

A Guide to Understanding Asylum in the United States

Over the past several years, there has been an unprecedented attack on asylum happening through new policies, legal decisions, prosecutions, detentions, and border closures. It is a patchwork of changes in the immigration system that must be looked at collectively. Together, these attacks contribute to a climate of fear that denies immigrant survivors of violence a bridge to safety and justice.

This guide is meant to shed light on the basics of asylum law in the United States and the recent policies that are eroding legal protections for immigrant women and girls seeking safety from gender-based violence.

WHAT IS ASYLUM?

Asylum law offers protection to individuals who meet the definition of a “refugee”. According to the [United Nations 1951 Convention](#), to which the U.S. is a signatory, a refugee is a person who is unable or unwilling to return to their home country and cannot find safety in that country, due to past persecution or a well-founded fear of being persecuted in the future **“on account of race, religion, nationality, membership in a particular social group, or political opinion.”**

The U.S. adopted this definition of a refugee within our country’s immigration law. The law governing who qualifies for asylum is complex and dynamic, including as it relates to survivors of gender-based violence. Asylum has been granted to people who have experienced or face fear of female genital mutilation/cutting, domestic violence, sexual assault, forced marriage, and trafficking, among other harm.

HOW SHOULD ASYLUM SEEKERS BE TREATED?

Under international treaties and U.S. immigration law, the U.S. must offer those who state a fear of return to their home country an opportunity to apply for asylum. We cannot turn away individuals who declare their fear and the [Immigration and Nationality Act](#), the federal law that governs immigration, explicitly states that any person in or arriving in the U.S. may seek asylum.

In the era after the Holocaust, the U.S. — alongside other nations around the globe — took on the responsibility of providing refuge to individuals who suffered persecution and were unable to find protection in their home countries. The U.S. must continue to respect the values of shared humanity and international obligation that underlie these promises.

HOW ARE ASYLUM SEEKERS BEING TREATED?

Asylum was already a rigorous process in the U.S.— with stringent requirements to meet, on top of limited access to appropriate legal counsel to navigate a complicated immigration system. Recent policy changes have further increased barriers for asylum seekers, making it nearly impossible for those fleeing severe violence and persecution to even apply for asylum and demonstrate their need for safety.

Recent policies include:

“Remain in Mexico”

In January 2019, the administration implemented the “[Remain in Mexico](#)” policy, which requires asylum seekers at the southern border to stay in Mexico while awaiting their immigration court hearings. As of September 2019, the government has required [more than 50,000 individuals](#) to wait in Mexico. Asylum seekers are waiting in some of the [country’s most dangerous areas](#), without access to trained attorneys. Access to legal counsel can make all the difference, as an individual’s chance of getting asylum is [five times higher with an attorney](#).

Migrants forced to wait in Mexico are also without access to other trauma-informed care, such as mental health support, health services, and additional critical support needed for survivors of severe violence.

Third Country Asylum Ban

In July 2019, the administration issued the [most restrictive asylum ban yet](#), barring asylum for everyone approaching the southern border, with limited exceptions. Families, unaccompanied children, survivors of violence — all are banned before they can even demonstrate their need for protection.

Individuals fleeing persecution, many from countries with some of the [world’s highest rates of violence](#), are then forced to settle in dangerous conditions, without a clear path to safety and justice.

Family Separation

In June 2018, the administration began enforcing its “zero-tolerance policy,” separating and prosecuting families arriving at the southern border to seek asylum. Parents were placed in jail and prosecuted, while kids were sometimes sent thousands of miles away to shelters and foster care.

Later that month, the president signed an executive order ending the policy, and a federal judge ordered the government to reunite families in July 2018. However, [not all separated families have been reunited](#) and [family separations still continue today](#). Experts cite that the [effects of family separation](#) are long-term and detrimental to both the psychological and physical health of children.

Other Policies

The three policies listed above only represent a snapshot of many other legal changes that have eroded access to safety and justice for immigrant survivors of gender-based violence. More information on policy changes can be found [here](#).

WHAT IS THE CLIMATE LIKE FOR ASYLUM SEEKERS AND OTHER IMMIGRANT SURVIVORS OF GENDER-BASED VIOLENCE?

The immense changes to the asylum system are part of the broader immigration policy changes that close our doors to survivors of gender-based violence. Rapid policy changes combined with growing anti-immigrant rhetoric has created a climate of fear, making survivors afraid to report their abuse or reach out for help.

A [national survey](#) conducted in May 2019 found that 52% of advocates worked with an immigrant survivor who dropped a civil or criminal case against their abuser due to fear and 76% of immigrant survivors have concerns about contacting the police.

New policies continue to chip away at existing legal protections for immigrant survivors and the climate of fear deepens within our country, making our communities less safe.