AMERICANBARASSOCIATION
CILA Children's Immigration Law Academy

Navigating Asylum Law Changes: What are the Impacts on Unaccompanied Children?

An Overview and Status of Recent Changes (And Attempted Changes) to Asylum Law

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Introduction

With legal updates occurring so frequently, it can be difficult to keep up with the changes. This resource provides an overview of many of the recent changes (and attempted changes) to asylum law and how those changes impact children arriving to the United States unaccompanied. In many instances, immigration advocates filed lawsuits following a change in asylum law or policy. Therefore, litigation is frequently ongoing, and it is important to keep tabs on the case(s) to see what is currently happening. Many of these suits have thus far been successful, underscoring the importance of the work of many organizations fighting to preserve access to the asylum system.

Asylum law is a complex and dynamic area of the law with frequent changes. However, particularly between 2018 and early 2021, asylum law was under attack. Now in the wake of numerous changes (and attempted changes), the future of asylum law is still being determined. Just like with any change in the tide, the waters must first settle before we can see the future of asylum law.

Asylum law in the United States[i] was built on the principle of non-refoulement, found in international law,[ii] "that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm."[iii] Unfortunately, many of the recent changes run afoul of this principle and endanger the lives of individuals who need protection most, including children and youth.

Table

In the table below, CILA describes the change to asylum and whether it applies to unaccompanied children in the "ISSUE" column. Then under "STATUS," CILA provides an overview on pending litigation, any governmental action, helpful links to learn more, and relevant practice advisories for an in-depth look at the issue.

ISSUE	STATUS
### Asylum Ban 1.0 EWI on the Southern Border The interim final rule "Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims" (by the Department of Justice (DOJ) and Department of Homeland Security (DHS)) and Presidential Proclamation entered in November 2018	**Pending Litigation:** *East Bay Sanctuary Covenant v. Biden* • 2/28/20: The U.S. Court of Appeals for the Ninth Circuit (9th Circuit) affirmed the District Court of the Northern District of California's temporary restraining order and grant of a preliminary injunction in *East Bay Sanctuary Covenant v. Trump*. In the summary of the opinion, as part of its rationale, the Court found the "Rule is unreasonable in light of the United States' treaty obligations" and "[s]pecifically, the panel concluded that the Rule runs afoul of three codified rules: 1) the right to seek asylum; 2) the prohibition against penalties for irregular entry; and 3) principles of non-refoulement, which prohibit signatories

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seek to bar anyone who entered the United States from Mexico without inspection from being eligible for asylum. Applies to unaccompanied children.	to the 1951 Convention from returning a refugee to the frontiers of territories where his life or freedom would be threatened." • **3/24/21: 9th Circuit issued an order and amended opinion (of 2/28/20 prior opinion). The court denied the government's petition for a rehearing en banc and issued an amended opinion affirming the district court's grant of a temporary restraining order and subsequent preliminary injunction.** • The rule has not been in effect during litigation because the 9th Circuit also denied the government's emergency motion for a stay pending appeal in an opinion issued in December 2018. • Visit the ACLU's website for case updates and to read case documents. *O.A. v. Biden* • 8/2/19: U.S. District Court for the District of Columbia (D. D. C. Court) vacated the interim final rule, finding it unlawful. • 10/11/19: Notice of Appeal filed to the United States Court of Appeals for the District of Columbia Circuit Court • 12/8/20: Oral argument held before the United States Court of Appeals for the District of Columbia Circuit Court • 2/3/21: Order filed by the court directing the parties to file supplemental briefs regarding the mootness of the appeal in light of the 2/2/21 Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border. • 2/24/21: United States Court of Appeals for the District of Columbia Circuit Court ordered that the case be held in abeyance and directed the government to submit status reports on its review of the interim final rule. • 4/26/21: Status letter regarding the DOJ and DHS review of the interim final rule filed. The letter stated, "[t]he Departments report that review of the rule remains ongoing and that any final decision concerning whether to modify or rescind the rule remains pending." • Visit Human Rights First's website for more information regarding the case. On 2/2/21, President Biden issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum

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	Seekers at the United States Border" to review and determine whether to rescind the interim final rule. On 5/14/21, the Executive Office for Immigration Review (EOIR) issued Policy Memorandum (PM) 21-19 cancelling PM 19-02, *Guidelines Regarding New Regulations Governing Asylum and Protection Claims* and PM 19-03, *Guidelines Regarding the Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States*. **As of publishing on 6/29/21, the Asylum Ban 1.0 is not in effect.**
Migrant Protection Protocols (MPP) a.k.a. "Remain in Mexico" program MPP was implemented in January 2019. Unaccompanied children along with certain other vulnerable groups should not be included in the program; however, in reality, the program has impacted unaccompanied children.[iv] The MPP program required some asylum seekers on the Southern border to wait in Mexico while their claims are adjudicated.[v]	**Following Implementation of MPP:** • While the MPP program does not directly apply to unaccompanied children, many unaccompanied children have been impacted by the program. This has happened in several ways. As an example, in some cases, a child is separated from their family member at the border, and the child is then processed as an unaccompanied child while their family member waits for court in Mexico, through the MPP program.[vi] Ultimately, this makes reunification much more difficult for this child. There are other instances, where a child will go across the border by themselves after their family was placed together in the MPP program, rather than stay in harsh and dangerous conditions. In other cases, a child's parents or the child was harmed while they were together in the MPP program so the child crossed the border alone as an unaccompanied child. Each of these situations creates a difficult situation for the child due to family separation, as well as legal and procedural hurdles in her case.[vii] • Human Rights First has issued a report and published a database[viii] about the human rights abuses occurring as a result of the "Remain in Mexico" program. • The MPP program has been riddled with problems including issues such as lack of access to counsel.[ix] **Pending Litigation:** *Pekoske v. Innovation Law Lab* • Innovation Law Lab, eleven individual plaintiffs, and several organizations filed a suit challenging the MPP program. Plaintiffs are represented by the American Civil Liberties Union (ACLU), Southern Poverty Law Center (SPLC) and the Center for Gender and Refugee Studies (CGRS).

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	• 4/8/19: The District Court for the Northern District of California granted a motion for a preliminary injunction in the case, but that was appealed. On 5/7/19, the 9th Circuit granted a stay on the preliminary injunction, allowing MPP to continue while the case is pending appeal in the 9th Circuit. • 2/28/20: The 9th Circuit issued an opinion affirming the District Court for the Northern District of California's injunction against implementation and expansion of MPP. Hours later on 2/28/20, DHS filed an emergency motion for a stay pending disposition of an appeal to the Supreme Court or an immediate administrative stay, and the 9th Circuit granted an administrative stay on its decision and created a briefing schedule regarding the longer stay. • 3/4/20: The 9th Circuit issued an order denying the stay in part and granting it in part. In its order the Court stated, "Because the MPP so clearly violates §§ 1225(b) and 1231(b), and because the harm the MPP causes to plaintiffs is so severe, we decline to stay our opinion pending certiorari proceedings in the Supreme Court, except as noted below with respect to the scope of the injunction." In regard to scope, the 9th Circuit granted the stay pending an appeal to the Supreme Court as it relates to Southern border states outside of the 9th Circuit (Texas–5th Circuit and New Mexico–10th Circuit) and denied the stay as it pertains to 9th Circuit border states (California and Arizona). Additionally, the 9th Circuit extended its administrative stay until 3/11/20 providing time for the Supreme Court to review the issue, and stated, "[i]f the Supreme Court has not in the meantime acted to reverse or otherwise modify our decision, our partial grant and partial denial of the Government's request for a stay of the district court's injunction, as described above, will take effect on Thursday, March 12." • 3/11/20: The Supreme Court issued an order granting a stay of the district court's 4/8/19 preliminary injunction pending the filing and disposition of a petition for a writ of certiorari. • 4/11/20: A petition for a writ of certiorari was filed with the Supreme Court. • 10/19/20: The Supreme Court granted the petition for certiorari.[x] • 2/1/21: DHS moved the court to hold the briefing schedule in abeyance and to remove the case from the February 2021 argument calendar in light of the suspension of new enrollments in January 2021 and the Supreme Court agreed. • 5/18/21: Motion to Intervene as Petitioners filed by States of Texas, Missouri, and Arizona.[xi]

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	• 6/1/21: DHS filed Petitioner's Suggestion of Mootness and Motion to Vacate the Judgment of the Court of Appeals • **6/21/21: The Supreme Court granted the motion to vacate the judgment and remanded the case to the 9th Circuit with instructions to direct the District Court to vacate as moot the 4/8/19 order granting a preliminary injunction. The Supreme Court also dismissed the motion for leave to intervene filed by Texas, Missouri, and Arizona as moot.** • Visit the ACLU's website and the SCOTUSblog for case updates and to read case documents. On 1/20/21, DHS announced the suspension of new enrollments in the MPP program. On 2/2/21, President Biden issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border" directing review of the MPP program. **Later in February 2021, DHS announced a phased approach to process individuals with MPP cases from Mexico into the United States. Information can be found on DHS's website.** **On 6/1/21, DHS terminated the MPP program after completing a review pursuant to Executive Order 14010, as outlined in this memorandum.** Then on 6/23/21, DHS announced that it "will expand the pool of MPP-enrolled individuals who are eligible for processing into the United States. Beginning June 23, 2021, DHS will include MPP enrollees who had their cases terminated or were ordered removed in absentia (i.e., individuals ordered removed while not present at their hearings)." Most recently, DOJ/EOIR issued PM 21-26, "Migrant Protection Protocols and Motions to Reopen" on 6/24/21. **As of publishing on 6/29/21, the MPP program has been terminated. The phased strategy to process individuals affected by MPP into the United States is ongoing.**
USCIS "Lafferty Memo" & "Kim Memo"	**Pending Litigation:** *J.O.P. v. DHS* • 8/2/19: The U.S. District Court for the District of Maryland (D. Md. Court) granted a temporary restraining order and enjoined USCIS

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The "Lafferty Memo" on "Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children" issued on 5/31/19 reversed the "Kim Memo" (representing USCIS's prior policy from May 2013). The "Lafferty Memo" states USCIS now will make a new factual inquiry, independent of any prior designation by an agency other than the EOIR to determine whether the asylum applicant is an unaccompanied child at the time of filing of the asylum application. Due to litigation, the "Kim Memo" is still in effect.	from applying the "Lafferty Memo," and required USCIS to retract adverse decisions and reinstate consideration of cases applying the "Kim Memo." • 10/15/19: D. Md. Court granted a preliminary injunction enjoining USCIS from applying the Lafferty Memo, ordering USCIS to retract adverse decisions already made, and covering all applicants previously determined to be unaccompanied children. • 12/21/20: D. Md. Court entered an amended preliminary injunction and certified a class. • Litigation is ongoing. Court documents can be easily viewed on the Catholic Legal Immigration Network, Inc. (CLINIC) website. Review CLINIC's Fact Sheet on the J.O.P. litigation and for unaccompanied children who file asylum with USICS while in removal proceedings. • According to USCIS's website, "we are reviewing all asylum applications where we determined that we did not have jurisdiction under the 2019 UAC memorandum or deferred to an EOIR assessment of jurisdiction." Visit the USCIS webpage for more information on processing. **As of publishing on 6/29/21, the "Kim Memo" is still in effect as a result of favorable rulings in the J.O.P. litigation.** **BUT Immigration Judges are bound by a different policy regarding jurisdiction in unaccompanied children cases as reflected in *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018)**. "An Immigration Judge has initial jurisdiction over an asylum application filed by a respondent who was previously determined to be an unaccompanied alien child but who turned 18 before filing the application."
Asylum Ban 2.0 Transit Bar Through 3rd Country—interim final rule and subsequent final rule: "Asylum Eligibility and Procedural Modifications" 7/16/19: Interim final rule (by DHS and DOJ) bars asylum protection for individuals who	**Pending Litigation:** *East Bay Sanctuary Covenant v. Garland* • 7/16/19: *East Bay Sanctuary Covenant v. Barr* complaint filed in the U.S. District Court for the Northern District of California (N. D. Cal. Court). • 7/24/19: N. D. Cal. Court granted a preliminary injunction to East Bay. • 8/16/19: 9th Circuit granted government's motion to stay the preliminary injunction. • 9/9/19: 9th Circuit reinstates the preliminary injunction. • 9/11/19: Supreme Court grants government's stay request.

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cross the Southern border on or after 7/16/19, if they transited through a third country en route to the United States unless they sought and were denied asylum in one of the countries through which they traveled on the way to the United States. The bar also does not apply to victims of severe forms of trafficking as defined in 8 C.F.R. § 214.11 or individuals who "transited en route to the United States through only a country or countries[xii] that were not parties to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol, or the CAT."[xiii] Applies to unaccompanied children. 12/17/20: DHS and DOJ issue a final rule on the third country transit ban. The final rule only reflects minor changes to the interim final rule. Effective 1/19/21. Applies to unaccompanied children.	• 7/6/20: 9th Circuit upheld the district court's injunction, finding that the transit bar violates the law and is arbitrary. • **2/16/21: N. D. Cal. Court granted a preliminary injunction and enjoined the final rule from taking effect.** • **4/8/21: 9th Circuit issued an order and amended opinion (of 7/6/20 prior opinion). The court denied the government's petition for a rehearing en banc and issued an amended opinion affirming the district court's grant of a preliminary injunction.** • More information regarding the case can be found on the ACLU's website. *CAIR Coalition v. Trump & I.A. v. Barr* (cases were ultimately consolidated) • 7/16/19: *CAIR Coalition v. Trump* complaint filed in the D.D.C. Court. • 7/24/19: D.D.C. Court denied the motion for temporary restraining order filed by CAIR Coalition and other organization/firms. • 8/21/19: *I.A. v. Barr* complaint filed in the D.D.C. Court. The case was brought by ACLU D.C., the ACLU Immigrants' Rights Project, and the National Immigrant Justice Center on behalf of a group of asylum seekers and Tahirih Justice Center. • 6/30/20: D.D.C. Court Judge Kelly granted the Plaintiffs' Motions for Summary Judgment in *CAIR Coalition v. Trump* and *I.A. v. Barr*, and "**ORDERED** that the interim final rule, Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019) is **VACATED**." The Court found that the "Defendants unlawfully promulgated the rule without complying with the APA's notice-and-comment requirements" and that the proper remedy was to vacate the rule. • 8/28/20: Defendants appealed the D.D.C. Court decision to the U.S. Court of Appeals for the District of Columbia Circuit. • More information regarding the cases can be found on ACLU's website and CAIR Coalition's website. Also read CAIR Coalition and Tahirih Justice Center's press releases regarding the win. *Al Otro Lado, Inc. v. Wolf* • 11/19/19: The U.S. District Court for the Southern District of California (S. D. Cal.) granted a motion for a provisional class certification and motion for a preliminary injunction. The judge blocked the bar from being applied to a provisionally certified class of "all non-Mexican asylum-seekers who were unable to make a direct asylum claim at a U.S. [port of entry (POE)] before

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	July 16, 2019 because of the Government's metering policy, and who continue to seek access to the U.S. asylum process."[xiv] • 12/6/19: Plaintiffs filed a motion for a temporary restraining order prohibiting application of the Asylum Cooperative Agreement (ACA) to provisional class members. Remember the ACAs should not apply to unaccompanied children. See information below chart for more details. • The government appealed to the 9th Circuit. • 12/20/19: The 9th Circuit granted the government's motion for an emergency temporary stay of the district court's order until the 9th Circuit makes a determination on the government's motion for a stay pending appeal. • 3/5/20: The 9th Circuit issued an order denying the stay, lifting the emergency temporary stay, on the preliminary injunction. For now, this leaves the lower court's preliminary injunction in place prohibiting application of the transit bar to the provisionally certified class. • 8/6/20: S. D. Cal Court granted Plaintiff's motion for class certification. American Immigration Council (AIC) explained the win allows "the case to proceed on behalf of all asylum seekers along the U.S.-Mexico border who were or will be prevented from accessing the asylum process at ports of entry as a result of the government's Turnback policy." Read the specific class and sub-class language here. • Visit AIC's website for case updates and for a link to a helpful FAQ regarding this case. On 2/2/21, President Biden issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border" to review and determine whether to rescind the final rule. On 5/14/21, EOIR issued PM 21-20 cancelling PM 19-12, *Guidance Regarding New Regulations Governing Asylum and Protection Claims*. The cancellation was consistent with the court orders and Executive Order 14010. **Following the issuance of a final rule on the Asylum Ban 2.0 Transit Bar Through 3rd Country in December 2020, the N. D. Cal. Court granted a preliminary injunction and enjoined the final rule from taking effect in *East Bay Sanctuary Covenant v. Barr*.**

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	Therefore, as of publishing on 6/29/21, the Asylum Ban 2.0 is not in effect.
Matter of A-B- (Attorney General Certified BIA Decisions) *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) issued by Attorney General Sessions set back years of progress on domestic violence cases and overruled *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), which found "married women in Guatemala who are unable to leave their relationship" as a cognizable particular social group (PSG). On January 14, 2021, a second Attorney General certified decision was issued in *Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021) by Acting Attorney General Rosen. **Then on June 16, 2021, a third Attorney General certified case was issued in *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) by Attorney General Garland.**	• 6/11/18: *Matter of A-B-* (*A-B- I*) Attorney General certified decision issued. • 7/11/18: DHS implemented new expedited removal policies based on *Matter of A-B-*. • 12/19/18: The District Court for D.C. issued an opinion and order in *Grace v. Whitaker,* a lawsuit filed by the ACLU and CGRS. The case primarily deals with expedited removal and the credible fear process (which does not apply to unaccompanied children), but it also rejects some aspects of *Matter of A-B.* Of particular importance in asylum cases for unaccompanied children, the court enjoined any categorical ban on domestic violence and gang-based asylum claims. • 1/14/21: *Matter of A-B-* (*A-B- II*) Attorney General certified decision issued. Learn more information regarding *Matter of A-B-* and litigation efforts on this case from CGRS. • **6/16/21: *Matter of A-B-* Attorney General certified decision issued vacating both prior *A-B-* cases (I and II) in their entirety. The decision stated *A-B- I* "threaten[ed] to create confusion and discourage[d] careful case-by-case adjudication of asylum claims" and *A-B- II* did not involve a thorough consideration of the issues. Now, "[i]nstead, pending forthcoming rulemaking, immigration judges and the Board should follow pre-*A-B- I* precedent, including *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014)." The decision referenced Executive Order No. 14010 from 2/2/21 that directed "the Attorney General and the Secretary of Homeland Security to promulgate regulations 'addressing the circumstances in which a person should be considered a member of 'a particular social group.'" In issuing the decision, the agency now has more flexibility in forthcoming rulemaking.** Several U.S. Courts of Appeals have issued decisions post-*Matter of A-B-* with some helpful language, including: • In April 2020, the U.S. Court of Appeals for the First Circuit issued *De Pena-Paniagua v. Barr*. See CGRS's website for more information relating to the case. • In May 2020, the U.S. Court of Appeals for the Sixth Circuit issued a decision in *Juan Antonio v. Barr* with positive language post *Matter of A-B-*. Learn more about this case from CGRS.

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	• In August 2020, the 9th Circuit issued a decision in *Diaz-Reynoso v. Barr* finding that "despite the general and descriptive observations set forth in the opinion, *Matter of A-B-* did not announce a new categorical exception to withholding of removal for victims of domestic violence or other private criminal activity, but rather it reaffirmed the Board's existing framework for analyzing the cognizability of particular social groups, requiring that such determinations be individualized and conducted on a case-by-case basis." Read more from CGRS here. • In April 2021, the 9th Circuit issued a favorable decision in *Rodriguez Tornes v. Garland*. Learn more from CGRS here. **This case, as well as *Matter of L-E-A-,* changed the landscape of asylum claims involving PSGs. The case did not categorically ban asylum claims based on domestic violence, but it made it much harder to be successful. However, in June 2021, AG Garland issued the third *Matter of A-B-* decision vacating the prior two *A-B-* decisions. This was a significant step toward the protection of individuals with domestic violence related claims. If you represented a client who was denied their case based on *Matter of A-B-*, it may be necessary to take further steps such as seeking prosecutorial discretion or filing a motion to remand, motion for supplemental briefing, motion to reconsider, or motion to reopen, etc. depending on the stage and factors involved in your case. CILA has a recorded webinar covering equitable tolling and motions practice in the MPP context, but much of the information could be helpful in this context.**

Matter of L-E-A- (Attorney General Certified BIA Decisions)
 	
Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019) issued by Attorney General Barr overruled *Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017) which affirmed that family can be a PSG.
 	
Then on June 16, 2021, Attorney General certified case was issued in *Matter of*
	• 7/29/19: *Matter of L-E-A- (L-E-A- II)* Attorney General certified decision issued overruling *Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017).
	• *Pena Oseguera v. Barr,* No. 17-60339 (5th Cir. 2019).
	  • *Matter of L-E-A-* "stands for the proposition that families *may* qualify as social groups, but the decision must be reached on a case-by-case basis." The "applicant must establish that his specific family group is defined with sufficient particularity and is socially distinct in his society." This is a "fact-based inquiry made on a case-by-case basis."
	  • "We recognize that *Matter of L-E-A-* is at odds with the precedent of several circuits. *Matter of L-E-A-*, 27 I&N Dec. at 589-91 (analyzing precedent from the First, Fourth, Sixth, Seventh, Eighth, and Ninth Circuits.) However, it is not at odds with any precedent in the Fifth Circuit."

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***L-E-A-*, 28 I&N Dec. 304 (A.G. 2021) by Attorney General Garland.**	• 9/30/19: USCIS released its policy guidance to USCIS officers regarding *Matter of L-E-A-*. • 11/22/19: CLINIC along with Crowell & Moring LLP filed a lawsuit in a District Court for D.C. challenging policy guidance following the A.G. decision in the expedited removal context. CLINIC "is monitoring how government officials and immigration judges are interpreting the attorney general's opinion. To that end, please share with CLINIC redacted copies of any decisions that rely on the attorney general's opinion." If you have a case in which an adjudicator relies on the attorney general's opinion, check out their webpage and contact CLINIC. • CLINIC created a practice pointer regarding representation post *Matter of L-E-A-*. Additionally available on CLINIC's website, "CLINIC has translated Title II of the Salvadoran Civil Code entitled 'Rules Relative to Intestate Succession,' which may help practitioners establish a cognizable family-based particular social group on behalf of Salvadoran clients." Learn more information regarding *Matter of L-E-A-* and litigation efforts on this case from CGRS. • **6/16/21: *Matter of L-E-A-* Attorney General certified decision issued vacating *L-E-A- II* in its entirety, "pending completion of the ongoing rulemaking process and the issuance of a final rule addressing the definition of 'particular social group.'" The decision referenced Executive Order No. 14010 from 2/2/21 that directed "the Attorney General and the Secretary of Homeland Security to promulgate joint regulations 'addressing the circumstances in which a person should be considered a member of 'a particular social group.'" The decision noted the inconsistency of *L-E-A- II* with multiple courts of appeals and discussed that the preferable administrative process to determine such issues was through rulemaking.** **This case, as well as *Matter of A-B-*, changed the landscape of asylum claims involving PSGs. The case did not categorically ban asylum claims based on family PSGs, but it made it much harder to be successful. However, in June 2021, AG Garland issued the third *Matter of L-E-A-* decision vacating *L-E-A- II*. This was a significant step for individuals with family related PSGs. If you represented a client who was denied their case based on *Matter of L-E-A-*, it may be necessary to take further steps such as seeking prosecutorial discretion or filing a motion to remand, motion for supplemental briefing, motion to reconsider, or**

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	motion to reopen, etc. depending on the stage and factors involved in your case. CILA has a recorded webinar covering equitable tolling and motions practice in the MPP context, but much of the information could be helpful in this context.
Matter of W-Y-C- & H-O-B- BIA Decision *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018) holds that "(1) [a]n applicant seeking asylum or withholding of removal based on membership in a particular social group must clearly indicate on the record before the Immigration Judge the exact delineation of any proposed particular social group. (2) The Board of Immigration Appeals generally will not address a newly articulated particular social group that was not advanced before the Immigration Judge."	**Following *Matter of W-Y-C- & H-O-B-*:** • *Cantarero-Lagos v. Barr*, No. 18-60115 (5th Cir. 2019)—Affirmed BIA's decision to not consider "a PSG on appeal that was never presented to the immigration judge ('IJ')."
USCIS Rejections of Form I-589 Due to Blank Spaces Many asylum applications were being rejected as incomplete for having blank spaces. This included questions where an appropriate response was "none," "unknown," or "n/a." Applies to unaccompanied children.	**Pending Litigation:** *Vangala v. USCIS:* • 11/19/20: Complaint and motion for class certification filed in N. D. Cal. Court. • 4/1/21: USCIS agreed to pause implementation of the blank space rejection policy beginning 12/23/20. USCIS confirmed this in an alert. The statement says, "USCIS will no longer reject Form I-589, Form I-612 or Form I-918 if an applicant leaves a blank space. However, applicants should be aware that we may reject these forms, or it might create delays in their case, if the applicant: o Leaves required spaces blank; o Fails to respond to questions related to filing requirements; or o Omits any required initial evidence." • View the National Immigration Litigation Alliance's (NILA) website to learn more and read the FAQ from counsel.

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	USCIS announced on 4/1/21 that the "Blank Space Policy" has been rescinded for Form I-589. USCIS still warns that leaving a *required* space blank, failing to respond to filing requirement related questions, or omitting any evidence may still lead to rejection or delay the case.
Final rule: "Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications" DHS published a new final rule in the Federal Register on 6/21/20 relating to processing asylum-based employment authorization documents. Applies to unaccompanied children.	• The rule's summary states "[t]he final rule removes a Department of Homeland Security (DHS) regulatory provision that U.S. Citizenship and Immigration Services (USCIS) has 30 days from the date an asylum applicant files the initial Form I-765, Application for Employment Authorization, (EAD application) to grant or deny that initial employment authorization application. This rule also removes the provision requiring that the application for renewal must be received by USCIS 90 days prior to the expiration of the employment authorization." • **The final rule is effective as of 8/21/20.** • **5/7/21: DHS Secretary Mayorkas ratified the rule.** **As of publishing on 6/29/21, the rule is in effect except as to certain provisions pertaining to litigation described in the below row.**
Final rule: "Asylum Application, Interview, and Employment Authorization for Applicants" DHS published a final rule in the Federal Register on 6/26/20 to "modify DHS's regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application. [The] final rule implements the proposed rule, with some amendments based on public	• The new final rule issued on 6/26/20 made several changes. USCIS's press release states, "[t]he rule prevents aliens who, absent good cause, illegally entered the United States from obtaining employment authorization based on a pending asylum application. Additionally, the rule defines new bars and denials for employment authorization, such as for certain criminal behavior; extends the wait time before an asylum applicant can apply for employment authorization from 150 days to 365 calendar days; limits the employment authorization validity period to a maximum of two years; and automatically terminates employment authorization when an applicant's asylum denial is administratively final." • There is now also a discretionary component to adjudication of asylum seekers' employment authorization document so advocates may want to provide evidence of positive discretionary factors. • CLINIC has a FAQ available on the new rule, and ILRC issued a Practice Advisory on EADs for asylum applicants. • **The final rule is effective as of 8/25/20.**

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comments received." Applies to unaccompanied children.	**Pending Litigation:** *Casa de Maryland v. Mayorkas* • 9/11/20: U.S. District Court for the District of Maryland issued a preliminary injunction enjoining provisions of the two new rules relating to asylum seekers' ability to obtain an employment authorization document as the rules pertain to members of the Asylum Seeker Advocacy Project (ASAP) and CASA de Maryland (CASA). • Read more information about the case from ASAP on its webpage regarding litigation updates and how the ruling affects its members. CASA also provides a helpful chart comparing the old and new rule and includes information on if/how the new rule applies to members. Additional information is also on USCIS's website. **As of publishing on 6/29/21, the final rule is in effect for everyone except ASAP and CASA members.**
Filing fee for Form I-589 in final rule: "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" DHS published a new final rule in the Federal Register to introduce a non-waivable $50 fee for asylum applications, when filed with USCIS. The proposed rule also impacts several other types of cases such as adjustment of status, DACA renewals, and naturalization.[xv] There is an exception for unaccompanied children in removal proceedings.	• The final rule was published on 8/3/20, and the rule was set to go into effect on 10/2/20; however, because of litigation, USCIS is halted from implementing the final rule. • According to the new rule, there is a $50 filing fee for Form I-589, but "[t]here is no fee for applications filed by unaccompanied alien children who are in removal proceedings." • The rule also requires asylum applicants to pay the initial filing fee for the I-765. **Pending Litigation:** *ILRC, et al., v. Wolf, et al.* • 8/21/20: Immigrants' rights organizations filed a lawsuit. • 9/29/20: N. D. Cal. Court granted a preliminary injunction and stay halting the implementation of USCIS' final fee rule in its entirety nationally pending a final adjudication. • 11/30/20: Appeal filed with the 9th Circuit. • 12/28/20: Appellants' unopposed motion for voluntary dismissal of its appeal granted by the 9th Circuit. • 1/29/21: USCIS filed a notification of the preliminary injunction in the Federal Register indicating compliance with the court orders. • CLINIC set up a webpage that features multiple resources on the issue. Also, read AILA's update covering the topic. **As of publishing on 6/29/21, this rule is not in effect because of a preliminary injunction.**

ISSUE	STATUS
Final rule: "Procedures for Asylum and Bars to Asylum Eligibility" DHS and EOIR published the final rule in the Federal Register on 10/21/20 to announce several changes to asylum bars and eligibility. Applies to unaccompanied children.	• The proposed rule was published on 12/19/19, and the final rule was published on 10/21/20. The final rule was slated to go into effect on 11/20/20 and apply to applications filed after that date. However, the rule did not go into effect due to litigation. • The rule presented several changes and barriers to asylum law including new bars of eligibility for asylum, clarifying the effect of criminal convictions, and removing current regulatory provision regarding reconsideration of discretionary asylum denials. • Read EOIR's press release for a summary of changes. Many spoke out against the proposed rules, and you can read several organizations' comments to learn more: Human Rights Watch, American Immigration Council, and Tahirih Justice Center. **Pending Litigation:** *Pangea v. DHS* • 11/2/20: Nonprofit immigration services organizations Pangea Legal Services, Dolores Street Community Services, CLINIC, and Capital Area Immigrants' Rights Coalition, filed a lawsuit in N. D. Cal. Court challenging the rule. • 11/19/20: N. D. Cal. Court granted a temporary restraining order and enjoined the government from implementing and enforcing the rule nationwide. The court found that the rule exceeded the Department's statutory authority and that it was arbitrary and capricious under the APA. • 11/24/20: N.D. Cal. Court issued order converting temporary restraining order to preliminary injunction per an agreement. • 12/23/20: DHS filed an appeal with the 9th Circuit. • 12/28/20: N.D. Cal. Court stayed proceedings pending the appeal. The preliminary injunction remains in place. • 1/28/21: 9th Circuit granted the parties' motion to hold the case in abeyance until 4/27/21. • 4/26/21: The parties filed a joint motion to hold the appeal in abeyance pending review of the rule by DOJ and DHS. • Read more regarding the impact of comments to the proposed rule on the litigation in Jeffrey S. Chase's blog post "Pangea v. DHS: The Power of Comments." More information on the case is also on the court's website and in NIPNLG's *Federal Court Enjoins New Criminal Bars to Asylum: Pangea Legal Services v. DHS Litigation Update & FAQs*. **As of publishing on 6/29/21 the rule is enjoined and is not in effect.**

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Impact of COVID-19 on asylum seekers Following the rise of the COVID-19 pandemic, the United States effectively closed its borders to unaccompanied children and asylum-seekers in mid-March 2020 considering their travel *non-essential*. MPP hearings were also suspended in mid-March. In total, the United States has expelled over 845,000 individuals as a result since March 2020, pursuant to a public health law, Section 265 of U.S. Code Title 42. This includes over 15,000 unaccompanied children, who were expelled rather than being processed under the protections of the TVPRA.[xvi] Unaccompanied children have been allowed to enter the United States to seek protection since January 2021, but others are still expelled and prevented from seeking protection.	• The Centers for Disease Control and Prevention (CDC) issued an interim final rule and an order, effective on 3/20/20, limiting entry to the United States for public health reasons. In April, the CDC extended the order and then again on 5/19/20, CDC extended the order without providing an end date. • 3/20/20: The United States reached agreements with Canada and Mexico to limit all non-essential travel across land borders, both with multiple extensions. • 3/20/20: DHS issued a rule limiting travel of individuals from Mexico to the United States along the United States-Mexico border to only "essential travel." • 5/24/20: Trump issues Presidential Proclamation limiting entry from Brazil. • Leaked guidance from Customs and Border Protection shows that only migrants who "make an affirmative, spontaneous, and reasonably believable claim that they fear being tortured in the country they are being sent back to" and subject to supervisory input will be allowed in the United States and referred to USCIS to evaluate further. All other asylum seekers are expelled. • **1/30/21: Unaccompanied children were excepted from the Title 42 expulsions and could enter the United States.** • 2/2/21: President Biden issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border" directing review of the CDC Order. • UNHCR stated on the issue in March 2020, "while States may put in place measures which may include a health screening or testing of persons seeking international protection upon entry and/or putting them in quarantine, such measures may not result in denying them an effective opportunity to seek asylum or result in refoulement." UNHCR continues to appeal to the United States to restore access to asylum and to stop expelling asylum seekers pursuant to Title 42. • Multiple public health experts stated that the CDC's March 2020 Order lacked public health justification. COVID-19 has been used as a pretext to expel migrants since March 2020. • You can read more about the impact on asylum seekers and unaccompanied children in the National Immigrant Justice Center's *The Latest Brick in the Wall: How the Trump Administration Unlawfully 'Expels' Asylum Seekers & Unaccompanied Children in the Name of Public Health*, CGRS's

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	Factsheet: The COVID-19 Pandemic and Closing the Border to Asylum Seekers, KIND's *Sending Children Back to Danger* Policy Brief, and AIC's *A Guide to Title 42 Expulsions at the Border*. **Related Litigation:** *J.B.B.C. v. Wolf* • ACLU, CGRS, and Oxfam are challenging the restrictions on immigration based on the use of the Public Health Service Act, in Title 42 of the U.S. Code. The challenge was filed in federal court in Washington, D.C. ACLU states, "Title 42 does not permit expulsions of non-citizens who are in the United States, nor does it legally allow the removal of children." The case was filed on behalf of a 16-year-old Honduran boy. Read more about the case on the ACLU's website. • 6/24/20: The presiding judge prohibited removal of the boy as the lawsuit continues. • 8/6/20: Plaintiff's notice of voluntary dismissal filed. *G.Y.J.P. v. Wolf* • The ACLU of Texas, CGRS, Texas Civil Rights Project, ACLU of D.C., ACLU National, and Oxfam additionally challenge the Trump administrations' restriction of immigration based on the Public Health Service Act. The case was filed on 6/10/20 in the District Court for D.C. on behalf a 13-year-old girl from El Salvador. • According to ACLU Texas, "[u]nder longstanding immigration statutes protecting children, G.Y.J.P. should have been given shelter in a children's facility until she could be released to her mother, already lawfully residing in the U.S. G.Y.J.P. should have had a full and fair proceeding to determine her right to protection in the U.S." • 1/7/21: Voluntary Dismissal filed; case dismissed without prejudice. *P.J.E.S. v. Pekoske* • 9/25/20: U.S. District Court for DC Magistrate Judge's Report and Recommendation recommended provisionally granting certification of a class "consisting of all unaccompanied noncitizen children who (1) are or will be detained in U.S. government custody in the United States, and (2) are or will be subjected to expulsion from the United States under the Title 42 Process . . . ." and recommends granting a preliminary injunction to enjoin DHS from expelling class members under the Title 42 Process.

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	• 11/18/20: U.S. District Court Judge adopted the Magistrate Judge's Report and Recommendation and provisionally granted certification of a class and granted the preliminary injunction. • 1/29/21: U.S. Court of Appeals for the District of Columbia Circuit granted a stay of the District Court's decision. • Visit the ACLU's website for case updates. **As of publishing on 6/29/21, unaccompanied children may enter the United States to seek protection. However, the United States' borders are otherwise effectively closed to asylum seekers. Thousands have been expelled since March 2020 as a result of actions taken by the U.S. government after the rise of COVID-19.**

Proposed rule and subsequent final rule: "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review" (sometimes known as mammoth rule)
 	
6/15/20: DHS and DOJ published a proposed rule in the Federal Register that proposes multiple changes to regulations governing asylum, withholding of removal, and protection under the Convention Against Torture.
 	
12/11/20: DHS and DOJ issued a final rule, with few changes to the proposed rule. The rule seeks to vastly change these protections and greatly limit those who will be able to succeed in their cases for protection and safety.
	• The proposed rule was published on 6/15/20.
	• The proposed rule includes multiple changes to asylum and withholding of removal including:
	  ○ Changing the definition of *frivolous* to broaden the definition and "discourage applications that make patently meritless or false claims." The proposed rule would also allow asylum officers adjudicating affirmative asylum applications to make findings that individuals have knowingly filed a frivolous application.
	  ○ Adding regulatory language "to clarify that immigration judges may pretermit and deny an application for asylum, statutory withholding of removal, or protection under the CAT regulations" if the individual has not shown a prima facie claim for relief.
	  ○ Codifying PSG requirements and outlining several non-exhaustive bases that would "generally be insufficient" to establish a PSG including, for example "presence in a country with generalized violence or a high crime rate" and "the attempted recruitment of the applicant by criminal, terrorist, or persecutory groups."
	  ○ Changing the definition of *political opinion* "as one expressed by or imputed to an applicant in which the applicant possesses an ideal or conviction in support of the furtherance of a discrete cause related to political control of a state or a unit thereof." The proposed rule states several bases that would not generally lend to a favorable adjudication including opposition to gangs.
	  ○ Changing the definition of *persecution* for asylum and withholding of removal claims

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The rule largely applies to unaccompanied children. There are some portions of the rule that relate to credible and reasonable fear interviews; these portions are not relevant to unaccompanied children since unaccompanied children are not subject to expedited removal.	○ Providing a list of eight non-exhaustive situations relating to nexus that generally will not favorably result in a grant of asylum or withholding of removal including claims including "gender," "interpersonal animus in which the alleged persecutor has not targeted or manifested an animus against, other members of an alleged particular social group in addition to the member who has raised the claim at issue . . .," "resistance to recruitment or coercion by guerilla, criminal, gang, terrorist, or other non-state organizations . . . ." ○ Changing standards related to internal relocation–"the Departments propose to amend the regulations to presume that for applications in which the persecutor is not a government or government-sponsored actor, internal relocation would be reasonable unless the applicant demonstrates by a preponderance of the evidence that it would not be." ○ Outlining positive and negative factors adjudicators must consider when determining whether an individual merits asylum as a matter of discretion ○ Changing the definition of *firm resettlement*. Additionally, the "Departments propose that the firm resettlement of a parent or parents with whom a child was residing at the time shall be imputed to the child." ○ Changing standards in CAT claims regarding rogue officials and *acquiescence* of a public official or other person acting in an official capacity ○ Changing confidentiality provisions regarding asylum applications • The above list captures only a few of the expansive changes included in the proposed rule. As CGRS stated, "the Administration is now attempting to write their vast array of anti-asylum policies, procedures, and legal opinions into law – by proposing a behemoth rule that would codify their hatred in the form of binding federal regulations." • CILA's blog post on the matter provides multiple sources to confer to learn more. For instance, the American Bar Association (ABA) provided a webinar summarizing many of the proposed changes. • Over 87,000 comments were submitted in response to the proposed rule. For example, read the ABA's comments, The Young Center's comments, and CLINIC's comments. • DHS and DOJ published the final rule on 12/11/20, and the rule was scheduled to go into effect on 1/11/21. Despite many

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	comments, few changes were made comparatively to the proposed rule. • On 12/11/20, EOIR also issued PM 21-09, *Guidance Regarding New Regulations Governing Procedures for Asylum and Withholding of Removal and Credible Fear and Reasonable Fear Reviews*. • The rule did not go into effect due to litigation. As a result, on 5/14/21, in PM 21-22, EOIR cancelled PM 21-09. **Pending Litigation:** *Pangea Legal Services II v. DHS* (Note: *Immigration Equality v. DHS* was decided in tandem with *Pangea Legal Services II v.* in N. D. Cal. Court) • 12/23/20: Several legal services organizations, Pangea Legal Services, Dolores Street Community Services, Inc., CLINIC, and Capital Area Immigrants' Rights Coalition, sought a temporary restraining order in the N. D. Cal. Court. • **1/8/21: N. D. Cal. Court issued a nationwide preliminary injunction enjoining the government from implementing, enforcing, or applying the rule. The injunction pre-dated the rule's enforcement date.** • 1/28/21: N. D. Cal. Court stayed both cases pursuant to a joint request pending further order by the Court. • 4/19/21: N. D. Cal. Court stayed both cases pursuant to a joint request pending further order by the Court. The Court ordered the parties to file a "joint status report by May 19, 2021, advising the Court of the status of the government's review of the regulation at issue in these cases, and of any relevant policy changes or other material developments." • 5/19/21: Joint status report filed along with plaintiff's request for a status conference because they believe that the government is not fully complying with the preliminary injunction. The government submit that they are fully complying. The parties also requested that the cases remain in abeyance with the preliminary injunction in effect until the status conference takes place. A primary reason that the plaintiffs believe that the government is not fully complying with the preliminary injunction is because they are "publishing [the rule] on their websites and linking to it without meaningfully notifying the public—as they have done in other cases—that the regulations have been enjoined, have never taken effect, and are not operative . . . Despite the

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	preliminary injunction, the Rule at issue in this case remains published on the Government's e-CFR website." • 6/8/21: N. D. Cal. Court scheduled a status conference for 8/19/21. • Learn more about the case from CGRS. Following the January 2021 win, a press release from Pangea Legal Services included this statement from one of the attorneys on the case, "'[t]his monstrosity of a rule would erect nearly insurmountable obstacles to protection for people fleeing life-threatening violence,' said Jamie Crook, Director of Litigation at the Center for Gender & Refugee Studies, who argued the case on Thursday. 'We are grateful that the court has taken swift action to stop this dangerous rule from taking effect – and placing courageous refugees in harm's way.'" *Human Rights First v. Wolf* • 12/21/20: Lawsuit filed in the D. D. C. Court. • For more information on the case, visit Human Rights First's website. **As of publishing on 6/29/21, this rule is not in effect due to litigation.**
Proposed rule and subsequent final rule: "Security Bars and Processing" 7/9/20: DHS and EOIR published a proposed rule in the Federal Register. The proposed rule seeks to amend regulations to reflect that "emergency public health concerns based on communicable disease due to potential international threats from the spread of pandemics" when considering the national security bar to asylum and withholding of removal.	• The proposed rule was published on 7/9/20.. CLINIC states in their summary, "[t]he proposed rule seeks to bar entry of asylum applicants who have tested positive for COVID-19, come from a country where COVID-19 is prevalent, and/or exhibit COVID-19 symptoms." Read more from CLINIC here. Read Human Rights Watch's comments and the AIC and AILA's comments to the proposed rule. • DHS and DOJ published the final rule on 12/23/20, and the rule was scheduled to go into effect on 1/22/21. • However, on 1/20/21, the White House Chief of Staff issued a memorandum *Regulatory Freeze Pending Review*. The memorandum called for rules already published in the Federal Register that had not yet taken effect to be "considered" for a 60-day postponement while they were reviewed. This rule fit into that category, so the effective date was postponed. • On 1/25/21, DHS and DOJ published a rule in the Federal Register indicating delay of the effective date to 3/22/21. The rule also stated that "[i]mplementing the Security Bars rule will not be viable" given the injunction in *Pangea Legal Services II v. DHS* and the fact that much of this rule relied upon or repeated

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12/23/20: DHS and DOJ published a final rule on the issue. Applies to unaccompanied children.	portions of the rule, "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review." • On 3/22/21, DHS and DOJ published an interim final rule with request for comments. In this rule, they further extended and delayed the rule's effective date to December 31, 2021. The rule also stated, "In addition, in light of evolving information regarding the best approaches to mitigating the spread of communicable disease, the Departments are also considering action to rescind or revise the Security Bars rule." **As of publishing on 6/29/21, this rule is not in effect. Currently, the interim final rule is set to go into effect on 12/31/21.**

Proposed rule: "Collection and Use of Biometrics by USCIS" and subsequent withdrawal of rule
 	
9/11/20: DHS published a proposed rule in the Federal Register that would make several changes to biometrics procedures.
 	
5/10/21: DHS withdraws the proposed rule.
	• The proposed rule was published on 9/11/20.
	• The proposed rule includes several changes including:
	  ○ Removing all age restrictions for biometrics collection which is generally restricted for children under age 14
	  ○ Proposing that any applicant, petitioner, sponsor, beneficiary, or individual filing or associated with an immigration benefit request including U.S. citizens would have to appear for biometrics collection and regardless of age
	  ○ Providing authority to use new biometric technologies including palm prints, facial photos, iris scans, voiceprints, etc.
	  ○ Allowing for DNA testing to prove a claimed genetic relationship
	  ○ Modifying how VAWA and T visa petitioners demonstrate good moral character including removing the presumption for good moral character for those under age 14
	• Read CLINIC's and the ACLU's comments to the proposed rule.
	• **5/10/21: DHS withdrew the proposed rule.** DHS stated, "[t]he withdrawal is consistent with the Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, and additional administration priorities to reduce barriers and undue burdens in the immigration system."
	
	As of publishing on 6/29/21, DHS withdrew this proposed rule.

Proposed rule and subsequent final rule: "Procedures for Asylum and Withholding of Removal"	• EOIR published the proposed rule on 9/23/20.
	• The proposed rule includes several changes including:
	  ○ Creating a 15-day deadline to file asylum applications after a first MCH
	  ○ Court can reject incomplete applications if there are any blank areas, unsigned, or lacks supporting attachments

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9/23/20: EOIR published a proposed rule seeking to make multiple changes for asylum seekers. 12/16/20: EOIR published final rule on issue. Applies to unaccompanied children.	○ Allowing IJ to submit evidence into the record and changing how supporting evidence is reviewed ○ Restricting continuance timeframes • EOIR published the final rule on 12/16/20. The rule was slated to take effect 1/15/21, but it did not take effect as a result of a preliminary injunction. **Pending Litigation:** *NIJC v. EOIR* • 1/8/21: National Immigrant Justice Center, Immigrant Defenders Law Center, Florence Immigrant & Refugee Rights Project, and Las Americas Immigrant Advocacy Center filed a complaint in D. D. C. Court. • 1/14/21: D. D. C. Court granted a temporary restraining order and preliminary injunction halting the rule. Read more from NIJC on the case. **As of publishing on 6/29/21, this rule is not in effect due to a preliminary injunction.**

Other Changes Not Directly Applicable to Unaccompanied Children

There have also been several additional changes to asylum law that are not directly applicable to unaccompanied children, such as changes to credible fear interview procedures[xvii] and expedited removal processes,[xviii] as well as litigation challenging the changes. As a result of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, unaccompanied children are not subject to expedited removal because they have a right to go through removal proceedings.

Additionally, the United States worked on safe third country agreements (or "Asylum Cooperation Agreements"–ACAs) with Guatemala[xix], El Salvador, and Honduras[xx] in 2019 and 2020. Generally, an individual cannot apply for asylum if there is a safe third country, where the individual could be removed; however, this does not apply to unaccompanied children.[xxi] USCIS and EOIR published a joint interim final rule on November 19, 2019 in the Federal Register "to provide for the implementation" of the ACAs the United States has entered into, except the agreement with Canada.[xxii] The rule applies to immigrants who enter the United States on or after November 19, 2019. EOIR additionally issued guidelines for immigration courts regarding the new regulations, and USCIS created guidance for Asylum Officers. The United States began transferring individuals to Guatemala as a result of the agreement, but the transfers stopped in mid-March as a result of COVID-19; transfers to El Salvador and Honduras were never

implemented.[xxiii] Read Human Rights Watch's *Deportation with a Layover, Failure of Protection under the US-Guatemala Asylum Cooperative Agreement* to learn more about how the ACA with Guatemala and how those who were transferred under this agreement have been impacted. Litigation is pending regarding the legality of the rule and guidance implementing the ACAs.[xxiv] The United States has had a Safe Third Country Agreement with Canada since 2002 and implemented since 2004; however, the agreement was recently the subject of litigation.[xxv]

In February 2021, the Biden administration issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border." Following that executive order, the Department of State suspended the ACAs with El Salvador, Guatemala, and Honduras and began steps to terminate the agreements. EOIR also cancelled PM 20-04, *Guidelines Regarding New Regulations Providing for the Implementation of Asylum Cooperative Agreements* in PM 21-21.

Additional Resources

If you want to read more about recent changes to asylum law, below are a few articles that provide helpful explanations. These articles were also consulted when drafting this resource.

- AIC, *Fact Sheet: Policies Affecting Asylum Seekers at the Border*, January 29, 2020.
- National Immigrant Justice Center, *A Timeline of The Trump Administration's Efforts To End Asylum*, December 2020.
- AILA, *Featured Issue: Border Processing and Asylum*, *AILA Doc. No. 19032731*, May 14, 2021.
- AILA, *Tracking Notable Executive Branch Action During the Trump Administration*, *AILA Doc No. 20091615*, June 24, 2021.

Moreover, read CILA's blog posts, *Biden Administration Immigration Updates* and *UPDATE: Biden Administration Immigration Actions*, to learn more about immigration-related actions the Biden Administration has taken since taking office in January 2021 and how the policies affect children and youth.

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[i] Congressional Research Service, "Immigration: U.S. Asylum Policy," Andorra Bruno, Feb. 19, 2019.

[ii] "In 1968, the United States acceded to the 1967 United Nations Protocol Relating to the Status of Refugees (Protocol). The Protocol incorporated the 1951 United Nations Convention Relating to the Status of Refugees (Convention) . . ." *Id*. at 8. "The Protocol retained other elements of the Convention, including the latter's prohibition on *refoulement* (or forcible return), a fundamental asylum concept." *Id*. "Despite the U.S. accession to the 1967 U.N. Protocol, the INA did not include a conforming definition of a refugee or a mandatory nonrefoulement provision until the enactment of the Refugee Act of 1980." *Id*. at 9.

[iii] Non-refoulement explained by the United Nations Human Rights Office of the High Commissioner.

[iv] Learn more about the MPP program in American Immigration Council's Fact Sheet, as well as what the DHS says in CBP's MPP Guiding Principles.

[v] Laura Peña, with the American Bar Association (ABA), along with other experts presented testimony before Congress regarding the MPP program in November 2019. ABA, *ABA counsel testifies about*

concerns with Remain in Mexico immigration policy, Nov. 19, 2019. *See also* Chicago Tribune, *'Remain in Mexico' policy faces internal critiques at House hearing*, CQ Roll Call, Tanvi Misra, Nov. 19, 2019.

[vi] Reuters, *When the U.S. puts a border between migrant kids and their caretakers*, Kristina Cooke, Nov. 11, 2019.

[vii] CILA co-hosted two webinars with CLINIC in 2020 focused on working with children affected by MPP, which are available to view for free on CILA's website. The webinars are entitled *Strategies for Working with Children Affected by MPP* and *Strategies for Working with Children Affected by MPP, Part 2: Equitable Tolling, Motions to Reopen, Motions to Stay*.

[viii] According to Human Rights First's website, "Human Rights First has published for the first time its running database tracking kidnappings, attacks and other violence against asylum seekers under the 'Remain in Mexico' policy." The press release goes on to say, "[t]he tracker invites asylum seekers, attorneys, human rights researchers and others to provide information about abuses that researchers can investigate, assess and potentially add to the database. It also has a feature to assist asylum seekers or attorneys to file a formal complaint to the U.S. Department of Homeland Security's Office for Civil Rights and Civil Liberties."

[ix] The ACLU of San Diego and Imperial Counties filed *Doe v. Wolf* regarding the right to counsel in MPP non-refoulement interviews. On January 14, 2020 the Southern District of California federal court certified a proposed class and issued a preliminary injunction in the matter. Read the ACLU of San Diego and Imperial County's Practice Advisory about the case.

[x] Associated Press, *High court to review two cases involving Trump border policy*, Jessica Gresko and Mark Sherman, Oct. 19, 2020.

[xi] *See also* Attorney General of Texas, AG Paxton Sues Biden Administration to Reinstate Migrant Protection Protocols, April 13, 2021. *See also* The Texas Tribune, *Texas sues Biden administration in effort to reinstate Trump-era 'remain in Mexico' immigration policy*, Shawn Mulcahy, April 13, 2021.

[xii] United Nations High Commissioner for Refugees (UNHCR), *State Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, April 2015. *See also* United Nations Treaty Collection to see participants to the Convention against Torture (CAT) and other Cruel Inhuman or Degrading Treatment or Punishment. Unaccompanied children commonly come to the United States from El Salvador, Guatemala, and Honduras. All three countries are participants to the Convention, Protocol, and CAT.

[xiii] 84 FR 33829, 33835.

[xiv] *Al Otro Lado, Inc. v. Wolf*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal.).

[xv] The Washington Post, *The cost to become a U.S. citizen is going up 61 percent*, Christopher Ingraham, Nov. 13, 2019. *See also* Forbes, *Judge Blocks USCIS Fee Increases: Here's Why it Happened*, Stuart Anderson, Sept. 30, 2020.

[xvi] *See* El Paso Times, *The Trump administration is turning away unaccompanied children at the border because of coronavirus*, Lauren Villagran, June 10, 2020. *See also* CBS News, *U.S. stops holding migrant children in hotels, but says they can still be expelled*, Camilo Montoya-Galvez, Oct. 2, 2020. *See also* U.S. Customs and Border Protection, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, FY20 to FY21TD.

[xvii] On April 29, 2019, there was a Presidential Memorandum directing DHS to change how the agency administers Credible Fear Interviews. The following day, on April 30, 2019, the USCIS Asylum Division updated Lessons Plans making it more difficult to pass Credible Fear Screenings. In July 2019, USCIS issued new guidance to asylum officers regarding internal relocation during Credible Fear screenings. News outlets have also reported on pilot projects Prompt Asylum Case Review (PACR) and Humanitarian Asylum Review Process (HARP) which began in October 2019 in El Paso. The ACLU has filed a lawsuit against these programs. Check out the Congressional Research Service's flowchart showing the process adults and families now go through when arriving at the Southern border. On 2/2/21, President Biden

issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border," which included ceasing implementation of PACR and HARP.

[xviii] AILA, *Featured Issue: Expedited Removal*, *AILA Doc. No. 19073000*, Nov. 6, 2019.

[xix] News outlets report the United States deported the first individual, a Honduran man, through its agreement with Guatemala on November 22, 2019. DHS also published the July 26, 2019 agreement between the United States and Guatemala in the Federal Register on November 20, 2019. *See also* Reuters' *Trump administration prepares to send asylum seekers to Guatemala*, Nov. 20, 2019.

[xx] *See also* BBC News, *Trump immigration plans: US signs deal to deport migrants to Honduras*, Sept. 26, 2019.

[xxi] 8 U.S.C. § 1158(a)(2)(E).

[xxii] UNHCR, "Statement on new U.S. asylum policy," Nov. 19, 2019.

[xxiii] CQ Roll Call, *Guatemala suspends US flights carrying asylum-seekers*, Camila DeChalus, Mar. 17, 2020.

[xxiv] *UT v. Barr* was filed on January 15, 2020 in the U.S. District Court in Washington, D.C. Read more information about the case on the ACLU's website.

[xxv] A lawsuit, filed in part by Amnesty International, challenges the United States' Safe Third Country Agreement with Canada. In July 2020, a Canadian Federal Court judge found that the agreement violated the Canadian Charter of Rights and Freedoms but suspended the effect of the decision for six months (until January 22, 2021). In the meantime, the Canadian government appealed the court ruling. *See* Forbes, *Possible New Prospects In Canada For U.S. Refugee Claimants Post Covid-19*, Andy J. Semotiuk, Sept. 18, 2020. *See also* Amnesty International, Organizations welcome Federal Court decision confirming that sending refugees back to the US is not safe, July 22, 2020. *See also* Government of Canada, *Government of Canada Appeal Granted on Safe Third Country Agreement*, April 15, 2021.