

U.S. Must Preserve the Right to Asylum and Provide Protection from Persecution and Torture

The United States is abandoning its commitment to protect people from persecution, condemning thousands to return to their country of origin or a third country where they may face torture or death. Dismantling the asylum process violates both U.S. and international law. The international community recognized, after World War II, that countries must provide protection to people facing persecution and torture on account of characteristics they cannot or should not have to change: political opinion, religion, race, nationality, or membership in a particular social group. The United States codified these obligations by ratifying the 1967 Protocol to the Refugee Convention and passing the 1980 Refugee Act. People who flee their country of origin to seek asylum at a U.S. border or within the United States are complying with the legal process Congress established in the Refugee Act.

International law categorically prohibits *refoulement*, which is returning someone to a country where they face torture, persecution, or death because of a protected characteristic. New U.S. policies undermine these protections by erecting physical, legal, rhetorical, and political barriers to safety. The asylum process is already daunting. Asylum applicants are NOT eligible for a government-appointed lawyer like a person in criminal court, so they must either prepare their own application, try to access limited free legal services, or pay a lawyer. When the administration announces additional barriers without warning and implements them in chaotic fashion, asylum seekers find that the already challenging process becomes almost impossible.

EXECUTIVE ACTION BARS LEGITIMATE ASYLUM CLAIMS

On September 4, 2025, the U.S. Attorney General's office announced it had narrowed the grounds of asylum — adopting a position that cases involving domestic violence or gang activity will rarely qualify. This decision is based solely on the Attorney General's interpretation, which is out of step with international standards and U.S. law.

The UN Office of the High Commissioner for Refugees has conclusively determined that persecution on account of one's gender is a basis for asylum. It has also reiterated that the Refugee Convention covers harm by private actors, like gangs and family members.

The Advocates represented a woman whose husband violently abused her in her home country. She had a thriving business, so she had the financial means to escape to a neighboring country. Her abuser found her there, however, and forced her to return to him. Eventually, the couple had an opportunity to come to the United States. In the United States, she connected with The Advocates and began working on her asylum case, but her abuser remained dangerous. One day, he showed up right as the attorney working on her asylum case was arriving to meet with her. She acted quickly and waved off her attorney just in time. Despite these challenges, she successfully received asylum because the government of her home country had failed to protect her from domestic violence. With the protection of asylum, she finally felt at peace and was able to leave her husband.

ADMINISTRATION DENIES ASYLUM SEEKERS CHANCE TO MAKE THEIR CASE

In April 2025, the Trump Administration issued a Memo encouraging immigration judges to “pretermite” asylum applications, rejecting the asylum claim before the applicant has a chance to present evidence in court. The Memo provides no clear standards for when immigration judges should decide a case is not eligible based on the application alone. Our court observers have documented that the lack of clear standards has led judges to arbitrarily pretermite applications and return people to prosecution.

Pretermission harms valid asylum seekers, who face tight timelines for submitting their applications. Most asylum seekers must file their application within one year of their entry. They often rush to meet that deadline, filing a simplified application while planning to gather evidence and submit a more complete record as their case proceeds. When judges pretermite the entire case based on the initial filing, they are basing that judgement on limited and incomplete knowledge. Judges have also used pretermission when applicants struggled to pay the new fees imposed in July (see below), exposing even greater numbers of asylum seekers to the risk of persecution when returned to their country of origin.

Observers noted that one judge in Minnesota invented his own asylum standards, claiming, “I see a lot of cases from Venezuela. Just because you attended a protest and something bad happens, that doesn't mean you are entitled to asylum. You have to establish you're a well-known public figure, public opponent of Maduro, led large-scale protests, etc. ...You must show you're a threat to the regime or government.” The law does not require asylum seekers to be major public figures or serious threats to the government to receive asylum. When the judge fabricates rules and then pretermits cases based on these standards not found in the law, he exposes legitimate asylum seekers to serious harm.

ASYLUM SEEKERS PRICED OUT OF SAFETY

In the OBBB Act of July 2025, Congress created new fees for asylum applications. The law's new \$100 initial filing fee makes the U.S. one of only three countries to charge for the right to seek protection from persecution and torture. The law raises the cost of safety even further, imposing a \$100 annual fee while the case is pending. This fee makes the U.S. the only country to punish asylum applicants for the government's delays — delays the government creates by refusing to fully fund the asylum adjudications infrastructure. The OBBBA also imposes additional financial hurdles on asylum seekers struggling to pay the new fees, imposing a nearly \$300 fee for initial work authorization and \$700 for renewals. Applicants trying to cover the expensive fees, for which there are no waivers, are vulnerable to offers of exploitative work or living arrangements from people claiming they can help.

Ms. P. came to the U.S. to seek asylum. She could not get work authorization until she filed for asylum, but, without work, she could not afford to hire an attorney to file her case. She met someone in the community who agreed to let her stay with them. But they exploited her, making her work constantly in the home, alleging such work was to cover expenses including legal fees. In the end, she found out that they never even hired an attorney.

The administration not only made asylum pay-to-play, it also created a slow, unclear and limited system for paying fees. Until late September — three months after the fees were imposed — The Advocates observed immigration judges requiring people to pay the \$100 fee to file asylum applications, even though there was no way for them to make the payment. Some courts accepted filings, while others refused them, leaving an asylum seeker's ability to file entirely to chance.

The Advocates documented the chaos in the early days of the fee rollout. One immigration court observer reported, “[The] Judge...was informed of new fees for all applications and that she can no longer issue fee waivers. She was informed of the \$100 [fee] for asylum, the added penalty fees for after the 1-year mark and then the clerk mentioned ‘other fees from \$500-1000.’ Nobody ([the judge], clerk, or DHS attorney) had any info or details, all were trying to figure out the information mid-hearing, [as] the family of respondents sat watching total confusion erupt during their hearing. [The judge] was clear in her comments to several respondents after this initial confusion that she (and others in court) did not know where to file the fee, who could take the fee, or if the system was even set up. But that the fee now applied to their cases.”

It took an October lawsuit to force immigration courts to provide clear instructions for fee payment. Despite mass confusion around the process, judges pretermitted cases based on failure to pay the fees.

At the end of October, USCIS also announced that they will no longer allow applicants to use money orders or personal checks to pay fees for any immigration benefit, including asylum applications. Asylum seekers often lose their identity documents while fleeing, making it difficult to get the credit card or bank account necessary to pay the fees. Unscrupulous individuals prey on this vulnerability, offering asylum seekers access to a bank account while intending to exploit them.

When Ms. X. first came to the U.S, she lived with a man who promised to help her navigate her new country. While preparing to file her asylum application, she began working to support herself. After helping her find a job, the man lied and told her she could not open her own bank account. She deposited all her checks in his account, giving him control over her money. He forced her to keep working and monitored her every movement, even installing cameras inside the house. Ms. X. never saw any of the money, even after she escaped.

DHS DETAINS ASYLUM SEEKERS SO THEY WILL ABANDON CASES

The Advocates previously documented how the government uses dismissals, detention, and expedited removal to coerce people into abandoning legitimate asylum claims. The Department of Justice is now expanding these tactics, denying bond even for people who are not subject to mandatory detention, applying the same coercive pressure to abandon their claims. Under this new policy, the government argues that immigration courts do not have the authority to grant bond to people who entered the U.S. without a visa, a group that includes Afghans paroled into the country for their protection after they assisted U.S. military efforts.

Even when judges do grant bond, the government immediately appeals the decision. This triggers automatic detention until the DOJ's overburdened appeals office can resolve the appeal. Due to the Administration's drastic staffing cuts to the appeals office, and a flood of cases arising from indiscriminate enforcement, the appeal process can take 6 months or more. Faced with spending those months in detention with no guarantee of release, asylum seekers are abandoning valid claims for protection, instead risking harm in their home country just to be free of a prison cell.

The Advocates represented a young man who entered the U.S. as an unaccompanied minor. He filed for asylum and started building a life in Minnesota. After he turned 18, ICE arrested him. Finding that he was neither a danger nor a flight risk, the immigration judge granted him the minimum bond. DHS immediately appealed and filed for an emergency stay, meaning that authorities could not release him while his case was pending before the Board of Immigration Appeals. He struggles to stay motivated to fight his asylum appeal while he awaits a decision on his request for release.

Prolonged arbitrary detention can retraumatize asylum-seekers, many of whom endured torture or other ill-treatment in similar conditions in their country of origin. The Advocates is documenting reports of the government denying medical care to detainees, providing inadequate or rotten food, creating crowded conditions, and subjecting people in detention to abuse. Facing these inhumane conditions of detention, asylum seekers are choosing to abandon their claims.

An Advocates client has a strong asylum claim: he was enslaved in his home country and then suffered persecution based on his race. Nonetheless, the U.S. government held him in mandatory detention, arguing that because he entered without a visa, he was ineligible for bond during the entirety of his case processing. He decided to abandon his case and return home to face possible death, rather than continue to fight what felt like a hopeless battle while living in horrible conditions.

THIRD COUNTRY REMOVALS PLACE ASYLUM SEEKERS AT RISK OF PERSECUTION

The U.S. government also circumvents asylum protections through third country removals and "asylum cooperative agreements." With these processes, the U.S. either creates agreements with other countries to accept deportees who are not their nationals or sends people to these third countries without a clear legal basis. There is no evidence that officials screen people to assess the risk that they will face persecution in the receiving country or that the receiving country will return them to danger in their home country.

Partners have notified The Advocates that DHS deported at least one Lao person from Minnesota to Romania without screening for potential persecution in Romania or securing guarantees that Romania would not send them to face persecution and torture elsewhere.

A partner organization reported that an immigration judge in Texas ordered a person from Africa deported to Honduras because the State Department had negotiated an agreement with that country. But Honduras never gave clear guarantees that authorities would not torture him or send him to his home country where he had a fear of torture.

The Advocates' observers witnessed an immigration judge threaten third country removal to coerce an individual into abandoning his asylum claim. The judge announced, "I am going to pretermite and have you sent to Honduras unless you withdraw your application and accept a removal order to (your country of origin)."

ADMINISTRATION THREATENS REFUGEE CONVENTION

In his February 4, 2025 executive order, President Trump called on the Secretary of State to review treaties and membership in intergovernmental organizations to determine if any are "contrary to the interests of the United States." While no specific action has been taken, a September 12 media report shows that the Trump Administration is attempting to enlist other countries in a concerted effort to undo legal norms and agreements that protect people from persecution. The Trump Administration nominee for Assistant Secretary of State for Population, Refugees and Migration testified at his September 11 confirmation hearing that he will work to recruit other countries to "reform" international agreements and norms on migration.

Under the Constitution, international agreements ratified with the advice and consent of the Senate are considered the law of the land. The Protocol to the Refugee Convention is one such agreement. A U.S. President has never unilaterally withdrawn from a ratified multilateral human rights or humanitarian treaty. This radical step would have dire consequences for the safety and security of people around the world, including U.S. citizens on foreign soil. Indeed, as two legal experts explained, "[i]f our foreign partners feel that they can no longer rely upon the United States, one of the chief architects of the current global order, to keep its international commitments, the foundations of that order are threatened."

TAKE ACTION

History shows that the U.S. can provide a fair and humane process to welcome people fleeing harm. The government could invest in application processing and immigration courts, while allowing people to pursue their case from anywhere in the country. These investments would give people clarity and closure within a fair time and reduce the administrative backlogs that currently plague the system.



Congress should pass the *Refugee Protection Act* and ensure that its provisions eliminate asylum pretermission, guarantee pathways to request asylum regardless of manner and location of entry, limit use of detention and coercive measures, disentangle the criminal and immigration legal systems, and bring U.S. asylum law in-line with international best practices.

- ✓ Congress should pass appropriations that adequately fund immigration adjudications, providing funding for USCIS and EOIR commensurate with, or exceeding, spending on ICE and CBP. This funding will ensure that courts can timely and fairly adjudicate asylum cases, that asylum seekers do not suffer prolonged and mandatory detention while decisions languish, and that the U.S. upholds its legal and moral duties to asylum applicants.
- ✓ Congress should ensure immigration courts are independent from the Executive Branch and that they uphold due process, while adopting best practices for addressing trauma and protecting vulnerable individuals. Support the strong standards in the *Real Courts, Rule of Law Act*.
- ✓ Congress should appropriate funding and guarantee counsel for all people in immigration court proceedings. Support the *Fairness to Freedom Act* to codify this right.
- ✓ Congress should repeal the OBBBA immigration fees. At a minimum, amend the law to allow the government to waive fees for asylum applications and work authorization.
- ✓ Congress should demand information from DOJ and DHS on how they will mitigate the impact of the improper roll-out of asylum fees, ensuring that people affected will be considered to have timely filed their application and setting their “asylum clock” to the date of attempted filing.
- ✓ Congress should issue a sense of Congress clarifying the U.S. commitment to upholding international standards:
 - Affirm that the U.S. respects the UNHCR guidelines recognizing gender and LGBTIQ+ identity as a basis for asylum protections.
 - Reinforce U.S. commitments to treaties signed with the advice and consent of the Senate, including the Refugee Convention framework.
- ✓ Congress should pass a law that limits detention and ensures that all people can request bond, regardless of how they entered the country. At a minimum, eliminate mandatory detention provisions for people without criminal convictions and ensure that immigration detention operates in accordance with international standards.

The Advocates calls on all people to demand that the U.S. reaffirm its commitment to protecting people fleeing persecution and harm, and align laws, policies and funding to prioritize due process and human dignity over detention and deportation.