

America's Unfinished Asylum Reform Agenda



Updated May 2022

By Ken Oliver and Garrett Yarbrough



**Texas Public Policy
Foundation**

Updated May 2022

by Ken Oliver
Garrett Yarbrough
Texas Public Policy Foundation



Table of Contents

Executive Summary.....	3
Introduction.....	3
Adjudication of “Credible Fear”	4
Flores Settlement Agreement.....	4
Trafficking Victims Protection Reauthorization Act....	4
First Country Rule.....	5
Deportation of Asylum Seekers	5
Metering Policy.....	5
Migrant Protection Protocols.....	5
Asylum Cooperation Agreements	6
Employment Authorization.....	6
CBP Officer Training.....	6
Asylum Application Fee.....	6
Asylum System Funding	7
Cancellation of Removal	7
Shore Up Northern Triangle.....	7
Congressional (In)Action.....	8
Conclusion.....	9
References.....	10

America's Unfinished Asylum Reform Agenda

By Ken Oliver and Garrett Yarbrough

Executive Summary

Following the country's most recent border crisis, the U.S. asylum system has been a source of serious concern for the American public and was the subject of the Texas Public Policy Foundation's 2019 study *Toward a 21st-Century Asylum System*. In our research we highlight that the current, Cold War-era asylum system was not designed to handle either the caseload or the unique problems it has recently faced, such as hundreds of thousands of ultimately ineligible cases. This paper aims to provide an updated assessment of the problem and the progress made since 2019 toward achieving long overdue reform of the U.S. asylum system.

Since 2019, some positive changes have been made to the credible fear interview process that takes place at the outset of an asylum claim, but there are outstanding issues with the 1997 Flores Settlement Agreement and the Trafficking Victims Protection Reauthorization Act of 2008. The Migrant Protection Protocols and asylum cooperation agreements with several Central American countries have also reduced large scale border crossings by foreign nationals seeking asylum, but adverse developments, such as a recent federal court ruling striking down the "first country" rule, continue to make the U.S. asylum system vulnerable to a future resurgence of cases.

In order for America's asylum system to overcome ongoing operational and capacity challenges, the 1997 Flores Settlement Agreement needs to be abolished, the Trafficking Victims Protection Reauthorization Act of 2008 needs to be amended to eliminate the distinction between unaccompanied minors (UACs) from contiguous and noncontiguous countries, and the first country rule needs to be upheld.

Introduction

In July 2019, the Foundation published *Toward a 21st-Century Asylum System* ([Davidson, 2019](#)). In the paper, we pointed out that the country's asylum system was outdated and inadequate to handle the stresses and strains of the current asylum and immigration panorama. The paper demonstrated that the U.S. asylum system's structural weaknesses have been exploited by human smugglers and hundreds of thousands of economic migrants who do not have valid asylum claims.

This paper builds upon that foundational research and provides an update on the current state of our asylum system, on several asylum reform measures, and on related developments that have taken place since last year. At present, the U.S. asylum system is still in need of substantial, lasting reforms. As of October 2019, more than 476,000 asylum cases were pending with the U.S. Department of Justice's Executive Office for Immigration Review, constituting 48% of the immigration court case backlog ([Implementing Bilateral and Multilateral Asylum Cooperative Agreements, 2019, paras. 6-8](#)).

Key Points

- Since 2019, there has been salutary reform in tightening credible fear standards, but long overdue changes to the Flores Settlement Agreement and the Trafficking Victims Protection Reauthorization Act are still pending.
- Executive branch measures to prevent abuse of the asylum system have been stymied by court challenges and adverse decisions, such as the striking down of the "first country" rule.
- America's asylum system has been at a standstill since most applicants are being turned away due to the COVID-19 pandemic, but once state and local governments reopen society, the country will need protections against future waves of claims.

The principal driver of the massive case backlog in U.S. immigration courts has been the substantial number of ultimately invalid claims filed by asylum seekers. The American asylum system has systematically incentivized abuse, undermined the rule of law, and encouraged both adults and minors to make long perilous trips to the U.S. border. If we are to get the country's asylum system in order, not only must adequate resources be allocated, but policies must also be implemented that reduce the ability to abuse the system and that make the adjudication process more efficient.

Adjudication of "Credible Fear"

The credible fear interview process is the process by which asylum officers interview asylum applicants to see if they have a reasonable prima facie case for asylum. The problem with this process is that the bar for credible fear is too low and in some cases illegal immigrants who are apprehended at the border will claim credible fear to avoid deportation ([Davidson, 2019, p. 7](#)). In *Toward a 21st-Century Asylum System*, the Foundation recommended tightening the standards for making credible fear claims and streamlining the entire process. Since then, substantial executive action has been taken to reform the adjudication of initial credible fear claims.

In July 2019, United States Citizenship and Immigration Services ([USCIS, n.d.](#)) posted new guidance to asylum officers that clarifies both the definition and application of eligible asylum categories. Additionally, U.S. Customs and Border Protection (CBP) created a pilot program to train CBP officers to conduct credible fear interviews ([White House, 2019](#)) in order to alleviate much of the workload bogging down asylum officers.

In June 2020, the Trump administration proposed new rules designed to further reform the asylum adjudication process. Proposed changes included streamlining proceedings for asylum claims by allowing immigration judges to preterm cases without a hearing and clarifying both when applications are frivolous and standards of adjudication for asylum withholding claims—including changes to definitions of the terms "particular social group," "political opinion," "persecution," and "firm resettlement" ([Office of Public Affairs, 2020](#)).

In addition, the new rules would raise the standards for burden of proof for screening of withholding and Convention Against Torture protection claims, going from "significant possibility" to a "reasonable possibility" standard ([Office of Public Affairs, 2020](#)). The administration stated these rule changes will enable the U.S. government to "more effectively separate baseless claims from meritorious ones," as well

as help "ensure groundless claims do not delay or divert resources from deserving claims" ([para. 3](#)).

Flores Settlement Agreement

The 1997 Flores Settlement Agreement (FSA) is the result of a longstanding legal battle over how the federal government exercises custody of unaccompanied alien minors. Specifically, the FSA sets standards and rules for detaining these minors. A 2015 judicial reinterpretation of this agreement stipulated that these minors cannot be detained for more than 20 days. This arbitrary determination effectively created an incentive structure that encouraged foreign nationals to bring children on a long perilous journey to the United States with the knowledge that they would be released into the country in a matter of just a few weeks ([Davidson, 2019, p. 4](#)). The average detention time for families before this 2015 ruling had been 60 days ([p. 8](#)).

There was an attempt to modify the FSA through rules that were published by the U.S. Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) in August 2019 ([de Peña & van Fossen, 2020, pp.37-38](#)). DHS pointed out at the time that by all accounts, the FSA should have expired years ago:

The FSA always contained provisions for its implementation in regulations and its termination – originally, it was to remain in effect no more than five years; and then, in 2001, the parties agreed it would terminate after a final rulemaking. Beginning in 2005, prior administrations repeatedly announced plans for a rule. No prior administration, however, issued a final rule. With this achievement now complete, the FSA will terminate by its own terms. ([DHS, 2019a](#))

The final rule would have abolished the Flores Settlement and allowed the HHS to take custody of unaccompanied minors. However, these policy changes were blocked in August 2019 by a federal district court in California ([Flores v. Barr, 2019](#)) and there has not been any further movement on this matter. Federal law or a new final rule should supersede the FSA to give immigration officials the time they need to assess asylum claims, as well as eliminate incentives to bring children into hazardous circumstances.

Trafficking Victims Protection Reauthorization Act

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 was configured with good intentions, but it has also significantly contributed to the spike in the arrival of minors from Central America. The problem comes from the distinction that the TVPRA makes between unaccompanied alien children (UACs) from contiguous and

from noncontiguous¹ countries and the different treatment it reserves them. UACs from contiguous countries can be expeditiously sent back to their home countries while UACs from noncontiguous countries are sent to the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR) within 2 days.

The law also stipulates that UACs from noncontiguous countries are to be placed in formal removal hearings in the least restrictive setting. As a result, UACs are routinely released to parents or family members in the United States ([Davidson, 2019, p. 4](#)), many of whom themselves are not in the country legally. This has incentivized large numbers of families and UACs from noncontiguous countries to head to the U.S. border, make asylum claims, and receive taxpayer-funded support (via HHS' Office of Refugee Resettlement) in completing the human smuggling cycle. Since last year there has been no substantial progress in Congress toward amending and closing this gaping loophole in the law.

First Country Rule

The first country rule was announced in July 2019 ([Asylum Eligibility and Procedural Modifications, 2019](#)). The policy requires asylum seekers to apply for refugee status in the first country they pass through that offers adequate asylum protection. This policy, implemented by the Trump administration, was struck down in late July 2020 by the United States District Court for the District of Columbia ([Capital Area Immigrants' Rights Coalition v. Trump, 2020](#)). Since then, the United States Court of Appeals for the Ninth Circuit has upheld the ruling of the D.C. Court. The case is expected to go up to the Supreme Court for a final ruling.

The rule was struck down on technical grounds because it did not provide a long enough period for public comment in accordance with Administrative Procedure Act (APA) rules, along with allegedly violating the Immigration and Nationality Act (INA) regarding the right to apply for asylum if you reach the United States ([Capital Area Immigrants' Rights Coalition v. Trump, 2020](#)). According to the *Wall Street Journal*, "it isn't clear the ruling will have an immediate, practical impact at the border. Since March, Mr. Trump has relied on a public-health law [1944 Public Health Service Act] to turn back nearly all migrants at the border, without allowing them to apply for asylum, to prevent the new coronavirus from entering the U.S. via Mexico" ([Hackman, 2020, para. 9](#)).

Deportation of Asylum Seekers

In June 2020, the Supreme Court ruled in *Department of Homeland Security v. Thuraissigiam* that "a noncitizen

apprehended shortly after crossing the border has no constitutional right to challenge immigration officials' 'expedited removal' orders in federal court" ([Bravin, 2020, para.1](#)). This ruling is important because illegitimate claims, whereby an illegal alien immediately claims asylum so as not to be deported, can be brought to court and can drag out into years of litigation. This change will curtail the number of frivolous or meritless cases added to the case backlog each year and enable the asylum and immigration system to better focus on legitimate cases. This is a positive step toward renewing the system to meet the challenges of the 21st century.

Metering Policy

The metering policy has existed since 2016 ([de Peña & van Fossen, 2020, p. 11](#)). This policy limits the number of people who can apply for asylum each day given available staffing capacity, holding cells, and other constraints.

The policy was challenged in *Al Otro Lado v. McAleenan* ([2019](#)) in the United States District Court of San Diego California but for the most part has remained intact. There are in fact physical limitations to how many people immigration and asylum authorities can process each day. Proper administration of this policy should include estimating capacity and ensuring that metering is adequately tailored to capacity.

Migrant Protection Protocols

The Migrant Protection Protocols (MPP) were first implemented in January 2019. The Mexican government agreed to them after being threatened by President Trump with severe tariffs on Mexican goods coming into the United States.

According to the DHS, "the Migrant Protection Protocols (MPP) are a U.S. Government action whereby certain foreign individuals entering or seeking admission to the U.S. from Mexico – illegally or without proper documentation – may be returned to Mexico and wait outside of the U.S. for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay" ([DHS, 2019b, para. 2](#)).

This policy aims to see to it that foreign nationals entering the country and applying for asylum are not released into the United States while their cases are pending, only to possibly not even show up for their eventual hearing. When people essentially use asylum as a backdoor visa program by making claims and then proceeding to disappear into the United States, they are both abusing the system and undermining the rule of law.

¹ Contiguous countries are countries that share a border with the United States, whereas noncontiguous countries do not share a border with the United States.

Despite its usefulness in preventing abuse of the U.S. asylum system, the policy has been challenged by various political advocacy groups ([de Peña & van Fossen, 2020, p. 33](#)) culminating in a U.S. Supreme Court ruling. The policy had an injunction placed on it by the U.S. District Court for the Northern District of California on February 14, 2019, until the Supreme Court issued a stay on the injunction on March 11, 2020 ([Wolf v. Innovation Law Lab et al, 2020](#)). The policy continues to be in effect.

Asylum Cooperation Agreements

When the United States has an asylum cooperation agreement with another country, that country typically agrees to handle any asylum claims made by people who pass through that country first but ultimately reach and apply in the United States. These agreements essentially complement the first country rule discussed earlier.

Instead of simply telling affected asylum seekers they cannot apply in the United States, these agreements facilitate the processing of their petitions by a neighboring asylum system. One of the countries the U.S. recently made an asylum cooperation agreement with is Guatemala. The U.S. signed the agreement in July 2019 ([Agreement between the United States of America and Guatemala, 2019](#)) and agreed to invest \$40 million to help Guatemala improve its own asylum system ([Shear & Kanno-Youngs, 2019, para. 10](#)). Similar agreements were signed with El Salvador in September 2019 and Honduras in October 2019. These agreements help people reach an asylum location as close to home as possible.

Employment Authorization

An employment authorization document (EAD) gives an asylum seeker permission to work in the U.S. while his or her asylum case is being adjudicated. On June 26, 2020, USCIS published the final version of a rule titled “Asylum Application, Interview, and Employment Authorization for Applicants” ([2020](#)). According to the Heritage Foundation, this rule makes the following changes to U.S. asylum employment authorization policy:

- *Extending the waiting period from 180 days to 365 days before an asylum applicant can apply for and receive an EAD;*
- *Barring employment authorization for aliens who, absent good cause, entered or attempted to enter the U.S. unlawfully;*
- *Excluding aliens who fail to file for asylum within one year of their last entry, unless and until an asylum officer or immigration judge determines that an exception to the statutory one-year filing requirement applies;*

- *Excluding aliens whose asylum applications have been denied by an asylum officer or an immigration judge during the 365-day waiting period or before the request for initial employment authorization has been adjudicated;*
- *Excluding aliens who have been convicted of: (1) any aggravated felony; (2) a particularly serious crime; or (3) a serious non-political crime outside the U.S.;*
- *Revising when employment authorization terminates, based on when an asylum application or appeal is denied;*
- *Denying employment authorization for delays caused by the asylum seeker if not resolved by the date the application for employment authorization is filed;*
- *Clarifying that the time period of employment authorization is discretionary and proposing that any EAD, whether initial or renewal, will not exceed two-year increments; and*
- *Limiting eligibility for aliens paroled into the country after establishing a credible fear or reasonable fear of persecution or torture. ([Stimson et al., 2020, pp. 32-39](#))*

This policy helps remove a powerful magnet for foreign nationals who may make a meritless asylum claim, as quick and easy access to work authorization has been identified as a significant driver of many of such claims ([Stimson et al., 2020, p. 38](#)). The final version of the rule went into effect on August 25, 2020.

CBP Officer Training

Another pertinent development has been the training of U.S. Customs and Border Protection (CBP) officers to conduct credible fear interviews. This is being done to fill the national shortage of asylum officers.

According to the website Government Executive, “more than one-in-five asylum officer positions were vacant as of March 2019” ([Katz, 2020, para. 4](#)). With such a significant shortage, this appears to be an understandable stopgap measure. Opponents contend that CBP officers have often failed to conduct the required questioning or refer people with legitimate need for asylum to credible fear screenings ([Human Rights First, 2019](#)). Ultimately, the asylum officer shortage needs to be filled.

Asylum Application Fee

Another controversial proposed policy is a fee for asylum applications. In November 2019, USCIS proposed a \$50 application fee with the goal of trying to slow the growth of asylum cases ([U.S. Citizenship and Immigration Services Fee Schedule, 2019](#)). The law of demand tells

us that if the price of an object increases, then the quantity demanded of that object will decrease, all else equal. Therefore, if the U.S. raises the price of applying for asylum, the number of asylum applications stands to decrease.

The controversy stems mainly from the fact that this would make it more difficult for impoverished people fleeing persecution to apply for asylum. The people coming here who really need asylum may be the people least likely to have the money to apply. This rule has yet to be implemented but continues to be part of the Trump administration's agenda ([Stimson et al., 2020](#)).

Asylum System Funding

Another problem that has recently plagued the U.S. asylum system is adequate funding of the agencies that administer it. This particular need was not met by the emergency supplemental funding passed by Congress and signed into law by President Trump in response to the border surge last year.

Specifically, the USCIS receives approximately 96% of its funding by charging fees, and, because of the COVID-19 pandemic, the agency has become underfunded by over \$1.3 billion ([USCIS, 2019](#)). Moreover, as referenced earlier, our asylum system also faces significant staffing problems, such as the vacancy of 1 out of 5 asylum officer positions ([Katz, 2020, para. 4](#)). In order to deal with the massive backlog of cases, the system continues to need additional staff—not only new asylum officers but judges and associated staff as well.

Cancellation of Removal

Another significant challenge for the asylum system involves foreign nationals who stay in the United States for 10 years or more and then apply for asylum in an attempt to obtain cancellation of their removal from the country. Cancellation of removal is a motion that can be granted by immigration judges only after an unauthorized immigrant has stayed here for 10 years and is in the process of being removed from the United States.

This phenomenon contributes significantly to the current case backlog. According to the Migration Policy Institute,

In FY 2016, 21,000 asylum applications were filed by noncitizens with a U.S. entry date ten or more years prior. Though not a certainty, this is a strong indication that a person may be seeking cancellation of removal rather than asylum. An additional 1,600 applications listed entry dates that were eight or nine years prior to their filing for asylum, suggesting that applicants recognize the 10-year requirement will have been met by the time the asylum application is denied and referred

to immigration courts. According to USCIS, as many as 40,000 cases currently in the asylum backlog were filed ten or more years after the applicant's date of arrival in the United States. Many of these claims are filed by Mexican nationals, implying that in addition to country conditions, access to cancellation of removal may partially account for the increase in affirmative claims by this nationality, which has for many years been among the top five in the affirmative system caseload. ([Meissner, 2018, pp. 12-13](#))

As the policy currently stands, it incentivizes immigrants who are unlawfully residing in the United States to make asylum claims in order to be able to stay until their claims are rejected. This, in turn, backs up the system and wastes time and limited resources.

A proposed rule titled “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review” and published on June 15, 2020, could be a step toward fixing this problem. The rule would levy penalties against people filing frivolous asylum claims, clarify standards, raise the burden of proof, and apply additional bars to asylum and withholding ([Office of Public Affairs, 2020](#)).

Shore Up Northern Triangle

A directly related policy option that enjoys bipartisan support is providing aid and supporting programs that improve conditions in the Northern Triangle countries. This effort has already seen some success. According to a progress report submitted by the U.S. Department of State and the U.S. Agency for International Development (USAID) in 2018 aid and other programs:

- *Enhanced local economies by boosting private sector exports and domestic sales by more than \$73 million and helping businesses generate more than 18,000 new jobs;*
- *Strengthened the rule of law through support to more than 1,200 civil society organizations, training to more than 1,700 human rights defenders, improving case management in more than 300 local courts, and training more than 15,000 judicial personnel;*
- *Contributed, with host government and other donor efforts, to dramatic decreases in homicide rates in El Salvador and Honduras, including through cutting-edge crime and violence prevention programming, such as after-school and pre-employment services and support to more than 140,000 at-risk youth across the region;*

- Since 2015, there have been dramatic decreases in homicides in communities that pair USAID's citizen security programs with the Department of State's law-enforcement efforts. In several of these locations, where violence is driving out-migration, homicide rates have dropped between 40 and 73 percent since 2015;
- Additionally, in FY 2018, the migration rates for beneficiaries of a USAID agriculture program in Honduras were approximately half that of the surrounding population. ([Department of State, 2019, pp. 1-2](#))

A report by the Center for Strategic International Studies found that in El Salvador, as a result of such targeted programs, "the 50 most violent municipalities saw the homicide rate cut by 60 percent over three years and saw a subsequent reduction of migration numbers as well" ([Schneider & Matera, 2019, para. 24](#)). Many of these programs show promising results, and if they continue, they could reduce the need to migrate or seek asylum in the United States. A rigorous cost-benefit analysis should be conducted for each of these programs, in order to determine the best use of the limited aid funds that are available.

Congressional (In)Action

The Secure and Protect Act of 2019

Some noteworthy asylum reform measures have been introduced in Congress, but they have yet to be approved. In May 2019, Senator Lindsey Graham and Senator Martha McSally introduced the Secure and Protect Act ([S.1494, 2019](#)). This bill is by far the most comprehensive legislation recently put forth to address the asylum crisis.

The bill's provisions include:

- Asylum applications from residents of the Northern Triangle and contiguous countries would be filed at refugee processing centers – not in the United States. These centers would be established in the Northern Triangle and Mexico.
- Modify U.S. law to allow families to be held together up to 100 days in the United States while making their asylum claims – up from the current 20 day limit.
- 500 new immigration judges to reduce the backlog of cases.
- Unaccompanied minors (UACs) from Central America would be treated the same as minors from Canada and Mexico. This allows the United States to return all UACs to their country of origin after

screening. ([Senate Committee on the Judiciary, 2019](#))

The Secure and Protect Act includes most of the recommendations made by the Texas Public Policy Foundation in 2019 ([Davidson, 2019](#)). It would codify necessary changes to the Flores Settlement Agreement and eliminate the distinction between UACs from contiguous and noncontiguous countries. The bill also provides for 500 new immigration judges, associated staff, and refugee processing centers, all of which represent substantial steps toward putting the U.S. asylum system back on track. This legislation has been examined by the Senate Judiciary Committee but has not advanced further.

HUMANE Act

The Humanitarian Upgrades to Manage and Assist our Nation's Enforcement Act of 2019 ([S.1303, 2019](#)) was introduced by Senator John Cornyn in the Senate and Congressman Henry Cuellar in the House of Representatives on May 2 of that year. The bill makes the following key reforms, according to Cornyn and Cuellar:

Improving Care of Children and Families at the Border:

- Requires DHS to keep families together during court proceedings and provide additional standards of care for families being held in DHS facilities.
- Improves Due Process for unaccompanied children and family units by prioritizing their claims for relief in immigration courts.
- Provides safeguards to prevent unaccompanied children from being placed in the custody of dangerous individuals.
- Requires DHS to continually update their regulations to prevent and combat sexual abuse and assault in DHS facilities.
- Fixes a loophole in current law to allow unaccompanied children from non-contiguous countries to be voluntarily reunited with their families in their home country.
- Clarifies that the Flores settlement agreement applies to unaccompanied children apprehended at the border.

Streamlining Processing and Increasing Resources at Ports of Entry:

- Mandates the hiring of additional DHS personnel, upgrades and modernization of our nation's ports of entry to expedite legitimate trade and travel.

- *Improves processing of humanitarian relief claims by requiring certain applications take place at designated ports of entry.*
- *Requires DHS to establish four or more Regional Processing Centers in high-traffic areas to process and house family units in a humane environment.*
- *Requires the Executive Office for Immigration Review to assign at least two immigration judges to each of the Regional Processing Centers that DHS is required to establish along the southern border.*
- *Mandates a strategy and implementation plan from the Department of State regarding foreign engagement with Central American nations. ([United States Congressman Henry Cuellar, 2019](#))*

The streamlining of processing and increasing resources at ports of entry would certainly make the asylum system more efficient and thus help deal with the current massive case backlog. The bill clearly has many positive points, but these changes may be better implemented in a separate bill that does not further entrench the Flores Settlement Agreement. The legislation was referred to the Senate Judiciary Committee, but no further action has been taken.

Conclusion

In the year since the Texas Public Policy Foundation published the study *Toward a 21st-Century Asylum System*, many of the reforms recommended at that time have yet to be fully implemented. While there has been some salutary reform in tightening credible fear standards and determinations, much-needed changes to the 1997 Flores Settlement Agreement and the Trafficking Victims Protection Reauthorization Act of 2008 have yet to take place.

In addition, while there has been a plethora of executive actions, many have been challenged and slowed down by the courts. This litigation, coupled with congressional inaction, continues to leave the asylum system vulnerable to abuse and yet another resurgence of cases.

America's asylum system currently remains at a standstill, since most applicants are being turned away due to COVID-19 pandemic-related restrictions. Once it fully reopens however, due to as yet unresolved litigation and congressional inaction, the country will still not have the protections against meritless claims that it needs. ★

References

- Agreement between the United States of America and Guatemala, U.S.-Guat., July 26, 2019, T.I.A.S No. 19-1115. <https://www.state.gov/wp-content/uploads/2020/01/19-1115-Migration-and-Refugees-Guatemala-ACA.pdf>
- Al Otro Lado v. McAleenan*, 423 F. Supp. 3d 848 (S.D. Cal. 2019). <https://casetext.com/case/al-otro-lado-inc-v-mcaleenan-3>
- Asylum application, interview, and employment authorization for applicants, 85 Fed. Reg. 38,532 (June 26, 2020). <https://www.federalregister.gov/documents/2020/06/26/2020-13544/asylum-application-interview-and-employment-authorization-for-applicants>
- Asylum eligibility and procedural modifications, 84 Fed. Reg. 33,829 (July 16, 2019). <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>
- Bravin, J. (2020, June 25). Supreme Court eases path to deport asylum seekers. *Wall Street Journal*. <https://www.wsj.com/articles/supreme-court-eases-path-to-deport-asylum-seekers-11593094588>
- Capital Area Immigrants' Rights Coalition v. Trump*, Civil Action No. 19-2117 (TJK) (D.D.C. Jun. 30, 2020). https://www.courtlistener.com/recap/gov.uscourts.dcd.209244/gov.uscourts.dcd.209244.72.0_2.pdf
- Davidson, J. D. (2019, July 10). *Toward a 21st-century asylum system*. Texas Public Policy Foundation. <https://www.texaspolicy.com/toward-a-21st-century-asylum-system/>
- de Peña, K., & van Fossen E. (2020). *The state of asylum: Changes made to the asylum system during the Trump administration*. Niskanen Center. <https://www.niskanencenter.org/the-state-of-asylum/>
- Department of Homeland Security. (2019a, August 21) *DHS and HHS announce new rule to implement the Flores Settlement Agreement; Final rule published to fulfill obligations under Flores Settlement Agreement* [Press release]. <https://www.dhs.gov/news/2019/08/21/dhs-and-hhs-announce-new-rule-implement-flores-settlement-agreement>
- Department of Homeland Security. (2019b, January 24). *Migrant Protection Protocols*. <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>
- Department of State. (2019). *Progress report for the United States strategy for Central America's plan for monitoring and evaluation*. <https://www.state.gov/wp-content/uploads/2019/05/FY-2019-Central-America-Strategy-Progress-Report.pdf>
- Flores v. Barr*, No. CV 85-4544 DMG (AGRx) (C.D. Cal. Sept. 27, 2019). <https://www.aila.org/File/Related/14111359ag.pdf>
- Hackman, M. (2020, July 02). Federal judge rejects Trump administration's 'third country' asylum policy. *Wall Street Journal*. <https://www.wsj.com/articles/federal-judge-rejects-trump-administrations-third-country-asylum-policy-11593620838>
- Human Rights First. (2019, April 29). *Allowing CBP to conduct credible fear interviews undermines safeguards to protect refugees*. <https://www.humanrightsfirst.org/resource/allowing-cbp-conduct-credible-fear-interviews-undermines-safeguards-protect-refugees>
- Katz, E. (2020, February 20). *Record asylum cases met with insufficient staffing and training, watchdog finds*. Government Executive. <https://www.govexec.com/workforce/2020/02/record-asylum-cases-met-insufficient-staffing-and-training-watchdog-finds/163246/>
- Meissner, D., Hipsman, F., & Aleinikoff, A. (2018, October 03). *The U.S. asylum system in crisis: Charting a way forward*. Migration Policy Institute. <https://www.migrationpolicy.org/research/us-asylum-system-crisis-charting-way-forward>

- Office of Public Affairs. (2020, June 10). *The Department of Justice and the Department of Homeland Security propose rule on procedures for asylum and withholding of removal* [Press release]. Department of Justice. <https://www.justice.gov/opa/pr/department-justice-and-department-homeland-security-propose-rule-procedures-asylum-and>
- S.1303 - HUMANE Act of 2019. 116th U.S. Congress. (2019). <https://www.congress.gov/bill/116th-congress/senate-bill/1303>
- S.1494 – Secure and Protect Act of 2019. 116th U.S. Congress. (2019). <https://www.congress.gov/bill/116th-congress/senate-bill/1494>
- Schneider, M. L., & Matera, M. A. (2019, August 20). *Where are the northern triangle countries headed? and what is U.S. policy?* Center for Strategic and International Studies. <https://www.csis.org/analysis/where-are-northern-triangle-countries-headed-and-what-us-policy>
- Senate Committee on the Judiciary. (2019, May 15). *Graham: Perfect storm brewing at the border due to broken and outdated laws*. <https://www.judiciary.senate.gov/press/rep/releases/graham-perfect-storm-brewing-at-the-border-due-to-broken-and-outdated-laws>
- Shear, M. D., & Kanno-Youngs, Z. (2019, August 2). Trump officials argued over asylum deal with Guatemala. Now both countries must make it work. *New York Times*. <https://www.nytimes.com/2019/08/02/us/politics/safe-third-guatemala.html>
- Stimson, C., von Spakovsky, H., & Ries, L. (2020, June 29). *Administration's immigration policies*. Heritage Foundation. <https://www.heritage.org/immigration/report/assessing-the-trump-administrations-immigration-policies>
- United States Citizenship and Immigration Services. (n.d.). *Guidance for processing reasonable fear, credible fear, asylum, and refugee claims in accordance with Matter of L-E-A-* [Policy memorandum]. Department of Homeland Security. Retrieved October 14, 2020, from https://www.uscis.gov/sites/default/files/document/memos/USCIS_Memorandum_LEA_FINAL.pdf
- United States Citizenship and Immigration Services. (2019, November 8). *USCIS proposes to adjust fees to meet operational needs* [Press release]. <https://www.uscis.gov/news/news-releases/uscis-proposes-adjust-fees-meet-operational-needs>
- U.S. Citizenship and Immigration Services fee schedule and changes to certain other immigration benefit request requirements, 84 Fed. Reg. 62,280 (November 14, 2019). <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>
- U.S. Congressman Henry Cuellar. (2019, May 2). *Cornyn, Cuellar introduce Humane Act to address border crisis* [Press release]. <https://cuellar.house.gov/news/documentsingle.aspx?documentid=404278>
- White House. (2019, October 8). *Press briefing by Acting CBP Commissioner Mark Morgan*. <https://www.whitehouse.gov/briefings-statements/press-briefing-acting-cbp-commissioner-mark-morgan/>
- Wolf v. Innovation Law Lab, et al.* 589 U.S. (2020, March 11) (order in pending case). https://www.supremecourt.gov/orders/courtorders/031120zr_19m2.pdf

ABOUT THE AUTHORS



Ken Oliver is the senior director of engagement and Right on Immigration in the Foundation's Washington, D.C., office. He is at the center of the landmark Texas Public Policy Foundation initiative that highlights and champions policies that secure the border, restore the rule of law, and fix and improve legal immigration to the United States.

In tackling this task, Oliver is leveraging the full range of his previous experience as a successful coalition builder in the conservative movement, a public diplomacy professional, and a bilingual communicator. Prior to joining the Foundation, Oliver was founding director of MRC Latino, the media research center project that challenged liberal dominance and rhetoric of U.S. Spanish-language media, particularly on immigration-related issues.

Most of Oliver's career has been divided between his native Washington, D.C., and his mother's homeland of Puerto Rico. In Washington, during President George W. Bush's administration, Oliver served as special assistant to the director of the U.S. Office of Personnel Management, as well as White House director of specialty media. Oliver is also a former program review analyst at the Voice of America and news editor at the NBC Radio Network.

In Puerto Rico, Oliver served as special assistant to former Puerto Rico Governor Luis Fortuño, as the assistant secretary of state, and as the special assistant to the administrator of the Puerto Rico Economic Development Administration. He is also a distinguished, award-winning journalist having worked for Caribbean Business and the island's leading daily newspaper El Nuevo Día.



Garrett Yarbrough was a research associate at the Texas Public Policy Foundation.

About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

