



Asylum Cooperative Agreement Backgrounder

Credit: CNS/Luis Hernandez

What are Asylum Cooperative Agreements (ACAs)?

Recently, the United States signed Asylum Cooperative Agreements (“ACAs”) with the nations of the Northern Triangle - El Salvador, Guatemala and Honduras. These agreements limit the ability of certain asylum seekers to access critical protections and claim asylum in the United States.

When were these agreements made with the Northern Triangle Countries?

In the summer and early fall of 2019, the government of the United States signed ACAs with Guatemala, Honduras, and El Salvador. On November 19, 2019, the Department of Justice and the Department of Homeland Security (DHS) adopted a joint interim final rule (“IFR”) titled “Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act.” The IFR authorizes DHS and DOJ officials to implement the ACAs made between the United States and Guatemala, Honduras, and El Salvador.

Are the ACAs “Safe Third Country Agreements”? What exactly are Safe Third Country Agreements?

The ACAs are named the “Asylum Cooperative Agreements” as the U.S. government has negotiated “cooperation” with the respective countries to limit access to asylum in the United States.

Safe third country agreements allow the United States to deport any individuals who arrive at the border seeking asylum in the U.S. to countries with which they have these agreements, so long as the immigrant would have

access to a full and fair procedure for determining their asylum claims, and would not have their life or freedom put at risk due to their race, religion, nationality, political opinion, or social group membership. If the asylum seeker is a citizen of that third country, they are not sent back to that nation.

There is some legal precedent for these agreements. In addition to such agreements being contemplated by U.S. law, a formal safe third country agreement has existed between the United States and the nations of Canada since 2002.

In short, an asylum seeker may be deported to a Safe Third Country if:

- (1) They are not a national of that country.
- (2) There is an opportunity to claim asylum in that country under a full and fair procedure
- (3) The country is “safe”, meaning that the asylum seeker’s life or liberty is not threatened based on factors like race, religion, or political views.

What do the ACAs mean for individuals arriving at the U.S./Mexico border?

The ACAs allow U.S. immigration officials to send certain asylum seekers, currently those from the Northern Triangle, arriving at the U.S./Mexico border back to the nations of the Northern Triangle to seek asylum there, rather than allowing them to apply for asylum in the United States.

It Does Not Sound Unreasonable That Individuals Would Have to Claim Asylum in Countries That They Are Migrating Through First Instead of Just Claiming Asylum in The United States. What Are the Concerns with This?

- (1) *El Salvador, Guatemala and Honduras do not qualify as “safe.”*

El Salvador, Guatemala, and Honduras do not meet the standards which are statutorily mandated by 8 U.S.C. § 1158 in order to allow immigrants to be sent to a “safe third country.” 8 U.S.C. § 1158(a)(2)(A) requires that in order to be sent to a safe third country under an agreement: (1) the immigrant’s life or freedom must not be threatened on account of “race, religion, nationality, membership in a particular social group, or political opinion,” and (2) they “would have access to a full and fair procedure for determining a claim to asylum.”

A major concern with these agreements is that the nations of the Northern Triangle do not meet the first requirement regarding freedom from persecution. Many of those who are coming to the U.S. seeking asylum are seeking it from the very same region that the United States plans to send them back to. For the past four years, Guatemala, Honduras, and El Salvador were each among the top countries from which asylum was granted, with almost 4,000 asylum applications approved from these countries in 2018 alone. A person from Guatemala would not be any safer in El Salvador or Honduras. The problems which would cause a person to flee one country are equally present in each of the other two.

This is especially true of the continuing threat of gang violence in the region. Gangs such as MS-13 often create an incredibly hostile and traumatic environment in these countries. Gangs persecute and extort poor locals and often attack those who can’t or refuse to pay their fees. It is largely because of gang presence that the Northern Triangle nations have some of the highest rates of homicide in the world. The violence in the region is so persistent that the U.S. government has issued travel advisories to U.S. citizens to avoid the very region they plan to send vulnerable asylum seekers back to. These gangs are transnational, and operate in every country of the Northern Triangle. To send asylum seekers back to the region would be placing them in the very danger that they sought to escape.

- (2) *El Salvador, Guatemala and Honduras lack adequate asylum systems to ensure fair access to legal protection.*

El Salvador, Guatemala, and Honduras do not have the resources necessary to give asylum seekers a “full and fair” asylum procedure as required under valid asylum cooperative agreements. The legal asylum system

and infrastructure in these countries is lacking, particularly in light of the significant increase in asylum cases they will see under the ACAs. In Guatemala, for instance, the government's asylum office only employs four people, and did not resolve a single case in 2019.

- (3) *Sending people back to these nations may violate the United States obligation under international law to avoid "refoulement."*

Refoulement is the practice of forcibly returning refugees or asylum seekers to a country where they are liable to be subjected to violence or persecution. It is illegal, under the United States' international legal obligations, for the United States to send back people seeking protection to such places. Persecution and violence is prevalent in all three of the Northern Triangle nations. Unfortunately, sending a Guatemalan asylum seeker to Honduras is extremely unlikely to provide them with safety and likely will leave them vulnerable and unable to meaningfully access protection. For this reason, the ACAs place the United States at significant risk of violating its international obligations.

What is the Church's Teaching Regarding Asylum, and Protection of the Vulnerable?

A core Catholic social teaching is that every human being is created in the image of God and is therefore entitled to dignity and respect. The Catholic Church views assisting those in need as a fundamental duty that is derived directly from the words and the life of Christ, who himself was part of a refugee family. We, as Christians, are called to welcome our new neighbors with the same love and compassion that we would want ourselves to be shown in a time of persecution. Regardless of their legal status, migrants, like all persons, possess inherent human life that should be respected and protected.

Endnotes

- <?> "Fact Sheet: DHS Agreements With Guatemala, Honduras, and El Salvador", U.S. DEP'T OF HOMELAND SECURITY, https://www.dhs.gov/sites/default/files/publications/19_1003_opa_fact-sheet-agreements-northern-central-america-countries.pdf, (Last accessed January 17, 2020).
- <?> 84 F.R. 63994, available at <https://www.federalregister.gov/documents/2019/11/19/2019-25137/implementing-bilateral-and-multilateral-asylum-cooperative-agreements-under-the-immigration-and>
- <?> Id.
- <?> 8 U.S.C. § 1158(a)(2)(A)
- <?> Id.
- <?> "Canada-U.S. Safe Third Country Agreement", IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>, (Last accessed January 16, 2020).
- <?> U.S. DEP'T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *Statistics Yearbook, Fiscal Year 2018*, Table 15 at 29., available at <https://www.justice.gov/eoir/file/1198896/download>.
- <?> Id., Figure 25 at 29.
- <?> INSIGHT CRIME, MS-13 IN THE AMERICAS at 47, 2018., available at <https://www.insightcrime.org/wp-content/uploads/2018/02/MS13-in-the-Americas-InSight-Crime-English-3.pdf>
- <?> CONGRESSIONAL RESEARCH SERVICE, GANGS IN CENTRAL AMERICA at 5, August 29, 2016., available at <https://fas.org/sgp/crs/row/RL34112.pdf>
- <?> See <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/honduras-travel-advisory.html>; <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/el-salvador-travel-advisory.html>; <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/guatemala-travel-advisory.html>
- <?> David C. Adams, Guatemala's "Embryonic" Asylum System Lacks Capacity To Serve As Safe U.S. Partner, Experts Say, UNIVISION NEWS, August 2, 2019, available at <https://www.univision.com/univision-news/immigration/guatemala-embryonic-asylum-system-lacks-capacity-to-serve-as-safe-u-s-partner-experts-say>.