

Eroded U.S. Asylum Protections for Gender Based Violence Survivors

Published in Advance of the United Nations Human Rights Council's
Universal Periodic Review of the United States of America
At the UPR Working Group's 36th Session
(4-15 May, 2020)

Submitted: September 20, 2019

Submitting Organizations:

MADRE; Contact: JM Kirby, <http://madre.org>, advocacy@madre.org, 121 W 27th St., New York, NY 10001¹

Human Rights and Gender Justice Clinic, CUNY School of Law; Contact: Lisa Davis, <http://law.cuny.edu/academics/clinics/hrgj>, davisl@law.cuny.edu, 2 Court Sq., Long Island City, NY 11101²

Center for Gender & Refugee Studies; Contact: Kate Jastram, jastramkate@uchastings.edu, <https://cgrs.uchastings.edu/>, 200 McAllister St., San Francisco, CA 94102³

Florence Immigrant and Refugee Rights Project; Contact: Lauren Dasse, ldasse@firrp.org, Laura St. John, lstjohn@firrp.org, <https://firrp.org/>, P.O. Box 86299, Tucson, AZ 85754⁴

Introduction

1. This report describes human rights violations committed by the Government of the United States of America (US) against asylum seekers who are fleeing gender-based violence (GBV). Since its 2015 Universal Periodic Review (UPR), the United States has largely worsened human rights conditions for migrants, including asylum seekers, in contravention of member states' recommendations. States called on the United States in 2015 to seek alternatives to migrant detention and end its use as a means to deter migration,⁵ to ensure due process for those in immigration proceedings,⁶ to eliminate discrimination against migrants,⁷ and to generally guarantee migrants' human rights.⁸
2. This report provides evidence of the US' failure to adhere to these recommendations, particularly with regard to asylum seekers who are fleeing GBV. A brief background section describes the context in which widespread, unchecked GBV is driving significant numbers of women and girls, particularly from Central America, to seek asylum at the US' southern border. The second section details retrogressive, discriminatory legal interpretations and policies implemented under the current U.S. presidential administration that hinder GBV survivors' ability to attain asylum in the US. The next section describes longstanding policies and practices that impact all asylum seekers, but disproportionately harm those fleeing GBV. The fourth section delineates how the US's policies and practices violate its human rights obligations. The final section contains a set of recommendations.

Background

3. Violence against women and girls for reasons of their gender is a recognized push factor for migration and a well-known risk in transit.⁹ In the last decade, increasing numbers of people, particularly women and children from Mexico and the Northern Triangle of Central America, have sought asylum at the U.S.-Mexico border, fleeing uncontrolled violence, including severe domestic violence and other forms of gender-based persecution.¹⁰ The U.S. does not make available data that tracks the basis for underlying asylum claims, but studies point to high numbers fleeing GBV. As many as one in three women the U.N. High Commissioner for Refugees (UNHCR) interviewed in 2016 at Mexico's southern border as they migrated north were fleeing GBV.¹¹ The proportion of women asylum seekers apprehended at the U.S.-Mexico border has jumped since 2012 from 14 percent of apprehensions to 27 percent in 2017, while the rate of girls under 18 from the Northern Triangle constituted 32 percent of the apprehended child population in 2017.¹² This jump parallels the steep rise in violence against women in the Northern Triangle region, which has some of the highest femicides rates in the world, with femicides in El Salvador alone more than doubling between 2013 and 2017.¹³ Human rights observers regularly find that those fleeing domestic violence and other forms of gender-based persecution in Mexico and the Northern Triangle cannot find protection in their countries of origin.¹⁴

4. Asylum applicants receiving legal assistance from our organizations include those who have faced repeated incidents and multiple forms of GBV, often at the hands of family members, criminal gangs, state actors, or a combination thereof.¹⁵ For example, one woman from Mexico, a childhood survivor of abuse by her father, was kidnapped at age 13 and abused by her captor. She was later trafficked into forced sex work, and one of her “clients” included a local police officer. Another woman from El Salvador endured sexual abuse by local gang members, but her reports to the police went unanswered, and she eventually fled to the United States when a gang member threatened to kill her. A woman from Guatemala sought asylum in the United States after her husband tried to kill her by running her over with his car. This attempted femicide occurred after years of domestic violence, rape, and threats—and the survivor’s repeated yet unsuccessful attempts to seek protection from Guatemalan law enforcement.¹⁶ In the last three years alone, the Center for Gender & Refugee Studies (CGRS) has provided assistance to attorneys representing asylum seekers in more than 7,500 cases of women and girls from the Northern Triangle countries. Of those, over half (56 percent) involved domestic violence and a third (35 percent) involved sexual violence and other forms of gender-based persecution.¹⁷
5. Like other asylum applicants, GBV survivors face extreme hardship applying for asylum in the United States due to longstanding policies and practices, as well as the current anti-immigrant policies of the Trump administration. However, they face additional and specific barriers where their claims are premised on them being a member of a “particular social group” that has experienced persecution, which is the most common enumerated ground applied in GBV cases.¹⁸ As discussed below, many remain in prolonged detention during the asylum application process where they experience re-traumatization so severe that they consider abandoning their asylum claims despite their fear. They would face serious danger of physical and sexual assault and even death if they were deported to their home countries, where the levels of violence and culture of impunity have only intensified since many fled to the United States.¹⁹

Retrogressive and Discriminatory Application of Asylum Law Towards GBV Survivors

6. Under the Trump administration, the U.S. government has promulgated policies and practices that are designed to curtail access to asylum for women fleeing GBV. A 2018 decision by the U.S. Attorney General, *Matter of A-B-*, is specifically directed at this population and has directly led to the denial of asylum grants for women who would likely have previously been granted asylum. In addition, GBV survivors are disproportionately impacted by other recent policies aimed at deterring all asylum seekers from reaching the territory or continuing with their claims. Together with longstanding barriers to due process in the asylum system that have thwarted the GBV asylum seekers’ claims for decades, the United States is effectively shutting down the U.S. protection system and criminalizing the right to seek asylum for a population that human rights law recognizes as especially vulnerable. This section highlights a few particularly harmful policies and practices.

A. *Matter of A-B-*

7. Since 1995, U.S. law has recognized that women fleeing GBV may qualify for refugee protection.²⁰ This principle—first enunciated in the context of politically motivated rape—has been applied to other contexts including female genital cutting, honor killings, and sex trafficking over the last two decades.²¹ Although cases involving domestic violence took a slightly more circuitous route, in 2014 U.S. law clearly recognized that women survivors of domestic violence may also establish eligibility for asylum in a landmark case known as *Matter of A-R-C-G-*.²² The principles in *A-R-C-G-* were not only positive for women fleeing domestic violence, but were more broadly applicable to gender claims, further codifying protections for women in U.S. law. Former Attorney General Jeff Sessions wiped out that precedent in *Matter of A-B-*, which vacated *A-R-C-G-*. In his decision, Sessions made the sweeping pronouncement that “[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.”²³
8. The impact of *Matter of A-B-* has been catastrophic. Following the decision, U.S. Citizenship and Immigration Services (USCIS) issued policy memoranda instructing asylum officers to apply *Matter of A-B-* to credible fear interviews (in the context of expedited removal at the border), and directing that claims based on domestic violence and gang-related violence by and large will not establish the basis for a credible fear of persecution.²⁴ Through the instructions, USCIS clearly intended to place additional obstacles in the path of GBV survivors even at the preliminary screening stage where the applicant need only demonstrate a “significant possibility” of establishing eligibility for asylum in a full hearing before an immigration judge.²⁵ At the merits stage, administrative adjudicators have also interpreted *A-B-* as Sessions intended—to foreclose claims involving women fleeing domestic violence—and have also invoked *A-B-* to categorically deny claims involving fear of gangs.²⁶ These are not cases where there is any doubt about the credibility of the applicant, or the extreme gravity of the harm she has suffered; these denials are made on the basis of the Attorney General’s *A-B-* decision.
9. The use of *Matter of A-B-* and the related USCIS policy memorandum in credible fear interviews is subject to a permanent nationwide injunction ordered in December 2018 by the U.S. District Court for the District of Columbia.²⁷ The court’s decision makes it clear that the government had acted in an arbitrary, capricious and unlawful manner, without regard for the intent of Congress when it enacted the Refugee Act of 1980, which was to bring the United States into compliance with international refugee law. While this victory is important for asylum seekers now going through their credible fear interviews, the government has appealed the court’s decision. Moreover, it applies *only* to credible fear determinations, not to full merits adjudications.²⁸ In fact, both the Department of Justice and the Department of Homeland Security have made it clear to asylum officers and immigration judges that *Matter of A-B-* remains good law for the purposes of deciding on the merits of an asylum application.²⁹

10. With regard to merits hearings, as noted above, grant rates for asylum seekers from the Northern Triangle countries dropped a full ten points in the first six months after the decision.³⁰ Although *Matter of A-B-* reaffirms that each case must be analyzed individually on its own merits, many asylum officers, immigration judges and the Board of Immigration Appeals have instead relied on Sessions' opinion to treat the *A-B-* decision as a categorical rule denying asylum for GBV survivors, depriving many women of their right to an individualized analysis of their claims. Such a blanket rule contravenes U.S. obligations under asylum law, and places the United States far out of the mainstream of international and comparative practice in recognizing GBV as a basis for asylum.

B. Other recent policies disproportionately impacting asylum seekers fleeing GBV

11. Three new policies by the current administration aimed at curbing asylum seekers more broadly have uniquely and/or disproportionately harmed GBV survivors. First, the United States departed from its longstanding practice of processing individuals who come to a land port of entry seeking asylum by implementing a policy of "metering", which allows only a small number of asylum seekers to enter the U.S. territory per day. U.S. Customs and Border Patrol (CBP) stops migrants from entering and forces them to wait weeks or even months in Mexico until their number is called before requesting asylum.

12. Second, another unprecedented policy called the "Migrant Protection Protocols" (MPP) forcibly sends asylum seekers who have been processed by CBP to Mexico pending their immigration hearings, which could be for well over a year.³¹ Both policies place asylum seekers at risk of further violence in Mexico, including sexual violence.³² Women waiting in Mexico, especially those who are alone, have been abducted and raped by gangs targeting vulnerable migrants.³³ Asylum seekers who have fled Mexico or Central American countries because of gender-based violence are also afraid of being discovered and targeted by the same perpetrators who caused them to flee and who have connections with organized crime in Mexico.³⁴ Women forced to return to Mexico are placed at grave risk of *refoulement* by the Mexican government, which regularly deports individuals without adequately screening for fear.³⁵ For example, on April 30, 2019, Mexican police attempted to extort a young Guatemalan woman who was sent to Ciudad Juárez under MPP.³⁶ When she refused to pay, the police took her to the airport and deported her to Guatemala despite the fact that she expressed fear of return and showed the police her U.S. immigration court papers instructing her return in September this year. The administration's policies place those fleeing persecution on grounds of GBV at further risk of the same.

13. Lastly, the administration's "zero tolerance" policy, announced in April 2018, aimed to criminally prosecute any immigrant who crosses the border without authorization between U.S. ports of entry.³⁷ Critically, this policy made *no exceptions* for asylum seekers.³⁸ Though not explicitly stated as a family separation policy, the foreseeable consequence was to mandate that all adults who cross without authorization be sent to adult-only detention centers while their children were detained in separate centers run by the Office of Refugee Resettlement.³⁹ Following a public uproar and a successful lawsuit, President Trump rescinded the policy in June 2018, but his administration continues to

separate families in certain situations.⁴⁰ Families are currently faced with two options: (1) be reunited, but face deportation and give up their asylum claims, or (2) remain separated, with parents returning alone and leaving their children to apply for asylum on their own.⁴¹ Because many women flee perilous situations with their children, they are particularly impacted by this policy.

Longstanding Policies and Practices Deny the Right of GBV Survivors to Seek Asylum

14. In addition to the administration's recent policies that specifically target or disproportionately impact those seeking asylum on grounds of GBV, numerous due process violations at every stage of the asylum process—from detention to threshold screenings to adjudication of their claims—further violate their rights. Together, these violations severely impede the ability of women to mount an effective asylum claim, or even to make a claim at all. Those fleeing GBV face particular difficulty due to a lack of meaningful awareness or sensitivity throughout the process towards the needs of survivors, placing them at risk of re-traumatization.⁴² This section describes the most common practices that effectively deny GBV asylum seekers the ability to obtain protection in the United States.

A. Detention of asylum seekers fleeing GBV

15. Although U.S. law provides for the release of asylum seekers who are neither a flight risk nor a security risk, and although studies show a high rate of appearance of asylum seekers who are released,⁴³ this administration has resorted to draconian detention policies out of step with existing policies and international law.⁴⁴ In fact, the number of women in U.S. immigration detention has increased by 60 percent since 2009.⁴⁵ An analysis of government data found that women spend disproportionate lengths of time in detention, with their average length of stay varying between ten to eighteen percent longer than men's.⁴⁶ This administration has been explicit that it is using detention to punish asylum seekers and send a message of deterrence.⁴⁷ Under U.S. law, asylum seekers who flee to a U.S. port of entry to make their claim must be detained,⁴⁸ and can be detained for the length of their asylum application process.⁴⁹ Authorities have a long history of detaining asylum seekers for months or years by failing to properly implement parole for "arriving" asylum seekers, with arriving asylum seekers "rarely if ever [being] released on parole."⁵⁰
16. Detention of asylum seekers in prison-like conditions, described as "inhumane" by leading immigrant rights attorneys, exacerbates survivors' trauma. A 2015 study found at least half of detained women and children asylum seekers had symptoms of post-traumatic stress disorder (PTSD).⁵¹ Despite the grave need for mental health services, providers familiar with conditions in detention centers regularly report that mental health services are inadequate or completely absent, as described in more detail below.⁵²
17. To escape the harmful physical and mental health impacts in such detention conditions, some GBV trauma survivors have understandably waived their right to appeal erroneous asylum decisions in order to leave detention, despite facing extreme danger upon deportation.⁵³ One asylum seeker detained in Eloy Detention Center, where all detained

women asylum seekers in Arizona are held, told human rights advocates in late 2018 that she was “hopeless and anxious” and has thought of giving up every day during the almost two years she had been detained despite her awareness that she would be in grave danger if deported.⁵⁴ This survivor faced sexual, emotional, and physical violence from her family, sought and was denied protection in the United States previously, and was raped by gang members upon deportation and subject to further beatings from a family member.⁵⁵ She fled again to the United States and was detained upon arrival.⁵⁶ She stated that in detention she was only able to see a male mental health professional for a few minutes once a month, and she felt uncomfortable sharing her traumatic experiences with him.⁵⁷ She was released in early 2019 after a community fundraiser helped her pay an exorbitant bond fee of \$25,000.

B. Denying GBV asylum seekers the right to establish a “credible fear” of persecution

18. U.S. law requires that a person who expresses a fear of persecution be given a “credible fear” interview with an asylum officer. If found to meet this preliminary screening standard, the asylum seeker then appears before an immigration judge for a full hearing on the merits of their claim. Currently, CBP officers often fail to refer individuals with viable asylum cases for credible fear interviews, provide false information to asylum seekers,⁵⁸ and even “fill out CBP interview forms with inaccurate, misleading, or false information.”⁵⁹ GBV survivor asylum seekers have reported CBP officers accusing them of “lying about their fears of return,” and stating that “they do not have rights, and that they will be deported no matter what they say.”⁶⁰ For example, CBP officers called a Guatemalan asylum seeking mother, who suffered repeated rapes and sexual abuse by family members, a liar, and deported her on two separate occasions before she was able to get a hearing before an immigration judge.⁶¹ The judge eventually granted her “withholding of removal,” a form of relief similar to asylum,⁶² but this underscores the legal consequences of these unlawful deportations. Upon return after deportation, an asylum seeker is not eligible even to seek asylum, but may instead seek only “withholding of removal,” a status which imposes a higher legal standard, does not allow for family reunification, and does not include a pathway to permanent residency or citizenship.⁶³

C. Lack of psycho-social support and trauma-informed approaches for GBV survivors during asylum application process

19. Throughout the asylum process, from detention through asylum interviews and court proceedings, applicants are not offered adequate privacy or psychosocial support. Though asylum officers are trained to conduct trauma-informed interviews, asylum officers continue to fail to adequately identify bona fide asylum seekers during the credible fear process.⁶⁴ Lack of rapport, language barriers, lack of official oversight, and trauma or disability may prevent an asylum seeker from disclosing or articulating in an initial interview why she fled her country.⁶⁵ The use of telephones to conduct interviews exacerbates these issues, as interpreters and asylum officers appearing telephonically are less likely to gain the immigrant’s trust, nor can they observe non-verbal cues that may

indicate that the interviewee is confused or frightened.⁶⁶ The initial screenings occur with CBP officers who are armed and in uniform and often in open, non-confidential spaces.⁶⁷ During this interview and other stages in the asylum process, GBV survivors are asked to disclose details of traumatic experiences often involving physical and sexual violence, and their children may be present during the screening.⁶⁸ Such conditions discouraging disclosure can harm asylum seekers fleeing GBV at later stages of the asylum process if their testimony before an immigration judge is inconsistent with or simply adds to the statements made during the credible fear interview.⁶⁹ Asylum advocates have interviewed numbers of women trauma survivors placed in expedited removal proceedings who found they could not describe their stories to asylum officers or immigration judges because of the trauma's severity, a situation that resulted in deportation for many of them.⁷⁰

20. Mental health services in immigration detention facilities across the United States have been found to be extremely inadequate, or virtually absent, or to come in the form of punitive practices.⁷¹ Since January 2017, 25 adults⁷² have died while in custody of U.S. Customs and Immigration Enforcement (ICE).⁷³ At least five of those dead committed suicide while in ICE custody;⁷⁴ three of whom were confirmed to have had mental illness and had spent days or weeks in segregation or solitary confinement.⁷⁵ Additionally, reports identified delays in providing care to detainees with serious medical conditions, including mental illness.⁷⁶ At the Stewart Detention Center ICE facility in Georgia, for example, U.S. government investigators found extreme shortages of physical and mental health professionals and lack of a staff psychiatrist.⁷⁷ In June of this year, the Department of Homeland Security Inspector General reported that inspections of four detention facilities revealed egregious violations of detention standards, including but not limited to inadequate medical care, overly restrictive segregation and nooses in detainee cells.⁷⁸ An investigative report found that the immigration agency used isolation cells to punish immigrants, many of whom suffered from mental illness.⁷⁹ The report found that immigrants held in the agency's isolation cells had suffered hallucinations, fits of anger, and suicidal impulses.⁸⁰ These circumstances often leave immigrants with severe symptoms of trauma, long after their release from detention.⁸¹

D. Lack of interpretation services

21. Inadequate language interpretation limits many asylum seekers' ability to communicate their fear to CBP officers.⁸² The ability to communicate this fear upon presentation at the point of entry or upon apprehension by CBP is critical, as it determines whether asylum seekers get placed into full removal proceedings or referred for a credible fear interview. At the credible fear interviews, interpretation quality can be poor, and in some cases women asylum seekers report that notes of their interviews with asylum officers don't reflect what they actually said. There are in fact, no exact transcriptions or recordings of these interviews, just asylum officers' notes,⁸³ and if the notes are inconsistent with asylum seekers' stories, this places them in danger of losing their cases due to immigration courts' focus on "the applicant's unwavering consistency in relaying traumatic details."⁸⁴ CBP officers have also made asylum seekers sign English summations of their fear claims that are not representative of what the individual actually told the CBP officer or falsely state the person claimed no fear of return.⁸⁵ For example,

one asylum seeking survivor of GBV who has been detained since arriving in the United States in mid-2017, was made by CBP officers to sign a document in English, a language she does not understand, which stated that she did not fear returning to her native country, something she was never asked.⁸⁶

22. Those who are referred for a credible fear screening often must undergo an interview with an asylum officer by telephone from detention centers rather than in-person. Women asylum seekers report not being able to hear both USCIS interviewers and interpreters properly, and being made to answer interview questions about traumatic events on phones in semi-public areas of detention centers.⁸⁷ In one case, interpreters continuously cut off a woman as she tried to convey her fear over a phone to an asylum officer, and one interpreter eventually hung up, after saying “I don’t know enough Spanish to do this.”⁸⁸ These obstacles to communication have undermined women’s ability to obtain relief, and in some cases, resulted in erroneous deportations of Indigenous mothers and children who are unable to communicate their fear to officials.⁸⁹

E. Lack of legal representation

23. Seeking asylum in the United States involves navigating a complex legal system, and success during a hearing frequently depends on whether applicants have a lawyer,⁹⁰ an often prohibitive cost, particularly for those who are detained.⁹¹ Unable to afford a private attorney, most asylum seekers must rely upon non-profit organizations and many go without legal representation.⁹² Study after study has shown that the likelihood of prevailing when represented is more than five times than when not represented.⁹³ However, in 2017 and 2018 about one in five asylum seekers were unrepresented.⁹⁴ For detained immigrants, representation rates are lower due to restricted mobility, strict visitation rules, the remote locations of detention centers, and frequent transfers of asylum seekers between facilities without notice.⁹⁵
24. One asylum seeker from Guatemala was detained at Eloy for nearly two years, and separated from her 11-year-old son, despite the fact that she was deemed to have a credible fear of persecution upon entry to the United States.⁹⁶ Her husband had attempted to kill her twice, the latest time by running her off the road while she was riding a motorcycle, resulting in a broken clavicle. In early hearings before an immigration judge she appeared *pro se*, unable to afford an attorney. Although she had filled out the application appropriately, she failed to make the requisite number of copies of the forms. Instead of giving her a brief continuance to make the copies (at a hearing when her arm was still in a sling), the judge deemed her application abandoned and ordered her removed. The judge exhibited further bias against her after she appealed and the Board remanded the case, inexplicably advancing her hearing with no notice to the attorney who had joined the case.

F. Arbitrariness in case adjudication

25. The arbitrary nature of case adjudications exemplifies the lack of fundamental fairness asylum seekers face before immigration judges. Winning one’s asylum case often

depends on the immigration judge assigned to the case and their personal predilections, instead of the merits of the claim and an objective application of the law to the facts.⁹⁷ In Eloy, AZ, for example, some immigration judges have displayed a gross lack of understanding of GBV and demonstrated insensitivity to survivors as they are made to tell their stories. In the fall of 2018, for example, one asylum seeker broke down in tears during her asylum hearing as she described harrowing physical and sexual abuse and estimated that she had been beaten by her abuser at least 200 times.⁹⁸ After hearing the testimony, the immigration judge said in open court that the woman’s case was a mere “custody dispute” instead of a case of grave GBV that merited protection.⁹⁹ Another GBV survivor was so traumatized by horrific abuse from her father that she was unable to mention this in her credible fear interview, which was conducted by a male asylum officer. When she appeared before an immigration judge, the judge found the denial of her claim appropriate despite *also* acknowledging the pain of her abuse and the difficulty of pursuing justice in her home country. She was then held in detention for another full year, during which time she secured pro bono counsel and was able to appeal the decision. A different immigration judge reversed the denial, then allowed her release after a months-long fundraising campaign to raise \$25,000 for bond. She awaits a final decision on her case from the Ninth Circuit Court of Appeals.¹⁰⁰

U.S. Policies & Practices Violate Legal Obligations Towards Asylum Seekers Fleeing GBV

A. The Right to Seek and Receive Asylum

26. The United States must allow refugees to “seek and receive” asylum in its territory.¹⁰¹ Forced to wait in Mexico, asylum seekers fleeing gender-based violence live in precarious conditions and have limited access to legal counsel, which prevent meaningful access to the U.S. asylum system.

B. The Right to Due Process and Nonrefoulement in Seeking Asylum

27. By failing to allow GBV survivors to mount effective asylum claims, the United States violates its international obligations to refrain from returning refugees to territories where their lives or freedom would be threatened¹⁰² or where they would face a substantial risk of torture.¹⁰³ Documented cases by our organizations establish that the *refoulement* risk increases through the prolonged detention policies and practices, as some GBV survivors choose to give up their asylum claims and face extreme danger upon return to their countries of origin rather than remain in detention. And, as described above, forcing asylum seekers to remain in Mexico also places them at risk for *refoulement* by Mexico to their countries of origin.

C. Freedom from Cruel, Inhuman or Degrading Treatment

28. In its General Comment 2, the U.N. Committee Against Torture (CAT) noted that immigration status can intersect with gender discrimination to increase the risk of cruel, inhuman, and degrading treatment, or torture for detained women and for survivors of domestic violence.¹⁰⁴ The U.N. Committee Against Torture (CAT) and the Human Rights

Committee have expressed concern about the use of administrative detention of non-citizens¹⁰⁵ and urged states to promote alternative measures to detention for asylum seekers.¹⁰⁶ The Human Rights Committee has recognized the particular vulnerability of asylum seekers and of gender-based violence survivors and called on State parties to take “special measures of protection” towards them.¹⁰⁷ On several occasions the CAT Committee has also urged states to ensure that detained women are treated in conformity with international standards, for example, by ensuring access to medical care within detention facilities that focus on health needs specific to women,¹⁰⁸ which should inherently include mental health care for survivors of GBV trauma.

29. U.S. policy and practices place GBV survivor asylum seekers at risk of cruel, inhuman and degrading treatment by failing to account for their vulnerable status, both as survivors and as asylum seekers. The asylum process places profound stress on GBV survivors, forcing them to recount their stories of victimization repeatedly, without access to adequate psychosocial support. In addition, GBV survivor asylum seekers are often subject to prolonged detention without adequate mental health services to address their PTSD related to the physical, sexual, and emotional violence they experienced. As described above, the inhumane conditions of detention often retraumatize GBV survivors, and consequently lead many to give up their asylum claims rather than remain in detention.

D. Freedom from Discrimination Based on Race and Gender

30. The context in which asylum seekers seek refuge in the United States is one rife with race and gender discrimination. From its inception, the current U.S. administration’s narrative about migrants, including asylum seekers, has been openly racist and gendered. In office and during his campaign Trump has used words like “animals”¹⁰⁹ to refer to migrants from Mexico and Central America, stated that Mexican immigrants are “rapists” that bring drugs and crime to the United States¹¹⁰ and used demeaning language when referring to migration from developing countries, including El Salvador.¹¹¹ Vice-President Mike Pence has echoed these messages, asserting that most asylum-seekers from Central America are not actually fleeing persecution.¹¹² Former White House Chief of Staff John Kelly described migrants arriving at the southern border as poor, uneducated, and incapable of integrating well into American society.¹¹³ In July 2019, the disclosure of a secret Facebook group for 9,500 CBP officers revealed extensive sexist, racist and xenophobic content about migrants.¹¹⁴ This rhetoric has manifested in an array of policies, including termination of Temporary Protected Status for Central Americans, Haitians, and Sudanese amongst others,¹¹⁵ an increase in immigration enforcement actions against women,¹¹⁶ and more recently the *Matter of A-B-* decision.
31. Language in *Matter of A-B-*, parroted in USCIS’s subsequent Policy Memorandum, which relies on discarded concepts of women’s rights, demonstrates discriminatory intent and pervasive sexism that undergirds the Administration’s policy decisions. Sessions in *A-B-* puts forth an antiquated worldview that domestic violence is not a pervasive and systemic societal ill, borne out of privilege, power and perceived gender roles. Instead, he compares perpetrators of domestic violence to “private criminals” motivated by “greed or

vendettas,”¹¹⁷ and dismisses domestic violence as mere “private violence,”¹¹⁸ taking us back to a time when that was the predominant narrative about gender-based violence. Sessions proposed a more stringent test to prove asylum eligibility in cases involving persecution by “private” actors (often the case for women who experience high rates of violence in the home or their communities). He stated that “[t]he applicant must show that the government condoned the private actions ‘or at least demonstrated a complete helplessness to protect the victims,’” rather than referring to the longstanding government “inability or unwillingness” to protect test that was the prevailing test for decades.¹¹⁹ Taken as a whole, through *A-B-*, the United States has placed a disproportionate burden on women fleeing gender-based violence to prove eligibility for protection, which flouts the well settled and well understood principle of non-discrimination.

Suggested Recommendations to the U.S. Government:

1. Rescind *Matter of A-B-* and ensure that asylum claims of domestic violence survivors are adjudicated fairly and in accordance with international norms.
2. Provide qualified interpreters for all asylum seekers, including Indigenous language speakers, at the time of apprehension, during any period of detention, in conversations with lawyers, and during asylum interviews and hearings. Provide translations of written materials reflective of literacy and education levels, and in Indigenous languages.
3. Guarantee legal counsel for asylum seekers.
4. Release asylum seekers on apprehension with a Notice to Appear and clear instructions on when and where to appear in court, with the aim of ending detention of asylum seekers pending their case outcomes, and investing in community-based case management alternatives to detention.
5. Consult with women’s and gender-based violence survivors’ advocates, in order to develop and implement training and protocols for officials who interact with gender-based violence survivors seeking asylum, from DHS and its sub-agencies, as well as Immigration Judges, on best practices and trauma-informed approaches to interviewing survivors and ensuring asylum seekers understand their legal rights.
6. Suspend use of “fast-track” removal methods, such as expedited removal and reinstatement of removal that remove these decisions from judicial decision-making.
7. Reform the asylum system to ensure efficient and consistent adjudication of asylum claims and eliminate procedural rules that block asylum claims from being heard.
8. Ratify the Convention on the Elimination of all Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of the Child.

¹ MADRE is an international women’s human rights organization that collaborates with grassroots women’s organizations in settings of conflict, disaster and their aftermath, to help them meet their communities’ needs and advocate for long-term change, including gender justice.

² The City University of New York’s Human Rights and Gender Justice Clinic (HRGJ) clinic conducts international human rights legal advocacy campaigns addressing various forms of gender-based violence, as well as economic and social rights, and children’s rights.

-
- ³ The Center for Gender & Refugee Studies (CGRS) protects the fundamental human rights of refugee women, children, LGBT individuals, and others who flee persecution in their home countries. We provide legal expertise, training, research and publications, engage in appellate litigation and policy development, and use international human rights instruments to address the root causes of persecution and to advance human rights.
- ⁴ The Florence Immigrant and Refugee Rights Project (FIRRP) provides free legal and social services to detained men, women, and children under threat of deportation in Arizona.
- ⁵ UNHRC, Report of the Working Group on the Universal Periodic Review, United States, ¶¶ 176.252, 176.253 (20 July, 2015) U.N. Doc. A/HRC/30/12/.
- ⁶ UNHRC, Report of the Working Group on the Universal Periodic Review, United States, ¶¶ 176.339 (20 July, 2015) U.N. Doc. A/HRC/30/12/.
- ⁷ UNHRC, Report of the Working Group on the Universal Periodic Review, United States, ¶¶ 176.153, 176.125 (20 July, 2015) U.N. Doc. A/HRC/30/12/.
- ⁸ UNHRC, Report of the Working Group on the Universal Periodic Review, United States, ¶¶ 176.321, 176.338 (20 July, 2015) U.N. Doc. A/HRC/30/12/.
- ⁹ Anja Parish, *Gender Based Violence Against Women: Both Cause for Migration and Risk Along the Journey*, Migration Policy Institute (Sept. 7, 2017) <https://www.migrationpolicy.org/article/gender-based-violence-against-women-both-cause-migration-and-risk-along-journey>; UNHCR, *Women on the Run* 15-30 (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>.
- ¹⁰ Women's Refugee Commission, *Migrant and Refugee Caravans: Failed Responses to Women and Children in Need of International Protection and Humanitarian Aid*, 1 (2019), <https://www.womensrefugeecommission.org/rights/resources/1761-migrant-and-refugee-caravans>. UNHCR, *Women on the Run*, 2-6, 25-27 (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>; AMNESTY INT'L, *Refugees Are in Urgent Need of Protection from Sexual and Gender-Based Violence* (Nov. 25, 2016), <https://www.amnesty.org/en/latest/news/2016/11/refugees-are-in-urgent-need-of-protection-from-sexual-and-gender-based-violence/>. The number of asylum seekers originating from the Northern Triangle reached 110,000 in 2015, a five-fold increase from 2012. Rocio Cara Labrador & D. Renwick, *Central America's Violent Northern Triangle*, Council on Foreign Relations (June 26, 2018), <https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle>.
- ¹¹ Nina Lakhani, "'He will kill me if he sees me again': abused women seek refuge in Mexico," THE GUARDIAN, June 7, 2017, <https://www.theguardian.com/global-development/2017/jun/07/women-refugees-domestic-violence-mexico>.
- ¹² Jeffrey Hallock, Ariel G. Ruiz Soto, & Michael Fix, *In Search of Safety, Growing Numbers of Women Flee Central America*, MIGRATION POLICY INSTITUTE (May 30, 2018), <https://www.migrationpolicy.org/article/search-safety-growing-numbers-women-flee-central-america>.
- ¹³ *Id.*; Juan Forero, *Women in Latin America are Being Murdered at Record Rates*, THE WALL ST. J., (Dec. 19, 2018), <https://www.wsj.com/articles/it-is-better-not-to-have-a-daughter-here-latin-americas-violence-turns-against-women-11545237843>.
- ¹⁴ Amnesty Int'l, *No Safe Place* 6-7, 12-13 (2017), <https://www.amnestyusa.org/wp-content/uploads/2017/11/No-Safe-Place-Briefing-ENG-1.pdf>; UNHCR, *Women on the Run*, 23-25 (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>.
- ¹⁵ UNHCR, *Women on the Run*, 2-6, 25-27 (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>.
- ¹⁶ Each of these clients were interviewed Nov. 7, 2018 in Eloy, AZ. (Interviews on file with MADRE).
- ¹⁷ CGRS collects data on cases in which attorneys request consultation or litigation support materials through its Technical Assistance Program. This information is on file with CGRS.
- ¹⁸ The other protected grounds for establishing asylum eligibility include political opinion, race, religion, and nationality. All of these grounds may be applied in cases involving GBV, but the social group ground is the most commonly argued where gender is the motivating factor of the persecutor.
- ¹⁹ Azam Ahmed, *Either They Kill Us, or We Kill Them—Inside Gang Territory in Honduras*, N.Y. TIMES, May 13, 2019, <https://www.nytimes.com/interactive/2019/05/04/world/americas/honduras-gang-violence.html?searchResultPosition=9> (“[G]overnments hollowed out by corruption are either incapable or unwilling to apply the rule of law, enabling criminal networks to dictate the lives of millions.”).

-
- ²⁰ *Matter of D-V-*, 21 I&N Dec. 77 (B.I.A. 1995).
- ²¹ See, e.g., *Matter of Kasinga*, 21 I&N Dec. 357 (B.I.A. 1996) (female genital cutting); *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011) (honor killing); *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013) (sex trafficking).
- ²² *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014).
- ²³ *Matter of A-B-*, 27 I&N Dec. 316, 320 (A.G. 2018).
- ²⁴ See USCIS Policy Memorandum, *Asylum Division Interim Guidance – Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (June 23, 2018); USCIS Policy Memorandum, *Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B-* (July 11, 2018) at 4 (PM-602-0162).
- ²⁵ 8 C.F.R. § 208.30.
- ²⁶ See, e.g., *Matter of O-L-B-D-*, CGRS Case No. 27172, (B.I.A. July 25, 2018) (citing to the AG’s “generally” domestic violence claims fail language, concluded without further analysis that “therefore . . . [Ms. O.L.B.D.] has not established that the harm that she suffered or fears is on account of membership in a cognizable particular social group, and she has not established eligibility for asylum or withholding of removal”); *Matter of Hernandez-Calderon*, 2018 WL 8062932 (B.I.A. 2018) (denying motion to reopen based on changed circumstances in El Salvador where gang had threatened family members citing to the AG’s statement that “generally” gang claims fail); *Matter of P-C-*, CGRS Case No. 24939 (IJ Dec. Oct. 12, 2018) (denied relief relying on *A-B-*’s general circularity rule to foreclose existence of the social group and nexus in the context of a “personal relationship”); *Matter of B-S-L-A-*, CGRS Case No. 28596 (IJ Dec. Aug. 29, 2018) (found the government was unable or unwilling to control the applicant’s abuser, but denied relief applying *A-B-* to categorically foreclose the existence of a similar gender-defined social group and existence of nexus where the harms are “purely personal disputes”). See also *Martinez-Perez v. Sessions*, 897 F.3d 33, 40 n.6 (1st Cir. 2018) (finding *A-R-C-G-*-distinguishable from the case at hand, which did not involve domestic violence, but noting that “even if domestic violence cases were applicable here,” the *A-B-*-decision overruled *A-R-C-G-* and interpreted the asylum standard “to exclude most domestic violence harms from satisfying that definition”).
- ²⁷ *Grace v. Whitaker*, 344 F.Supp.3d 96 (D.D.C. 2018).
- ²⁸ See generally CGRS and ACLU, *Practice Advisory: Grace v. Whitaker* (2019), <https://www.aclu.org/legal-document/grace-v-whitaker-practice-advisory>.
- ²⁹ EOIR General Counsel, *Guidance on Grace v. Whitaker, No. 18-cv- 01853* (D.D.C., Judge Sullivan, Dec. 17, 2018) (Dec. 19, 2018), <https://www.aclu.org/legal-document/grace-v-whitaker-eoir-guidance-re-grace-injunction> (“And, to reiterate, the decision applies only to the credible fear process. It has no effect on the conduct of removal hearings.”); John L. Lafferty, *Instructions to RAIO Re: Decision in Grace v. Whitaker and Impact on Credible Fear Processing* (Dec. 19, 2019), <https://www.aclu.org/legal-document/grace-v-whitaker-uscis-guidance-re-grace-injunction>; *Redacted U.S. Citizenship and Immigration Services (USCIS) PM-602-0162: Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B-* (Jan. 10, 2019), <https://www.aclu.org/legal-document/grace-v-whitaker-uscis-guidance-re-grace-injunction>. See also DHS-ICE, *OPLA Memorandum: Litigating Domestic Violence-Based Persecution Claims Following Matter of A-B-* (Jul. 11, 2018), <http://www.documentcloud.org/documents/4597904-OPLA-Memo-on-Matter-of-A-B.html>.
- ³⁰ Human Rights First, *Fact Sheet: Central Americans were Increasingly Winning Asylum Before President Trump Took Office* (Jan. 2019), https://www.humanrightsfirst.org/sites/default/files/Asylum_Grant_Rates.pdf
- ³¹ A federal district court enjoined the policy as violating U.S. law, including its *nonrefoulement* obligations. See *Innovation Law Lab v. Nielsen*, 366 F.Supp.3d 1110 (N.D. Cal. 2019). The Ninth Circuit Court of Appeals temporarily stayed the injunction pending appeal on the merits. See *Innovation Law Lab v. McAleenan*, 924 F.3d 503 (9th Cir. 2019).
- ³² Human Rights Watch, *US: Asylum Seekers Returned to Uncertainty, Danger in Mexico* (July 2, 2019), <https://www.hrw.org/news/2019/07/02/us-asylum-seekers-returned-uncertainty-danger-mexico> (citing risks to migrants returned to Ciudad Juarez including kidnapping, sexual assault and violence based on interviews with asylum seekers and observations of court proceedings). In addition, the policy deprives asylum seekers of humanitarian aid in overwhelmed shelters and leaves them without access to legal counsel. Miriam Jordan, *Trump Administration Can Keep Sending Asylum Seekers to Mexico, Court Rules*, N.Y. TIMES, May 7, 2019, <https://www.nytimes.com/2019/05/07/us/asylum-seekers-trump-mexico.html?searchResultPosition=8>.
- ³³ Joel Rose, *Trump Administration's 'Remain In Mexico' Policy Leaves Migrants Confused, Scared*, NAT’L PUB. RADIO, June 27, 2019, <https://www.npr.org/2019/06/27/736716101/trump-administrations-remain-in-mexico-policy-leaves-migrants-confused-scared>.

³⁴ Zolan Kanno-Youngs & Maya Averbuch, *Waiting for Asylum in the United States, Migrants Live in Fear in Mexico*, N.Y. TIMES, Apr. 5, 2019, <https://www.nytimes.com/2019/04/05/us/politics/asylum-united-states-migrants-mexico.html?module=inline>. A district court in Northern California enjoined this program, but the Ninth Circuit Court of Appeals recently allowed the policy to continue while litigation proceeds despite finding that the program lacked safeguards to ensure that migrants would not be subjected to danger in Mexico. Miriam Jordan, *Trump Administration Can Keep Sending Asylum Seekers to Mexico, Court Rules*, N.Y. TIMES, May 7, 2019, <https://www.nytimes.com/2019/05/07/us/asylum-seekers-trump-mexico.html?searchResultPosition=8>.

³⁵ Human Rights First, *Fact Sheet: Central Americans were Increasingly Winning Asylum Before President Trump Took Office* (Jan. 2019), https://www.humanrightsfirst.org/sites/default/files/Asylum_Grant_Rates.pdf.

³⁶ *Innovation Law Lab v. McAleenan*, No. 19-15716, Dkt. No. 44 (June 26, 2019) (on file with CGRS).

³⁷ U.S. Department of Justice, *Attorney General Announces Zero Tolerance Policy for Criminal Illegal Entry*, (April 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>. The policy was implemented on May 7, 2018. This was a departure from previous administrations, which had treated first time unauthorized entries as civil infractions. Congressional Research Service, *The Trump Administration's 'Zero Tolerance' Immigration Enforcement Policy*, 6-7, R45266, (Feb. 26, 2019), <https://crsreports.congress.gov>.

³⁸ Attorney General Sessions' clear goal was to deter those crossing into the U.S. with the threat of criminal prosecution, even if they had valid asylum claims. As stated in the press release, "illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers of the Department of Justice." U.S. Department of Justice, *Attorney General Announces Zero Tolerance Policy for Criminal Illegal Entry*, (April 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

³⁹ Congressional Research Service, *The Trump Administration's 'Zero Tolerance' Immigration Enforcement Policy*, 2, 8, R45266 (Feb. 26, 2019), <https://crsreports.congress.gov>.

⁴⁰ The government's reasoning for continuing to separate families includes "parent criminality, prosecution, gang affiliation, or other law enforcement purpose." Media reports suggest the Trump administration is exploiting alleged parent criminality as a loophole. *Id.* at 14. Kevin Johnson, David Jackson & Jessica Estepa, *Trump signs executive order on immigration, but says 'zero tolerance' will continue*, USA TODAY, June 20, 2018, <https://www.usatoday.com/story/news/politics/2018/06/20/homeland-security-drafts-plan-end-separations-border/717898002/>. See also Caroline Kelly, *Acting DHS Chief: Family separations policy 'not worth it'*, CNN, April 23, 2019, <https://www.cnn.com/2019/04/23/politics/mcaleenan-family-separations-nbc/index.html> (reporting that while acting Secretary McAleenan indicated that a family separation policy would not be reinstated, a senior White House official indicated family separation is still being considered by the Trump administration).

⁴¹ Congressional Research Service, *The Trump Administration's 'Zero Tolerance' Immigration Enforcement Policy*, 10-14, R45266 (Feb. 26, 2019), <https://crsreports.congress.gov>.

⁴² Alana Mosley, *Re-Victimization and the Asylum Process*, 36 *Law & Inequality: J. of Theory & Practice* 2, 321-323 (2018), <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1600&context=lawineq>.

⁴³ See Human Rights First, *FACT CHECK: Asylum Seekers Regularly Attend Immigration Court Hearings* (Jan. 25, 2019), <https://www.humanrightsfirst.org/resource/fact-check-asylum-seekers-regularly-attend-immigration-court-hearings> ("In fiscal year 2018, Department of Justice (DOJ) figures show that 89 percent of all asylum applicants attended their final court hearing to receive a decision on their application. When families and unaccompanied children have access to legal representation, the rate of compliance with immigration court obligations is nearly 98 percent."); AILA et al., *The Real Alternatives to Detention* (June 27, 2017), <https://www.aila.org/infonet/the-real-alternatives-to-detention> (highlighting effectiveness of various alternative programs, including upwards of 95% compliance).

⁴⁴ Detention rates have been on the rise and at an unprecedented high in 2019. See J. Rachel Reyes, *Immigration Detention: Recent Trends and Scholarship*, Center for Migration Studies (2019), <http://cmsny.org/publications/virtualbrief-detention/>; Spencer Ackerman, *ICE is Detaining 50,000 People. A New All-Time High*, THE DAILY BEAST, Mar. 8, 2019, <https://www.thedailybeast.com/ice-is-detaining-50000-people-a-new-all-time-high>. Under U.S. law, asylum seekers who flee to a U.S. port of entry to make their claim must be detained (Immigration and Nationality Act § 235(b)(B)(IV), 8 U.S.C. § 1225(b)(B)(iii)(IV) (2012)) and can be detained for the length of their asylum application process. Authorities have a long history of detaining asylum seekers for months or years by failing to properly implement parole for "arriving" asylum seekers, with arriving asylum seekers "rarely if ever [being] released on parole." Human Rights First, *Judge and Jailer*, 3, 5-12 (2017), <https://www.humanrightsfirst.org/sites/default/files/hrf-judge-and-jailer-final-report.pdf>.

⁴⁵ Emily Butera & Katharina Obser, *A Prison for Survivors: A Report on the Detention of Women Seeking Asylum*, Women’s Refugee Commission 2 (2017), <https://www.womensrefugeecommission.org/rights/resources/1528-prison-for-survivors-women-in-us-detention-oct2017>.

⁴⁶ Michelle Brané & Lee Wang, *Women: The Invisible Detainees*, FORCED MIGRATION REV., 44 (Sept. 2013), http://www.fmreview.org/detention/brane-wang.html#_edn1 [<https://perma.cc/FY78-GMEA>].

⁴⁷ See U.S. Department of Justice, Attorney General Announces Zero Tolerance Policy for Criminal Illegal Entry, (April 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>. (“I warn you: illegally entering this country will not be rewarded, but will instead be met with the full prosecutorial powers ...”); *Transcript: White House Chief Of Staff John Kelly’s Interview With NPR*, NPR, May 11, 2018, <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>

([On Trump’s policy to detain all migrants crossing the border illegally] “They’re not bad people. They’re coming here for a reason. And I sympathize with the reason. But the laws are the laws. But a big name of the game is deterrence.”).

⁴⁸ See 8 U.S.C. § 1225(b)(B)(iii)(IV) (2012).

⁴⁹ Previously, at least in some jurisdictions (including Eloy), asylum seekers found to have a credible fear of persecution would have been entitled to a custody hearing before an immigration judge after six months of detention. However, the U.S. Supreme Court recently struck down that precedent, greatly limiting the ability of asylum seekers in this position to pursue release. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018).

⁵⁰ See Human Rights First, Judge and Jailer, 3, 5-12 (2017), <https://www.humanrightsfirst.org/sites/default/files/hrf-judge-and-jailer-final-report.pdf>.

⁵¹ See Amber D. Moulton, *No Safe Haven Here: Children and Families Face Trauma in the Hands of U.S. Immigration*, Unitarian Universalist Service Committee, at 3 (2015), http://www.uusc.org/sites/default/files/no_safe_haven_here_-_children_and_families_face_trauma_in_the_hands_of_u.s._immigration.pdf.

⁵² *Id.*; Interview with Anonymous Asylum Attorney #2 in Texas (Aug. 30, 2018), interview on file with MADRE; Laurie Cook Heffron, Josie Serrata, & Gabriela Hurtado, *Latina Immigrants’ Well-Being & Access to Services After Detention: Preliminary Findings*, at 6 (Jan. 30, 2018), <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1005&context=latino-policy;%20https://scholar.smu.edu/latino-policy/6/>.

⁵³ See Blaine Bookey, *Gender-Based Asylum Post-Matter of A-R-C-G-: Evolving Standards and Fair Application of the Law*, 22 SOUTHWESTERN J. INT’L L. 1, 4 (2016).

⁵⁴ *Id.*

⁵⁵ Interview with Anonymous Asylum Seeker #3 in Eloy, AZ (Nov. 7, 2018), interview on file with MADRE.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Interview with Anonymous Asylum Attorney #1 in Texas (Aug. 30, 2018), interview on file with MADRE; Interview with Anonymous Asylum Attorney #2 in Texas (Aug. 30, 2018), interview on file with MADRE; Interview with Anonymous Asylum Seeker #3 in Eloy, AZ (Nov. 7, 2018), interview on file with MADRE; see AILA, *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States*, at 7-8 (2016), <https://www.aila.org/infonet/report-due-process-denied>.

⁵⁹ Human Rights First, *Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers*, at 10 (2017), <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>.

⁶⁰ AILA, *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States*, at 7 (2016), <https://www.aila.org/infonet/report-due-process-denied>.

⁶¹ *Id.* at 8.

⁶² *Id.*

⁶³ *Id.* at 8. See also Immigration Equality, *Withholding of Removal and CAT* (2015), <https://www.immigrationequality.org/get-legal-help/our-legal-resources/asylum/withholding-of-removal-and-cat/#.W6qolZNKbbU>.

⁶⁴ See American Immigration Council, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers*, at 1-3 (2017), <https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers> (“The credible fear interview process is potentially rife with procedural errors. . . . On paper, the interview process is designed to elicit responses that may bolster an applicant’s claim for relief; however, what happens in practice may be quite different. In some cases, an asylum officer’s failure to build rapport and ask follow-up questions could prevent a woman from sharing her entire story.”)

⁶⁵ See, e.g., CARA Family Detention Pro Bono Project, *Complaint to DHS: Ongoing Concerns regarding the Detention and Fast-Track Removal of Children and Mothers Experiencing Symptoms of Trauma* (Mar. 28, 2016), <https://www.aila.org/File/DownloadEmbeddedFile/67656>.

⁶⁶ See U.S. Dep’t of Homeland Sec., *Report of the DHS Advisory Committee on Family Residential Centers*, at 95-97 (2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf> [<https://perma.cc/8HVP-R72Y>]; see also Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 NW. U. L. REV. 933, 941 (2015).

⁶⁷ AILA, *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States*, at 9 (2016), <https://www.aila.org/infonet/report-due-process-denied>.

⁶⁸ *Id.*

⁶⁹ Alana Mosley, *Re-Victimization and the Asylum Process*, 36 *Law & Inequality: J. of Theory & Practice* 2, 322 (2018), <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1600&context=lawineq>.

⁷⁰ AILA, *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States*, at 11 (2016), <https://www.aila.org/infonet/report-due-process-denied>.

⁷¹ Independent experts who reviewed 18 official death records of those who died in U.S. immigration detention from 2012-2016 found that in the cases where detainees showed signs of serious mental health issues, “inadequate mental health care or the misuse of isolation may have significantly exacerbated their mental health problems.” Human Rights Watch, *U.S. Deaths in Immigration Detention* (Jul. 7, 2016), <https://www.hrw.org/news/2016/07/07/us-deaths-immigration-detention#>.

⁷² This number does not include children or persons who died from custody related illnesses after release from ICE detention. See Hannah Rappleye & Lisa Riordan Seville, *24 Immigrants Have Died in ICE Custody During the Trump Administration*, NBC News (Jun. 9, 2019), <https://www.nbcnews.com/politics/immigration/24-immigrants-have-died-ice-custody-during-trump-administration-n1015291>.

⁷³ See AILA, *Deaths at Adult Detention Centers*, AILA Doc. NO 16050900 (Jul. 2, 2019), <https://www.aila.org/infonet/deaths-at-adult-detention-centers>.

⁷⁴ See Human Rights Watch, *Report: Fatal Consequences of Dangerously Substandard Medical Care in Immigration* (Jun. 20, 2018), <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>. See also POGO, *Detainee Death Review – Osmar Epifanio Gonzalez-Gadba*, JICMS#201705550, <https://www.pogo.org/document/2018/10/ice-detainee-death-review-osmar-epifanio-gonzalez-gadba-died-march-2017/>.

⁷⁵ See Hannah Rappleye, Lisa Riordan Seville & Andrew W. Lehren, *22 Immigrants Have Died in ICE Detention Centers During the Past 2 Years*, NBC News (Jun. 6, 2019), <https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-centers-during-past-2-years-n954781>. See also Spencer Woodman, Karrie Kehoe, Maryam Saleh and Hannah Rappleye, *Solitary Voices: Thousands of Immigrants Suffer in US Solitary Confinement in ICE Detention*, International Consortium of Investigative Journalists (May 21, 2019), <https://www.icij.org/investigations/solitary-voices/thousands-of-immigrants-suffer-in-us-solitary-confinement/> (explaining that expert reports identified inadequate mental health services as a primary contributing factor for the custodial deaths of 15 immigrants between December 2015 and April 2017) [hereinafter ICIJ]

⁷⁶ Hannah Rappleye, Lisa Riordan Seville & Andrew W. Lehren, *22 Immigrants Have Died in ICE Detention Centers During the Past 2 Years*, NBC News (Jun. 6, 2019), <https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-centers-during-past-2-years-n954781>. See also Spencer Woodman, Karrie Kehoe, Maryam Saleh and Hannah Rappleye, *Solitary Voices: Thousands of Immigrants Suffer in US Solitary Confinement in ICE Detention*, ICIJ (May 21, 2019), <https://www.icij.org/investigations/solitary-voices/thousands-of-immigrants-suffer-in-us-solitary-confinement/> (explaining that expert reports identified inadequate mental health services as a primary contributing factor for the custodial deaths of 15 immigrants between December 2015 and April 2017).

⁷⁷ Elly Yu, *Exclusive: An ICE Detention Center’s Struggle With ‘Chronic’ Staff Shortages* (May 31, 2018), available at <https://www.wabe.org/exclusive-an-ice-detention-centers-struggle-with-chronic-staff-shortages/>.

⁷⁸ See DHS Office of the Inspector General, *OIG-19-47-Memorandum: Concerns about ICE Detainee Treatment and Care at Four Detention Facilities* (June 3, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

⁷⁹ See Spencer Woodman, Karrie Kehoe, Maryam Saleh and Hannah Rappleye, *Solitary Voices: Thousands of Immigrants Suffer in US Solitary Confinement in ICE Detention*, ICIJ (May 21, 2019), <https://www.icij.org/investigations/solitary-voices/thousands-of-immigrants-suffer-in-us-solitary-confinement/>

⁸⁰ *Id.*

⁸¹ *Id.* (former detainees told the ICIJ that they experienced sleeplessness, flashbacks, depression, and memory loss long after release)

⁸² See CARA Family Detention Pro Bono Project, *Complaint to DHS: Family Detention -- Challenges Faced by Indigenous Language Speakers in Family Detention* (Dec. 10, 2015), <https://www.aila.org/advo-media/press-releases/2015/crcl-complaint-challenges-faced-family-detention>. See also American Immigration Council, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers*, at 1-3 (2017), <https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers>.

⁸³ See AILA, *Immigration Practice and Pointers: Accessing Protection at the Border*, at 741-50, 747 (2015), <https://www.aila.org/File/Related/14072246a.pdf>.

⁸⁴ See Alana Mosley, *Re-Victimization and the Asylum Process: Jimenez Ferreira v. Lynch: Re-Assessing the Weight Placed on Credible Fear Interviews in Determining Credibility*, 36 LAW & INEQ. 315, 327-328 (2018).

⁸⁵ See ACLU, *American Exile: Rapid deportations that bypass the courtroom*, at 36-38 (2014), https://www.aclu.org/files/assets/120214-expeditedremoval_0.pdf#page=36.

⁸⁶ See Interview with Anonymous Asylum Seeker #1 Eloy, AZ (2013), interview on file with MADRE.

⁸⁷ WOMEN'S REFUGEE COMMISSION, *PRISON FOR SURVIVORS: THE DETENTION OF WOMEN SEEKING ASYLUM IN THE UNITED STATES* 20-21, 23 (2017) <https://www.womensrefugeecommission.org/rights/resources/1528-prison-for-survivors-women-in-us-detention-oct2017>.

⁸⁸ *Id.* at 23.

⁸⁹ CARA Family Detention Pro Bono Project, *Complaint to DHS: Family Detention -- Challenges Faced by Indigenous Language Speakers in Family Detention* (Dec. 10, 2015), <https://www.aila.org/advo-media/press-releases/2015/crcl-complaint-challenges-faced-family-detention>; American Immigration Council, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers*, at 1-3 (2017), <https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers>.

⁹⁰ Lulu Garcia-Navarro, *Without A Lawyer, Asylum-Seekers Struggle With Confusing Legal Processes*, NPR (Feb. 25, 2018).

⁹¹ Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, AMERICAN IMMIGRATION COUNCIL (Sept. 28, 2016) at 6, <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.

⁹² The Vera Institute reported that 54 percent of all immigration court cases filed never had representation. Karen Berberich & Nina Siulc, *Fact Sheet: Why Does Representation Matter? The Impact of Legal Representation in Immigration Court* (Nov. 2018) at 1 & n.3, https://storage.googleapis.com/vera-web-assets/downloads/Publications/why-does-representation-matter/legacy_downloads/why-does-representation-matter.pdf. A 2016 national study found that only 37 percent of all immigrants, and a mere 14 percent of those who were detained, were able to pursue their claims with assistance of counsel. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 2 (2015).

⁹³ . Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 12 n.58 (2015). (collecting research showing asylum seekers are more likely to prevail when represented by counsel); *id.* at 9 (“Among similarly situated respondents, the odds were fifteen times greater that immigrants with representation, as compared to those without, sought relief and five-and-a-half times greater that they obtained relief from removal.” (footnote omitted)).

⁹⁴ Based on 2017-2018 data analysis. *Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year, Outcome and more*, TRACIMMIGRATION, SYRACUSE UNIVERSITY (April 30, 2019), <https://trac.syr.edu/phptools/immigration/asylum/>.

⁹⁵ See e.g., Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 5-6 (2015); WOMEN'S REFUGEE COMMISSION, *PRISON FOR SURVIVORS: THE DETENTION OF WOMEN SEEKING ASYLUM IN THE UNITED STATES* 22-23 (2017)

<https://www.womensrefugeecommission.org/rights/resources/1528-prison-for-survivors-women-in-us-detention-oct2017>.

⁹⁶ Case on file with FIRRP.

⁹⁷ This issue has been well documented for the immigration courts generally as well as women's claims specifically. See, e.g., Gabriel Thompson, "Your Judge is Your Destiny," TOPIC MAGAZINE (July 2019), <https://www.topic.com/your-judge-is-your-destiny>; *Asylum Outcome Continues to Depend on the Judge Assigned*, TRACIMMIGRATION, SYRACUSE UNIVERSITY (Nov. 20, 2017), <http://trac.syr.edu/immigration/reports/490/>; Blaine Bookey, *Domestic Violence as a Basis for Asylum: An Analysis of 206 Case Outcomes in the United States from 1994 to 2012*, 24 HASTINGS WOMEN'S L.J. 107 (2013).

⁹⁸ J.M. Kirby, *Inside the US Asylum System*, MADRE (Nov. 2018), <https://www.madre.org/press-publications/your-support-action/inside-us-asylum-system-report-arizona>.

⁹⁹ *Id.*

¹⁰⁰ Case on file with FIRRP.

¹⁰¹ Universal Declaration of Human Rights, art. 14(1), G.A. Res. 217A(III), U.N. G.A.O.R., 3d Sess. at 71, U.N. Doc. A/810 (1948); American Declaration of the Rights and Duties of Man, art. 27, May 2, 1948.

¹⁰² Convention relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137.

¹⁰³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Oct. 12, 1984, 1465 U.N.T.S. 85.

¹⁰⁴ CAT Committee, General Comment No. 2: Implementation of Article 2 by States parties (39th Sess., 2007), in COMPILATION OF GENERAL COMMENTS & GENERAL RECOMMENDATIONS ADOPTED BY HUMAN RIGHTS TREATY BODIES, at 381, para. 22, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008)

¹⁰⁵ See, e.g., Comm. against Torture, Concluding Observations: Australia, ¶ 10, U.N. Doc. CAT/C/AUS/CO/3 (2008); Comm. against Torture, Concluding Observations: Finland, ¶¶ 17-18, U.N. Doc. CAT/C/FIN/Co/5-6 (2011); Comm. against Torture, Concluding Observations: Hungary, ¶ 8, U.N. Doc. CAT/C/HUN/CO/4 (2007); Comm. against Torture, Concluding Observations: Italy, ¶ 9, U.N. Doc. CAT/C/ITA/CO/4 (2007); Comm. against Torture, Concluding Observations: Turkey, ¶ 15, U.N. Doc. CAT/C/TUR/Co/3 (2011); UNHRC, Consideration of reports submitted by States parties under article 40 of the Covenant: concluding observations of the Human Rights Committee: Sweden, ¶ 17, CCPR/C/SWE/CO/6 (May 7, 2009); UNHRC, Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights, Concluding Observations: Austria, ¶ 17, CCPR/C/AUT/CO/4 (Oct. 30, 2007).

¹⁰⁶ See, e.g., Comm. against Torture, Concluding Observations: Ukraine, ¶ 20, U.N. Doc. CAT/C/UKR/CO/5 (2007). "Detention in special centres/retention centres must be accompanied by special safeguards and limitations. Thus, the long-term detention of asylum seekers while their asylum claims are considered is prohibited." Comm. against Torture, Concluding Observations on Latvia's initial report, ¶ 6, UN Doc. CAT/C.CR/31/3 (2004); Concluding Observations on Croatia's third periodic report, ¶ 9, UN Doc. CAT/C.CR/32/3 (2004), available at https://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf.

¹⁰⁷ Human Rights Comm., *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, ¶ 23 (2018).

¹⁰⁸ Comm. against Torture, Concluding Observations: Bolivia, ¶ 18, U.N. Doc. CAT/C/BOL/CO/2 (2013); Comm. against Torture, Concluding Observations: Greece, ¶ 20, U.N. Doc. CAT/C/GRC/CO/5-6 (2012); Comm. against Torture, Concluding Observations: Honduras, ¶ 17, U.N. Doc. CAT/CHND/CO/1 (2009); Comm. against Torture, Concluding Observations: Japan, ¶ 13, U.N. Doc. CAT/C/JPN/CO/2 (2013).

¹⁰⁹ Josh Hafner, *Trump calls undocumented people 'animals,' rhetoric with a dark past*, USA TODAY (May 16, 2018), <https://www.usatoday.com/story/news/politics/onpolitics/2018/05/16/trump-calls-undocumented-immigrants-animals-echoing/617762002/>.

¹¹⁰ Dylan Scott, *Trump is repeating his most explosive immigration rhetoric during the family separation crisis*, VOX (June 19, 2018), <https://www.vox.com/policy-and-politics/2018/6/19/17479542/family-separation-trump-mexico-rapists>.

¹¹¹ Josh Dawsey, *Trump derides protections for immigrants from 'shithole' countries*, WASH. POST (Jan. 12, 2018), https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.a1c36e465e98.

¹¹² Patrick J. McDonnell & Tracy Wilkinson, *Pence tells Central American leaders to do more to stem illegal immigration to the U.S.*, LOS ANGELES TIMES (June 28, 2018), <http://www.latimes.com/world/la-fg-guatemala-migrants-pence-20180628-story.html>.

¹¹³ *Transcript: White House Chief Of Staff John Kelly's Interview With NPR*, NPR (May 11, 2018), <https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr>.

¹¹⁴ A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, PROPUBLICA (July 1, 2019), <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes>.

¹¹⁵ Hillel R. Smith, *UPDATE: Termination of Temporary Status for Sudan, Nicaragua, Haiti and El Salvador, Key Takeaways and Analysis*, CONGRESSIONAL RESEARCH SERVICE (June 8, 2018), <https://fas.org/sgp/crs/homesecc/LSB10070.pdf>.

¹¹⁶ GUILLERMO CANTOS, EMILY RYO & REED HUMPHREY, AMERICAN IMMIGRATION COUNCIL, *CHANGING PATTERNS OF INTERIOR IMMIGRATION ENFORCEMENT IN THE UNITED STATES - 2016-2018*, at 15 (June 2019), available at http://americanimmigrationcouncil.org/sites/default/files/research/changing_patterns_of_interior_immigration_enforcement_in_the_united_states.pdf.

¹¹⁷ *Matter of A-B-*, 27 I&N Dec. 316, 337 (A.G. 2018).

¹¹⁸ *Id.* at 319.

¹¹⁹ *Id.* at 337 (citing *Galina v. INS*, 213 F.3d 955, 958 (7th Cir. 2000)).