedule either within or outside the app. The family was recently forced to leave the shelter where they were staying due to capacity issues and was sleeping in the street until a non-profit offered to pay for a hotel room temporarily. Multiple doctors have told *Ignacia* that they cannot treat her in Mexico; the family is afraid she will die while waiting to seek asylum in the United States.

## **B. Families are Forced to Separate to Exercise Their Rights**

The CBP One app offers a limited number of appointments for individuals each day, and when it first launched evidently even fewer that could accommodate families. So, many families interviewed made the difficult decision to separate, leaving spouses alone with children in Tijuana. Of the 157 families interviewed, at least 18 specifically reported that their families had separated because of the CBP One app (and many more were contemplating the same). For those that stayed behind in Tijuana, they expressed an overarching fear that they would never obtain an appointment and safely reunite with their families in the United States.

Many interviewees shared stories of initial confusion using the app. The CBP One app, for instance, failed to make clear that for an entire family to cross, all members must be included under one individual's profile. As such, if a parent obtained an appointment but did not include other family members, they would learn at the border that they could not cross together. Officers consistently told parents that they had the "option" of leaving their children behind, sending their children across the border unaccompanied, or attempting to get another appointment together.

Interviewed families shared frustration that they had been shut out of any opportunity to secure an appointment with all family members included in one profile. Often, family members could get one or two individual appointments, but never enough for their whole family. As



a result, many interviewees decided to separate out of desperation, sending some family members ahead, while their spouses stayed in Tijuana with their children.

For separated families, those who remained in Tijuana continue to face difficulty obtaining an appointment and feared for their safety. Even when families divided into smaller groups, interviewees shared that they still could not get appointments, despite trying at the early hours of every morning for over a month. Those families in Tijuana were considering sending their children ahead unaccompanied anyway to remove them from danger.

Here are stories of some of the families who separated to improve their chances of entry:

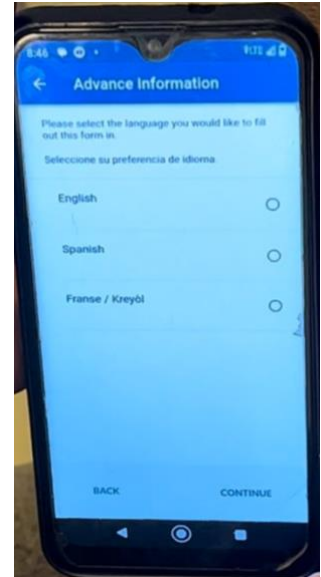
- The *Pierre* family from Haiti—one of the few able to successfully schedule an appointment—presented at the border with their appointment notice that did not list their three-year-old child. A border officer welcomed them with three unenviable options: send one parent through, forgo the appointment altogether, or leave the child behind in Mexico. The family had yet to reschedule after several weeks.
- *Louis* shared that his family, from Haiti, was unable to secure an appointment for himself, his wife, and his young daughter. While languishing in Tijuana, his wife's health deteriorated, and she desperately needed medical attention that was not available there. When they learned that it was easier to get appointments for individuals, they successfully secured an appointment for her. *Louis's* wife entered the United States but is currently alone in a hospital. *Louis* continues to try to get an appointment for himself and his daughter so that he can take care of his wife, but he has not been successful.
- *Emmanuel's* Haitian family was unable to get an appointment that accommodated his entire family through the app. Because his wife is pregnant, she was able to work with an organization to help her cross the border with one of their children while he stayed behind with their other child. *Emmanuel* successfully got an appointment, only learning at the border that he needed to have his child included on the app, so he had to relinquish the appointment.
- *Esther* was unable to get an appointment for herself, her husband, and their two children. Instead, her husband successfully obtained an appointment for himself and entered the United States. Now, *Esther*, from Haiti, is alone with her children in Tijuana. She is very concerned for her family's safety and worries that the program will end before she can reunite her family in the United States.



- *Angeline*, a Haitian woman, is at a shelter in Tijuana with her three-year-old autistic child. She and her husband decided to separate in the hopes it would be easier for her and the child to get an appointment for two instead of three. Her husband entered using CBP One and she has yet to be successful with the app.

### C. Limited Language Access

The app is currently only available in English, Spanish, and Haitian Creole. Although the Haitian Creole version—which notably was not available for several weeks after the app first launched—indicates it is also in “French,” delegation members observed this is not the case and no French version exists. While certain words overlap between the languages, they are completely distinct.



**Agnes** fled Togo after her sisters died from complications as a result of female genital cutting and her uncle threatened her with the same fate. She never learned to read and write because patriarchal norms denied many girls an education. While making the treacherous journey through the notorious Darién Gap, she was sexually assaulted on multiple occasions. Some fellow travelers took her under their wing and helped her reach Tijuana where she is now renting a small room in a temporary housing complex with help from extended family in the United States. When researchers met Agnes, she had yet to download the CBP One app on her phone because she is illiterate. Since getting set up on the app, she has tried to schedule an appointment daily to no avail and continues to report confusion at the error messages she cannot read.

### D. Individuals Face a Glitchy App

Whether individuals attempted to secure appointments alone or with their families, nearly all interviewees encountered problems with the app. From faulty facial recognition to constant glitches, CBP One is riddled with software issues that block individuals from attempting to get appointments on a daily basis.



## 1. Geolocation inaccuracies

At least one individual reported that the app would not schedule an appointment because they were not close enough to the border. However, they were in Tijuana at the time they tried to make the appointment.

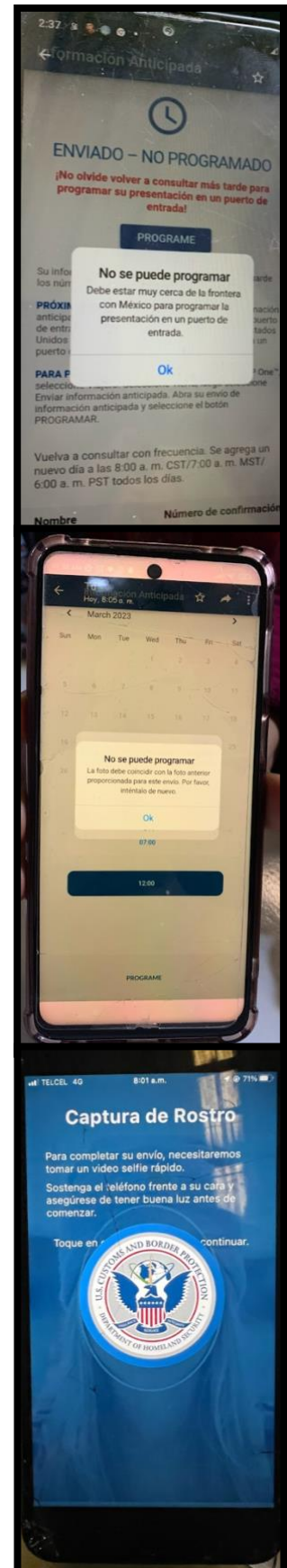
## 2. Photo confirmation issues

To confirm a selected appointment, individuals must take a photo to secure their calendar slot. Because the CBP One app requires photo confirmation at the calendar stage, families struggle to take pictures of all family members within the short confirmation window. Not only is it challenging to get the app to accept photos of all family members, but families also reported waking their young children up as early as one o'clock in the morning to do so. By the time everyone had taken a photo, all of the calendar slots were taken.

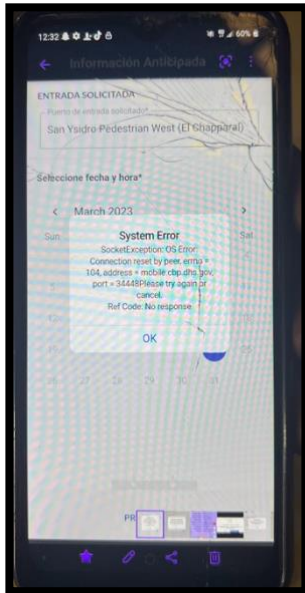
In addition to these difficulties, the app's facial recognition software often does not recognize dark skinned people. Many interviewees were unable to get past the photo confirmation stage because the app failed to recognize their faces. Individuals had to make multiple attempts to get the app to accept their photos, which frequently were never accepted. As a result of the delay, they would lose their opportunity to get an appointment for the day.

## 3. Freezing and other system errors

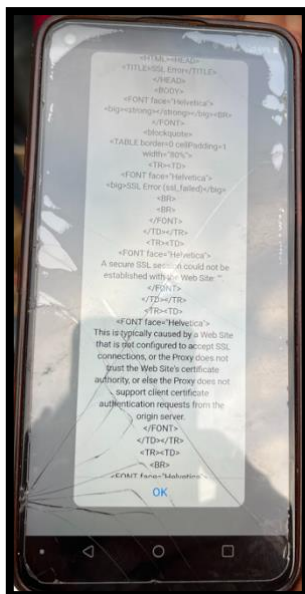
The CBP One app suffers from a variety of software issues that prevent individuals from using the app. Nearly all interviewees reported that the app freezes at various stages of the process, shutting them out during the short time period within which they can attempt to get an appointment before all the available slots are filled. In an attempt to circumvent the constant system errors they experienced, interviewees shared that they have uninstalled and reinstalled the app, updated the app, or removed all other apps from their phone aside from the CBP One app. Despite this, the software issues persist.



Some common issues encountered with CBP One included:



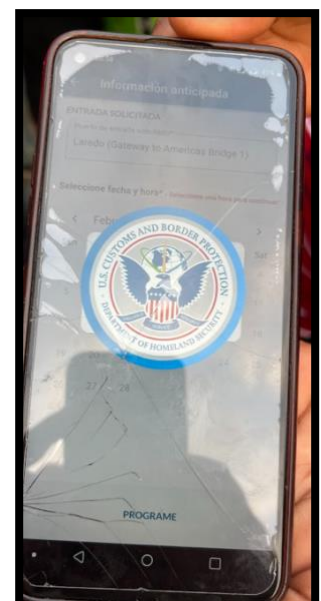
- The app froze just before an individual could take their photo. Typically, a spinning wheel appeared on the page, preventing them from progressing further.
- The app froze on the calendar slot page. A large CBP logo appeared on top of the calendar, preventing individuals from selecting the calendar date and continuing to use the app.
- The app froze entirely, without the CBP logo blocking the calendar, but individuals still could not progress to confirm an appointment.
- The app prevented families from adding their family members under one profile. Parents could add their own information, but the app would freeze or shut down after they did so, preventing them from adding their children and progressing further in the appointment process.



Overall, because pervasive system errors with the CBP One app were not resolved before launching, it fails to serve its stated purpose of enabling individuals at the border to effectively apply for daily appointments.

Moreover, the app seemed to work better for people with higher quality smartphones and strong internet connectivity. Several Haitian interviewees were using new phones when they finally received an appointment, and others had tried up to six different phones before they could secure an appointment. Some interviewees who obtained appointments had spent upwards of \$500 on

their phones, thus creating a system that privileges those with more resources, all but shutting out those who cannot afford a new phone or strong internet.



## **E. Mexican Asylum Seekers Have Little Hope of Escaping Danger**

Mexican nationals will presumably not be subject to the proposed transit bar if adopted because they have not transited through a third country en route to the United States. In practice, however, it is unclear if they will have the ability to even present at a POE without a CBP One appointment even after Title 42 lifts. In the meantime, U.S. policy blatantly violates their right to seek asylum by requiring them to wait in the very country from which they are claiming persecution. Several individuals interviewed had incorrectly been told that the app was not available to Mexicans, and a great deal of confusion persists.

The delegation spoke with 86 Mexican individuals or families, each story more harrowing than the last. Here are just a few examples:

- *Esteban* and his wife and kids fled Michoacan because the cartel wanted *Esteban's* brother to work for them. When his brother refused, the cartel killed the brother, cut off his limbs, sent the body back to the family in a suitcase, and then burned down the family home. They have been waiting at the border since November 2022.
- *Malena* escaped Michoacan with her two-year-old daughter and father-in-law after cartels disappeared her husband and mother-in-law. They are hiding in a shelter attempting to secure a CBP One appointment.
- *Guadalupe* fled Guerrero several months ago after cartels kidnapped her son and threatened to kill her next. She had yet to even download the CBP One app when interviewed because she is living in a rented room without any means of community or basic support.
- *David* and *Yesenia* fled Michoacan after a criminal organization shot *David*, who had been working as a police officer. They have yet to be able to schedule an appointment; the shelter where they were staying is on the outskirts of Tijuana with weak cell service.
- *Jaime* was captured and beaten when he was unable to pay a cartel's extortion fee on his vegetable business. He fled Michoacan with his wife, *Alma*, and their seven-year-old daughter. *Alma* and their daughter have been threatened while staying at a shelter in Tijuana.

## II. Asylum Seekers Have Not Been Able to Find Safety in Transit Countries

The proposed rule would create a “rebuttable presumption of asylum [ineligibility](#)” for individuals who do not seek and receive a denial of asylum in at least one country they pass through to reach the U.S.-Mexico border unless they meet the requirements of the administration's new parole programs, manage to secure a CBP One appointment, or meet one of three extremely narrow exceptions. DHS insists that the rule promotes “lawful, safe, and orderly pathways” for those wishing to enter the United States. However, it will put individuals and families in continued danger by ignoring the safety of the countries they pass through and their capacity to process asylum claims.

Only two individuals interviewed had received asylum denials—one in French Guyana and the other in Mexico. The experience of *Ramón*, for instance, highlights the difficulty of seeking asylum in Mexico. He left Haiti after being attacked for participating in anti-corruption protests. In 2022, he began the lengthy process of applying for asylum in Mexico. Despite the Mexican Commission for Refugee Assistance (COMAR) policy of reaching decisions within [45 to 100 business days](#), a surge in applicants has overwhelmed the agency. In 2021, it received more than 130,000 applications but [only processed 38,005](#). With [limited staff](#) to handle this growing demand, the situation has become increasingly challenging. *Ramón* has now been waiting more than four months for a decision on his asylum application and, struggling to find a job, he faces destitution. People reported facing similar insecurity accessing protection in other transit countries.

In sharp contrast to the Biden administration’s message of safety for immigrants, Mexico has seen an [alarming surge](#) in violent crime rates. In 2021, the homicide rate rose to [28 homicides per 100,000](#), and [over 6,000](#) immigrants were violently attacked. Unfortunately, asylum seekers in Mexico [are often targeted](#) and subjected to discrimination by drug cartels and other criminal actors, as well as by Mexican authorities, including the police and migration officials. Not surprisingly, *Adelina’s* family (from Honduras) was kidnapped in Tapachula, and the police took all of her money, while *Mayra* (from Guatemala) was subjected to unwanted touching by Mexican authorities. Despite feeling scared and unsafe, both women must continue waiting in Mexico while trying to obtain one of the limited appointments through the CBP One app.

**Roseline** was journalist in Haiti with a radio show dedicated to denouncing the rampant crime throughout the country. Threatened with her life, she was forced to flee. Educated, with mastery in three languages, *Roseline* tried to apply for protection in Chile but was overwhelmed by the confusing process and eventually gave up. She came to Mexico with someone who she thought was her friend, but he attacked her and tried to rape her, so she had to flee again. She and her three-year-old son were homeless at the time of interview with nowhere to go (though they were secured a place at a local shelter later that day). *Roseline* had attempted to secure a CBP One appointment every day. She once received an appointment in Mexicali, but border officials turned her away for unclear reasons having to do with the CBP One app.

The following accounts further illustrate the dangers for asylum seekers in Mexico and other transit countries and why applying for asylum in those countries is simply not an option for most:

- The *Perez* family, mentioned above, like many others is too afraid to apply or wait for their asylum claim to be adjudicated in Mexico. A politically connected cartel kidnapped the family in southern Mexico, repeatedly raped the mother, and—before releasing them on a ransom—threatened to kill them should they report anything to the authorities. They are now living in hiding in Tijuana awaiting reunification with family in the United States.
- The *Morales* family, a mother and her thirteen-year-old son, continue to feel unsafe in Mexico after fleeing Honduras. The mother ran a market and owned her own home and car. When she refused the cartel's demands that her son sell drugs, the cartel attacked her, destroyed her vehicle, and tried to kidnap her son. After Honduran authorities refused to get involved, the family fled. The mother did not apply for protection in Guatemala because the same cartel was also active there. Shortly after arriving in Mexico, she received an anonymous call: an unidentified man told her he knew that she and her son were in Mexico. The family is living in isolation in a Tijuana shelter out of fear.
- The *Cortez* family, a mother and three young sons, fled El Salvador when the mother was unable to pay a weekly extortion fee to the cartel from her food and vegetable business. The cartel threatened to kill her or kidnap one of her sons. The mother is scared to stay in Mexico for fear of being found by members of the same cartel.

- *Sandra* fled Honduras with her daughter after her husband was murdered. In Mexico, the family was kidnapped and held for fifteen days during which time the kidnappers subjected her to a brutal beating.

### **III. The U.S. Should Withdraw the Proposed Rule and Restore Asylum**

The stories contained in this report are not unique. Several [news outlets](#) and community based [organizations](#) have reported on these same or similar issues at other locations across the southwest border since release of the CBP One app on January 12, 2023. Members of Congress have [called](#) on the administration to resolve the issues. The dangers in transit countries facing asylum seekers who reach the United States have also been [well documented](#).

The proposed rule betrays the promises the Biden administration made in one of its first [Executive Orders](#) on asylum and in the 2022 [Los Angeles Declaration](#) on Migration and Protection to ensure protections for those in need. The rule will block from asylum individuals who undoubtedly face persecution, torture, and even death. The administration should withdraw the rule, end Title 42, and restore access to asylum at the U.S.-Mexico border.

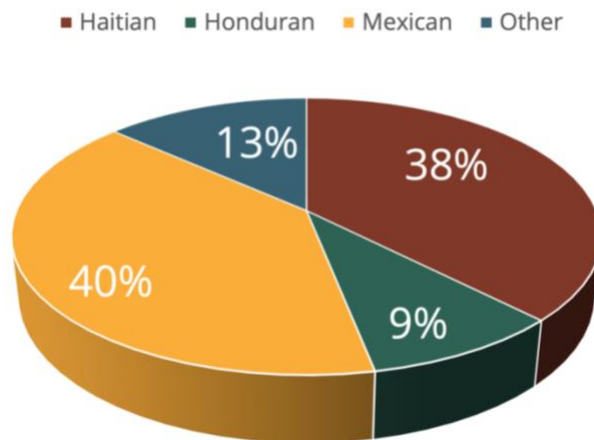
### **Acknowledgments**

This report was authored principally by CGRS Law Clerk and UC Law student Peter Habib with authorial contributions by CGRS Legal Director Blaine Bookey and UC Law SF students Kelsey Anderson, Sam Dodson, Jessica Gillespie, and Keari Platt. Other members of the delegation included: UC Law SF students Jess McPeake, Tuesday Rose Thornton, Becky Vaughan, Nick Wiley and Jake Zarone and ESCDROJ Professor Yvon Janvier. The delegation thanks HBA Legal Director Nicole Phillips and CGRS Director of Litigation Melissa Crow for their comments and extends its appreciation to HBA staff Jeef Nelson and Vivianne Petite Frere for logistical support and Jeremie Dupin for interpretation.

## IV. Appendix

### Summary of Interviews with Asylum Seekers in Tijuana, Mexico from March 4-5 and 11-12, 2023

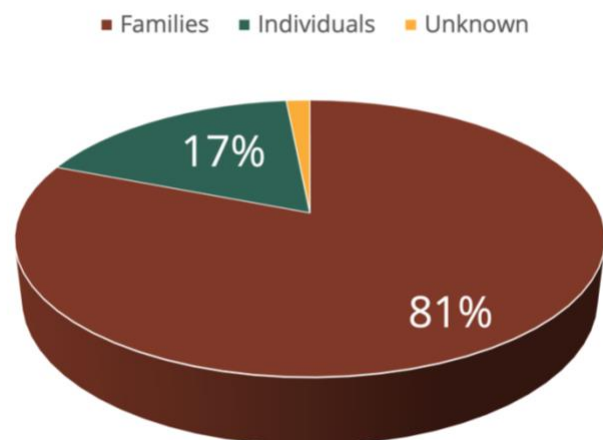
#### Interviewees by Nationality



Of the 194 interviews conducted in Tijuana, Mexico, the vast majority of interviewees were either Haitian or Mexican. As shown below, these two groups comprised nearly 80% of all asylum seekers interviewed. The delegation also spoke with a significant number of Hondurans over the four days during which interviews were conducted.

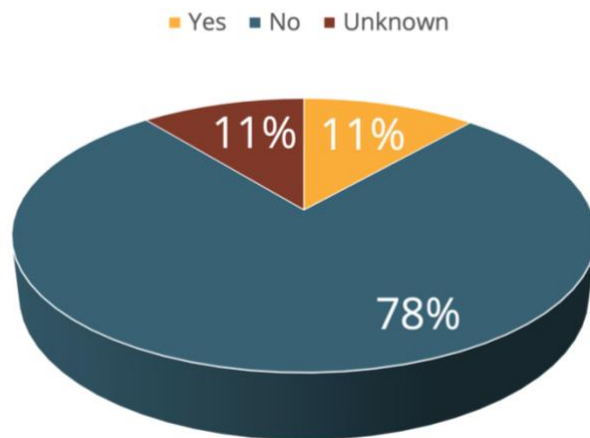
As described above, families are especially impacted by the ongoing volatility and inhumanity of U.S. border policy. The vast majority—at least 81%—of those interviewed were travelling as a family, seeking safety in the United States. While all asylum seekers are adversely impacted by the Biden’s administration’s existing policies and proposed rule, families and parents of young children remain particularly vulnerable—forced to make choices that no parent should have to make.

#### Families Seeking Asylum





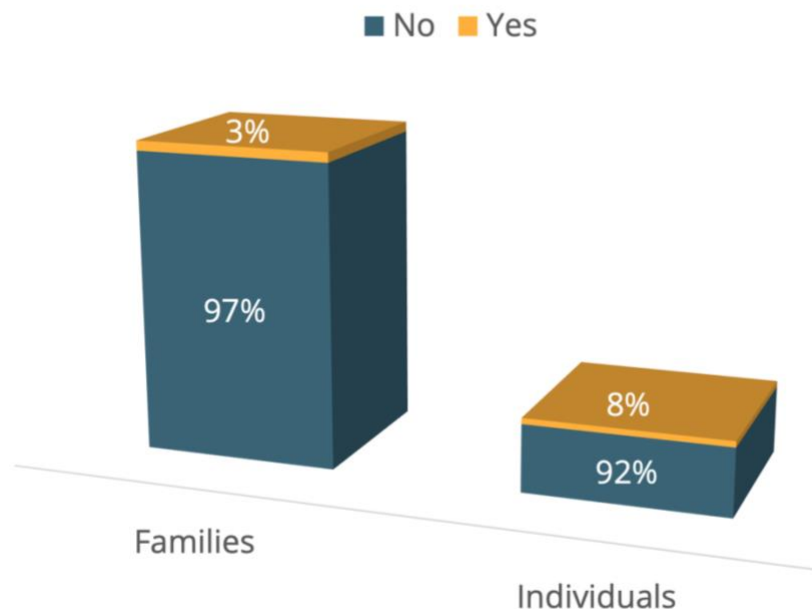
## Families Forced to Separate



Many of the families interviewed experienced the “choice” of splitting their family apart in order to increase their chances of obtaining one of the scarce CBP One appointments. At least 11% of those with whom the delegation spoke made the difficult choice to separate and send some family member(s) into the United States while the other remained in Mexico.

Of the 194 interviews conducted, very few had successfully scheduled an upcoming appointment on CBP One. At the time of interview, 97% of families and 92% of individuals had no forthcoming appointment. Of the few who had successfully scheduled an appointment, several noted that their luck in successfully scheduling an appointment only came when they bought a new smart phone.

## Upcoming CBP One Appointments



***Far from Safety:  
Dangers and Limits to  
Protection for Asylum  
Seekers Transiting through  
Latin America***

**CGRS Report  
April 2023**



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**Center for Gender & Refugee Studies**

# ***Far From Safety: Dangers and Limits to Protection for Asylum Seekers Transiting Through Latin America***

This report was primarily researched and written by Felipe Navarro, with editorial contributions from Kate Jastram and Blaine Bookey. Alex Rodriguez provided research and production assistance. We would like to thank Karen Musalo, Melissa Crow, and Anne Peterson for their valuable feedback on an earlier iteration of information in this report that appears in CGRS's public comment for the proposed regulation, "Circumvention of Lawful Pathways," 88 Fed. Reg. 11704 (Feb. 23, 2023).

The **Center for Gender & Refugee Studies** is a national organization that provides legal expertise, training, and resources to advocates representing asylum seekers, litigates to expand protections for refugees, advances refugee law and policy, and uses domestic, regional and international human rights mechanisms to address the root causes of persecution.

## **INTRODUCTION**

In recent years, migration in the Americas has increased as people are forced to flee political unrest, violence, poverty and economic sanctions, natural disasters, and the impacts of climate change. This has presented new challenges for countries in the region, including the forced displacement of millions of Cubans, Haitians, Nicaraguans, Venezuelans, and others. To help address these challenges, the United States and 22 other countries in North, Central and South America signed the Los Angeles Declaration on Migration and Protection in June 2022, promising to uphold the rights of migrants and refugees in the region.<sup>1</sup> Nevertheless, the Biden administration continues to rely on inhumane policies that prevent people seeking protection from being able to access asylum in the United States.

This report presents the legal and policy context for the administration's latest border proposal which would declare most people ineligible for asylum because they did not seek protection in another country on their way to the United States. It documents the inability of the most common transit countries to provide such protection, with a deep dive into nine common transit countries in the region. And it also offers recommendations to the U.S. government grounded in our legal and moral obligations to refugees.

## **LEGAL AND POLICY CONTEXT**

The administration recently proposed a regulation entitled "Circumvention of Legal Pathways," under which people who have transited through another country on their way to the United States' southern land border (i.e., all non-Mexicans) will be ineligible for asylum, unless they fit within one of the limited exceptions to the ban.<sup>2</sup> This proposal echoes the previous administration's attempt to implement similar policies, which federal courts ultimately deemed unlawful.

The proposed regulation, set to go into effect on or before May 11, 2023, wrongly assumes that all, or even most, transit countries in the Americas have functioning asylum systems and are safe for refugees. Although some countries in the Americas have taken commendable steps to respect the rights of migrant populations in recent years, countless asylum seekers are left without protection due to the limitations of these efforts. The Biden administration is overlooking these shortcomings in an attempt to continue to limit asylum access at the U.S. border as a measure of deterrence.

Both U.S. and international law stipulate that a country must meet specific criteria to be considered a "safe third country."<sup>3</sup> These requirements include providing access to full and fair asylum proceedings; ensuring the country does not pose a risk to the life or freedom of asylum seekers based on their race, religion, nationality, membership in a particular social group, or political opinion; and entering into a formal agreement with the United States.<sup>4</sup>

While the proposed rule does not use the term "safe third country," presumably to avoid having to meet these minimum requirements, there is no other basis for assuming that a person seeking protection is ineligible for asylum in the United States simply by transiting through another country. If the safe third country conditions are not met, the United States must consider asylum claims without presuming that the applicant is ineligible.

## **PROTECTION DEFICITS IN TRANSIT COUNTRIES**

Our analysis of nine major transit countries – Mexico, Belize, Guatemala, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, and Ecuador – reveals that they cannot be considered "safe third

countries” for asylum seekers. U.S. government sources confirm this assessment. As recognized by the Department of State in its Country Reports on Human Rights Practices, the asylum systems in most of these countries are either overwhelmed or almost non-existent, leading to significant challenges in accessing protection. Moreover, in many of these countries, asylum seekers encounter violence and discrimination. Additionally, asylum seekers and refugees in transit countries face serious barriers to accessing basic services such as healthcare, education, and employment. The second part of this report includes a detailed analysis of the protection systems and conditions for asylum seekers in each country.

Although some countries in the region, such as Colombia and Costa Rica, have implemented other temporary forms of protection, these are limited to specific nationalities, such as Venezuelans or Nicaraguans. While these programs have the potential to provide much-needed relief to some individuals, in practice they exclude a significant number of people, which does not reflect the reality of migration across the region. To illustrate, Haitians, among others, are frequently left out of these alternative pathways even though they face significant challenges. These programs also tend to limit access to refugee protection, which undermines the fundamental principle of international refugee law that temporary measures should not be a substitute for permanent refugee protection.

## **RECOMMENDATIONS**

The United States has a legal and moral obligation to protect the rights of asylum seekers and refugees, both domestically and abroad. However, U.S. policies that restrict access to asylum and mandate individuals to seek protection in other nations violate U.S. and international law, and contradict commitments made in the Los Angeles Declaration on Migration and Protection. While several countries in the region are already doing more than their fair share to respond to refugees, the United States is shirking its own obligations to refugees and coercing neighbors to become "safe third countries" would only further burden their asylum systems and put refugees in danger.<sup>5</sup> Rather than relying on failed policies, the Biden Administration must implement effective measures to protect asylum seekers, including at least the following:

- 1) Restore access to asylum at the southern border for all asylum seekers and refrain from implementing an asylum ban – including the proposed regulation “Circumventing Legal Pathways,” 88 Fed. Reg. 11704 (Feb. 23, 2023) – for those who have transited through third countries without seeking protection.
- 2) Coordinate with and fund community-based organizations at the border and throughout the United States to offer essential support and services for asylum seekers without resorting to detention.<sup>6</sup> Prioritizing the needs of asylum seekers and partnering with community-based organizations can lead to a more dignified, compassionate, and effective system for processing and integrating asylum seekers into the country.
- 3) Expand existing humanitarian pathways and establish new ones for different nationalities, including those who come from countries impacted by climate or environmental disasters.
- 4) Refocus regional migration negotiations on developing asylum systems and expanding access to protection in countries able to provide safe haven, and refrain from enforcement-centered agreements and policies that limit transit and place asylum seekers at risk.

## ANALYSIS OF CONDITIONS AND PROTECTION SYSTEMS IN NINE MAJOR TRANSIT COUNTRIES IN LATIN AMERICA

This section presents a detailed analysis of the deficiencies in the protection systems and other conditions in transit countries that place asylum seekers in danger. We begin with **Mexico**, as it is the country that every asylum seeker must transit in order to reach the U.S. southern border. From there, we move southwards through **Belize, Guatemala, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, and Ecuador**, highlighting the challenges and shortcomings faced by asylum seekers throughout the region.



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## Mexico

### Dangers for Asylum Seekers

Mexico is an unsafe country for many asylum seekers, who are targeted by both government authorities and criminal gangs. The Department of State recognizes that “[t]he press, international organizations, and NGOs [have] reported targeting and victimization of migrants and asylum seekers by criminal groups.” There have been numerous instances of these groups extorting, threatening, or kidnapping asylum seekers and other migrants. “In many parts of the country, human smuggling organizations wield significant power, and media allege frequent collusion among local authorities.”<sup>7</sup> As reported by CGRS and other human rights organizations, there are several instances of documented violence against asylum seekers transiting or returned to Mexico, particularly women, children, LGBTQ+ individuals, and others who are particularly vulnerable.<sup>8</sup> Mexican immigration or law enforcement authorities are responsible for a large share of this violence and other crimes committed against asylum seekers.<sup>9</sup>



The combination of stringent immigration enforcement measures in Mexico and U.S. policies that restrict asylum seekers' access to the border have tragically resulted in many deaths. A recent example is the devastating fire that broke out at an immigration processing facility in Ciudad Juarez, Mexico, which claimed the lives of 39 individuals and injured many others. Shockingly, video footage of the incident shows uniformed officials passing by the flames without attempting to open the door or provide assistance to the trapped asylum seekers.<sup>10</sup>

### Deficiencies in the Asylum System

The U.S. government asserts that Mexico has become one of the top countries receiving asylum applications due to the government's efforts to strengthen its international protection system.<sup>11</sup> It is true that asylum applications have increased exponentially in Mexico over the last few years.<sup>12</sup> However, this dramatic increase in asylum applications does not indicate that more asylum seekers feel safe in Mexico and are choosing it as a destination. Rather, it coincides with the U.S. government's implementation of policies that severely restricted access to the U.S. territory and asylum system,<sup>13</sup> forcing thousands of individuals – particularly Black Haitian and African asylum seekers – to remain in a country through which they intended only to transit.<sup>14</sup>

In practice, Mexico's asylum system is overwhelmed despite efforts to increase its capacity. COMAR (“Comisión Mexicana de Ayuda a Refugiados”), Mexico's refugee agency, has modestly increased its staffing and field presence. Yet despite these efforts, the agency cannot meet the demand resulting from an increasing number of applications. COMAR's budget has increased over the years, but only modestly and not commensurate with the increase in asylum applications.<sup>15</sup> For 2023, COMAR was assigned a budget of around 2.5 million U.S. dollars. This represents only a 5.8 percent increase over the budget for 2022, and an 8.8 percent increase as compared with 2021.<sup>16</sup> In practice, the unprecedented number of asylum seekers in Mexico has overstretched COMAR's capacity to process



asylum requests.<sup>17</sup> This lack of capacity has become one of many obstacles to accessing international protection in Mexico.<sup>18</sup>

An illustration of COMAR's lack of capacity is the limited number of requests it adjudicates, in comparison with the total number of applications received. Between 2020 and 2022, COMAR resolved on average 32,189 cases per year, while it received 183,555 asylum applications during the same period.<sup>19</sup> Further, while COMAR granted asylum or complementary protection in around 74 percent of cases adjudicated, it is important to note that the agency treats asylum seekers differently depending on their nationality. For example, COMAR may grant protection to many Hondurans, Venezuelans, and Salvadorans, "while rejecting most applicants from Haiti, saying they do not qualify as refugees."<sup>20</sup> The approval rate among applicants for Haiti was only 12 percent in 2022.<sup>21</sup>

Additional barriers to accessing protection in Mexico include a limited period of 30 days to file asylum applications after entering the country,<sup>22</sup> as well as a series of practices and policies that prevent asylum seekers from filing their claims or obtaining proper support during the process. For instance, human rights organizations have documented cases where immigration agents have dissuaded asylum seekers from applying for refugee status and instead pressured them to agree to voluntary returns, "even when they said they would be at risk of violence and persecution in their home countries."<sup>23</sup> At airports, Mexican immigration authorities have turned around individuals intending to seek protection in Mexico.<sup>24</sup> Mexican authorities have also illegally expelled asylum seekers from the interior of the country and from its southern border.<sup>25</sup>

Further, Mexican law forces asylum seekers to remain in the jurisdiction in which they applied for protection during the duration of their proceedings.<sup>26</sup> This has caused a bottleneck of cases at Mexico's southern border. In 2021 and 2022, on average over 66 percent of those who applied for asylum in Mexico did so in Tapachula, Chiapas, where conditions are dire. Shelters in Chiapas have been stretched beyond their capacity, jobs are nearly impossible to find, and individuals waiting for appointments or decisions are provided little to no assistance, forcing many to live in the streets.<sup>27</sup> Asylum seekers in Tapachula are also prevented from accessing healthcare services, as providers often require them to provide documentation they do not have.<sup>28</sup> Further, not only have asylum seekers experienced violence in Tapachula, but many have also reported feeling unsafe due to its proximity to the Guatemalan border, where some of the gangs they have fled operate.<sup>29</sup>

## **Detention**

Mexico's immigration detention system presents another serious barrier to accessing or receiving protection. While the national Migration Law sets a maximum of 60 days for immigration detention, the implementing regulation provides that asylum seekers can be detained for the entire duration of their proceedings.<sup>30</sup>

Asylum seekers in detention face overcrowding, unsanitary conditions, lack of services, and inadequate food and healthcare, forcing many to drop their claims in order to be released.<sup>31</sup> Most of them never receive information about their right to apply for asylum or complementary protection while in detention.<sup>32</sup> During 2021, foreign nationals arriving at airports to seek protection were detained by Mexican migration authorities and held in detention for weeks, without any opportunity

to apply for asylum.<sup>33</sup> There have also been incidents of torture reported in immigration detention centers.<sup>34</sup>

### **Discrimination and Access to Basic Services**

The asylum-seeking population in Mexico has also shifted over the last few years, with an increasing number of both Black and non-Spanish speaking applicants.<sup>35</sup> These asylum seekers face racism and increased xenophobia.<sup>36</sup> For example, as documented by CGRS and other organizations, discrimination and racial profiling prevents Haitian asylum seekers from accessing employment, housing, or even public transportation in Mexico.<sup>37</sup> Non-Spanish speakers face language barriers further prevent access to both the asylum system and services such as education and healthcare.<sup>38</sup>

In short, Mexico does not meet the requirements of a safe third country under U.S. law and international standards.

## **Belize**

### **Deficiencies in the Asylum System**

Although Belize is a country with lower levels of violence, and greater respect for human rights than many of its nearby neighbors, its asylum system is barely functional. By December 2022, Belize had granted asylum to fewer than 100 individuals, resulting in a backlog of over 4,000 cases.<sup>39</sup>

Asylum seekers in Belize face an inaccessible and inefficient asylum system. First, the actual process is cumbersome as it involves a single Eligibility Officer who oversees gathering and reviewing claims before passing them on to the Refugee Eligibility Committee, a 9-member group that reviews only a limited number of cases at monthly meetings.<sup>40</sup> According to the Department of State, out of 640 positive recommendations, the Ministry of Immigration has granted asylum in only 15 percent of them.<sup>41</sup> Second, more than 50% of asylum seekers report not applying for asylum in Belize due to not knowing it was an option or not having information on how to do so, a clear barrier to accessing the system.<sup>42</sup>



Worse, there are also reports that Belizean authorities prevent asylum seekers from seeking protection or discriminate against them. For example, the Human Rights Commission of Belize reported that 26 individuals filed complaints for not being allowed to apply for refugee status in 2022, while the true number is believed to be much higher.<sup>43</sup> And while the Belizean Refugee Law recognizes the right to seek asylum regardless of the matter of entry into the country, there have been cases reported of asylum seekers being denied this opportunity because they entered irregularly.<sup>44</sup> During 2022, “the government repatriated Cuban nationals who claimed their lives or freedom would be threatened due to their opposition to the government. Belize and Cuba have an agreement that requires Belize to return to Cuba all irregular migrants with Cuban citizenship.”<sup>45</sup> Additionally, one government study reported that 15 percent of asylum seekers claimed to have entered Belize irregularly after being rejected at ports of entry due to their nationality.<sup>46</sup>

### **Discrimination and Access to Basic Services**

Discrimination also extends to access to basic services.<sup>47</sup> For example, lack of access to education and employment in Belize is a serious barrier to integration for asylum seekers, in particular due to their inability to obtain employment authorization.<sup>48</sup> As of January 2023, only 222 asylum seekers in the entire country had work permits.<sup>49</sup>

### **Deficiencies in the Amnesty Program**

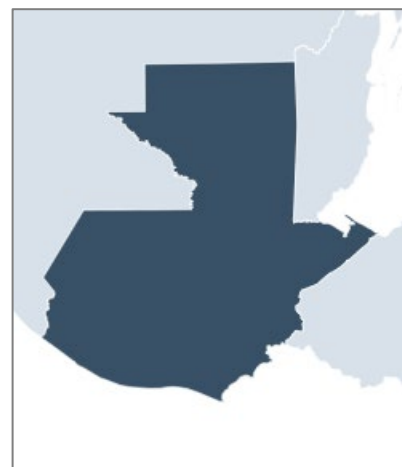
Finally, while the Government of Belize has launched an amnesty program, this measure will benefit only a limited number of individuals. The amnesty is available solely to asylum seekers who filed their claims before March 31, 2020, and for migrants who entered irregularly before 2017.<sup>50</sup> In practice, this means that the total number of asylum seekers eligible to apply for amnesty is fewer than 5,000, including individuals whose claims have been rejected.<sup>51</sup>

In short, Belize fails to meet the requirements of a safe third country under U.S. law and international standards.

## **Guatemala**

### **Dangers for Asylum Seekers**

It must be noted first that Guatemala itself is a refugee-producing country. Indeed, in 2021, Guatemalans filed 23,000 asylum cases in the United States, accounting for 12% of the total number of applications filed that year.<sup>52</sup> The conditions that force so many to flee Guatemala can also make it a dangerous country for asylum seekers. According to the State Department's own human rights report, rape, femicide, violence against women, trafficking in persons, violent attacks against LGBTQ+ persons, gang recruitment of displaced children, and sexual exploitation of children are all serious problems in Guatemala.<sup>53</sup> Guatemala's high rates of violence in large part are due "to the presence of narcotrafficking organizations, particularly in border areas, as well as gangs that control urban neighborhoods. In this context, gender-based violence is particularly rampant, given that many of these groups use this form of violence in order to demonstrate control or power."<sup>54</sup>



We know that asylum seekers suffer from this violence, as well. Individuals transferred from the United States to seek asylum in Guatemala under the now defunct Asylum Cooperative Agreement reported that:

they considered Guatemala to be no different than their home countries in terms of safety and opportunity. Indeed, many transferees noted that in their home countries they at least understood the context and had social networks that they could rely on. Few found

remaining in Guatemala to be a feasible option because it is a dangerous and poor country where they lack familial or social ties.<sup>55</sup>

Over the last few years there has been a moderate increase in the number of individuals seeking asylum in Guatemala.<sup>56</sup> However, there is no indication that asylum seekers seek refuge in Guatemala because they feel safe. In reality, the dramatic increase in asylum requests filed in Guatemala occurred at a time when both the U.S. and Mexican governments had implemented increased enforcement measures, such as expulsions, designed to keep asylum seekers from reaching the U.S. border.<sup>57</sup>

### **Deficiencies in the Asylum System**

Guatemala has taken some steps to develop its asylum system. For example, in February 2021 the government created the Refugee Status Recognition Department (DRER), an office dedicated to “establishing an appropriate mechanism to receive asylum requests.”<sup>58</sup> However, the mere creation of an office does not meaningfully address other structural deficiencies in the asylum system.<sup>59</sup>

The asylum system in Guatemala is inefficient; claims go through an extended bureaucratic process. Asylum requests are reviewed by the National Commission for Refugees (CONARE), which is composed of delegates from the Ministry of Labor and Social Security, Ministry of Foreign Affairs, Ministry of Interior, and Guatemalan Migration Institute. CONARE then makes recommendations to the National Immigration Authority (INM) which approves or denies the asylum requests.<sup>60</sup> UNHCR is deliberately excluded from the process, preventing the agency from voicing its position on asylum cases.<sup>61</sup> This “interministerial process contributes to major delays on final case decisions and an increased backlog.”<sup>62</sup> At the end of 2022, Guatemala had recognized only 773 refugees in the prior 20 years.<sup>63</sup>

Even with the DRER in place, access to the asylum system is out of reach for many. The Department of State noted that in 2021 some vulnerable individuals in need of protection required the intervention of “central authorities” and the Human Rights Ombudsman (PDH) to be able to apply.<sup>64</sup> Similarly, “UNHCR reported that identification and referral mechanisms for potential asylum seekers were inadequate.”<sup>65</sup> Following the initial asylum request—which can be made at immigration control posts at the border or in DRER offices—the asylum seeker must travel to Guatemala City to complete the process.<sup>66</sup> In practice, this onerous travel requirement limits access to asylum.<sup>67</sup>

Access to asylum is also restricted by enforcement practices that limit access to territory. For example, Guatemalan authorities have violently repressed peaceful migrant caravans. Authorities have also illegally expelled potential asylum seekers *en masse*, particularly those from Haiti or Venezuela.<sup>68</sup>

### **Work Permits and Access to Employment**

The Guatemalan government also created a process to issue work permits as another step to improve the protection system. Yet by no means does this new process fully address the basic survival needs of asylum seekers. In reality, the centralized process to issue work permits, the existence of a cap on the number of foreign workers that companies can employ,<sup>69</sup> and lack of knowledge in the public and private sectors about refugee rights, are all obstacles to economic

integration.<sup>70</sup> This has a direct impact on asylum seekers in Guatemala, who “struggle to meet their most basic needs.”<sup>71</sup>

### **Access to Basic Services**

Further, “access to effective personal documentation for asylum-seekers and refugees is the main obstacle” to obtaining services such as education, health, welfare, and financial services.<sup>72</sup> In particular, the Department of State reports that access to education for asylum seekers is difficult due to “the country’s onerous requirements for access to formal education, including documentation from the country of origin.” Relatedly, the Department of State noted that “[a]dult asylum seekers often could not obtain accreditation of their foreign university degrees to practice their profession.”<sup>73</sup>

Guatemala does not meet the requirements of a safe third country under U.S. law and international standards.

## **El Salvador**

### **Dangers for Asylum Seekers**

Like Guatemala, El Salvador is traditionally a refugee producing country. In 2021 alone, nearly 15,000 Salvadorans applied for asylum in the United States, accounting for 9 percent of total applications.<sup>74</sup> El Salvador is also a dangerous country for asylum seekers.

The Department of State reports that UNHCR and humanitarian organizations that attempt to aid asylum seekers and refugees find it difficult to do so in certain areas due to the control of gangs over neighborhoods.<sup>75</sup> Additionally, human rights conditions in El Salvador have deteriorated over the last year. In 2022, the government of El Salvador instituted a state of emergency as an alleged response to increased gang violence. The state of emergency, initially imposed for one month, has been repeatedly extended for nearly a year now.<sup>76</sup>



During this time, NGOs have documented an increase of human rights violations, including mass arbitrary detentions, torture and other cruel treatments of detainees, enforced disappearances, degrading treatment or punishment by security forces; harsh and life-threatening prison conditions, and corrupt prosecutions.<sup>77</sup> Making matters worse, the state of emergency has also been used as an excuse to limit the right to access public information, advance the closure of civic space, and facilitate acts of corruption.<sup>78</sup> The Department of State has also recognized persistent additional human rights issues such as “serious problems with the independence of the judiciary. . . lack of investigation and accountability for gender-based violence; significant barriers to accessing sexual and reproductive health services; and crimes involving violence against [LGBTQ+] individuals.”<sup>79</sup> These factors all impact the ability of vulnerable populations, such as refugees and asylum seekers, to be safe in El Salvador.

### **Deficiencies in the Asylum System**

Furthermore, according to the Department of State, El Salvador’s asylum system “has major regulatory and operational gaps” that restrict access to protection.<sup>80</sup> First, there is an exceptionally

short deadline of 5 business days to apply for asylum, so few people are able to apply in the first place.<sup>81</sup>

Second, the entity in charge of adjudicating asylum claims, *Comisión para la Determinación de la Condición de Personas Refugiadas* (or CODER),<sup>82</sup> does not have its own budget, which hampers its capacity and operations. Additionally, CODER is not structured to process asylum requests in a streamlined manner. CODER is made up of the Ministers of Government and Foreign Relations, or their representatives, and in order to grant asylum to individuals, their decision must be unanimous.<sup>83</sup> Between 2014 and 2019 CODER granted asylum to an average of 6 people per year.<sup>84</sup>

Third, El Salvador's asylum system has limited due process guarantees. For instance, "the criteria for case decision [are] unclear"<sup>85</sup> and asylum denials cannot be appealed to a higher authority. At best, asylum seekers can request a revision of the decision from the same body that adjudicated their case, CODER, within three business days of being notified of the denial.<sup>86</sup>

El Salvador fails to meet the requirements of a safe third country under U.S. law and international standards.

## Nicaragua

### Dangers for Asylum Seekers

Thousands of Nicaraguan individuals and families have sought refuge in countries like Costa Rica and the United States, among others. Conditions are so dire that Nicaragua is one of the very few countries in the world that benefit from the new country-specific U.S. parole program.<sup>87</sup>

The Department of State reports significant human rights violations and other abuses in Nicaragua, including arbitrary killings; torture and cruel, inhuman, or degrading treatment; government harassment of human rights organizations; sexual and gender-based violence perpetrated with impunity; violence against Indigenous communities, trafficking in persons; violence against LGBTQ+ individuals; and "the worst forms of child labor."<sup>88</sup>



### Deficiencies in the Asylum System

The asylum system in Nicaragua has been *de facto* suspended since 2015, with a significantly reduced protection space for both asylum seekers and refugees.<sup>89</sup> The Department of State confirms that the Nicaraguan government has not provided updated information on refugees or asylum seekers since 2015.<sup>90</sup>

UNHCR has expressed serious concern about conditions in the country, stating that the:

current situation in Nicaragua is severely affecting refugees and asylum-seekers. As the socio-political crisis deepens, refugees and asylum-seekers in Nicaragua lack access to basic services, such as education or medical care, a fact which has increased their socioeconomic

vulnerability. Many have lost their jobs or have been forced to close their small businesses as the inflation and the reduced demand are not allowing them to make a profit. The insecurity and the protests have also negatively impacted their freedom of movement. As a result, many refugees and asylum-seekers have started to leave the country. Some of them have preferred to return to their country of origin, while others are looking for international protection in neighboring countries.<sup>91</sup>

Since 2017, UNHCR has documented “several cases of refoulement and/or denial of entry of Honduran and Salvadoran families. The persons that are affected include: recognized refugees and asylum-seekers, and persons with international protection needs who could not access the asylum procedures due to the suspension of the asylum system.”<sup>92</sup>

Nicaragua fails to meet the requirements of a safe third country under U.S. law and international standards.

## **Costa Rica**

Costa Rica is a country known to welcome asylum seekers and migrants, but it already has a per capita rate of asylum claims ten times that of the United States.<sup>93</sup> Further, its asylum system is overwhelmed. Just in 2021, over 108,000 asylum seekers filed claims in Costa Rica.<sup>94</sup> As of September of 2022, there were over 200,000 pending asylum applications, and over 50,000 individuals waiting for their appointments to make formal applications.<sup>95</sup> Between 2017 and 2021, Costa Rica granted asylum to only 6,035 individuals.



Worse, forcing Costa Rica to become a safe third country would likely result in a dramatic increase of asylum applications. According to the former president of Costa Rica, such a policy would increase the burden for the country and make it less welcoming by fueling xenophobia.”<sup>96</sup>

### **Deficiencies in the Asylum System**

Aside from increased numbers of applicants, structural and systemic deficiencies limit Costa Rica's asylum system. According to Obiora C. Okafor, U.N. Independent Expert on human rights and international solidarity, despite the increasing number of asylum seekers there has been a “decrease in access to international development assistance and other forms of international cooperation received from donors,”<sup>97</sup> which negatively impacts Costa Rica's capacity to welcome asylum seekers. In line with this, civil society organizations “have reported significant gaps on the ground in the social protection of migrants and refugees.”<sup>98</sup> Also, “[d]ue to the insufficiency of the number of officers processing their applications, migrants and refugees also experience long delays before their applications for the regularization of their status [are] determined.”<sup>99</sup>

According to the Department of State, “while the law requires authorities to process claims within 3 months of being filed, in practice there [is] an average two-month wait for appointments to file an



asylum claim, and it [takes] up to 10 years to complete the review and appeals processes.”<sup>100</sup> UNHCR also reports that Costa Rica’s asylum system does not have a clear prioritization mechanism for applicants with special needs, lacks standard operating procedures, and provides insufficient information to applicants about the process.<sup>101</sup>

### **Temporary Protection and Measures to Deter Asylum Seekers**

In response to its backlog, Costa Rica’s new government has severely curtailed eligibility and discouraged people from seeking asylum. In December 2022, President Rodrigo Chaves stated that the asylum system was being abused and announced sweeping reforms and policies to curb this perceived abuse.<sup>102</sup> First, the government issued a decree modifying the country’s refugee regulation to enact the following restrictions: a new one month-term to apply for asylum;<sup>103</sup> bans to asylum for reasons such as working without authorization and/or transiting through “safe countries” - as determined by the General Migration Directorate - without requesting asylum and receiving a denial;<sup>104</sup> and expanded the bases for finding claims to be fraudulent or unfounded.<sup>105</sup>

Second, an accompanying regulation restricts access to employment authorization for asylum seekers. Before the new regulation, applicants in most cases were automatically able to work 3 months after filing their claim. Now individuals must apply separately for a work permit after waiting the 3-month period.<sup>106</sup> With the new regulation, work authorization is now tied to a specific employer and requires a detailed job offer.<sup>107</sup> These represent significant restrictions, especially because “refugees and asylum seekers reported that job opportunities were scarce” before the new regulation.<sup>108</sup> Prior to these reforms, at least 3,225 asylum seekers or refugees in Costa Rica already lived in a situation of poverty or extreme poverty.<sup>109</sup>

Third, while Costa Rica is extending a new Special Temporary Category (STC) to Cuban, Nicaraguan, and Venezuelan asylum seekers, it requires them to withdraw their asylum applications once the STC is granted.<sup>110</sup> This form of temporary protection will benefit only nationals from the three countries who requested asylum between 2010 and September 2022 and whose cases were denied or are pending.<sup>111</sup> Further, the STC does not allow for family reunification.<sup>112</sup> All of this indicates that, even if the STC will benefit Nicaraguans, Cubans, and Venezuelans already in Costa Rica, it was also created to dissuade people from seeking asylum and will leave countless people unprotected.

### **Discrimination and Access to Basic Services**

Additionally, despite its welcoming reputation, Costa Rica can be an unwelcoming place for many asylum seekers. Xenophobia and discrimination have increased as the number of refugees from Nicaragua and other places has grown over the years.<sup>113</sup> The Department of State reports that “access to public services and social welfare is hampered, among other reasons, due to xenophobia. Access to health services is difficult.”<sup>114</sup> Nicaraguans in particular face discrimination in the education system to varying degrees. This includes demotion of academically successful children and teens under the pretense that education levels in Nicaragua are lower than in Costa Rica; social exclusion and harassment, particularly because of their accents; and hostile treatment and denial of information by academic officials.<sup>115</sup>

## **Work Permits and Access to Employment**

Furthermore, refugees and asylum seekers in Costa Rica “reported that job opportunities [are] scarce. In the case of professionals, refugees, and asylum seekers [face] significant bureaucratic processes in obtaining a license to practice locally.”<sup>116</sup> In turn, “these labor prospects have placed Nicaraguan migrants in an unusually vulnerable economic situation, particularly during the pandemic, with many becoming food insecure and having to sleep in the streets.” For example, a report highlights that “[i]n mid-2020, more than three-quarters of Nicaraguan immigrants were going hungry.”<sup>117</sup> The Department of State has also pointed out that the “forced labor of migrants occurs in the agricultural and domestic service sectors” and that the Government does not enforce minimum wages in rural areas, especially “where large numbers of migrants [are] employed, and in the large informal sector.”<sup>118</sup>

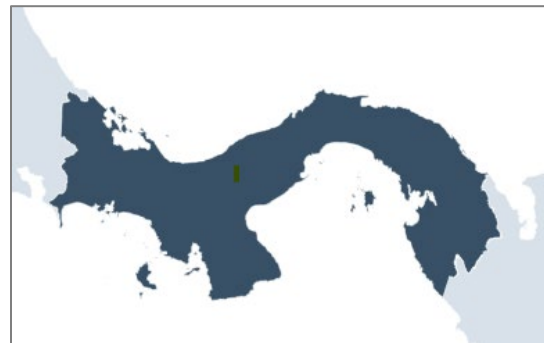
## **Dangers for Asylum Seekers**

According to the Department of State, “[g]roups of exiles in Costa Rica alleged harassment and political oppression by parapolice and [Ortega regime] sympathizers who crossed the border to target exiles, as well as by intelligence officials within the Nicaraguan embassy in Costa Rica.”<sup>119</sup>

Costa Rica does not meet the requirements of a safe third country under U.S. law and international standards.

## **Panama**

Large numbers of individuals make the treacherous journey through the Darién Gap into Panama every year. From January 2021 through December 2022, over 382,000 individuals entered Panama irregularly.<sup>120</sup> However, despite the high number of individuals transiting through the country, very few opt to seek refuge in Panama. In 2021, Panama received only 542 asylum applications, and the number increased modestly to 703 in 2022.<sup>121</sup> This responds largely to policies and structural deficiencies that prevent asylum seekers from accessing protection in Panama.



## **Deficiencies in the Asylum System**

The country’s migration policy is focused on transit, not on hosting migrants nor much less on protecting asylum seekers. As witnessed by CGRS and partner organizations during a fact-finding trip to Panama in October 2022, the country’s main stated and actual policy is to facilitate the transportation of migrants from the Darien region to the border with Costa Rica.<sup>122</sup>

Those who do decide to seek asylum face what advocates on the ground believe is “the single most difficult pathway to regularize in Panama.”<sup>123</sup> In practice, Panama’s asylum infrastructure lacks procedural guarantees and basic safeguards, leaving asylum seekers largely unprotected.<sup>124</sup> First, individuals can file their claims only in Panama City and must do it within six months after entering the country.<sup>125</sup> Second, according to UNHCR, the National Office for the Attention of Refugees (ONPAR)—the agency charged with receiving claims and determining their admissibility—is not applying the lower

“manifestly unfounded” admissibility standard, but instead is deciding on the merits, which is inappropriate at this stage.<sup>126</sup> As an illustration of the impact of this, in 2022, ONPAR admitted only 11 cases while rejecting 957.<sup>127</sup>

In turn, the National Commission for Refugees (CONARE)—the body charged with considering and adjudicating asylum claims referred by ONPAR—is highly inefficient. This committee is composed of representatives of eight different government agencies that meets around four times a year and historically has adjudicated on average fewer than 50 cases annually.<sup>128</sup> In 2021, CONARE recognized only 13 refugees (nine from Ukraine and four from Nicaragua).<sup>129</sup> On average, the Panamanian asylum system has an extremely low one percent admission and approval rate.<sup>130</sup> Moreover, Panama has a backlog of over 11,000 cases.<sup>131</sup>

### **Documentation and Access to Basic Services**

This backlog “leaves asylum-seekers in precarious circumstances without the right to work and without social assistance.”<sup>132</sup> When individuals apply for asylum, they receive a certificate that allows them to remain in the country while their case is reviewed for admission. However, in 2022, ONPAR only issued 208 of these certificates.<sup>133</sup> “[A]s a result of the long wait times to be entered into the asylum system, many applicants encountered difficulties accessing basic services such as health care, financial services, and appropriate housing.”<sup>134</sup> Additionally, the certificate issued by Panamanian authorities to asylum seekers is “not always recognized by the National Police and by health and education authorities,” and “contains only the main claimant’s information, placing the rest of the accompanying family members at risk as they do not have individualized identification.”<sup>135</sup>

### **Work Permits and Access to Employment**

Only after cases are formally admitted by ONPAR can asylum seekers apply for a work permit. However, this process can take several years, which also limits access to basic rights and leaves asylum seekers at risk of exploitation.<sup>136</sup> In 2022, only 48 work permits were issued to asylum seekers.<sup>137</sup> Aside from difficulties obtaining permission to work, asylum seekers and refugees alike have a challenging time finding work opportunities.<sup>138</sup> “In fact, the exclusion of refugees and migrants from economic participation and other forms of integration into Panamanian life are codified in law.”<sup>139</sup> The Panamanian Constitution allows the exclusion of foreigners from certain activities and the law in fact “forbids foreigners, even with a work permit, to labor in [certain] professions.”<sup>140</sup> At present, there are as many or more than “56 protected professions, which only Panamanian-born and naturalized citizens can practice” including “a wide variety of skilled and unskilled professions, ranging from doctors, accountants, and lawyers, to cosmetologists, security agents, and gardeners.”<sup>141</sup>

The protracted length of the asylum process, the inability to access work permits and job opportunities, and limited available humanitarian assistance, place asylum seekers in Panama at heightened risk.<sup>142</sup> Conditions for refugees and asylum seekers were further exacerbated by the COVID-19 pandemic, where many individuals who had achieved some degree of stability had to rely on humanitarian assistance to meet their most basic needs.<sup>143</sup> As the Department of State acknowledges, there are thousands of individuals in Panama with international protection needs. These

include “persons in the asylum and refugee process, persons denied refugee status, and persons who did not apply for refugee status due to lack of knowledge or fear of deportation.”<sup>144</sup>

### **Dangers for Asylum Seekers**

Finally, there are alarming rates of sexual violence committed against refugees and migrants who cross the Darién Gap. This violence has been largely committed with impunity against Black women and girls, who are generally unable to access justice, law enforcement, or even health services.<sup>145</sup>

For these reasons, Panama does not meet the requirements of a safe third country under U.S. law and international standards.

## **Colombia**

### **Dangers for Asylum Seekers**

While in recent years Colombia has gained notoriety for being among the top 3 countries in the world hosting forcibly displaced individuals, it is also a refugee producing country.<sup>146</sup> As of 2021, there were more than 400,000 Colombian refugees abroad.<sup>147</sup>

Colombia is also dangerous country for many asylum seekers and refugees. For example, during the first half of 2021 alone, Venezuelans in Colombia were targets of violence, including 1059 assaults, 362 homicides, and 335 incidents of sexual violence, although it is widely believed that crimes against migrants are severely underreported.

In the same period, there were seven reported events of forced displacement due to violence or conflict that impacted 115 Venezuelans.<sup>148</sup> The Department of State also reports that “Venezuelan migrants, and inhabitants of marginalized urban areas, were at the highest risk of forced labor, domestic servitude, forced begging, and forced recruitment. Authorities did not make efforts to investigate cases or increase inspections of forced labor.”<sup>149</sup>



According to the Department of State, there are other serious human rights violations in Colombia, including arbitrary killings; torture and arbitrary detention by government security forces; serious abuses in a conflict, violence against and forced displacement Black and Indigenous persons; and violence against LGBTQ+ individuals.<sup>150</sup> Further, armed groups are known perpetrators of violent crimes such as “. . . human trafficking, bombings, restrictions on freedom of movement, sexual violence, unlawful recruitment and use of child soldiers, and threats of violence against journalists, women, human rights defenders.”<sup>151</sup> All of these human rights abuses present a risk for refugees and asylum seekers.

### **Deficiencies in the Asylum System**

Colombia’s asylum system is deficient, bureaucratic, and cumbersome. A single body, *Comisión Nacional para la Determinación de la Condición de Refugiado* (CONARE), which is made up of nine representatives from different government agencies, reviews asylum applications, conducts

interviews, and makes non-binding adjudication recommendations.<sup>152</sup> The Minister of Foreign Relations, a high-level cabinet position, then makes final determinations.<sup>153</sup> Between 2017 and mid-2022, Colombia's refugee agency granted asylum in only 1,313 cases.

Furthermore, there is little infrastructure to support the asylum system or services for refugees.<sup>154</sup> These factors, added to the increasing number of asylum requests, have resulted in a backlog of over 42,106 pending cases.<sup>155</sup>

In addition, numerous difficulties prevent access to the asylum system. General lack of awareness and information about the asylum process is a significant barrier.<sup>156</sup> The two-month deadline to apply for asylum after entering Colombia presents another substantial roadblock.<sup>157</sup> The process can last for an undetermined amount of time, sometimes years, before an application is adjudicated.<sup>158</sup> While they wait, asylum seekers receive a document (*salvoconducto*) that allows them to remain in the country, sometimes restricted to specific areas, but without the possibility to work or access basic services.<sup>159</sup> This leaves asylum seekers in Colombia in a vulnerable situations where they are unable to provide for themselves or their families for extended periods of time.

While the current Colombian government has promised to expand its protection system, this does not seem to represent a serious commitment. On the contrary, in the national development plan for the next four years (*Plan Nacional de Desarrollo 2022-2026*), which the government submitted to Congress in February 2023, there is no mention whatsoever of policies for refugees or migrants.<sup>160</sup> The new government also dismantled the President's Office of Attention and Socioeconomic Integration for Migrants, the department in charge of coordinating integration policies at the national level, and instead dispersed its duties within the Ministry of Foreign Relations, an agency that is not charged with developing domestic policy.<sup>161</sup>

### **Deficiencies in the Temporary Protection Program**

It is noteworthy that Colombia has enacted the Statute of Temporary Protection for Venezuelans (ETPV), an effort to regularize over 2 million Venezuelans. However, this program leaves many vulnerable individuals out and limits access to permanent protection, such as refugee status, in favor of temporary regularization.

Significantly, the ETPV is not available to all Venezuelans in Colombia. It excludes those who entered Colombia irregularly after January 31, 2021, and will cover only Venezuelans who enter Colombia with recognized travel documents up to May 28, 2023.<sup>162</sup> While the goal of this measure may be to disincentivize irregular migration, it does not respond to the reality of conditions in Venezuela and the reasons that force its nationals to flee.<sup>163</sup> Further, even those who are eligible for the ETPV may have difficulty meeting its stringent requirements and deadlines.<sup>164</sup> In particular, the policy ignores the special needs of elders, individuals with disabilities, survivors of trafficking, or Indigenous peoples.<sup>165</sup> In turn, the exclusions and restrictions in the ETPV will further overwhelm the asylum system as newly arriving Venezuelans will have no options to regularize other than to seek asylum.

While asylum seekers are eligible to apply for the ETPV, if approved, individuals must choose between receiving the ETPV or continuing their asylum claims.<sup>166</sup> This hardly a voluntary choice given the deficiencies in the asylum system described above. Forcing asylum seekers to make this choice is very concerning, especially given that the ETPV provides only temporary protection on a

discretionary basis.<sup>167</sup> Colombian authorities can cancel an individual's ETPV for a variety of ambiguous reasons, including when "*Migración Colombia* considers that the presence of the foreigner in the national territory is inconvenient . . . ."<sup>168</sup> A decision to cancel an ETPV status cannot be appealed.<sup>169</sup> This indicates that Venezuelan asylum seekers that choose the ETPV are at risk of *refoulement*, especially as advocates have reported that Colombia's migration agency regularly abuses its discretionary authority and violates the due process rights of migrants and refugees, including by conducting mass expulsions.<sup>170</sup>

Relatedly, former Colombian President Juan Manuel Santos has recently voiced his opposition to proposals that would restrict asylum seekers' access to protection in the United States if they have passed through third countries. He cautioned that such measures would place additional pressure on his country, which could undermine the policies that have been successful in supporting migrants.<sup>171</sup>

Colombia does not meet the requirements of a safe third country under U.S. law and international standards.

## **Ecuador**

### **Dangers for Asylum Seekers**

An increasing number of Ecuadorans have been increasingly forced to leave their country.<sup>172</sup> In FY 2022, Ecuadorans were apprehended over 24,000 times at the U.S. southern border.<sup>173</sup> Ecuador also poses dangers for many asylum seekers. As the Department of State points out, according to UN agencies and NGOs on the ground, migrants and refugees—especially women, children and LGBTQ+ individuals—face sexual and gender-based violence.<sup>174</sup> Human rights organizations have found that "Venezuelan refugee women face an even greater risk of physical, psychological, sexual, patrimonial, gynecological-obstetric and cyber violence in public and private spaces.



This vulnerability to violence is exacerbated for women in an irregular migratory situation, as is the case for the majority of Venezuelan women in Ecuador."<sup>175</sup> Additionally, asylum seekers face forced labor and forced recruitment into illegal activities ". . . particularly by transnational criminal organizations and criminal groups that also operated in Colombia."<sup>176</sup> Last, ". . . Colombian refugees, and Venezuelan and Chinese migrant workers are particularly vulnerable to trafficking in Ecuador, as well as Haitians migrating through Brazil into Ecuador. . . ." <sup>177</sup>

### **Deficiencies in the Asylum System**

The Government of Ecuador has taken some steps to expand protection for asylum seekers, in practice there are significant barriers to access protection in Ecuador. These include a short 90-day period to apply, as well as a general lack of publicly available information about asylum proceedings.<sup>178</sup> Additionally, Ecuadoran migration officials reportedly discourage asylum seekers from applying for refugee status.<sup>179</sup> As an illustration of these barriers, "[b]etween 2018 and 2022, a

total of 27,889 Venezuelans applied for refugee status in Ecuador.”<sup>180</sup> This is an astoundingly low number of asylum applications, considering that—as the Departments recognize—Ecuador is currently hosting over 500,000 displaced Venezuelans.

Asylum seekers in Ecuador also face barriers to pursuing their asylum proceedings. For example, while individuals may apply for asylum online, they must travel to certain large cities for their interviews, a sometimes hours-long journey for applicants in rural areas and even mid-size cities.<sup>181</sup>

### **Discrimination and Access to Basic Services**

Furthermore, migrants and refugees in Ecuador have a hard time accessing basic necessities. According to UNHCR, 82.8 percent of migrants and refugees in Ecuador need access to food and 64.4 percent need housing or shelter.<sup>182</sup> More than half of asylum seekers have a hard time finding employment,<sup>183</sup> and the Department of State highlights that refugees report employers do not accept government issued work authorizations.<sup>184</sup> According to NGOs on the ground, children also face barriers accessing education services, including due to lack of information about the education system, costs, lack of capacity in schools, and xenophobia or discrimination.<sup>185</sup>

Ecuador does not meet the requirements of a safe third country under U.S. law and international standards.

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<sup>1</sup> The White House, *Los Angeles Declaration on Migration and Protection* (June 10, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/>

<sup>2</sup> Circumvention of Legal Pathways, 88 Fed. Reg. 11704 (Feb. 23, 2023).

<sup>3</sup> UNHCR, *Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries* (Apr. 2018), <https://www.refworld.org/docid/5acb33ad4.html>.

<sup>4</sup> U.S.C. Sec. 1158 (a) (2) (A). (“Safe third country Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.”).

<sup>5</sup> Karen Musalo, *Biden's Embrace of Trump's Transit Ban Violates US Legal and Moral Refugee Obligations* (Feb. 8, 2023), <https://www.justsecurity.org/84977/bidens-embrace-of-trumps-transit-ban-violates-us-legal-and-moral-refugee-obligations/>

<sup>6</sup> For a compilation of solutions to restore access to asylum, see Welcome With Dignity, *Ending Asylum is Unacceptable – Expert Recommendations On What To Do Instead*, <https://welcomewithdignity.org/solutions/>

<sup>7</sup> Department of State, *2022 Country Reports on Human Rights Practices: Mexico* (Mar. 20, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/mexico/>.

<sup>8</sup> See, e.g., CGRS, Hastings to Haiti Partnership, Haitian Bridge Alliance, *Mocking a Mockery of Asylum: The Proposed Asylum Ban, Relying on the CBP One App For Access to Ports of Entry, Will Separate Families and Deny Protection* (Mar.



27, 2023), <https://cgrs.uchastings.edu/our-work/publications/making-mockery-asylum-proposed-asylum-ban-relying-cbp-one-app-access-ports> ("The Perez family . . . is too afraid to apply or wait for their asylum claim to be adjudicated in Mexico. A politically connected cartel kidnapped the family in southern Mexico, repeatedly raped the mother, and—before releasing them on a ransom—threatened to kill them should they report anything to the authorities. They are now living in hiding in Tijuana awaiting reunification with family in the United States."); Human Rights First, *Fatally Flawed "Remain in Mexico" Policy Should Never Be Revived* (Sept. 2022), <https://humanrightsfirst.org/wp-content/uploads/2022/10/FatallyFlawed.pdf> (Forty-one percent of the interviewed asylum seekers and migrants (1,109 people) initially enrolled in RMX 2.0 reported attacks in Mexico, including kidnapping, rape, torture, and other violent assaults. Kidnappings made up 36 percent (401 reports) of these attacks.); WRC and IMUMI, *Stuck In Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021* (Feb. 2022), <https://www.womensrefugeecommission.org/wp-content/uploads/2022/02/Stuck-in-Uncertainty-2.pdf> (Women who are returned to Mexico alone or with their families experience many types of violent attacks.); Human Rights Watch, *Every Day I live in Fear – Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States* (Oct. 7, 2020), <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador> ("The fear of violence leads some LGBT asylum seekers, especially trans women, to avoid leaving the shelters in Tijuana in which they are staying, in a kind of self-imposed house arrest.").

<sup>9</sup> See, e.g., LAWG, CGRS and others, *Memo: Impacts of U.S. and Mexican migration enforcement on migrant and refugee rights in Mexico* (Sept. 2021), <https://cgrs.uchastings.edu/sites/default/files/NGO-Memo-Impacts-of-Mexican-U.S.-Migration-Enforcement-9.20.21-1-1.pdf> ("The INM, National Guard, and Mexican army are using anti-riot gear and vehicles to intercept these migrant groups, disperse them, and detain their members, which include families, young children, pregnant women, as well as many individuals – such as refugees . . ."); WRC and IMUMI, *Stuck In Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021* (Feb. 2022), <https://www.womensrefugeecommission.org/wp-content/uploads/2022/02/Stuck-in-Uncertainty-2.pdf> (In August 2021, Mexican immigration authorities and the Mexican National Guard were filmed kicking migrants, violently pushing women and children into vehicles, and threatening family separation as tactics to break up large groups. . . In October 2021, a Haitian woman was found dead along a highway in Chiapas. Her clothes had been removed and she had been raped and strangled. Four municipal police officers were detained in relation to the crime."); Human Rights Watch, *Mexico: Asylum Seekers Face Abuses at Southern Border* (June 6, 2022), <https://www.hrw.org/news/2022/06/06/mexico-asylum-seekers-face-abuses-southern-border#:~:text=People%20applying%20for%20refugee%20status,appointment%20for%20a%20residence%20visa> ("In some cases, efforts to apprehend undocumented migrants have led to serious violence and even deaths. In October 2021, National Guard troops opened fire on a truck carrying migrants, in an apparent attempt to detain them, killing two. . . In March 2021, soldiers shot and killed a Guatemalan man who failed to stop at a checkpoint.").

<sup>10</sup> Jose Luis Gonzalez, *Mexico border fire: at least 38 die during protest at Juarez migrant center*, Reuters (Mar. 29, 2023), <https://www.reuters.com/world/americas/least-ten-dead-after-fire-migrant-facility-mexicos-ciudad-juarez-sources-2023-03-28/>

<sup>11</sup> Circumvention of Lawful Pathways, Notice of Proposed Rulemaking, 88 Fed. Reg. 12345 (Feb. 23, 2023).

<sup>12</sup> From 2018 to 2019, the numbers of applications went from 29,569 to 70,210. The numbers decreased to 40,912 in 2020, largely due to the pandemic, but grew to 129,780 in 2021 and 118,756 in 2022. See COMAR, *La COMAR en números – Estadística enero 2023* (Feb. 16, 2023), <https://www.gob.mx/comar/articulos/la-comar-en-numeros-327441?idiom=es>.

<sup>13</sup> These policies include metering, include the now defunct Migrant Protection Protocols, third country transit rule (or "Transit ban"), processes like Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP), and the continued use of the Title 42 expulsion policy.

<sup>14</sup> See, e.g., Zefitret Abera Molla, *The Experiences of Black African and Haitian Migrants Forced to Remain in Mexico Due to Restrictive U.S. and Immigration Policies*, Oxford Monitor of Forced Migration (Vol 11, No. 1) (Feb. 2023), <https://www.sogica.org/wp-content/uploads/2023/02/OxMo-Volume-11.1.pdf>.

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- <sup>15</sup> Department of State, 2021 *Country Reports on Human Rights Practices: Mexico* (2022), <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/mexico/>.
- <sup>16</sup> La Razón, Crece migración 60% y a COMAR le dan sólo 2.6 mdp más para 2023 (Oct. 9, 2022), <https://www.razon.com.mx/mexico/crece-migracion-60-comar-le-dan-2-6-mdp-2023-497779>.
- <sup>17</sup> Department of State, 2021 *Country Reports on Human Rights Practices: Mexico* (2022), <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/mexico/>.
- <sup>18</sup> Department of State, 2022 *Country Reports on Human Rights Practices: Mexico* (Mar. 20, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/mexico/>.
- <sup>19</sup> COMAR adjudicated 22,674 cases in 2020, 38,099 in 2021, and 35,749 in 2022. See COMAR, La COMAR en números – Estadística enero 2023 (Feb. 16, 2023), <https://www.gob.mx/comar/articulos/la-comar-en-numeros-327441?idiom=es>.
- <sup>20</sup> Human Rights Watch, *Mexico: Asylum Seekers Face Abuses at Southern Border* (June 6, 2022), <https://www.hrw.org/news/2022/06/06/mexico-asylum-seekers-face-abuses-southern-border#:~:text=People%20applying%20for%20refugee%20status,appointment%20for%20a%20residence%20visa>.
- <sup>21</sup> COMAR, *La COMAR en números – Estadística enero 2023* (Feb. 16, 2023), <https://www.gob.mx/comar/articulos/la-comar-en-numeros-327441?idiom=es>.
- <sup>22</sup> Estados Unidos Mexicanos, *Ley sobre refugiados, protección complementaria y asilo político* (Jan. 27, 2011), art. 18., [https://www.gob.mx/cms/uploads/attachment/file/211049/08\\_Ley\\_sobre\\_Refugiados\\_Proteccion\\_Complementaria\\_y\\_Asilo\\_Politico.pdf](https://www.gob.mx/cms/uploads/attachment/file/211049/08_Ley_sobre_Refugiados_Proteccion_Complementaria_y_Asilo_Politico.pdf).
- <sup>23</sup> Human Rights Watch, *Mexico: Asylum Seekers Face Abuses at Southern Border*, *supra* n.114.
- <sup>24</sup> WRC and IMUMI, *Stuck In Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021* (Feb. 2022), <https://www.womensrefugeecommission.org/wp-content/uploads/2022/02/Stuck-in-Uncertainty-2.pdf%20> (“Mexican immigration authorities also stepped up restrictive tactics at Mexican airports, where they denied entry to a record 72,895 foreigners in 2021, more than double the number of denials in 2019 (31,008)”).
- <sup>25</sup> See LAWG, CGRS and others, *Memo: Impacts of U.S. and Mexican migration enforcement on migrant and refugee rights in Mexico* (Sept. 2021), <https://cgrs.uchastings.edu/sites/default/files/NGO-Memo-Impacts-of-Mexican-U.S.-Migration-Enforcement-9.20.21-1-1.pdf>.
- <sup>26</sup> Estados Unidos Mexicanos, *Reglamento a la Ley sobre refugiados, protección complementaria y asilo político* (2012), art. 38.
- <sup>27</sup> Human Rights Watch, *Mexico: Asylum Seekers Face Abuses at Southern Border* (June 6, 2022), <https://www.hrw.org/news/2022/06/06/mexico-asylum-seekers-face-abuses-southern-border#:~:text=People%20applying%20for%20refugee%20status,appointment%20for%20a%20residence%20visa>.
- <sup>28</sup> WOLA, *Struggling to Survive: The Situation of Asylum Seekers in Tapachula*, Mexico (June 2022), <https://www.wola.org/wp-content/uploads/2022/06/FINAL-Struggling-to-Survive-Asylum-Seekers-in-Tapachula.pdf>.
- <sup>29</sup> See, *Cfr.* Human Rights Watch, *Mexico: Asylum Seekers Face Abuses at Southern Border* (June 6, 2022), <https://www.hrw.org/news/2022/06/06/mexico-asylum-seekers-face-abuses-southern-border#:~:text=People%20applying%20for%20refugee%20status,appointment%20for%20a%20residence%20visa>; and WOLA, *Struggling to Survive: The Situation of Asylum Seekers in Tapachula*, Mexico (June 2022), <https://www.wola.org/wp-content/uploads/2022/06/FINAL-Struggling-to-Survive-Asylum-Seekers-in-Tapachula.pdf>.
- <sup>30</sup> See Estados Unidos Mexicanos, *Ley de migración* (May 11, 2011), art. 111, <https://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf>; and Estados Unidos Mexicanos, *Reglamento de la Ley de Migración* (Sept. 28, 2012), art. 235, [https://www.diputados.gob.mx/LeyesBiblio/regley/Reg\\_LMigra.pdf](https://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LMigra.pdf).
- <sup>31</sup> WOLA, *Asylum Access*, IMUMI, *Key Issues on Access to Asylum in Mexico*, *Protection for Migrant Children*, and *U.S. Cooperation* (Mar. 23, 2021), <https://www.wola.org/analysis/key-points-migration-march-2021>; BAIJ and IMUMI, *There is a Target on Us, The Impact of Anti-Black Racism on African Migrants at Mexico's Southern Border* (2021), <https://baji.org/wp-content/uploads/2021/01/The-Impact-of-Anti-Black-Racism-on-African->

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[Migrants-at-Mexico.pdf](#) (“[I]nterviewees shared multiple accounts of anti-Black racism within immigration detention centers. In some cases, the interviewees were denied the basic necessities of water and access to medical care . . . The poor conditions in detention fostered the spread of illnesses, such as flus and fevers. As Adamo, a migrant from Cameroon, stated, ‘Black people are dying in detention and the Mexican officials do not even care enough to allow us access to proper medical care.’”)

<sup>32</sup> WOLA, Asylum Access, IMUMI, *Key Issues on Access to Asylum in Mexico, Protection for Migrant Children, and U.S. Cooperation* (Mar. 23, 2021), <https://www.wola.org/analysis/key-points-migration-march-2021>.

<sup>33</sup> WRC and IMUMI, *Stuck In Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021* (Feb. 2022), <https://www.womensrefugeecommission.org/wp-content/uploads/2022/02/Stuck-in-Uncertainty-2.pdf%20>.

<sup>34</sup> Department of State, *2022 Country Reports on Human Rights Practices: Mexico* (Mar. 20, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/mexico/>. (“In June the MNPT received a report from the NGO Asylum Access indicating a Honduran migrant was tortured by immigration and National Guard agents in a migratory station in Piedras Negras, Coahuila”).

<sup>35</sup> Just between 2021 and 2022, over 50,000 Haitians applied for asylum in Mexico. See COMAR, *La COMAR en números – Estadística enero 2023* (Feb. 16, 2023), <https://www.gob.mx/comar/articulos/la-comar-en-numeros-327441?idiom=es>.

<sup>36</sup> Zefitret Abera Molla, *The Experiences of Black African and Haitian Migrants Forced to Remain in Mexico Due to Restrictive U.S. and Immigration Policies*, *Oxford Monitor of Forced Migration* (Vol 11, No. 1) (Feb. 2023), at p. 83, <https://www.sogica.org/wp-content/uploads/2023/02/OxMo-Volume-11.1.pdf>. (“Black, non-Spanish speaking migrants face intersecting discriminations due to their status as migrants, their race, and their lack of Spanish language skills. These overlapping identities put Black, non-Spanish speaking people at a greater risk of extortion from criminals, hinders their access to justice and assistance from the Mexican government, and increases their vulnerability to racist attacks. In addition to facing discrimination from state agencies, Mexican law enforcement such as the National Guard and the local police, Black, non-Spanish speaking migrants also endure daily discrimination from the local population.” At p. 88).

<sup>37</sup> See, e.g. CGRS, Haitian Bridge Alliance, and IMUMI, *A Journey of Hope: Haitian Women’s Migration to Tapachula, Mexico* (2021), <https://cgrs.uchastings.edu/sites/default/files/A-Journey-of-Hope-Haitian-Womens-Migration-to-Tapachula.pdf>; WRC and IMUMI, *Stuck In Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021* (Feb. 2022), <https://www.womensrefugeecommission.org/wp-content/uploads/2022/02/Stuck-in-Uncertainty-2.pdf%20>; WOLA, *Struggling to Survive: The Situation of Asylum Seekers in Tapachula, Mexico* (June 2022), <https://www.wola.org/wp-content/uploads/2022/06/FINAL-Struggling-to-Survive-Asylum-Seekers-in-Tapachula.pdf>.

<sup>38</sup> See James Fredrick, *All the doors are closed to Afghans’: from fall of Kabul to limbo in Mexico*, *The Guardian* (Apr. 12, 2023), <https://www.theguardian.com/us-news/2023/apr/12/afghan-asylum-seekers-mexico-us-border>; and Zefitret Abera Molla, *The Experiences of Black African and Haitian Migrants Forced to Remain in Mexico Due to Restrictive U.S. and Immigration Policies*, *Oxford Monitor of Forced Migration* (Vol 11, No. 1) (Feb. 2023), <https://www.sogica.org/wp-content/uploads/2023/02/OxMo-Volume-11.1.pdf>.

<sup>39</sup> See Government of Belize Press Office, *Announcement of Amnesty 2022* (Dec. 2022), <https://www.pressoffice.gov.bz/wp-content/uploads/2019/12/Announcement-of-Amnesty-2022.pdf>; UNHCR, *Refugee Data Finder Belize*, <https://www.unhcr.org/refugee-statistics/download/?url=IG78Vvk>.

<sup>40</sup> Submission by the United Nations High Commissioner for Refugees, *For the Office of the High Commissioner for Human Rights’ Compilation Report, Universal Periodic Review: 3rd Cycle, 31st Session, Belize*, <https://www.refworld.org/pdfid/5b56e1903.pdf>.

<sup>41</sup> Department of State, *2021 Country Reports on Human Rights Practices: Belize* (Apr. 12, 2022), <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/belize/>.

<sup>42</sup> *Id.*

<sup>43</sup> Department of State, *2022 Country Reports on Human Rights Practices: Belize* (Mar. 20, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/belize/>.

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- <sup>49</sup> MIRPS, Annual Report of the Comprehensive Regional Protection and Solutions Framework (Dec. 2022), p. 37, [https://mirps-platform.org/wp-content/uploads/2023/01/MIRPS\\_ENG\\_WEB.pdf](https://mirps-platform.org/wp-content/uploads/2023/01/MIRPS_ENG_WEB.pdf).
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- <sup>52</sup> UNHCR, Global Trends Report 2021 (2022), <https://www.unhcr.org/en-us/publications/brochures/62a9d1494/global-trends-report-2021.html>.
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- <sup>54</sup> Declaration of Claudia Paz y Paz (2019).
- <sup>55</sup> Refugees International, Deportation with a Layover, Failure of Protection under the US-Guatemala Asylum Cooperative Agreement (May 19, 2020), [https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative#\\_ftn151](https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative#_ftn151).
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- <sup>140</sup> Political Constitution of the Republic of Panama (2016), art. 20 ("Panamanians and foreigners are equal before the Law, but the Law may, for reasons of work, health, morality, public safety, and national economy,



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subject to special conditions or deny the exercise of certain activities to foreigners in general. . .”), <https://ministeriopublico.gob.pa/wp-content/uploads/2016/09/constitucion-politica-con-indice-analitico.pdf>.

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<sup>154</sup> Jose Manuel Luengo, *Política pública debe ajustarse a los refugiados, Estoy en la Frontera* (2021) <https://estoyenlafrontera.com/mis-derechos/politica-publica-debe-ajustarse-los-refugiados>.

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<sup>159</sup> Ministerio de Relaciones Exteriores de Colombia, *Decreto 1067 de 2015, por medio del cual se expide el Decreto Único Reglamentario del Sector Administrativo de Relaciones Exteriores* (May 26, 2015), art. 2.2.3.1.4.1, [https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto\\_1067\\_2015.htm](https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_1067_2015.htm); and Centro de Estudios en Migración and Clínica Jurídica para Migrantes, *Estatuto Temporal de Protección para Migrantes Venezolanos: reflexiones de una política de regularización migratoria* (Mar. 2021), p. 30, <https://migracionderecho.uniandes.edu.co/wp-content/uploads/Informe-CEM-3-Estatuto-Temporal-de-Proteccion-para-Migrantes-Venezolanos-reflexiones-de-una-politica-de-regularizacion-migratoria-2.pdf>.

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<sup>165</sup> Gracy Pelacani, *Estatuto de protección para migrantes venezolanos: grises de una medida aclamada*, *Universidad de los Andes* (Apr. 9, 2021), <https://uniandes.edu.co/es/noticias/derecho/estatuto-de-proteccion-para-migrantes-venezolanos-grises-de-una-medida-aclamada>.

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Colombia Migration as the migration control and enforcement authority.”), <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%2016%20DEL%201%20DE%20MARZO%20DE%202021.pdf>.

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<sup>171</sup> Juan Manuel Santos, *Time for the Americas to step up (again) on migration*, El País (Mar. 6, 2023), <https://english.elpais.com/opinion/2023-03-06/time-for-the-americas-to-step-up-again-on-migration.html>.

<sup>172</sup> Michael Weissenstein and Gonzalo Solano, *More Ecuadorians move to US, spared many other hurdles*, AP News (Apr. 2, 2023), <https://apnews.com/article/ecuador-migrants-migration-us-immigration-policy-86a8009efa8d357e7cb4dc0cff40fb52>

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<sup>176</sup> Department of State, *2022 Country Reports on Human Rights Practices: Ecuador* (Mar. 20, 2023), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/ecuador/>.

<sup>177</sup> Integral Human Development, *Ecuador Country Profile* (2022), <https://migrants-refugees.va/wp-content/uploads/2022/10/2022-CP-Ecuador.pdf>.

<sup>178</sup> See República de Ecuador, *Ley Orgánica de Movilidad Humana* (Jan. 31, 2017), art. 100, [https://gobiernoabierto.quito.gob.ec/Archivos/Transparencia/2017/02febrero/A2/ANEXOS/PROCU\\_L:EY\\_ORG%3%81NICA\\_DE\\_MOVILIDAD\\_HUMANA.pdf](https://gobiernoabierto.quito.gob.ec/Archivos/Transparencia/2017/02febrero/A2/ANEXOS/PROCU_L:EY_ORG%3%81NICA_DE_MOVILIDAD_HUMANA.pdf); Amnesty International, *Ecuador: Unprotected in Ecuador: Venezuelan Women survivors of gender-based violence* (Nov. 17, 2022), <https://www.amnesty.org/en/documents/amr28/6137/2022/en/>.

<sup>179</sup> *Id.* (“Amnesty International has received reports that Venezuelans were discouraged from applying for refugee status by officials of the International Protection Directorate. Civil society organizations explained that ‘[they] have had cases of officials telling people to forget about this, that [Venezuelans] are never going to be recognized as refugees.’”).

<sup>180</sup> In that time, only 1,100 Venezuelans, among them 555 women, were recognized as refugees. See *Id.*

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The logo for CGRS features the letters 'C', 'G', 'R', and 'S' in a stylized, rounded font. The 'C' is light blue with a dark blue outline and an orange and green inner border. The 'G' is light blue with a dark blue outline and an orange and green inner border, with a green and white striped pattern on its left side. The 'R' is light blue with a dark blue outline and a red and white striped pattern on its bottom left. The 'S' is light blue with a dark blue outline and an orange and green inner border.

CGRS