

Case Summary: *CAIR Coalition v. Trump*

The Trump administration has launched an unprecedented assault against asylum seekers. In its latest move, it issued a sweeping asylum ban, barring from asylum eligibility any refugee who crossed through another country on her way to the United States without first requesting asylum in that country. This focus on demonizing and criminalizing people seeking protection from persecution flouts administrative and statutory protections in the United States.

In response to the administration's latest attack on asylum, Human Rights First, Capital Area Immigrants' Rights Coalition ("CAIR Coalition"), and Refugee and Immigrant Center for Education and Legal Services Inc. (RAICES), on behalf of themselves and nine asylum seekers, filed a lawsuit to challenge this ban and protect the rights of asylum seekers.

Background

CAIR Coalition v. Trump challenges the Trump administration's rule barring individuals that traveled through another country before crossing through the U.S. southern border.

On July 16, 2019 Attorney General William Barr issued interim final rule "[Asylum Eligibility and Procedural Modifications](#)", outside the normal proposed notice and comment process for federal regulations. This rule bars refugees from asylum simply because they passed through a third country before crossing the U.S. southern border and did not seek asylum in that third country. Because of limited capacity to adjudicate asylum claims, information, and safety concerns in several of those third countries, seeking asylum and attaining a final determination elsewhere is often impossible.

Under immigration law, a refugee who enters the United States to seek asylum is entitled to a non-adversarial interview where they describe their fear of persecution if forced to return home. In these interviews, an asylum seeker must establish that she has a "credible fear" of returning to her home country. Under the new rule, however, these refugees are ineligible for asylum, and therefore must meet a much higher standard for alternative and [more limited](#) forms of relief: withholding of removal or protection under the Convention Against Torture ("CAT").

While the government claims this policy is intended to efficiently identify people abusing the asylum system, the administration has put this rule in place to limit asylum even for bona fide asylum seekers. By barring asylum seekers in this way, the United States risks returning asylum seekers to harm and persecution, in violation of our domestic and international legal obligations.

Summary of the Case

The Trump administration's regulation is unlawful. It violates the Immigration and Nationality Act, the Administrative Procedure Act, the Due Process clause of the Fifth Amendment, and the William Wilberforce Trafficking Victims Protection Reauthorization Act. This lawsuit asks the federal district court in Washington, D.C. to hold that this regulation is unlawful and halt officials from enforcing it before more vulnerable asylum seekers are harmed.

Congress established a process in the **Immigration and Nationality Act** (INA) for asylum seekers to apply for asylum once in the United States. Under the INA, an asylum seeker has the right to have her claim evaluated regardless of her manner of entry. The INA applies regardless of which countries a refugee may have passed through on their way to the United States, so long as that country has not been



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designated as a “safe third country” or the migrant has not “firmly settled” in another country. Under current law, only Canada has been designated a “safe third country.” This new regulation therefore violates the INA because it renders ineligible for asylum individuals who arrive in the United States after merely passing through one or more countries that have not been designated “safe third countries” and even when individuals have not “firmly resettled.”

This regulation also violates the **Administrative Procedure Act** (APA), which requires the government to act reasonably, and follow certain procedures, when enacting new rules. For example, the APA requires the government to adequately consider the effects of a new policy and allow the public the opportunity to comment prior to enacting it. Here, the administration arbitrarily and capriciously departed from longstanding policy enacted by Congress without adequate justification for that departure. Furthermore, as demonstrated by numerous statements made by the president and others in the Trump administration, this new rule is motivated by animus toward asylum seekers entering at the southern border. This new rule violates the APA because it surpassed congressionally mandated procedures for implementing new restrictions on asylum eligibility.

This rule is also unconstitutional under the **Due Process clause** of the fifth amendment. This clause mandates that all people within the U.S. have a right to process and access to fair hearings, in this case, to seek asylum. This rule is unconstitutional because it categorically denies all eligibility for asylum without meaningful process to hear an asylum seeker’s claims for protection.

This rule is also unlawful under the **William Wilberforce Trafficking Victims Protection Reauthorization Act** (TVPRA), a law enacted to provide asylum protections to children due to their unique vulnerabilities. The TVPRA grants asylum officers the authority to adjudicate unaccompanied children’s asylum claims so that when they recount the sensitive and often traumatic facts of their claims, they do so in non-adversarial settings. Under the new policy, however, unaccompanied children who pass through a country before crossing the U.S. southern border are automatically ineligible for asylum and asylum officers would be forced to issue negative findings for vulnerable children claiming protection. Because asylum officers do not have the authority to grant withholding of removal or protection under CAT, children will be forced to present their claims in adversarial proceedings before an immigration judge, by themselves, in order to meet the higher standards for withholding of removal or CAT. Thus, this regulation is unlawful because it violates the TVPRA’s Congressionally mandated process for unaccompanied children and at the same time risks re-traumatization of already vulnerable individuals.

Plaintiff Summaries

Individual Plaintiffs

J.M. is seeking asylum in the U.S. after years abuse, threats, and sexual assaults by an MS-13 gang member in El Salvador. This gang member also extorted J.M. by threatening to hurt her brother. J.M. never reported these incidents to the police because she witnessed the police refusing to arrest gang members after receiving reports of similar persecution and she believes members of the police force have ties to MS-13. J.M. fled to Mexico and attempted to live there safely, however the same gang member found her and, with help of another MS-13 member, beat her and threatened her family. J.M. escaped and fled to the United States where she is seeking asylum.

D.R. is an asylum seeker from Cuba who fled after experiencing government persecution based on her political beliefs. Since college, D.R. refused to attend Communist Party meetings. In response, the Cuban government harassed and persecuted D.R. by subpoenaing her five times to attend Communist Party meetings; threatened the father of her daughter as harboring counter-revolutionary information; instructed D.R.’s daughter’s school teacher to threaten her daughter’s school life, and arrested D.R. on multiple occasions. Despite this pressure, D.R. refused to vote in a constitutional election in 2019. The police then



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arrested and assaulted her. When D.R. was released, she fled Cuba. She traveled through Central America and is now seeking protection in the United States.

Z.M. is an asylum seeker from Angola who was attacked and kidnapped by three police officers because members of the police force disliked her religion and tribal membership. These police officers threatened to kill Z.M. if she did not leave the country immediately. The next day Z.M. fled Angola and traveled through several countries before arriving in the United States to request protection.

Y.C. is a Guatemalan asylum seeker who fled her home country after a gang member forced her to become his "woman" under threat of death. This gang member threatened to kill any man he saw walking with Y.C. and attempted to force Y.C. to extort money from her boss. Y.C. attempted to file a criminal complaint with the police, but the police refused to take any such report. As a result, she endured repeated threats. She fled Guatemala and traveled through Mexico before seeking asylum in the United States.

M.B. is an indigenous Guatemalan asylum seeker. She fled her home country after suffering extortion and death threats by gangs against her and her teenage son because they are indigenous Guatemalans. M.B. initially paid extortion fees out of fear for her life and the life of her son. When the extortion price increased, however, she stopped paying as she could no longer afford it. She felt she had no choice but to flee with her son. M.B. did not report these threats to the police because her neighbor's son was murdered by gang members for doing so in the spring of 2019. M.B. had additional reason to distrust the Guatemalan police because she experienced discrimination and physical assault from other Guatemalans because she is indigenous. During her escape, M.B. and her son traveled through Mexico and faced additional harms there. For example, a police officer boarded her bus and demanded a bribe and she was sexually assaulted by a man who then threatened to beat her son if she reported the crime. She is now in the United States and seeking protection.

K.M. is a Honduran asylum seeker who fled to the United States with her six-year-old daughter after her entire family was threatened by gang members. K.M.'s family live in a town where there is no police presence, so her brothers reported the crime to the police in another town. The police visited twice but took no action, and as a result of their visit K.M.'s family was targeted for reporting to the police. K.M., her parents, and her daughter moved to another town in an attempt to escape the gang threats, but the gang still discovered their location. K.M. reported this to the police who told K.M. that they could not protect her family. K.M. and her daughter escaped and traveled through Guatemala and Mexico to apply for asylum in the United States.

W.O. and **C.O.** are unaccompanied twin children seeking asylum in the U.S. after escaping persecution in Honduras. W.O. and C.O.'s older brother is gay and when community members in Honduras found out, two men attempted to break into their house. When they could not break down the door, the men yelled that the entire family would be murdered because of W.O. and C.O.'s older brother's sexuality. W.O. and C.O. fled Honduras and traveled through Guatemala and Mexico to seek asylum in the United States.

N.G. is an unaccompanied child who fled Honduras after her stepfather raped and threatened her. N.G.'s sister was also raped by their stepfather, and she committed suicide after learning she was pregnant. N.G. reported her stepfather to the police, but he was incarcerated for only three months. When he was released, he told N.G. she would regret reporting him and that he will continue to rape her, and she would end up like her sister. N.G. fled Honduras and traveled through Guatemala and Mexico in order to apply for asylum in the United States.

Organizational Plaintiffs

CAIR Coalition is a non-profit direct legal services provider and advocacy organization for individuals at risk of detention and deportation. This rule harms CAIR because the automatic deportation of asylum



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seekers reduces CAIR's client base, requires CAIR to divert staff away from legal services to analyze this Rule, forces CAIR to develop new resources for asylum seekers, and will require additional preparation for each individual client in immigration proceedings in a space where resources are already strained. This is particularly true for unaccompanied children clients.

Human Rights First is an independent human rights advocacy organization and direct legal services provider. This rule harms Human Rights First because it drastically reduces its client base and it would be required to spend valuable resources on developing new training and advocacy materials. The rule also impairs the organization's financial health. Human Rights First was already harmed because it was unable to inform the government of the substantial harms of this rule when the Defendants violated the APA comment and advise process.

RAICES is a non-profit direct legal services provider and advocacy organization that is the largest immigration legal services provider in Texas. RAICES is harmed by this Rule because it will no longer be able to represent the same number of clients and the organization will need to spend more resources on each individual case, particularly in the appeals process.