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**THE COUNCIL OF THE CITY OF NEW YORK**

##### COMMITTEE REPORT AND BRIEFING PAPER OF THE JUSTICE DIVISION

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**COMMITTEE ON IMMIGRATION**

*Hon. Carlos Menchaca, Chair*

**February 10, 2020**

**Oversight:** The Dismantling of the U.S. Asylum System and the Impact on Immigrant New Yorkers

**Res. No. 1173-2019:** By Council Members Menchaca

**Title:** Resolution in support of the amicus brief submitted by the District of Columbia and the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, calling on the U.S. Court of Appeals for the D.C. Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.

1. **Introduction**

On February 10, 2020, the Committee on Immigration, chaired by Council Member Carlos Menchaca, will conduct an oversight hearing entitled, “The Dismantling of the U.S. Asylum System and the Impact on Immigrant New Yorkers.”This hearing will explore the drastic changes that the Trump administration has made to the asylum system, how these have made obtaining asylum nearly impossible, and the impact that many of these changes have had on immigrant New Yorkers, including those seeking asylum and their families. The committee will also hear Res. No. 1173, sponsored by Council Member Menchaca, in support of the amicus brief submitted by the District of Columbia and 20 States as detailed above, calling on the U.S. Court of Appeals for the D.C. Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence. The committee expects to receive testimony from the Mayor’s Office of Immigrant Affairs (‘MOIA’), as well as advocates, legal and social services providers and members of the public.

1. **Background** 
   1. **Asylum and Asylum-Seekers**

Individuals fleeing persecution have the right to seek asylum. This most fundamental right is guaranteed by the 1951 United Nations Convention relating to the Status of Refugees and implemented in the 1967 United Nations Protocol relating to the Status of Refugees.[[1]](#footnote-1) The United States (‘U.S.’) codified refugee protection and the procedures for asylum in the Refugee Act of 1980, made part of the Immigration and Nationality Act (‘INA’).[[2]](#footnote-2) Responsibility for the implementation and enforcement of most U.S. immigration law, including asylum and refugee law, is shared between the Department of Homeland Security (‘DHS’) and the Department of Justice’s (‘DOJ’) Executive Office for Immigration Review (‘EOIR’).[[3]](#footnote-3) Within DHS, U.S. Citizenship and Immigration Services (‘USCIS’) adjudicates applicants for immigration benefits, Customs and Border Protection (‘CBP’) inspects and admits non-citizens into the U.S., and Immigration and Customs Enforcement (‘ICE’) investigates immigration violations, as well as detains and removes violators of immigration law.[[4]](#footnote-4) EOIR conducts removal proceedings and adjudicates appeals of decisions in removal proceedings.[[5]](#footnote-5) Individuals who seek asylum may encounter any and all of these agencies during the asylum process. If an individual is applying for asylum affirmatively—meaning they have come to the U.S. and have not been placed in removal proceedings by DHS—their application is adjudicated by USCIS.[[6]](#footnote-6) If an individual is applying for asylum defensively—meaning they were arrested by ICE or CBP and placed in removal proceedings—their asylum application is transferred to the EOIR immigration court upon the filing of a Notice to Appear (‘NTA’).[[7]](#footnote-7)

To qualify for asylum, an applicant must be physically present in the U.S.[[8]](#footnote-8) Asylum may be granted to an applicant who can establish past persecution or a “well-founded fear” of future persecution in their home country on account of race, religion, nationality, membership in a particular social group, or political opinion.[[9]](#footnote-9) Asylum is discretionary; additionally, certain bars apply which could make an applicant ineligible for asylum, such as prior fraudulent asylum claims.[[10]](#footnote-10) Upon a grant of asylum, an asylee has the right to: (1) travel and return to the U.S. with asylum status, (2) remain indefinitely in the U.S., (3) work, and (3) after one year, apply to adjust their status to lawful permanent resident (‘LPR’).[[11]](#footnote-11) Additionally, an asylee’s spouse and unmarried children under 21 can obtain asylee status with the asylee or follow the asylee to join them in the U.S.[[12]](#footnote-12)

Individuals who are applying for asylum are often survivors of unimaginable atrocities. Many have had family members killed in conflict or been separated from their parents or children due to violence or chaos.[[13]](#footnote-13) They have been arrested, jailed, beaten, raped, tortured, threatened with death, or otherwise persecuted because of their political or religious beliefs, or their race, nationality, or other fundamental aspects of their identity.[[14]](#footnote-14) The current state of U.S. asylum policy unfortunately means that asylum applicants come to the U.S. seeking refuge and are met with extraordinary barriers that put their safety and wellness at grave risk. Currently, more than 800,000 U.S. asylum applications are pending—this unprecedented backlog means asylum seekers can wait more than six years before their immigration legal case is resolved.[[15]](#footnote-15)

* 1. **Trump’s asylum policies**

In the three years since President Donald Trump took office, the U.S. asylum system has become almost unrecognizable. The administration has strategically set up a series of impediments in Central America, at the U.S./Mexico border, in detention centers, and in immigration courts, making obtaining asylum nearly impossible. While Trump campaigned on a promise to build a physical wall on the southern border of the U.S., the culmination of Trump’s policies has created a wall achieving the same effect: targeting asylum seekers well before they reach the southern border. The following policy measures have essentially dismantled the U.S. asylum system: (1) the issuance of a sweeping rule that prevents migrants from being granted asylum if they passed through any country other than their own before arriving in the U.S.; (2) agreements with Guatemala, Honduras, and El Salvador that the U.S. could return asylum seekers to those countries; (3) threatening to impose tariffs on Mexican goods in exchange for Mexican enforcement stopping migrants before they reach the southern U.S. border; (4) CBP officials limiting the number of asylum seekers processed at ports of entry each day, forcing individuals to wait in Mexico where migrant shelters are at capacity; (5) “Migrant Protection Protocols,” otherwise known as the administration’s “Remain in Mexico” policy, which allows the government to send migrants with credible asylum claims back to Mexico while they await a final decision on their applications; (6) the massive expansion of the detention of asylum seekers, including children and pregnant women; (7) an attempt to expand expedited removal; (8) policy changes affecting immigration courts, such as completion quotas for immigration judges; and (9) the undermining of previously established protections, such as asylum protections for victims of gang and domestic violence, LGBTQ individuals, and those whose family members have been persecuted; among other policies.[[16]](#footnote-16)

* + 1. **Before Entry**

In response to groups of asylum seekers from Central America arriving in the fall of 2018 (which the administration referred to as “caravans”), the administration, via proclamation,[[17]](#footnote-17) issued the first of two “asylum bans.”[[18]](#footnote-18) This proclamation banned individuals who did not present themselves at a point of entry from applying for asylum.[[19]](#footnote-19) The proclamation was implemented through an Interim Final Rule, allowing for immediate implementation without the ordinary notice and comment period usually required for significant regulatory changes.[[20]](#footnote-20) This rule was ultimately challenged in court, and in *O.A. v. Trump*, a Washington D.C. federal court declared the rule illegal and prohibited its implementation.[[21]](#footnote-21)

In July 2019, the administration issued a second asylum ban, publishing a sweeping Interim Final Rule, entitled “Asylum Eligibility and Procedural Modifications,” also known as the “third country asylum rule.”[[22]](#footnote-22) This rule adds a bar to asylum for all individuals, including children, who enter or attempt to enter the U.S. across the southern border, if they did not seek protection from a third country while in route to the U.S.[[23]](#footnote-23) Effectively, this rule bars most migration across the nation’s southwestern border by Hondurans, Salvadorans, Guatemalans, and others.[[24]](#footnote-24) Mexican migrants, who do need not to travel through another country to reach the U.S., are not affected by this policy.[[25]](#footnote-25) While this rule was challenged in court, the U.S. Supreme Court ultimately allowed the administration to enforce the rule during the pendency of litigation.[[26]](#footnote-26)

The Trump administration has additionally entered into agreements with Guatemala, Honduras, and El Salvador that would allow the U.S. to return asylum seekers to those countries.[[27]](#footnote-27) Over 978,000 migrants have arrived at the U.S./Mexico border over the past year, mainly arriving from Guatemala, Honduras, and El Salvador, from where they are fleeing rampant crime, violence, and corruption.[[28]](#footnote-28) According to the United Nations Office on Drugs and Crime, El Salvador has the highest homicide rate in the world, Honduras has the fifth highest, Guatemala has the sixteenth highest, and Mexico has the nineteenth.[[29]](#footnote-29) Each of these countries has high rates of violence against women and LGBTQ individuals, significant international criminal gang activity, and rampant government corruption.[[30]](#footnote-30) In fact, the U.S. State Department has issued travel warnings for U.S. citizens in all four countries.[[31]](#footnote-31) However, the Trump administration has sought to send migrants back to those countries, entering into so-called “safe third country agreements,” essentially outsourcing asylum obligations to countries that cannot meet them.[[32]](#footnote-32)

Safe third country agreements were created as a way for countries to share the responsibility of aiding asylum seekers, always with their welfare in mind.[[33]](#footnote-33) These agreements are not considered treaties, which must be ratified by Congress, so the President can sign them unilaterally.[[34]](#footnote-34) Under these agreements, typically signed by two countries, individuals fleeing their country of origin must apply for asylum in the first country through which they pass. If they fail to do so, the second country included in the agreement can send the asylum seeker back to the first country.[[35]](#footnote-35) In the U.S., the INA lays out two conditions for the agreements: they must be with countries where an immigrant’s “life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion,” and where they would have “access to full and fair procedure for determining a claim to asylum or equivalent temporary protection.”[[36]](#footnote-36) Before Trump came into office, the U.S.’s only existing safe third country agreement was with Canada—drafted in cooperation with international human rights organizations and signed in 2002, the agreement acknowledges that the U.S. and Canada both have robust processes under which asylum seekers can petition for protections and have strong traditions of welcoming asylum seekers.[[37]](#footnote-37)

Critics have argued that the Trump administration coerced countries to sign on to safe third country agreements with threats of tariffs, a travel ban, and a tax on remittances.[[38]](#footnote-38) The administration entered into “safe third country agreements” with Guatemala, Honduras, and El Salvador, by which any asylum seekers that passed through these countries without first seeking asylum there could be sent back.[[39]](#footnote-39) These agreements included a commitment to develop the capacity of the asylum system within these countries, as all of them are currently incapable of offering the protections to groups who seeks asylum in the U.S.[[40]](#footnote-40)

Mexico has additionally become a choke point. The journey through Mexico is a dangerous one, as migrants are often targeted by criminal gangs and frequently kidnapped.[[41]](#footnote-41) Under the Trump administration, migrants must also engage Mexican authorities.[[42]](#footnote-42) While Mexico has refused to sign a “safe third country” agreement, which would allow the U.S. to turn away migrants who did not first seek asylum in Mexico, it has responded to Trump’s threats of tariffs on all Mexican goods by cooperating with the Trump administration on immigration enforcement and stopping migrants before they reach the U.S. border.[[43]](#footnote-43) As such, Mexico has created a bottleneck for asylum seekers—if detained and deported by Mexican authorities, they may never reach the U.S. border in order to claim asylum.

If individuals do reach the border, they face the additional hurdle of the U.S.’s metering policy, or “turn-back policy.” Starting in mid-2018, CBP officials began limiting the number of asylum seekers they processed at official U.S./Mexico border crossings, called “ports of entry” each day, forcing the others to wait in Mexico, where migrant shelters are at capacity and many have been forced to sleep on the streets.[[44]](#footnote-44) This de facto policy of turning away asylum-seekers is arguably both illegal under U.S. law and violates U.S. obligations under international refugee law.[[45]](#footnote-45) An ongoing lawsuit, *Al Otro Lado v. Nielsen*,[[46]](#footnote-46) argues that the metering policy deprives migrants of access to the U.S. asylum system and is in violation of federal immigration law and their constitutional due process rights.[[47]](#footnote-47) The Southern Poverty Law Center states that the metering policy “compounds other longstanding border-wide tactics that CBP has implemented to prevent migrants from applying for asylum in the U.S., such as lies, intimidation, coercion, verbal abuse, physical force, outright denials of access, unreasonable delays, and threats—including the threat of family separation.”[[48]](#footnote-48)

* + 1. **Upon “Entry”**

Even if asylum seekers are able to speak to a border agent, they are confronted with a number of other harmful policies. In February 2017, USCIS raised the threshold for demonstrating credible fear in asylum interviews.[[49]](#footnote-49) The new guidelines ordered asylum officers to be stricter in assessing claims of fear during credible fear interviews—or the threshold interview that is required before an asylum seekers is allowed to present their claim to an immigration judge.[[50]](#footnote-50) The implementation of this policy quickly resulted in a high rate of denials, causing a significant rise in deportations of those with arguably meritorious asylum claims that they were never fully able to present.[[51]](#footnote-51) In July 2019, a new pilot program went into effect, promoted by senior advisor to the President, Stephen Miller, giving CBP officers the authority to conduct credible fear interviews.[[52]](#footnote-52)

In April 2018, then-Attorney General Jeff Sessions introduced by memo the “zero-tolerance” policy.[[53]](#footnote-53) This policy required that all arriving migrants, including asylum seekers, be referred to the DOJ for criminal prosecution for illegal entry or reentry.[[54]](#footnote-54) This resulted in the mass separation of families, as parents were prosecuted and children were taken into custody, causing irreversible, life-long trauma to over 2,600 children.[[55]](#footnote-55) Internal government memos subsequently revealed that this policy was explicitly intended to serve as a deterrence mechanism for asylum seekers.[[56]](#footnote-56) Family separation continues on a mass scale despite an Executive Order issued in July 2018 allegedly ending the “zero tolerance” policy and despite a court order enjoining the practice—in fact, there were more than 900 separations in the year following the court order.[[57]](#footnote-57)

This “zero-tolerance” policy also sent record-numbers of asylum seekers, who would have typically been released under previous administrations, to mandatory, prolonged, and indefinite immigration detention.[[58]](#footnote-58) This violated ICE’s own policy directive requiring that the agency release asylum seekers on humanitarian parole if they have a sponsor and pose no community safety risk.[[59]](#footnote-59) In fact, by the summer of 2019, ICE’s own data revealed that it was jailing approximately 9,000 immigrants who had already been found to have a credible or reasonable fear of persecution or torture.[[60]](#footnote-60) The government’s rationale for detaining families seeking asylum was that the government’s practice of releasing families (what Trump has called “catch and release”) was encouraging migrants to come to the U.S. and that keeping them in detention while their immigration cases were pending would deter further migration.[[61]](#footnote-61) This led the administration to fill detention centers to their capacity and obtain additional funding for more beds in immigration detention.[[62]](#footnote-62) The administration additionally attempted to dismantle the *Flores* settlement agreement[[63]](#footnote-63) and the Trafficking of Victims Protection Reauthorization Act of 2008 (TVPRA) through the regulatory process by proposing a rule that would, among other things, allow for the indefinite detention of families, enable DHS to self-license family detention facilities, and undermine accompanied children’s rights to a bond hearing.[[64]](#footnote-64) A federal judge rejected these new regulations.[[65]](#footnote-65)

Migrants who are processed at the border are first held in dangerously overcrowded CBP facilities that were never designed to hold them extended periods of time, sleeping on concrete floors with nothing but mylar blankets.[[66]](#footnote-66) Under the agency’s own guidelines, migrants are not supposed to be held in CBP facilities for more than 72 hours, but CBP has not complied with those guidelines following the implementation of the “zero tolerance” policy.[[67]](#footnote-67) In August 2019, a federal appeals court ruled that CBP was obligated to provide basic hygiene items including toothbrushes and soap to children in its custody after a government attorney suggested these items were nonessential.[[68]](#footnote-68) The dangerous, substandard, and inhumane conditions of these facilities have led to numerous deaths of migrants in CBP custody, including a 2-year-old suffering from pneumonia and a 7-year-old who went into cardiac arrest from severe hydration.[[69]](#footnote-69) ICE, to which CBP transfers adults, has the discretion to parole asylum seekers but likewise chooses not to do so.[[70]](#footnote-70) In June 2019, the Office of the Inspector General (OIG) found that conditions in ICE facilities were not only substandard and inhumane—filled with spoiled food, moldy bathrooms, and inadequate hygiene and recreation—but also overly reliant on disciplinary segregation, strip searches, and handcuffs.[[71]](#footnote-71)

In September 2019, Acting DHS Secretary McAleenan announced that DHS would no longer allow any arriving asylum seekers to be released into the community.[[72]](#footnote-72) If individuals expressed fear of return to their home country, they would be returned to Mexico to wait while their claims were processed.[[73]](#footnote-73) This policy is known as Migrant Protection Protocols (MPP), and often referred to as “Remain in Mexico.”[[74]](#footnote-74) In January 2019, the Trump administration began implementing the MPP program, which forces Central Americans seeking asylum to return to Mexico—for an indefinite amount of time—while their claims are processed.[[75]](#footnote-75) This “Remain in Mexico” policy has been criticized as a clear violation of both U.S. and international law, putting asylum seekers in further danger.[[76]](#footnote-76) Since its inception, the program has been implemented at ports of entry all across the southern border, placing asylum seekers at risk for violence, exploitation at the hands of cartels, and death.[[77]](#footnote-77) In fact, a recent survey by Doctors Without Borders found that a staggering 80 percent of asylum seekers sent to Mexico to await U.S. court hearings under the MPP program report being victims of violence.[[78]](#footnote-78) While the policy is being challenged in the courts, more than 50,000 asylum seekers have been sent to Mexico to wait, where almost none have access to legal help with their claims.[[79]](#footnote-79) The MPP program has caused wait times on the international bridges to increase and asylum seekers to become so desperate that they cross between ports of entry and suffer injuries or even death.[[80]](#footnote-80) A lawsuit challenging this program is on-going—although a district court issued a preliminary injunction in April 2019, the program continues to be operational, as the 9th Circuit Court of Appeals issued a stay of the injunction in May 2019.[[81]](#footnote-81)

In July 2019, the federal administration published a new Interim Final Rule expanding procedures that expedite deportation.[[82]](#footnote-82) Under this regulatory change, any undocumented individual who cannot prove to have been continuously present in the U.S. for at least two years can be placed in a fast-track deportation process, without the opportunity to plead their case in front of an immigration judge or the help of an attorney.[[83]](#footnote-83) While expedited removal proceedings do allow individuals to seek referral to an immigration court proceeding to seek asylum, the program has been consistently criticized for officers’ failure to identify legitimate asylum seekers, resulting in the return of many of asylum seekers to harm.[[84]](#footnote-84) On August 6, 2019, a lawsuit challenging this inhumane rule was filed.[[85]](#footnote-85)

Further, in January 2020, it was reported that CBP was expanding two new programs to the Rio Grande Valley—the Humanitarian Asylum Review Process (HARP), applying to Mexican nationals, and the Prompt Asylum Claim Review (PACR), applying to individuals other than Mexican nationals—which were initially launched in the El Paso area in October 2019.[[86]](#footnote-86) Under both of these programs, asylum seekers remain in CBP custody rather than being transferred to ICE for their credible fear processing.[[87]](#footnote-87) HARP and PACR result in asylum seekers being unjustly rushed through the credible fear process, hastening their removal to dangerous situations—with the deportation process fast-tracked to ten days.[[88]](#footnote-88) Additionally, asylum seekers are effectively precluded from receiving meaningful help and support from counsel in the PACR program—whereas in ICE custody, they were provided access to a telephone and an opportunity to meet with an attorney. This proffered the opportunity to prepare for an asylum screening and review by an immigration judge. Under these programs, they have 24 hours in the CBP facility to call a family member or an attorney before being interviewed by an asylum officer.[[89]](#footnote-89) Unsurprisingly, preliminary rates of credible fear interview passage in these programs are appallingly low because of due process challenges.[[90]](#footnote-90) More than 1,000 asylum seekers have already been effected by this program, which denies them their rights to due process and legal counsel.[[91]](#footnote-91) The legality of the HARP and PACR programs has been challenged in a lawsuit filed in the U.S. District Court for the District of Columbia.[[92]](#footnote-92)

* + 1. **In Immigration Court**

The Trump administration has also used the DOJ to insert significant hurdles in the immigration court process. EOIR, an office of the DOJ, under the authority of the Attorney General, is charged with adjudicating all immigration cases in the U.S.[[93]](#footnote-93) EOIR is responsible for conducting all removal proceedings in immigration courts—administrative proceedings to determine the removability and admissibility of individuals in the U.S.—and as such EOIR oversees all of the immigration courts in the U.S.[[94]](#footnote-94) Appeals from immigration courts are heard by the Board of Immigration Appeals (BIA), which is also a part of EOIR.[[95]](#footnote-95)

The DOJ has been straining Immigration Judges with stringent case completion rates, case quotas, and rapid docketing procedures, as well as curtailing the independence of Immigration Judges, pressuring Immigration Judges to deny rather than approve claims, and politicizing the judicial hiring process.[[96]](#footnote-96) In April 2018, the DOJ instituted a policy whereby Immigration Judges would be required to comply with case quotas.[[97]](#footnote-97) Despite opposition from the National Association of Immigration Judges,[[98]](#footnote-98) this policy requires Immigration Judges to make final rulings on 700 cases per year (about three per day) with repercussions—either being sent to a different immigration court or termination—if they do not comply.[[99]](#footnote-99) Paired with other unprecedented policies, this policy has resulted in chaos in the immigration court system, including increasing the backlog crisis rather than cutting down the number of pending cases that has surpassed 1 million.[[100]](#footnote-100) In fact, migrants with active immigration cases have been waiting an average of almost two years for a decision.[[101]](#footnote-101)

The Attorney General’s office has stepped in to eviscerate asylum seekers’ due process rights in immigration court. In March 2018, then-Attorney General Jeff Sessions utilized a provision of law that was used only sparingly under previous administrations to certify to himself and then overturn a decision of the BIA, *Matter of E-F-H-L-*, gutting the rights of asylum seekers to testify on their own behalf before they can be denied asylum and/or deported.[[102]](#footnote-102) In June 2018, then-Attorney General Sessions once again certified a BIA case to himself, overruling a BIA decision, *Matter of A-R-C-G-*,[[103]](#footnote-103) andmaking the argument that victims of domestic violence do not belong to a particular social group, but rather ought to be considered victims of “private criminal activity,” and thus ineligible for asylum.[[104]](#footnote-104) This determination, *Matter of A-B-*, had sweeping implications for all future asylum claims of victims of domestic violence and victims of gang violence, including a formalizing of this policy by USCIS memo.[[105]](#footnote-105) This effectively limited the availability of asylum to most individuals fleeing gender-based violence or violence at the hands of gangs and made it easier for ICE counsel to argue for deportation.[[106]](#footnote-106) In December 2018, a federal court issued a decision generally preventing the administration from implementing this and other policies.[[107]](#footnote-107) In July 2019, Attorney General Barr certified another case to himself, reversing yet another BIA decision, this time strictly limiting asylum eligibility for individuals targeted and harmed due to their family membership.[[108]](#footnote-108)

DHS has also constructed temporary courts in tent complexes near CBP ports in Laredo and Brownsville, Texas, to hear cases from migrants affected by the MPP program.[[109]](#footnote-109) In these “tent courts,” immigrants and their attorneys video conference with judges and DHS attorneys appearing virtually, streamed from actual immigration courts hundreds of miles away.[[110]](#footnote-110) Significant concerns have been raised regarding these temporary courts, as they violate migrants’ due process rights by restricting their access to attorneys and rely on teleconferencing.[[111]](#footnote-111)

* + 1. **Other**

The administration has also attempted to change the eligibility for asylum, introducing new hurdles via rulemaking. In December 2019, DHS and DOJ published a joint notice of proposed rulemaking (NPRM) severely curbing the number of individuals who may qualify for asylum.[[112]](#footnote-112) This proposed rule adds seven new bars to asylum eligibility based on prior conduct or involvement in the criminal legal system, and significantly alters the way immigration adjudicators determine whether allegations of wrongful or criminal conduct render an individual ineligible for asylum.[[113]](#footnote-113) If finalized, this rule would severely impact asylum seekers and also threatens U.S. compliance with its obligations under international and domestic asylum law.[[114]](#footnote-114) The thirty-day public comment period for the proposed rule closed on January 21, 2020.[[115]](#footnote-115)

The legal and moral obligations of the U.S. to protect those seeking safety from persecution includes the obligation to ensure that those seeking and those granted asylum are able to access the benefits and services that enable them to live a full life.[[116]](#footnote-116) However, while 44 countries accept asylum applications, the U.S. is the only country that denies asylum seekers access to basic services and simultaneously delays permission to work.[[117]](#footnote-117) The Trump administration is now further chipping away at not only the ability of asylum seekers to access this form of relief, but also their ability to work.[[118]](#footnote-118) In November 2019, DHS published a NPRM announcing changes to the regulations controlling work permits while an asylum case is pending and blocks access to asylum for certain groups based on how and when they entered the U.S.[[119]](#footnote-119) If finalized, the proposed rule would, among other changes, extend the time an asylum applicant would have to wait before submitting an application for a work permit from 180 to 365 days; exclude individuals who did not lawfully enter the U.S. through a port of entry from being eligible to apply for asylum; and exclude individuals who did not file an asylum application within one year of their last entry from being eligible for asylum.[[120]](#footnote-120) The public comment period for this proposed rule closed on January 13, 2020.[[121]](#footnote-121)

Lastly, the administration is introducing economic hurdles. USCIS, for the first time, is planning to charge asylum application fee(s). If implemented, asylum seekers would face multiple fees, including a new processing fee of $50—as well as $500 in non-waivable fees and a further payment of $450 for an initial work authorization.[[122]](#footnote-122)

* 1. **Asylum Seekers in New York**

New York State’s distance from the U.S./Mexico border has not precluded it from feeling the impact of many of the changes in asylum policy effected under the Trump administration. While the complete population of asylum-seeking New Yorkers is difficult to quantify, the Transactional Records Access Clearinghouse (‘TRAC’) at Syracuse University has reported some data collected through Freedom of Information Act requests (‘FOIA’).[[123]](#footnote-123) Since 2001, EOIR has made 135,235 asylum determinations in New York, granting asylum in 92,868 cases.[[124]](#footnote-124) The primary country of origin for asylum applications in New York is China (54 percent),[[125]](#footnote-125) with growing numbers in the last five years from El Salvador, India and Honduras.[[126]](#footnote-126) And the majority of asylum seekers in New York since 2001 have never been detained (77 percent).[[127]](#footnote-127)

New York has historically reviewed a disproportionate number of asylum cases, compared to courts across the U.S. In 2019, New York’s EOIR courts decided over 20 percent of all completed defensive asylum cases.[[128]](#footnote-128) While immigration judges are making more asylum decisions per year, and the number of asylum grantees more than doubled from Fiscal Year 2014 to Fiscal Year 2019,[[129]](#footnote-129) the denial rate has increased exponentially: nationally, two thirds of applicants were denied in 2019 as compared to half in 2014.[[130]](#footnote-130) Additionally, by compiling case-by-case EOIR court records, TRAC found New York, which has historically had one of the highest acceptance rates in the nation, has also seen a rise in denial rates: 37 percent in Fiscal Year 2019 as compared to 16 percent in fiscal year 2015.[[131]](#footnote-131) Asylum-seeking New Yorkers will face further hardship as changes to the asylum system place further strain on New York courts, necessitating more resources from local legal and social service agencies and City agencies. The Committee is interested to hear how existing programs, such as the legal service referral program, ActionNYC,[[132]](#footnote-132) can receive further investment to meet the demand resulting from the dismantling of the asylum system.

1. **Legislative Analysis**

Res. 1173-2019 (Menchaca) supports the amicus brief submitted in support of the appellees in *Barr v. Grace*[[133]](#footnote-133)by the District of Columbia and 20 other States, including New York. In response to former-Attorney General Sessions’ overturning of the granting of asylum in the *Matter of A-B-* and subsequent guidance issued by USCIS, described above, the amicus brief calls on the U.S. Court of Appeals for the District of Columbia Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence. The *Amici* States find that the asylum policies concerning survivors of domestic and gang violence set forth by the federal government “impermissibly heightened the standards for asylum claims.”

Res. 1173-2019 highlights that 30 percent of all asylum grantees in the U.S. in 2016 hailed from countries where domestic and gang-related violence remain pervasive, including Guatemala, El Salvador and Honduras. As described above, New York is home to the majority of the U.S.’ asylum grantees, and thus has an interest in ensuring that the asylum system continues to provide relief for individuals who have been victims of domestic and gang-based violence.

1. **Conclusion**

Today’s asylum system is virtually unrecognizable as the federal government persists to use every available executive function to strip eligibility and impose excessive barriers to accessing humanitarian relief. As one of the states with the highest number of asylum application adjudications, New York is experiencing many of the impacts of asylum policy changes in the immigration courts. Understanding this, the Committee is interested to hear how the Mayor’s Office defines the asylum population in New York City, assesses and addresses the populations’ unique needs, and any national advocacy conducted on behalf of asylum-seeking New Yorkers. The Committee also expects to hear from legal and social service providers who serve asylum seeking New Yorkers about the programs and services in place to meet the population’s needs as well as recommendations for further programs and asylum-specific advocacy.

Res. No. 1173

..Title

Resolution in support of the amicus brief submitted by the District of Columbia and the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, calling on the U.S. Court of Appeals for the D.C. Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.

..Body

By Council Member Menchaca

Whereas, In 2014, the Board of Immigration Appeals (“BIA”) determined, in *Matter of A-R-C-G-*, that domestic violence survivors may qualify for asylum in the United States (U.S.); and

Whereas, The BIA found that women who experience persecution by their husbands, and are unable to leave their marriage, and do not receive assistance from law enforcement constitute a “particular social group;” and

Whereas, Belonging to a particular social group is one of several factors to be considered when the Executive Office of Immigration Review makes a determination on an asylum claim; and

Whereas, In June 2018, former U.S. Attorney General Sessions overturned a decision to grant asylum in *Matter of A-B-*, arguing that victims of domestic violence do not belong to a particular social group, but are instead victims of “private criminal activity” and thus should not be granted asylum; and

Whereas, This 2018 determination had sweeping implications for all future asylum claims for individuals who have experienced domestic violence and for victims of gang violence; and

Whereas, The U.S. Citizenship and Immigration Services (“USCIS”) published a policy memorandum in July 2018, entitled “Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with *Matter of A-B-*,” directing near-blanket denials of domestic violence and gang-based persecution asylum claims, effectively heightening the standards for all pending and future asylum claims; and

Whereas, The Center for Gender and Refugee Studies (“CGRS”) and the American Civil Liberties Union (“ACLU”) filed suit shortly thereafter in *Grace v. Whitaker*, arguing that these policies contradicted historical precedent in asylum case law and undermined the fundamental human rights of women; and

Whereas, In December 2018, the U.S. District Court for the District of Columbia found that there was “no legal basis for an effective categorical ban on domestic violence and gang-related claims,” finding that individuals making domestic or gang violence claims deserve a fair opportunity to apply and be considered for asylum; and

Whereas, The U.S. District Court additionally issued a decision vacating the government’s policies promulgated by the Attorney General in *Matter of A-B-* and subsequent guidance issued by the USCIS regarding credible fear claims relating to domestic violence or gang violence; and

Whereas, The federal government has appealed this decision, and requested a stay of its execution pending appeal, in an effort to continue to apply its asylum policies; and

Whereas, In January 2019, the U.S. District Court for the District of Columbia granted a permanent injunction on those policies while *Grace v. Barr* is litigated; and

Whereas, In August 2019, 20 states and the District of Columbia, including the State of New York, filed a brief as *amicus curiae* calling for the U.S. Court of Appeals for the D.C. Circuit, currently considering *Grace v. Barr*, to affirm the lower court’s determination and maintain the existing standards for the asylum claims of victims of domestic and gang violence; and

Whereas, In 2016, 30 percent of all asylum grantees in the U.S. hailed from Guatemala, El Salvador, and Honduras, where domestic and gang-related violence remain pervasive and laws against such violence often go unenforced; and

Whereas, New York is one of 20 states that together are home to the majority of the U.S.’s asylum grantees, and thus has an interest in ensuring that the asylum system continues to provide relief for individuals who have been victims of domestic or gang-based violence; and

Whereas, Foreign-born New Yorkers, including asylum grantees, play a vital role in our City’s economy, contributing an estimated $195 billion to the City’s Gross Domestic Product (“GDP”) in 2017 alone, and paying an estimated $8 billion in City and State personal income taxes and approximately $2 billion in City property taxes ever year; and

Whereas, Restricting humanitarian relief on the basis of domestic or gang-violence for asylum applicants is antithetical to the local laws the City enforces to protect residents from such violence, regardless of immigration status; now, therefore, be it

Resolved, That the Council of the City of New York supports the amicus brief submitted by the District of Columbia and the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, calling on the U.S. Court of Appeals for the D.C. Circuit to maintain the availability of asylum-related protections for individuals and families with a well-founded fear of persecution due to domestic or gang-related violence.

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