REFUGEES INTERNATIONAL

HUMAN RIGHTS WATCH

DEPORTATION WITH A LAYOVER

FAILURE OF PROTECTION UNDER THE U.S.-GUATEMALA ASYLUM COOPERATIVE AGREEMENT

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Cover Photo: Two U.S. asylum seekers, one from El Salvador and one from Honduras, wait inside a migrant house in Guatemala City after being sent to Guatemala from the United States on December 3, 2019, under an asylum cooperative agreement between the two countries.

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EXECUTIVE SUMMARY

An agreement between the United States and Guatemala, the U.S.-Guatemala Asylum Cooperative Agreement (ACA), enables the United States to rapidly transfer non-Guatemalan asylum seekers to Guatemala without allowing them to lodge asylum claims in the United States, but also leaves them without access to effective protection in Guatemala. As a result, they are effectively compelled to abandon their asylum claims and some who have a well-founded fear of persecution appear to be returning to their home countries where they are at real risk of serious harm.

Guatemala does not meet the standard required in U.S. law for a "safe third country"—the ability to provide "access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection."[1] Guatemala's asylum system is hamstrung by a limited legal framework that only allows high level officials to approve claims, which causes massive bottlenecks in a system that has only recently begun to function at all. At the end of March 2020, there was a backlog of 713 cases,[2] including every one of the few asylum applicants among ACA transferees;[3] the interministerial committee that decides asylum cases had not met from the time COVID-19 restrictions went into place in mid-March through the time of writing this report in late April.[4]

Prior to the suspension of the ACA on March 16, 2020, local nongovernmental partners for the UN High Commissioner for Refugees (UNHCR) had interviewed a portion of the people transferred under the ACA and found that about two-thirds of those interviewed had international protection concerns.[5] However, only a small proportion of those who expressed fear of return to their home countries applied for asylum in Guatemala, UNHCR said. Many also told UNHCR's partners they were unwilling to stay in Guatemala, citing their inability to support themselves there, distrust of the authorities, and Guatemala's proximity to their home countries, fearing that their persecutors could still reach them.[6]

Refugees International and Human Rights Watch conducted research on the impact of the ACA in Guatemala in February 2020, investigating the vulnera-

1. Immigration and Nationality Act, section 208(a)(2)(A).
2. Guatemalan government asylum statistic of pending cases March 2020 provided to UNHCR.
3. Human Rights Watch and Refugees International phone call with a UN official, April 17, 2020.
4. Human Rights Watch and Refugees International phone call with UN official, April 27, 2020.
5. Human Rights Watch and Refugees International phone call with a UN official, April 17, 2020. UNHCR's partners did not interview all transferees because some declined to be interviewed.
6. Ibid.

bilities of transferees and the lack of support for them in Guatemala, as well as their access to the Guatemalan asylum system and its capacity to provide protection to those needing it.

All 30 of the ACA transferees Refugees International and Human Rights Watch interviewed described abusive conditions at the U.S. border, including receiving inedible frozen food, having no access to showers for several days at a time, being unable to sleep because lights were constantly left on, being denied medical care, and being subjected to insults and degrading treatment while in custody. All transferees interviewed by Refugees International and Human Rights Watch said that, while detained by CBP, they were denied meaningful access to an attorney and only allowed to make between one and three rushed, non-private phone calls. A Salvadoran man said that a U.S. Department of Homeland Security (DHS) official told him "there is no asylum" and "there are no Central Americans allowed into the United States." Two women showed Refugees International evidence of abuse by domestic partners—pictures of physical injuries from brutal beatings and a copy of a protective order from a court in El Salvador—which they said U.S. officials at the border refused to let them present as evidence to support their claims of fear of return there. The ACA transferees also gave accounts showing that their registration and processing at the Guatemalan airport was inadequate, lacking in both humanitarian reception care and access to information. Transferees, including small children, waited hours on the tarmac with no food, water, or adequate medical attention.[7] The actual registration process itself took a cursory two-to-three minutes, during which transferees were not provided any information regarding what would happen to them in Guatemala.[8]

Transferees under the ACA were thrust into a high-pressure situation in which they lacked adequate time and resources to make truly informed, voluntary choices about what to do. Once transferees were registered at the airport, they had 72 hours to make the decision about whether they would remain in Guatemala, return to the countries they fled, or try to find refuge elsewhere.[9] The Guatemalan government's 72-hour time limit is arbitrary and coercive, giving transferees insufficient time to make such monumental decisions.

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7. According to interview conducted by Refugees International with the Office of the Human Rights Ombudsman, Gabriela Mundo Rodriguez and Eduardo Woltke Martinez, Guatemala City, February 5, 2020.
8. Ibid.
9. According to interviews Refugees International conducted with El Refugio de la Niñez, the Office of the Human Rights Ombudsman, and the Casa del Migrante. February 5, 6, and 7 of 2020. Supported by press accounts, https://www.washingtonpost.com/world/the_americas/the-us-is-putting-asylum-seekers-on-planes-to-guatemala--often-without-telling-them-where-theyre-going/2020/01/13/0f89a93a-3576-11ea-a1ff-c48c1d59a4a1_story.html.

Only one person out of the 30 people subject to the ACA interviewed by Refugees International and Human Rights Watch said they were applying for asylum in Guatemala. Several said they had no family or support networks in Guatemala and that they feared for their safety in Guatemala. Many indicated they would return to El Salvador and Honduras despite continuing to express a fear of persecution there.

The United States transferred 939 Honduran and Salvadoran asylum seekers, the vast majority of them women and children, to Guatemala under the U.S.-Guatemala ACA between November 21, 2019 and March 16, 2020.[10] Only 20 of the 939 transferees—about 2 percent—applied for asylum in Guatemala even though many of them had well-founded fears of persecution in their home countries.[11]

Our interviews indicate that the ACA has been implemented in a way that effectively compels transferees to abandon their claims. In Guatemala, transferees have an unreasonably short time frame to make a decision whether to apply for asylum in Guatemala, which has a cumbersome and ineffectual asylum system and fails to ensure adequate social support while asylum seekers' claims are pending. Given security conditions in Guatemala, many transferees also say they fear they would be subjected to the same harms in Guatemala from which they fled in their home countries. As a result, as our interviews and UNHCR partner organization interviews indicate, some people who have a well-founded fear of persecution appear to be abandoning their claims and returning to their home countries where they are at real risk of serious harm. Given Guatemala's incapacity to provide effective protection and the risk that some transferees would face the threat of serious harm either in Guatemala itself or after returning to their home countries, the United States violates its domestic and international nonrefoulement obligations by not examining the asylum claims of asylum seekers it is forcibly sending to Guatemala.

Transfers under the ACA were temporarily suspended in mid-March in response to the COVID-19 pandemic.[12] Refugees International and Human Rights Watch call on the U.S. and Guatemalan governments to rescind the Guate-

10. Asylum Cooperative Agreement (ACA) Transfers from November 2019 through March 16, 2020, https://twitter.com/camiloreports/status/1239660499161186305?s=20.
11. Ibid., Although this chart from the Guatemalan Institute of Migration (IGM) shows that 57 transferees lodged refugee applications with the Guatemalan Air Force (FAG), it is not authorized to process refugee claims; the same chart indicates that only 20 of the 939 transferees filed "official applications" with the International Migration Relations Office (ORMI), the body responsible for processing refugee claims.
12. "The Coronavirus Is Hindering One of the Trump Administration's Ways to Deport Asylum-Seekers," *BuzzFeed News*, March 17, 2020, https://www.buzzfeednews.com/article/hamedaleaziz/coronavirus-immigration-asylum-deportation-guatemala.

malan ACA completely, rather than plan for its resumption. The United States should also halt plans to begin transferring asylum seekers to El Salvador and Honduras under asylum cooperative agreements that have been signed but are not yet implemented.[13]

13. "The U.S. Will Continue Sending Deportees to El Salvador Despite the Country's Coronavirus Quarantine," *Elfaro*, March 13, 2020, https://elfaro.net/en/202003/el_salvador/24122/The-US-Will-Continue-Sending-Deportees-to-El-Salvador-Despite-the-Country%E2%80%99s-Coronavirus-Quarantine.htm.

BACKGROUND

Safe Third Country Agreements versus Asylum Cooperative Agreements

Beginning in the late 1980s, several European countries, the United States, and Canada began signing bilateral or multilateral agreements and adopting domestic laws to enable countries with comparable asylum standards and procedures to transfer asylum seekers to countries designated as "safe" where they would be guaranteed access to full and fair examination of claims for international protection. Many, but not all, of the agreements required the asylum seeker to have first transited through the designated safe third country, as they have been based generally on the principle of country of first safe arrival having responsibility to examine the claim. Such arrangements are known as safe third country agreements. Transfer to these countries is sanctioned under international law under the assumption that the asylum seekers have already found, or could find, effective protection there. UNHCR has stipulated that safe third country transfers should not take place if there is a risk that they will lead to refoulement (persecution in the third country) or indirect or chain refoulement (through removal from third country to the country of origin).[14] The concept of effective protection also requires, inter alia, that each transferred asylum seeker is guaranteed:

- an individual assessment of the appropriateness of the transfer, subject to procedural safeguards, prior to transfer;
- access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection;
- treatment during reception in accordance with accepted international standards;
- access to health, education, and basic services;
- identification and assistance for persons with specific needs, including operating on the principle of the best interests of the child; and
- for those recognized as being in need of international protection, the granting of asylum and/or access to a durable solution.[15]

14. UNHCR, Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum Seekers, https://www.refworld.org/docid/51af82794.html.
15. Ibid., citing ExCom Conclusion No. 85 (XLIX) (Conclusion on International Protection) (1998), para. (aa); ExCom Conclusion No. 58 (XL) (Problem of Refugees and Asylum-Seekers who move in an irregular manner from a country in which they had already found protection) (1989), para. (f); UN High Commissioner for Refugees, Summary Conclusions on the Concept of "Effective Protection" in the Context

The ACA agreements involve countries with highly dissimilar standards, procedures, and capacity; lack transparency and UNHCR monitoring; allow for the transfer of asylum seekers to countries they never transited through on their way to the United States (such as Mexicans to Guatemala or Guatemalans to Honduras or El Salvador); and provide minimalistic screenings at the U.S. border that do not provide asylum seekers a meaningful opportunity to challenge the finding that they are subject to transfer.[16]

A Bad-Faith Deal

In a letter to the U.S. Congress in late 2017, U.S. President Donald Trump outlined several policies that would limit access to asylum at the southern border of the United States, including "expand[ing] the ability to return asylum seekers to safe third countries."[17] Safe third country designations are usually based on an assessment that the country in question has an asylum system that is functioning according to international standards and that will not place asylum seekers and refugees at risk of direct or indirect refoulement.[18]

Mexico resisted a safe third country deal with the United States but ultimately acquiesced to the "Remain in Mexico" policy, which requires asylum seekers to wait in Mexico for their proceedings in the United States.[19] In the spring of 2019, a U.S. federal court issued a preliminary injunction halting returns to Mexico under this policy.[20] Then, the Trump administration began negotiating

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of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002), February 2003, available at: http://www.unhcr.org/refworld/docid/3fe9981e4.html.
16. UNHCR, Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, https://www.refworld.org/docid/56f3ee3f4.html.
17. "President Donald J. Trump's Letter to House and Senate Leaders & Immigration Principles and Policies," The White House, October 8, 2017, https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/.
18. Susan Fratzke, "International Experience Suggests Safe Third-Country Agreement Would Not Solve the U.S.-Mexico Border Crisis," Migration Policy Institute, June 2019, https://www.migrationpolicy.org/news/safe-third-country-agreement-would-not-solve-us-mexico-border-crisis.
19. "Mexico opposes Washington's request to shelter those who ask for it on the US border: source, document," July 17, 2018, https://mx.reuters.com/article/politica-mexico-eeuu-idMXL1N1U8214; See also, Secretary of Foreign Relations, Government of Mexico, "Positioning of Mexico before the decision of the US Government to implement section 235 (b) (2) (c) of its Immigration and Nationality Law," https://www.gob.mx/sre/es/articulos/posicionamiento-de-mexico-ante-la-decision-delgobierno-de-eua-de-implementar-la-seccion-235-b-2-c-de-su-ley-de-inmigracion-y-nacionalidad-185774?idiom=es; See also, https://www.texastribune.org/2019/01/25/mexico-agrees-house-some-asylum-seekers-advocates-worry-about-safety/. See also, Migrant Protection Protocols policy implementation memo at https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf.
20. Innovation Law Lab, et. al. v Kirstjen Nielsen, et. al. Order Granting Motion for Preliminary Injunction, U.S. District Court, Northern District of California, April 8, 2019, https://www.politico.com/f/?id=00000169-fee3-d8fd-a7e9-ffe314940002.

an asylum transfer agreement with then-president of Guatemala Jimmy Morales.

In late May 2019, the secretary of the U.S. Department of Homeland Security (DHS) met with the director of the Guatemalan Institute for Migration (IGM), who requested a "five-year bar" on readmission for those transferred from the United States to Guatemala (or transferees) under a possible agreement, presumably in an effort to deter transferees from attempting to return to the United States.[21] Tens of thousands of asylum seekers had left Guatemala, or transited through Guatemala, on their way to the United States in the previous year. When, in mid-June 2019, the Trump administration publicized negotiations over the U.S.-Guatemala agreement, it was well aware (from an assessment done by the U.S. embassy in Guatemala) that Guatemala was "among the most dangerous countries in the world" and that a backlog of a few hundred cases existed in Guatemala's very rudimentary asylum system.[22]

Initially, the agreement faced opposition from the Office of the Human Rights Ombudsman in Guatemala and from four former Guatemalan foreign ministers who filed a complaint with the Constitutional Court to stop the president from implementing the agreement, stating that it was a "certain and imminent threat"[23] and would violate the human rights of asylum seekers.[24] On July 14, the Guatemalan Constitutional Court issued a preliminary injunction against the president proceeding with the ACA unless he followed constitutional procedures for entering international agreements, which might require Guatemalan congressional authorization.[25]

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21. The government provided plaintiffs in *U.T. v. Barr* with administrative records. This report refers to those records using the abbreviations in the government's pagination. Department of Homeland Security documents from *UT v. Barr*, DHSFF1260 (notes from May 30, 2019 meeting), https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk1N4GKK/view.

22. DHSFF1249-51 (July 12, 2019 assessment of Guatemalan Asylum system), describing the lack of capacity of the Guatemalan asylum system and noting prevalence of gang violence, extortion, sexual assault, and impunity for criminals in Guatemala. In the "crime statistics and security section" of this assessment (page 1251), the U.S. embassy writes: "Guatemala's homicide rate in 2018 was about 22 per 100,000 inhabitants. In 2018, the police reported approximately 3,881 homicides, 4,246 aggravated assaults, and over 2,500 missing persons. Despite the slight downward trend, Guatemala remains among the most dangerous countries in the world, according to several security providers." https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk1N4GKK/view.

23. Expediente 3881-2019 Procurador de los Derechos Humanos a la Corte de Constitucionalidad Secretaria General de Guatemala, https://www.trendsmap.com/twitter/tweet/1149811646250061824.

24. Constitutional Court of Guatemala Resolutions in Files 3829-2019, 3849-2019 and 3881-2019. "Safe Third Country," https://cc.gob.gt/2019/07/15/resoluciones-en-expedientes-3829-2019-3849/ https://cc.gob.gt/2019/07/15/resoluciones-en-expedientes-3829-2019-3849/.

25. Expediente 3881-2019 Procurador de los Derechos Humanos a la Corte de Constitucionalidad Secretaria General de Guatemala. https://www.trendsmap.com/twitter/tweet/1149811646250061824. See also, Constitutional Court, Republic of Guatemala, Resolutions in Files 3829-2019, 3849-2019 and 3881-2019. "Safe Third Country," https://cc.gob.gt/2019/07/15/resoluciones-en-expedientes-3829-2019-3849/.

On July 15, a day after the injunction, the Trump administration attempted to implement a unilateral policy that barred anyone from seeking asylum at the U.S. border if they had transited through a third country without seeking asylum there.[26] On July 23, a federal court halted this policy.[27] The Trump administration next threatened Guatemala with tariffs unless it agreed to the asylum agreement.[28] Three days later, on July 26, the two countries signed an agreement providing for the transfer from the United States to Guatemala of asylum seekers from any country except Guatemala.[29]

President Morales filed a motion with the Guatemalan Constitutional Court asking it to lift the preliminary injunction on the agreement.[30] In September 2019, the Guatemalan Constitutional Court rescinded the injunction and left open the possibility that outgoing Morales could enter the ACA without the approval of Congress, provided that, in doing so, he followed the "legal route established in the Constitution,"[31] which allows the president to move forward with a treaty that might impact the country's finances, so long as its impact does not exceed one percent of the state's revenue.[32] Still, the Constitutional Court warned that, "depending on the circumstances," it could review the legality of the agreement again.[33]

In November 2019, despite having received information from both the U.S. Department of State and UNHCR regarding problems faced by asylum seekers in Guatemala, including long waiting periods for decisions on asylum cases and

26. "DHS and DOJ Issue Third-Country Asylum Rule," Department of Homeland Security press release, June 15, 2019, https://www.dhs.gov/news/2019/07/15/dhs-and-doj-issue-third-country-asylum-rule.
27. Order Granting Preliminary Injunction, *East Bay Sanctuary Covenant v. Barr*, Case no. 19-cv-04073-JST, District Court, N.D. California, July 24, 2019, https://www.courtlistener.com/docket/15925501/42/east-bay-sanctuary-covenant-v-barr/. The administration later appealed to the Supreme Court, which lifted the injunction in September 2019, see Barr v. East Bay Covenant, Supreme Court of the United States, case no. 19A230, On Application for Stay, September 11, 2019, https://www.supremecourt.gov/opinions/18pdf/19a230_k53l.pdf. See also, https://www.nytimes.com/2019/09/11/us/politics/supreme-court-trump-asylum.html.
28. "Trump threatens Guatemala after it backs away from 'safe third country' asylum deal," *Washington Post*, July 23, 2019, https://www.washingtonpost.com/politics/trump-threatens-guatemala-over-delay-in-safe-third-country-asylum-deal/2019/07/23/cc22417e-ad45-11e9-bc5c-e73b603e7f38_story.html.
29. Agreement between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, July 26, 2019, https://www.state.gov/wp-content/uploads/2020/01/19-1115-Migration-and-Refugees-Guatemala-ACA.pdf.
30. Communication from the Government of Guatemala, July 23, 2019, https://twitter.com/GuatemalaGob/status/1153792350293938176/photo/1.
31. Press release, Constitutional Court of the Republic of Guatemala, COM 14-2019, September 10, 2019, https://twitter.com/CC_Guatemala/status/1171468185645637632/photo/1. See also, Political Constitution of the Republic of Guatemala, article 171, https://www.minfin.gob.gt/images/subsitios/transferencias/constitucion_art_171.pdf.
32. Article 171, Constitution of Guatemala, https://www.minfin.gob.gt/images/subsitios/transferencias/constitucion_art_171.pdf; Comunicado de Prensa Corte Constitucional de Guatemala https://twitter.com/CC_Guatemala/status/1171468185645637632/photo/1.
33. Ibid.

U.S. President Donald Trump (C) watches as Guatemala's Interior Minister Enrique Degenhart (L) and Acting U.S. Secretary of Homeland Security Kevin K. McAleenan (R) exchange documents while signing an asylum cooperative agreement at the White House on July 26, 2019 in Washington, DC.

lack of access to social services and work,[34] the U.S. Attorney General certified that Guatemala qualified as a safe third country with full and fair access to asylum as required by the U.S. Immigration and Nationality Act.[35]

DHS and the U.S. Department of Justice (DOJ) then published an interim final rule (hereafter, "the rule") allowing for the implementation of ACAs not only with Guatemala, but also with El Salvador and Honduras, framing them as attempts to "share the burden" of protection between the United States and the three Central American countries.[36] In practice the ACAs will shift the responsibility of protection to countries significantly less able to bear it. Supplementary information accompanying the published rule makes clear that a principal motivation for the ACAs is to "reduce the flow" of asylum seekers to the United States as quickly as possible.[37] The ACA with Guatemala was the first Central American agreement to be implemented; transfers began in late November 2019.

Besides the agreements with the Central American governments, the United States' only other asylum transfer agreement is its "safe third country agreement" with Canada, which has a robust asylum system.

Besides the agreements with the Central American governments, the United States' only other asylum transfer agreement is its "safe third country agreement" with Canada, which has a robust asylum system. The U.S.-Canada agreement provides an exception for asylum seekers with close

34. "Assessment of Guatemalan Asylum System," U.S. embassy cable, reference no. 19STATE61360; message reference number: 19GUATEMALA 536, June 12, 2019. In DHS documents from *UT v. Barr*, DHSFF 1232, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk1N4GKK/view. The U.S. embassy said at the time (June 2019) that there was a backlog of more than 400 cases and that Guatemala had the capacity to process 100-150 cases per year. It noted, however, that no cases were processed for more than a year while the Rules of Procedure for Refugee Status were being drafted and that from March 2019 through the time of writing, June 2019, the National Migration Authority, which is the only authorized body to make refugee status decisions, had not met. While the embassy found that asylum seekers have formal work authorization, per article 8 of the Rules of Procedure for Refugee Status, as well as provisional permits for health care, it noted that "employment in the formal sector is hard to find," and that without employer-provided health insurance, medical services were limited to emergencies only.

35. Memorandum from the Attorney General, "Whether Guatemala's Refugee Protection Laws and Procedures Satisfy the "Access to a Full and Fair Procedure" Requirements of Section 208(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § I 158(a)(2)(A)," November 7, 2020, Department of Justice documents from *UT v. Barr*, DOJFF 6-7, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk-1N4GKK/view.

36. U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act," 84 Fed. Reg. 63,994 (Nov. 19, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.

37. Ibid., 64,005.

family members in the United States, acknowledging the UNHCR's conclusion that the choices of asylum seekers as to their country of refuge "should as far as possible be taken into account" especially when the asylum seeker has "a connection or close link" with that country.[38] The U.S.-Canada agreement also includes a provision inviting the UNHCR to monitor its implementation to ensure its consistency with international refugee law.[39] In contrast, the ACA with Guatemala fails to adopt any such exception or oversight. Though the ACA implementation plans from the summer of 2019 indicated that the UNHCR would be running a "care center" in Guatemala for transferees, no such center has been established.[40] Indeed, UNHCR has expressed "serious concern" that the ACA "could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers."[41]

Negotiations over the agreement and its expanding implementation have been shrouded in secrecy. Only the main text of the agreement is available to the public, while the annexes containing additional terms of the agreement remain secret to the public to this day.[42] Former President Morales hid the agreement in its entirety not only from government institutions and the media, but also from civil society—the very people who would later oversee the very limited care available for ACA transferees.

Alejandro Giammattei was sworn in as Guatemala's president on January 14, 2020. Prior to his presidency, Giammattei had only seen the publicly available text, not the secret annexes, and he had previously expressed hesitation to take on the role of a safe third country.[43] He eventually reaffirmed Guatemala's commitment to the ACA,[44] and the program expanded substantially.

38. UNHCR. September 2019, Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers, https://www.refworld.org/docid/5d8a255d4.html.
39. "The Agreement between the Government of Canada and the Government of the United States of America for Co-operation in the Examination of Refugee Status Claims from Nationals of Third Countries," article 8.3, https://www.refworld.org/pdfid/42d7b9944.pdf. See also, Year One Binational Review of the U.S.-Canada Safe Third Country Agreement," U.S. Citizenship and Immigration Services, https://www.uscis.gov/archive/us-canada-safe-third-country-agreement.
40. DOJ documents from *UT v. Barr*, DOJFF118, describing the "Temporary Shelter and Migration Care Center," https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByIlk1N4GKK/view.
41. UNHCR, "Statement on new U.S. asylum policy," June 19, 2019, https://www.unhcr.org/en-us/news/press/2019/11/5dd426824/statement-on-new-us-asylum-policy.html.
42. The Constitutional Court asked for the annexes following President Morales' appeal of its decision enjoining the government from implementing the ACA, https://twitter.com/Jody_Garcia_/status/1159217737924849664/photo/1 but the annexes are not publicly available, https://www.univision.com/noticias/inmigracion/se-dispara-el-numero-de-solicitantes-de-asilo-enviados-por-eeuu-a-guatemala-ya-son-720-salvadorenos-y-hondurenos.
43. "Guatemala's new president takes office under U.S. pressure on asylum," *Reuters*, January 14, 2020, https://www.reuters.com/article/us-guatemala-politics/guatemalas-new-president-takes-office-under-u-s-pressure-on-asylum-idUSKBN1ZD0H8.
44. "New Guatemalan government won't cancel U.S. asylum deal," *Reuters*, January 22, 2020, https://www.reuters.com/article/us-usa-immigration-guatemala/new-guatemalan-government-wont-cancel-u-s-asylum-deal-idUSKBN1ZL2LA.

DHS has also not released the agreement in its entirety including all its annexes and has not publicly released data on the number of transferees under the agreement.

At the height of transfers in early February 2020, Refugees International and Human Rights Watch investigated the policy to assess its impact on asylum seekers sent to Guatemala.

MISTREATMENT AT THE U.S. BORDER

Until the Guatemalan ACA was suspended because of the COVID-19 pandemic, it established a process for transferring asylum seekers to Guatemala from U.S. custody.

In violation of its own procedural standards, U.S. Customs and Border Protection (CBP) detained ACA transferees at the U.S. border in February 2020 for much longer than the 72-hour limit outlined by DHS policy without adequate access to food, bedding, showers, and medical care.[45] The 30 people Refugees International and Human Rights Watch interviewed said that CBP detained them, many with their young children, for between 7 and 20 days in El Paso or McAllen and Donna, Texas, before their transfer to Guatemala. All described receiving inedible frozen food, having no access to showers for several days at a time, being unable to sleep because lights were constantly left on, being denied medical care, and being subjected to insults and degrading treatment while in custody:

- In denying a request for a blanket for a two-year-old child who had fallen ill with the flu in detention, an officer told her 19-year-old Salvadoran mother, "If I give you a blanket, I will have to give them to everyone."[46]
- One woman from El Salvador said that her 4-year-old son vomited and had diarrhea from eating almost exclusively chips for 10 days because he refused to eat burritos that were frozen.[47]
- When the detergent CBP used to wash asylum seekers' clothes gave a Honduran teenager a terrible rash, the guard told him that he must be "allergic to washing himself."[48]

45. U.S. Customs and Border Protection, "National Standards on Transport, Escort, Detention, and Search," October 2015, https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf.
46. "Cara M.," interviewed by Refugees International on February 6, 2020, Casa del Migrante, Guatemala City.
47. "Mary L.," interviewed by Refugees International on February 7, 2020 Casa del Migrante, Guatemala City.
48. "Freddie G.," interviewed by Refugees International on February 7, 2020, Casa del Migrante, Guatemala City.

- One Honduran woman said an agent mocked her detained children's cries.[49]
- Two parents said their children over the age of ten were separated from them and held in separate cells.[50] (CBP standards say that family units should be held together.[51])
- When a 20-year-old Salvadoran woman asked a guard to use the restroom (located outside of the cell), the guard responded, "Chinga tu madre" ("Fuck your mother").[52] (CBP standards require that, if restrooms are not available in a secure area, guards must allow detainees to access restrooms upon request.[53])

The rule implementing the ACA provides for only "threshold" screening by United States Citizenship and Immigration Services (USCIS) asylum officers to determine whether the asylum seekers can be subject to the agreement.[54] The rule does not provide asylum seekers with even a "minimal consultation period" before the screening.[55] All transferees interviewed by Refugees International and Human Rights Watch said that, while detained by CBP, they were denied meaningful access to an attorney and only allowed to make between one and three rushed, non-private phone calls:

- A Salvadoran man said that a DHS official told him, "There is no asylum," and, "There are no Central Americans allowed into the United States."[56]
- A 20-year-old Honduran woman said that CBP agents told her the United States "wasn't giving asylum anymore," and that she had to choose

49. "Manuela C.," interviewed by Human Rights Watch on February 18, 2020 Casa del Migrante, Guatemala City.
50. "Celia D." and "Marcela P." interviewed by Human Rights Watch on February 18, 2020 Casa del Migrante, Guatemala City.
51. U.S. Customs and Border Protection, "National Standards on Transport, Escort, Detention, and Search," October 2015, https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf, p. 15.
52. "Veronica G.," interviewed by Human Rights Watch, February 18, 2020, at Casa del Migrante, Guatemala City.
53. U.S. Customs and Border Protection, "National Standards on Transport, Escort, Detention, and Search," October 2015, https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf, p. 16.
54. U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act," 84 Fed. Reg. 64,008 (Nov. 19, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf.
55. Ibid., at 64,003.
56. "Fernando C.," interviewed by Human Rights Watch, February 19, 2020, Casa del Migrante, Guatemala City.

A U.S. Customs and Border Protection (CBP) sign is posted outside a U.S. Border Patrol station (R) in Texas. © Mario Tama/Getty Images.

between being sent to Honduras or Guatemala.[57]

- One woman showed Refugees International pictures of her bruises from where her domestic partner had physically assaulted and beaten her in El Salvador,[58] and another woman showed Refugees International copies of a Salvadoran court order detailing her domestic abuse.[59] Both women said U.S. officials at the border refused to let them present these as evidence to support claims of fear of return to El Salvador.
- A 20-year-old Salvadoran man said agents told him that he had to choose between calling an attorney or family and gave him only two-to-five minutes to talk.[60]
- A Honduran man said a U.S. border official told him he would be released from detention in the United States sooner if he accepted transfer to Guatemala under the ACA rather than deportation to Honduras.[61]

With the exception of the Honduran man just mentioned, all the transferees we interviewed said they were afraid to return to El Salvador or Honduras but that they were never given an opportunity to seek asylum in the United States or to explain why they fled their home countries.

All [but one of] the transferees we interviewed said they were afraid to return to El Salvador or Honduras but that they were never given an opportunity to seek asylum in the United States or to explain why they fled their home countries.

Under the regular expedited removal process, people who express a fear of return to their home countries are transferred to U.S. Immigration and Customs Enforcement (ICE) custody, where USCIS asylum officers conduct credible fear interviews with them, and where they can try to access attorneys. Each asylum seeker subjected to ACA, however, was held in CBP custody, where they were unable to meet with an attorney and were given a brief phone interview with an asylum

57. "Yana E," interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.
Another Honduran woman said she was told she had to make the same choice: "Celia D.," interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City.
58. "Jane L.," interviewed by Refugees International February 7, 2020, Case del Migrante Guatemala City.
59. "Mary I.," interviewed by Refugees International February 7, 2020, Casa del Migrante, Guatemala City.
60. "Gilberto C.," interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City.
61. "Javier S." interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.

officer during which they were asked only their nationality and when they arrived in the United States; they were not asked about their fear of return to their home countries. The asylum officers then told them they were potentially subject to removal to Guatemala under the ACA.

A brief by the asylum officer's union in litigation against the ACA asserts: "The ACA Rule reflects a dramatic departure from longstanding refugee screening processes and a stark re-interpretation of the asylum officer's role."[62]

Under the rule, DHS officers do not ask asylum seekers being considered for removal to Guatemala whether they fear persecution or torture in that country.[63] Rather, the migrant is supposed to be provided a "written notice" in the form of a document—or "tear sheet"—stating that if the applicant fears removal to that country due to the likelihood of torture or persecution on the basis of a protected ground, the applicant should affirmatively state such fear.[64]

But CBP officers did not provide all transferees with written notice that they should raise the issue of fear of return to Guatemala.[65] Fourteen transferees Refugees International interviewed who were held at a CBP tent facility in Donna, Texas, in early February said they never even received this tear sheet. They received only three documents—a Notice and Order of Expedited Removal (Form I-860), a Notice to Alien Ordered Removed/Departure Verification (Form I-296), and a U.S.-Guatemala Asylum Cooperation Agreement Threshold Screening Assessment Notice. The threshold screening notice says only that "you were interviewed by a DHS asylum officer" who determined "you are subject to removal to Guatemala under the U.S.-Guatemala Asylum Cooperative Agreement for consideration of your asylum or other protection claims." Without access to a lawyer or an English translation to explain this, it is not surprising that all of those Refugees International interviewed were under the

62. "Brief of Amicus Curiae Council 119 in support of plaintiffs' motion for summary judgment and permanent injunction," *U.T. v. Barr*, Case no. 1:20-lv-oo116 (EGS) U.S. District Court of the District of Columbia, https://int.nyt.com/data/documenthelper/6807-amicus-brief-asylum-policy/d2898a7e9c9d-b10ed0b5/optimized/full.pdf#page=1. See also, "Immigration Officers Say Asylum Deal with Guatemala Is Unlawful," March 6, 2020, https://www.nytimes.com/2020/03/06/us/politics/trump-asylum-guatemala.html.
63. U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act," 64,009 (Nov. 19, 2019) https://www.federalregister.gov/documents/2019/11/19/2019-25137/implementing-bilateral-and-multilateral-asylum-cooperative-agreements-under-the-immigration-and.
64. U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act," 84 Fed. Reg. 64,009 (Nov. 19, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf. U.S. Citizenship & Immigration Services, US-Guatemala Asylum Cooperation Agreement (ACA) Threshold Screening: Guidance for Asylum Officers and Asylum Office Staff, (Nov. 19, 2019), USCIS284, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk1N4GKK/view.
65. USCIS313, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk1N4GKK/view.

impression that they could apply for asylum in the United States from Guatemala.

Ten of the transferees interviewed by Human Rights Watch and Refugees International received an additional Spanish language explanation of the ACA that notified them of the need to affirmatively express fear of return to Guatemala and that, if transferred under the agreement, they could no longer seek protection in the United States but only in Guatemala. However, asylum seekers often said they did not understand its meaning. This is a violation of the instruction to asylum officers that they ensure all those subject to the ACA understood the contents of the tear sheet.[66]

A Honduran transferee told Human Rights Watch that when an agent gave her the I-296 departure form to sign, she asked him what the document was for and he told her "it's to continue your case."[67] One man from Honduras fled the country with his wife and infant daughter after his father was murdered and he began receiving death threats. He told Refugees International that a CBP officer signed the form for him after he refused.[68] A transferred married couple told Refugees International that they believed that, so long as they did not sign the form, they would be able to seek asylum in the United States from Guatemala.[69] Though given this form, several transferees said they thought they were being transferred within the United States and were not aware that they were being flown to Guatemala until they arrived there.[70]

Several transferees said they thought they were being transferred within the United States and were not aware that they were being flown to Guatemala until they arrived there.

According to the rule implementing the ACA, even when an asylum seeker affirmatively expresses fear of removal to Guatemala, the resulting secondary

66. USCIS314, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcBylIk1N4GKK/view.
67. "Manuela C.," interviewed by Human Rights Watch on February 18, 2020, Casa del Migrante, Guatemala City.
68. "Jose Y.," interviewed by Refugees International on February 7, 2020, Casa del Migrante, Guatemala City.
69. "Nino M" and "Lisa M," interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.
70. "Marcela P," Interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City; "Cara M." interviewed by Refugees International , February 6, 2020, Casa del Migrante, Guatemala City; "Jorge C." interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City; "Freddie G." interviewed by Refugees International, Feb. 7. 2020, Casa del Migrante, Guatemala City.

interview requires that the asylum seeker demonstrate that it is "more likely than not" that they will face persecution or torture in Guatemala, an evidentiary standard significantly higher than the one applied in normal credible fear interviews.[71] Without adequate time to prepare or access to counsel, it is functionally almost impossible for asylum seekers to prevail in the interviews.

Only one person Refugees International interviewed, a 22-year-old pregnant Salvadoran woman, was given a second phone interview because she told the asylum officer that she did not want to be sent to Guatemala because she was pregnant and feared she would be detained there and have difficulty accessing healthcare. She had already been detained in Mexico on her way to the U.S. border. But, she said, the second interview was almost identical to the first and she was found subject to removal under the ACA.[72] Only one person to whom Human Rights Watch spoke, a 20-year-old Salvadoran man, was given a second interview, but he said the officer did not ask him for details about why he was afraid to go to Guatemala.[73] Under USCIS guidance for implementing the ACA rule, asylum officers cannot make a finding that future persecution in Guatemala is "more likely than not" based solely on evidence of past persecution there.[74]

A Refugees International interview with one transferee encapsulates the poor treatment, lack of due process, and arbitrary placement in the ACA at the border. "Jorge C.," a former police officer from Honduras, said that CBP officials at the border "threw away" documents he had brought with him from Honduras. He said that these papers proved he was a witness in a case against gang members who would kill him if he returned home. U.S. State Department reports that show that police officers are often intimidated and targeted by gangs in Honduras support Jorge's account.[75] His wife and child had already fled to the United States and applied for asylum based upon the threats directed against him.

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71. The higher "more likely than not" standard is described at U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act," 84 Fed. Reg. 63,999 (Nov. 19, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf.
72. "Fara V.," interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.
73. "Gilberto C.," interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City.
74. Page 18 of U.S. Citizenship & Immigration Services, US-Guatemala Asylum Cooperation Agreement (ACA) Threshold Screening: Guidance for Asylum Officers and Asylum Office Staff, (Nov. 19, 2019), USCIS295 https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk1N4GKK/view.
75. State Department, 2019 Country Reports on Human Rights Practices: Honduras, March 11, 2020. Section 1. Respect for the Integrity of the Person, Including Freedom from: A. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings, https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/honduras/.

Jorge said that he complained to officials at the border about poor interpretation during his interview with an asylum officer. He said an officer told him he had 15 days to talk to a judge about his case, but then he was rapidly transferred to Guatemala. Indeed, under the ACA rule an immigration judge is prohibited from reviewing an officer's determination that an asylum seeker is not eligible for asylum in the United States and is subject to removal to Guatemala.[76] The ACA, its implementing rule, and USCIS guidance give officers the discretion to exempt from the agreement anyone they determine it is in the "public interest" to allow to pursue a claim for asylum in the United States.[77] But DHS did not consider Jorge for this exception despite members of his family already being asylum applicants in the United States and his role in combatting gangs in Honduras—an effort the U.S. government supports.[78]

Jorge was shackled at the waist, wrist, and ankles for the 12-hour transfer despite CBP transport standards that mandate humane use of restraints. He told us that he fears remaining in Guatemala, where he is sure gang members can find him, and he remains uncertain where or how he can find safety.

Instead, like many of the adults sent to Guatemala from the Donna facility, Jorge was shackled at the waist, wrist, and ankles for the 12-hour transfer despite CBP transport standards that mandate humane use of restraints.[79] He told us that he fears remaining in Guatemala, where he is sure gang members can find him, and he remains uncertain where or how he can find safety.[80]

76. See amended paragraph h in Section 1003.42 of U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, "Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act," 84 Fed. Reg. 66,009 (Nov. 19, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.

77. See Article 5 of the Agreement between the U.S. and Guatemala, https://www.federalregister.gov/documents/2019/11/20/2019-25288/agreement-between-the-government-of-the-united-states-of-america-and-the-government-of-the-republic;
See also, U.S.-Guatemala Asylum Cooperation Agreement (ACA) Threshold Screening, Guidance for Asylum Officers and Asylum Officer Staff, November 19, 2019, p. 13, https://fingfx.thomsonreuters.com/gfx/mkt/12/8962/8874/ACA%20Guatemala.pdf.

78. The U.S. government has prioritized working with the Honduran government to combat gangs. See "Joint Statement Between the U.S. Government and the Government of Honduras" Dept. of Homeland Security (Sept. 13, 2019) https://www.dhs.gov/news/2019/09/13/joint-statement-between-us-government-and-government-honduras.

79. https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf.

80. Jorge C., interviewed by Refugees International February 7, 2020, Casa del Migrante, Guatemala

THE ACA PROCESS IN GUATEMALA

Until the ACA was suspended due to the COVID-19 pandemic, transferees under the ACA were thrust into a tragic situation in which they lack adequate time and resources to make a truly informed, voluntary choice about what to do. ACA transferees were flown to La Aurora Airport in Guatemala City, typically on the same plane with Guatemalan nationals who were also being deported.[81] They disembarked from the plane at the Guatemalan Air Force hangar.

Transferees under the ACA were thrust into a tragic situation in which they lack adequate time and resources to make a truly informed, voluntary choice about what to do.

Transferees, including small children, waited hours on the tarmac with no food, water, or adequate medical attention.[82] The actual registration process itself took two-to-three minutes, during which transferees were not provided any information regarding what will happen to them in Guatemala.[83] Until the suspension of the ACA, representatives from the Institute of Migration and the Foreign Relations Ministry registered the ACA transferees.

The Guatemalan Office of the Human Rights Ombudsman, an independent government office charged with investigating human rights violations in the country, monitors the registration process.[84] Workers from Casa del Migrante, an NGO-run shelter, accompanied transferees during this process. Once transferees are registered at the airport, they have 72 hours to decide whether to apply for asylum or temporary residence in Guatemala or be returned to their country of origin. [85] The 72-hour time limit not only provides insufficient time for transferees to make such a monumental decision, but is

City.

81. According to interview conducted by Refugees International with the Office of the Human Rights Ombudsman, Gabriela Mundo Rodriguez and Eduardo Woltke Martinez, February 5, 2020, Guatemala City.

82. Ibid.

83. Ibid.

84. "Functions and Powers," Procurador de los Derechos Humanos, https://www.pdh.org.gt/funciones-y-atribuciones/.

85. According to interviews Refugees International conducted with El Refugio de la Niñez, the Office of the Human Rights Ombudsman, and the Casa del Migrante. February 5, 6, and 7 of 2020. Supported by press accounts https://www.washingtonpost.com/world/the_americas/the-us-is-putting-asylum-seekers-on-planes-to-guatemala--often-without-telling-them-where-theyre-going/2020/01/13/0f89a93a-3576-11ea-a1ff-c48c1d59a4a1_story.html

also arbitrary, as the Central America-Four Border Control Agreement allows passport-free land transit for up to 90 days for nationals of the signatory countries, El Salvador, Guatemala, Honduras, and Nicaragua.[86]

It was only after the ACA transferees were taken to civil society organizations, Refugio de la Niñez (Children's Refuge) and Casa del Migrante, that they were given their first meal and access to psychologists and social workers.[87] Only then did they receive any humanitarian attention or information regarding their status in Guatemala.

At Refugio de la Niñez, a lawyer gave a rights orientation to the transferees and explained their options. The lawyer informed them that they had 72 hours to decide whether to ask for asylum or temporary residence in Guatemala or be returned to their country of origin. In the orientation Refugees International witnessed, all transferees expressed dismay upon being told they could not apply for asylum in the United States. For most, if not all of the transferees, this was the first time they learned they were not going to be allowed to lodge asylum claims in the United States. Transferees cried out in frustration, "They [CBP officers] lied to us," and "They didn't tell us that we couldn't go back." Despite their disappointment at receiving this information, some transferees stated that the first time in the process they felt they were being "treated like human beings" was when they arrived at Refugio de la Niñez.[88]

Once ACA transferees finished at Refugio de la Niñez, they were taken to the church-run Casa del Migrante, one of the few shelters in Guatemala and the only one available to ACA transferees.[89] Despite having only 50 beds,[90] the Casa del Migrante sometimes shelters more, including migrants from many countries in transit through Guatemala, members of caravans,[91] and some deported Guatemalans. Before the COVID-19 suspension of the ACA, Casa del Migrante provided them basic humanitarian care and gave them the opportunity to speak with lawyers from Refugio de la Niñez and Pastoral de Movilidad Humana (Pastoral for Human Mobility), another church-run organization that

86. Regional Agreement on Migratory Procedures CA-4, p. 11, July 2005. https://reddhmigrantes.files.wordpress.com/2014/06/acuerdo-regional-ca4.pdf. See also, International Organization for Migration Northern Triangle of Central America, Regional Integration, https://triangulonorteca.iom.int/regional-integration.
87. Si dependiera del Gobierno, los hondureños y salvadoreños se quedarían en la calle," Nómada, December 4, 2019, https://nomada.gt/identidades/migracion/si-dependiera-del-gobierno-los-hondurenos-y-salvadorenos-se-quedarian-en-la-calle/.
88. Refugees International observation of orientation at Refugio de la Ninez, February 7, 2020, Guatemala City.
89. According to a Refugees International interview with Casa del Migrante, February 14, 2020, Guatemala City.
90. According to a Refugees International interview with Casa del Migrante, February 14, 2020, Guatemala City.
91. https://www.aljazeera.com/news/2020/01/prominent-guatemala-migrant-shelter-receives-threats-director-200122211903365.html

provides legal support.[92] During their stay for up to 72 hours at Casa del Migrante, they had to make a decision among the following three options:

1. **Apply for asylum in Guatemala**: Lawyers from Refugio de la Niñez and Pastoral de Movilidad Humana provide information on how to apply for asylum in Guatemala and how the process works.[93]
2. **Apply for temporary residence in Guatemala:** Those who wish to obtain a regularized status quickly and who can afford the $500 USD fee can apply for temporary residency in Guatemala, which can last up to five years.[94]
3. **Return home:** Transferees can return home at their own expense or through the International Organization for Migration (IOM)'s Assisted Voluntary Return Program.[95]

Once the 72 hours passed, the transferees who did not wish to stay in Guatemala typically returned to their home country or migrated to another country. Although Refugees International researchers have stayed in touch with two ACA transferees who returned to their home country, El Salvador, and one who went to Mexico, there is no general monitoring of those who returned to their home countries without assistance.

Despite their limited resources, the task of caring for ACA transferees falls solely on civil society organizations. Refugio de la Niñez and Casa del Migrante both have mandates that extend beyond assisting ACA transferees. Refugio de la Niñez operates in 15 offices throughout the country,[96] providing protection for people in transit, assists non-ACA asylum seekers with their asylum claims and assists the government in finding cases of child trafficking.[97] They receive very little government funding for their work and rely mostly on private funders.[98] The Casa del Migrante hosts a variety of populations, but they are a church-run organization and rely on donations to carry out their work.[99] The more people transferred to Guatemala under ACA, the more likely it is that civil society will have to divert limited resources away from other marginalized groups to take care of ACA transferees, given the transferees' extreme vulnerability and the lack of government support.

92. Movilidad Humana web page, https://movilidadhumana.com/sobre-nosotros/mision/.
93. As witnessed by Refugees International at the Refugio de la Niñez, February 7, 2020, Guatemala City.
94. Government of Guatemala, "Residencias Guatemaltecas, https://igm.gob.gt/residencias-temporales-y-definitivas/
95. https://triangulonorteca.iom.int/assisted-returns.
96. Refugee International interview with the director of Refugio de la Niñez, February 7, 2020, Guatemala City.
97. Refugio de la Niñez web page, http://www.refugiodelaninez.org.gt/#programs.
98. Refugio de la Niñez web page, http://www.refugiodelaninez.org.gt/#donors.
99. Migrant House in Guatemala City, web page, http://www.migrante.com.mx/guatemala.html.


CASA DEL MIGRANTE
Misioneros de San Carlos Scalabrinianos
15 AV. 1-94 "A" ZONA 1 GUATEMALA
A
1-94 1-04

Salvadoran and Honduran asylum seekers arriving at Casa del Migrante, a Catholic shelter, in Guatemala City. Many of those transferred to Guatemala from the United States under the ACA were mothers and toddlers. Photo by Refugees International.

The Guatemalan government provides no money to civil society organizations to care for ACA transferees.[100] The constitutional provision under which Morales signed the ACA without congressional approval required that the agreement not entail additional expenses for the government—any agreement involving additional expenses would have, as the Constitutional Court warned in its preliminary injunction, required the legislature to approve it."[101] Then-acting head of USCIS Ken Cuccinelli, however, indicated that the Guatemalan government would be responsible for taking care of arriving transferees, including costs.[102] The U.S. government is giving money to the Guatemalan government to prevent irregular migration, although it is unclear that any of this money is to be used for the ACA.[103] The publicly available text of the agreement does not stipulate who, in fact, should assume financial responsibility for the transferees. Article 8, section 5, states: "Nothing in this Agreement shall be construed in such a way as to oblige the Parties to disburse or obligate funds."[104] This has allowed the Guatemalan and U.S. governments to shirk any financial responsibility for the transferees, even though international law requires each country to respect and uphold the rights of people under their control.

Article 8, section 5, states: "Nothing in this Agreement shall be construed in such a way as to oblige the Parties to disburse or obligate funds." This has allowed the Guatemalan and U.S. governments to shirk any financial responsibility for the transferees, even though international law requires each country to respect and uphold the rights of people under their control.

100. "Jimmy Morales' government lied about terms for the country due to an asylum agreement with the United States," *Prensa Libre*, February 27, 2020, https://www.prensalibre.com/guatemala/politica/gobierno-de-jimmy-morales-mintio-en-cuanto-a-que-el-acuerdo-de-asilo-no-representaria-un-costo-para-guatemala/.
101. Constitutional Court of Guatemala, Press Communication, https://twitter.com/CC_Guatemala/status/1171468185645637632/photo/1.
102. "Ken Cuccinelli: Guatemala is responsible for paying for asylum processes by ACA," *Prensa Libre*, February 25, 2020, https://www.prensalibre.com/guatemala/politica/ken-cuccinelli-guatemala-es-responsable-de-costear-procesos-de-asilo-por-aca/.
103. "Trump Administration Announces Resumption of Foreign Aid for Central American Countries to Address Illegal Migration," Press Release, Department of Homeland Security, October 17, 2019, https://www.dhs.gov/news/2019/10/17/trump-administration-announces-resumption-foreign-aid-central-american-countries.
104. Agreement Between the United States of America and Guatemala, signed at Washington July 26, 2019. Entered into force November 15, 2019, https://www.state.gov/wp-content/uploads/2020/01/19-1115-Migration-and-Refugees-Guatemala-ACA.pdf.

VULNERABILITIES OF TRANSFEREES

Prior to the implementation of the ACA, the majority of migrants that passed through Casa del Migrante were single men, who were housed in shared dormitory-style rooms. In discussions over the implementation of the ACA, the U.S. government learned that Casa del Migrante had only one room for families.[105] And yet, as of March 16, 2020, of the 939 asylum seekers from Honduras and El Salvador DHS sent to Guatemala, 75 percent were women and children.[106] DHS has also transferred LGBT (lesbian, gay, bisexual and transgender) individuals to Guatemala under the ACA, according to research conducted by Refugees International and Human Rights Watch, as well as reporting by *BuzzFeed News*.[107]

Women and Girls

Gender-based violence, including violence against women and girls and violence on the grounds of sexual orientation and gender identity, is prevalent in Guatemala, El Salvador, and Honduras.[108] Abuse of women and girls in Guatemala, El Salvador, and Honduras is endemic, rooted deeply in social norms and exacerbated by generalized violence and impunity in these countries.[109] Despite some reform efforts in Guatemala, such as specialized women's courts and dedicated units in the Attorney General's Office, formidable obstacles remain for women seeking police protection, investigation, or justice through the courts. Guatemala has among the highest rates of gender-related murder of women or girls in the world when counting the number of women murdered for reasons of their sex per 100,000,[110] yet less than six percent of female

105. Plaintiff administrative record in *UT v. Barr*, DHSFF 1257, Guatemalan Immigration Law and Current Capacity. "There is only one operational shelter in Guatemala that has 35 beds but the capacity to house 100 migrants using mattresses. One floor is a female dorm and the other a male dorm. No UACs are allowed at the shelter, and there is only one room for FAMUs [family units]. There is no Special Housing Unit or specified area for LGBT migrants" (page 1247). https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcBylIk1N4GKK/view.
106. Asylum Cooperative Agreement (ACA) Transfers from November 2019 through March 16, 2020, https://twitter.com/camiloreports/status/1239660499161186305/photo/1. As of March 16, 2020, 345 transferees were women, 357 were children, and 237 were men.
107. Hamed Aleaziz, "Two Gay Immigrants Left Everything for Safety in the U.S. Instead, they were Sent to Guatemala," *BuzzFeed News*, Feb. 10, 2020, https://www.buzzfeednews.com/article/hamedaleaziz/gay-immigrants-asylum-guatemala-us-trump.
108. The Inter-American Dialogue, Nowhere to Turn: Gender-Based Violence in the Northern Triangle and its Impact on Migration, Aug. 9, 2019, https://www.thedialogue.org/analysis/nowhere-to-turn-gender-based-violence-in-the-northern-triangle-and-its-impact-on-migration/.
109. The Inter-American Dialogue, Nowhere to Turn: Gender-Based Violence in the Northern Triangle and its Impact on Migration, Aug. 9, 2019, https://www.thedialogue.org/analysis/nowhere-to-turn-gender-based-violence-in-the-northern-triangle-and-its-impact-on-migration/.
110. Procurador de Derechos Humanos, Annual Report, p. 180, file:///C:/Users/rachel/Downloads/

homicides result in a conviction in the country.[111] Sexual and domestic violence "remain widespread and serious," according to the U.S. State Department.[112]

"Jane L.," an ACA transferee from El Salvador, shared pictures with Refugees International documenting the injuries her partner caused her. Although she had gone to the police to report her partner and six of his family members and then spent three months testifying in court, her case was never resolved. The U.S. government is aware of the particular dangers such victims face in El Salvador, the U.S. State Department noting in a recent report: "Laws against domestic violence remained poorly enforced, and violence against women, including domestic violence, remained a widespread and serious problem" in El Salvador.[113] After Jane was transferred from the U.S. border to Guatemala under the ACA, she did not think it would be safe for her to return to El Salvador or remain in Guatemala. She is now in Monterrey, Mexico, while she decides what to do next.

LGBT People

DHS has sent LGBT people to Guatemala under the ACA, even though LGBT people experience persecution in both their home countries and in Guatemala.[114] Human Rights Watch confirmed that at least two gay men and one transgender woman were transferred to Guatemala under the ACA. According to Lambda, an LGBT rights organization based in Guatemala City, the number of LGBT transferees is probably much higher, since LGBT asylum seekers are often afraid to identify themselves.[115]

IAC%20-%20Final%2016%20DE%20ENERO%20DE%202019%20%20final%20PDF5.pdf.

111. Azam Ahmed, "Women Migrants So as Not to Die at Home: United States Closes the Door," *New York Times*, August 19, 2019, https://www.nytimes.com/es/2019/08/19/espanol/america-latina/guatemala-migrantes-mujeres-violencia.html.

112. U.S. State Department 2019 Country Reports on Human Rights Practices, El Salvador, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons. March 11, 2020, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons, https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/guatemala/.

113. U.S. State Department 2019 Country Reports on Human Rights Practices, El Salvador, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons. March 11, 2020, https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/el-salvador/.

114. U.S. State Department 2019 Country Reports on Human Rights Practices, Guatemala, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons, "Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity," March 11, 2020, https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/guatemala/; Hamed Aleaziz, "Two Gay Immigrants Left Everything for Safety in the U.S. Instead, They Were Sent to Guatemala," *BuzzFeed News*, Feb. 10, 2020, https://www.buzzfeednews.com/article/hamedaleaziz/gay-immigrants-asylum-guatemala-us-trump.

115. According to Lambda Director Carlos Valdez, LGBT asylum seekers often experience discrimination, including at migrant shelters. For example, they may be harassed by other asylum seekers, forced to eat separately, and are sometimes made to sleep separately from other asylum seekers. According to Lambda, LGBT-presenting migrants have at times been barred from entering migrant shelters altogether. Lambda Director Carlos Valdez, interview with Human Rights Watch, Lambda, February 13, 2020, Guatemala City.

The Guatemalan migration code states that migrants should not be discriminated against on the basis of sex or sexual orientation but contains no explicit protections on the grounds of gender identity.[116] Guatemalan law has no non-discrimination provision to protect people from violence based on gender identity and sexual orientation in accessing employment, housing, health care, and public or private services.[117] According to Lambda Director Carlos Valdez, LGBT asylum seekers often experience discrimination in Guatemala.[118] In research conducted in 2019 and 2020, Human Rights Watch found that LGBT people in Guatemala, some of whom had fled the country as a result of violence, had suffered from domestic violence; gang violence based both on sexual orientation and gender identity, as well as increased vulnerability to violence from members of the public and police.[119]

"Josue M." fled Honduras after being assaulted and receiving death threats for being gay.[120] Shortly after U.S. authorities sent Josue to Guatemala under the ACA, a group of homophobic men threatened and pursued him. Josue sustained multiple injuries to his face and body when he fell trying to escape them, according to immigration attorney Linda Corchado. Josue told Corchado he did not feel safe remaining in Guatemala and that he could not return to Honduras.[121]

Victims of Gang Violence

ACA transferees who have been targeted by gangs in their home countries of Honduras and El Salvador (which may also include women, girls, and LGBT people) have good reason to believe that they are not safe in Guatemala, as

116. Articles 2 and 9 of the Guatemalan Migration Code, http://igm.gob.gt/wp-content/uploads/2017/09/CODIGO-MIGRACION-DTO-44-2016.pdf.
117. Ibid.
118. Lambda Director Carlos Valdez, interview with Human Rights Watch, February 13, 2020, Lambda, Guatemala City.
119. Human Rights Watch report forthcoming in Fall 2020. These cases involve harassment and assault of LGBT Guatemalan nationals, but provide context for understanding the situation of LGBT foreigners in Guatemala. "Raya," a trans woman, said she was having a drink in a bar with a friend in Guatemala when police came in and began harassing them. "Police started hitting my friend and they pulled her wig off and started throwing the wig from one policeman to the other," she said. "They wanted to put my friend in the patrol car, but I stopped a taxi on the street and we quickly got in. It was going to be their word against ours and I thought that it was better to avoid that, so we left." Interviewed August 11, 2019, Guatemala City. "Juan" said he was stopped by four Guatemalan police officers in 2017. When the officers realized he was gay, they made him get in the car and to "take a ride." "When we stopped, three of them got out and one stayed inside with me," he said. "He made me perform oral sex on him." Interviewed August 5, 2019, Huehuetenango.
120. Hamed Aleaziz, "Two Gay Immigrants Left Everything for Safety in the U.S. Instead, They Were Sent to Guatemala," *BuzzFeed News*, Feb. 10, 2020, https://www.buzzfeednews.com/article/hamedaleaziz/gay-immigrants-asylum-guatemala-us-trump.
121. Immigration attorney Linda Corchado, text message conversation with Human Rights Watch, February 5, 2020.

many of the same gangs have a presence in the country and maintain links across borders.[122] High levels of impunity in Guatemala mean that criminal organizations could target asylum seekers without being held to account and that victims cannot expect to access justice or protection.[123] Shelter operators in Guatemala City working with asylum seekers subjected to the ACA repeatedly stressed that the same violent gangs from which asylum seekers had fled also operate in Guatemala. Migrant shelters and shelter workers in Guatemala have also received serious threats, according to workers interviewed by Human Rights Watch and Refugees International, as well as media reports.[124]

When Yana asked for asylum at the U.S. border, an official told her that the United States "wasn't giving asylum anymore." She was transferred to Guatemala under the ACA despite having no family or friends in Guatemala. She said that she felt unsafe in Guatemala because she said the gang knew where she was and had since received a threatening video message from the same people who murdered her husband.

Like the Honduran police officer Jorge C., many of the transferees Human Rights Watch and Refugees International spoke to expressed fear of remaining in Guatemala, saying they faced the same risk of persecution or torture as in their home countries. For example, "Yana E." fled Honduras with her two-year-old daughter after a gang brutally murdered her husband. She showed Refugees International his death certificate. When Yana asked for asylum at the U.S. border, an official told her that the United States "wasn't giving asylum anymore." She was

122. "Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Guatemala," UNHCR, January 2018, https://www.refworld.org/pdfid/5a5e03e96.pdf
MS-13 in the Americas, InSightCrime and Center for Latin American & Latino Studies (CLALS), February 2018, https://www.justice.gov/eoir/page/file/1043576/download. See also, Clare Ribando Seelke, "Gangs in Central America," Congressional Research Service, August 29, 2016, https://fas.org/sgp/crs/row/RL34112.pdf. See also, "Transnational Gangs," Federal Bureau of Investigation, January 7, 2016, https://www.fbi.gov/news/stories/transnational-gangs.

123. "Sistema Integrado de Justicia," Comisión Internacional contra la Impunidad en Guatemala, June 2019, https://www.cicig.org/wp-content/uploads/2019/06/Presentacion_GIZ_SIJ_2019.pdf.
Guatemala Profile, Insight Crime, https://www.insightcrime.org/guatemala-organized-crime-news/guatemala/#Criminal%20Groups.

124. "Prominent Guatemala migrant shelter receives threats: Director," *Al Jazeera*, January 27, 2020, https://www.aljazeera.com/news/2020/01/prominent-guatemala-migrant-shelter-receives-threats-director-200122211903365.html; Human Rights Watch interviews with shelter workers, names withheld, Guatemala City, Feb. 14-19, 2020.

transferred to Guatemala under the ACA despite having no family or friends in Guatemala. She said that she felt unsafe in Guatemala because she said the gang knew where she was and had since received a threatening video message from the same people who murdered her husband.[125]

Human Rights Watch spoke to a woman and her two sons (17 and 11) from Honduras. Because of a series of threats against them by gangs, they had moved to different places within Honduras four times. At the last place they lived, the woman said, she was told to pay a "war tax" every Thursday. When the gang gave her a note saying they would kidnap her younger son from school unless she paid, she decided to travel to the United States to ask for asylum. She said they could not return to their home country, but she said she knew no one in Guatemala and could not support her children there. She said she did not know what to do next.[126]

Trauma and Stress

A staff member at Refugio de la Niñez described the whole process of the ACA—from the experience at the U.S. border, to the flight and reception at the airport, to the 72-hour time limit—as "a series of deceptions and intimidations" that break down people who already have "extremely complicated protection needs." He emphasized the need to "return people's dignity."[127]

A staff member at Refugio de la Niñez described the whole process of the ACA—from the experience at the U.S. border, to the flight and reception at the airport, to the 72-hour time limit—as "a series of deceptions and intimidations" that break down people who already have "extremely complicated protection needs."

According to psychologist Sucely Donis, who works with migrants at Casa del Migrante, the ACA creates a seemingly never-ending

125. "Yana E.," interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.
126. "Manuela C., Edgar C., and Chris C.," interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City.
127. Refugee International and Human Rights Watch interviews with a staff member of Refugio de la Niñez who asked that his name and title be withheld, February 7, 2020 and February 18, 2020, Guatemala City.

"circle of violence" in which asylum seekers are in a constant state of mental stress and never have the opportunity to pause and decompress in a safe environment.[128] She has noticed a significant difference between the psychological responses of migrants and asylum seekers who are in transit on their way north versus the asylum seekers sent to Guatemala under the ACA. "People in transit [northward] are more prepared to deal with the things they may face because they have fortified themselves," she said. "But people [returned under the ACA] are not given any information and are unable to prepare themselves for what happens."

Combined with abusive CBP detention conditions and the trauma they have experienced at home and potentially along the way, the experience of suddenly arriving in Guatemala is a shock for ACA transferees. Donis described the experience as leaving transferees mentally and emotionally defeated, especially when they believed the United States would hear their case and give them access to a fair process. She said those who arrive under the ACA are often suffering from post-traumatic stress disorder and chronic stress, as well as physical illnesses – respiratory infections, headaches, palpitations – that she said are in part physical manifestations of that stress. Meanwhile, children in the shelter are showing signs of anxiety, aggression, and arrested development. "We are destroying a generation," she said.

Many of the ACA transferees interviewed by Human Rights Watch and Refugees International were young adults between 18 and 20 years old, separated from parents in the United States, at heightened risk of being targets of gangs, and experiencing increased difficulty making decisions. A 20-year-old Salvadoran woman told Human Rights Watch that her mind was "completely worn out" (desgaste) by CBP detention. In Guatemala City where she knew nobody, she said she did not know what she was going to do—she was fearful of persecution should she return to El Salvador and separated from her family in the United States.[129]

"Freddie G.," a 19-year-old Honduran, told Refugees International he was in a complete panic. Freddie's mother abandoned the family when he was four and his father later left for the United States, leaving his sister, brother, and him in the care of their grandmother, now ill and infirm. A gang leader kidnapped his sister and kept her as "his woman" until she managed to escape and flee to the United States. In response, the gang tried to recruit his brother and then mutilated his brother's legs with a machete. Next, the gang members came after Freddie, blaming him for the sister's escape and robbing him. Freddie

128. Sucely Donis, interviewed by Human Rights Watch, February 19, 2020, Guatemala City.
129. "Veronica G.," interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City.

sought help from his employer to no avail; the gang leader found him and severely beat him, prompting him to flee to the United States. Freddie said that he felt panicked and spent much of his time crying at the crowded shelter in Guatemala, where he could not sleep or eat knowing that he had only three days to figure out what to do—fearing persecution in Honduras, knowing no one in Guatemala, and having his entire family in the United States seeking asylum for the same reasons that he needed to. Freddie was desperate for help from a psychologist and a lawyer, but neither were available to provide him services beyond initial consultations in Guatemala. He could not understand why the lawyer his father found for him in the United States could not help him apply for asylum there.[130]

Freddie said that he felt panicked and spent much of his time crying at the crowded shelter in Guatemala, where he could not sleep or eat knowing that he had only three days to figure out what to do—fearing persecution in Honduras, knowing no one in Guatemala, and having his entire family in the United States seeking asylum for the same reasons that he needed to.

Like Freddie G., several transferees had immediate relatives living in the United States pursuing asylum cases based upon the ***same fears*** as the transferees to Guatemala, which underscores how the ACA is contributing to family separation. In contrast, under the U.S.-Canada Safe Third Country agreement, an asylum seeker who has even a distant relative (aunt or uncle, grandparent, nephew or niece) with an outstanding asylum claim in the United States is exempted from transfer and permitted to pursue asylum in the United States.[131]

Several transferees had immediate relatives living in the United States pursuing asylum cases based upon the same fears as the transferees to Guatemala, which underscores how the ACA is contributing to family separation.

130. "Freddie G.," interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.
131. USCIS39, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByIlk1N4GKK/view.

Erwin Jose Ardon (c) is the first Central American asylum seeker sent to Guatemala under the country's ACA agreement with the United States, pictured on November 24, 2019. Erwin opted to return to his home in Honduras, but said he hopes to perhaps set out again next year for the United States where his daughter was born seven months ago.


TOCOA

REMAINING IN GUATEMALA: NOT AN OPTION

Most asylum seekers Refugees International and Human Rights Watch interviewed indicated 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.

Prior to the suspension of the ACA, UNHCR's local nongovernmental partners had interviewed a portion of the people transferred under the ACA and found that about two-thirds of those interviewed had international protection concerns.[132] However, only a small proportion of those who expressed fear of return to their home countries applied for asylum in Guatemala, UNHCR said. Many also told UNHCR's partner they were unwilling to stay in Guatemala, citing their inability to sustain themselves there, distrust of the authorities, and proximity to their home countries, fearing that their persecutors could still reach them.[133]

Guatemala has not historically been a country of destination for many asylum seekers; it only began to receive a few claims in 2002.[134] It received fewer than 50 new asylum claims per year from 2002-2014.[135] In June 2019, a U.S. embassy cable reported that the Guatemalan Institute for Migration (IGM) had not processed any asylum cases in more than a year while the Rules of Procedure for Refugee Status were being drafted, and that from March 2019 through the time of writing that cable, the National Migration Authority, which is the only authorized body to make refugee status decisions, had not met.[136]

The U.S. embassy's June 2019 cable reported that the Office of International Migration Relations (ORMI), a specialized unit in IGM for the processing of asylum claims, had a staff of three caseworkers, three investigators, and one su-

132. Human Rights Watch and Refugees International phone call with UN official, April 17, 2020. UNHCR partners did not interview all transferees because some declined to be interviewed.
133. Ibid.
134. "15 Años del Sistema Nacional de 15 Protección de Refugiados en Guatemala," Ministerio de Relaciones Exteriores, September 2017, http://igm.gob.gt/wp-content/uploads/2017/09/Informe-Borrador-no-finalizado.pdf.
135. Ibid.
136. "Assessment of Guatemalan Asylum System," U.S. embassy cable, reference no. 19STATE61360; message reference number: 19GUATEMALA 536, June 12, 2019. In DHS documents from UT v. Barr, DHSFF 1232, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcByllk1N4GKK/view.

pervisor.[137] The U.S. embassy estimated that ORMI had capacity to process 100 to 150 claims per year at a time when the backlog stood at about 400. Nine months after the U.S. embassy cable, at the end of March 2020, the backlog had grown to 713 cases, an increase of 78 percent.[138]

At the time of the writing of this report, late April 2020, the National Migration Authority that decides asylum cases had not met from the time COVID-19 restrictions went into place in mid-March.[139] Given COVID-19-related slowdowns, it is hard to predict how long it will take to process claims in the current caseload, including those of the 20 ACA transferees who lodged asylum claims. Bottlenecks in the legal framework, the lack of technical capacity to process asylum claims, and a lack of qualified adjudicators point to serious gaps in this nascent asylum system.[140]

Guatemala's asylum system is hamstrung by a limited legal framework that only allows high level officials to approve claims. Under the Guatemalan Migration Code, all requests for refugee status are decided by the National Migration Authority, a committee comprised of the Vice President; the Ministers of Foreign Affairs, Social Development, Labor and Social Welfare, and the Interior; the Director of the Guatemalan Institute of Migration; and the Executive Secretary of the Migrant Assistance Council of Guatemala. None of these members, including the Vice President, can delegate this responsibility.[141] The result is bottlenecks in the system that can only be addressed by changing the Guatemalan Migration Code—no amount of support or technical capacity can remedy this problem.[142]

The lack of technical capacity is also of serious concern. People seeking asylum must file an application with the ORMI,[143] which then forwards it for review by the National Refugee Commission (CONARE), an advisory body that examines applications and issues recommendations, opinions, and suggestions.[144]

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137. Ibid.
138. Guatemalan government asylum statistic of pending cases March 2020 provided to UNHCR.
139. Human Rights Watch and Refugees International phone call with UN official, April 27, 2020.
140. Human Rights First, fact sheet "Is Guatemala Safe for Refugees and Asylum Seekers?" June 2019, https://www.humanrightsfirst.org/sites/default/files/GUATEMALA_SAFE_THIRD.pdf.
141. Migration Code under Decree Number 44-2016, http://igm.gob.gt/wp-content/uploads/2017/09/CODIGO-MIGRACION-DTO-44-2016.pdf.
142. According to interview conducted by Refugees International with the Office of the Human Rights Ombudsman, Gabriela Mundo Rodriguez and Eduardo Woltke Martinez, February 5, 2020, Guatemala City.
143. Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Guatemala. https://www.refworld.org/pdfid/4f7867022.pdf.
144. Consejo Centroamericano de Procuradoras y Procuradores de Derechos Humano, Informe Final de las Rutas Migratorias Norte y Sur Proyecto "Investigación, monitoreo y verificación de la realidad migratoria y sus efectos en los derechos humanos," January 2019, p. 25, https://www.refworld.org.es/

The CONARE is a technical working group whose members are appointed by various government ministries, but it does not employ asylum lawyers or persons trained in international asylum law.[145] While the General Director of Migration and a representative from UNHCR, who has this expertise, are also members of CONARE, they participate solely in an advisory capacity and neither one has the authority to provide final recommendations regarding refugee status.[146] The United States has signed a Memorandum of Understanding with UNHCR to build up the capacity of the Guatemalan asylum system,[147] but problems with lack of relevant expertise in CONARE persist.[148]

Asylum seekers in Guatemala also face difficulties sustaining themselves while their claims are pending and the government has done little to help them.[149] Although asylum seekers have the right to work, it is difficult for them to find formal employment using the "refugee ID" that the government provides them as many employers do not recognize it as valid; also, Guatemalan labor laws cap at 10 percent the number of foreign workers that employers may hire.[150] Starting in 2017, the National Registry of Persons (RENAP) took over the responsibility of issuing an ID card for asylum seekers, refugees, and temporary residents that looks more like the ID cards that citizens use.[151] But the process of applying for the new ID card—with fees to RENAP, the Migration Directorate, notaries, and other personnel—is cost-prohibitive for many people.[152] To make matters worse, an informed observer reported that RENAP has not been consistently issuing the new IDs for asylum seekers and refugees as required by law.[153]

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pdfid/5cdc69d24.pdf.

145. "15 Años del Sistema Nacional de 15 Protección de Refugiados en Guatemala," Ministerio de Relaciones Exteriores, September 2017, p. 2, http://igm.gob.gt/wp-content/uploads/2017/09/Informe-Borrador-no-finalizado.pdf.
https://reliefweb.int/sites/reliefweb.int/files/resources/Guatemala_Informe_Asilo_Junio_2017.pdf.

146. Sistema Nacional de Protección de Refugiados en Guatemala Segunda edición, 2018 https://www.acnur.org/es-es/5b3e64214.pdf.

147. 2019 Country Reports on Human Rights Practices: Guatemala, Article F "Protection of Refugees," State Department, https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/guatemala/.

148. 2018 Country Report on Human Rights Practices: Guatemala," State Department, page 13, https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf.

149. El Derecho al Trabajo de las Personas Solicitantes de Asilo y Refugiadas en América Latina y el Caribe, page 38. https://asylumaccess.org/wp-content/uploads/2019/07/Derechos-Laborales-Refugiadas-en-America-Latina-y-el-Caribe-final-ESP.pdf. See also, Encuesta Nacional de Empleo e Ingresos 2-2018, p. 16. 69.5% of the total Guatemalan population works in the informal economy, https://www.ine.gob.gt/sistema/uploads/2019/07/05/publicacion_ENEI_2_2018.pdf.

150. "Guatemala abre la puerta a un nuevo comienzo," UNHCR, https://www.acnur.org/guatemala-abre-la-puerta-a-un-nuevo-comienzo.html.

151. "15 Años del Sistema Nacional de Protección de Refugiados en Guatemala," Ministerio de Relaciones Exteriores, September 2017, p. 9, https://reliefweb.int/sites/reliefweb.int/files/resources/Guatemala_Informe_Asilo_Junio_2017.pdf. http://igm.gob.gt/wp-content/uploads/2017/09/Informe-Borrador-no-finalizado.pdf.

152. According to interviews Refugees International conducted with El Refugio de la Niñez, February 7, 2020, Guatemala City.

153. Refugees International interview with official who asked that name, title, and agency be withheld, February (date withheld), 2020, Guatemala City.

Asylum seekers, refugees, and temporary residents have a right to access health, education, and other state services under the Guatemalan Migration Code.[154] But the state does not cover the costs of specialist health care and medications; for that, they need either sufficient funds or health insurance, which is typically provided through an employer.[155] Generally, in Guatemala, the quality and availability of public health care, particularly for low-income people, is poor.[156] This leaves asylum seekers in a catch-22 situation; they need employment to receive many services, but employers will not hire them, so they cannot obtain health insurance and struggle to access needed care. Many ACA transferees arrive with children, some with very young children,[157] creating another barrier to access work as childcare options are quite limited.

From November 2019 through March 16, 2020, only 20 of the 939 people transferred to Guatemala under the ACA had applied for asylum despite that many more of them were likely to have well-founded fears of persecution in their home countries, as indicated in the interviews by UNHCR's local partners, cited above,[158] by the fact that nearly three times the number who formally lodged asylum claims initially indicated to the Guatemalan Air Force an interest in applying for asylum,[159] and in interviews conducted by Human Rights Watch and Refugees International.[160]

From November 2019 through March 16, 2020, only 20 of the 939 people transferred to Guatemala under the ACA had applied for asylum despite that many more of them were likely to have well-founded fears of persecution in their home countries

154. Article 53 of the Guatemalan Migration Code, http://igm.gob.gt/wp-content/uploads/2017/09/CODIGO-MIGRACION-DTO-44-2016.pdf.
155. "Assessment of Guatemalan Asylum System," U.S. embassy cable, reference no. 19STATE61360; message reference number: 19GUATEMALA 536, June 12, 2019. In DHS documents from *UT v. Barr*, DHSFF 1232, https://drive.google.com/file/d/1em53GvgzXvzUYxfDcGOfcBylIk1N4GKK/view.
156. USAID Sector Brief Health and Nutrition, https://www.usaid.gov/sites/default/files/documents/1862/sector_brief_-_health_and_nutrition_june_2018.pdf.
157. Asylum Cooperative Agreement (ACA) Transfers from November 2019 through March 16, 2020, https://twitter.com/camiloreports/status/1235002188444946432/photo/1.
158. Human Rights Watch and Refugees International phone call with UN official, April 17, 2020.
159. Upon arrival in Guatemala, 57 ACA transferees requested asylum with the Guatemalan Air Force (FAG), which is not authorized to process refugee claims, however only 20 filed "official applications" with the International Migration Relations Office (ORMI), the body responsible for processing refugee claims. Asylum Cooperative Agreement (ACA) Transfers from November 2019 through March 16, 2020, https://twitter.com/camiloreports/status/1239660499161186305?s=20.
160. Asylum Cooperative Agreement (ACA) Transfers from November 2019 through March 16, 2020, https://twitter.com/camiloreports/status/1239660499161186305?s=20.

Honduran migrants board a bus to return to their country after remaining for several days in Guatemala on January 21, 2020.

Given the insufficiencies of the Guatemalan asylum system, the non-viability of temporary residency, and the 72-hour deadline to decide, many transferred asylum seekers feel compelled to return to their home countries. To return home, transferees can enroll in the International Organization for Migration (IOM)'s Assisted Voluntary Return Program (AVR) or return to their home countries using their own resources. However, IOM assisted in the repatriation of only 44 of the more than 900 transferees.[161] It declined to facilitate the return of 7 of the 51 transferees because of protection concerns.[162]

Only one person out of the 30 people subject to the ACA interviewed by Refugees International and Human Rights Watch at Casa del Migrante said they were applying for asylum in Guatemala. Several said they had no family or support networks in Guatemala and that they feared for their safety in Guatemala. Many indicated they would return to El Salvador and Honduras despite continuing to express their fear of persecution there:

- A 33-year-old Salvadoran woman said that, though she feared her former partner would harm her, "I don't know what else I can do" but return to El Salvador.[163]
- A woman said that she felt she had no alternative but to return to Honduras because she had no place to stay and no means to support herself and her baby in Guatemala. She said she feared attack in Honduras by the same gang that had forced her husband to flee to the United States.[164]
- A 20-year-old Salvadoran man said "[t]here is no asylum here in Guatemala," and that he could not stay without any family support. He said that he feared persecution in El Salvador but did not know where else he could go.[165]
- A woman said that she was afraid to stay in Guatemala and planned to return to Honduras with her 12-year-old daughter despite fear of attack there.[166]

161. International Office of Migration, Assisted Voluntary Return Program, Guatemala and Belize SITREP Mar 11, 2020 – Mar 17, 2020. On file with Refugees International.
162. Ibid.
163. "Mary I.," interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.
164. "Fannie M.," interviewed by Refugees International, February 7, 2020, Casa del Migrante, Guatemala City.
165. "Gilberto C.," interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City.
166. "Celia D.," interviewed by Human Rights Watch, February 18, 2020, Casa del Migrante, Guatemala City.

RECOMMENDATIONS

To the U.S. Government (Department of Homeland Security and Department of Justice):

- Terminate the ACA with Guatemala, halt plans to begin transferring asylum seekers under the ACA with Honduras, and do not implement the ACA with El Salvador.
- Remove the five-year bar to entry into the United States for persons subjected to any asylum cooperative agreements.
- Allow asylum seekers who are or were subject to the Guatemala ACA to restart their asylum claims in the United States.
- Disclose the number of individuals subjected to the Guatemala ACA and a breakdown of this number by nationality, gender, age, and port of entry or Border Patrol Sector through which the individual was initially processed; the number of individuals who expressed fear of being sent to a third country under an ACA and were provided a non-refoulement interview; and the pass rate of those interviews.

To the Congress of the United States:

- Hold hearings at which State and Justice Department officials are called to answer questions about the negotiations and legality of the ACAs and hearings that require DHS to disclose how the Guatemala ACA is being implemented.
- Defund the ACAs by barring the Department of Homeland Security from using any funds, resources, or fees to implement or enforce the ACAs with El Salvador, Guatemala, and Honduras.

To the Guatemalan Government:

- Terminate the ACA with the United States, or, at least, do not resume acceptance of ACA transfers, which have been suspended because of the COVID-19 pandemic.
- Release the annexes of the agreement publicly and allow the Guatemalan Congress to review and determine whether the agreement should be signed.
- Revise the Guatemalan Legal Code to allow the National Migration Authority to delegate asylum determination decisions to individuals trained in international asylum law.
- Continue to work with UNHCR to improve the capacity of the asylum system.

METHODOLOGY

In February 2020, Human Rights Watch and Refugees International interviewed 30 Hondurans and Salvadorans whom the United States had removed or "transferred" to Guatemala under the asylum cooperative agreement. The interviews began when the policy was still new, but also when transfers under the policy hit their peak.[167] The interviews were conducted in a migrant shelter out of earshot of other individuals at the shelter and with assurances of confidentiality.

Researchers identified interview subjects by observing their initial orientation process and then joined transferees when they arrived at the shelter. Human Rights Watch and Refugees International told interview subjects that they would receive no payment, service, or other personal benefit for the interviews. All interviewees were told they could decline to answer questions and could end the interview at any time. The interviews were conducted in Spanish by three female researchers.

Additional interviews and conversations were held with nongovernmental service providers, UN agencies, academics, lawyers, and shelter workers. Researchers also interviewed officials in Guatemala's Office of the Human Rights Ombudsman. To protect confidentiality, pseudonyms are used for all interview subjects.

On April 16, 2020, Human Rights Watch and Refugees International sent letters to the acting secretary of the U.S. Department of Homeland Security and acting commissioner of Customs and Border Protection and the director of Guatemala's Institute for Migration to share our findings and recommendations and to give them the opportunity to respond to them. As of the time this report went to press, we had not received a response.

167. https://twitter.com/palabrasdeabajo/status/1237503362293268480.

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ABOUT REFUGEES INTERNATIONAL

Refugees International advocates for lifesaving assistance and protection for displaced people and promotes solutions to displacement crises around the world. We do not accept any government or UN funding, ensuring the independence and credibility of our work.

ABOUT HUMAN RIGHTS WATCH

Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

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