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**RE: Request for Comments: Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act (November 19, 2019) DHS Docket No. USCIS-2019-0021 and DOJ Docket No. EOIR-19-0021; A.G. Order No. 4581-2019.**

Dear Mr. Davidson and Ms. Reid,

The Center for Gender & Refugee Studies (CGRS) writes in response to DHS Docket No. USCIS-2019-0021 and DOJ Docket No. EOIR-19-0021; A.G. Order No. 4581-2019, Request for Comments: Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act (November 19, 2019) (hereinafter, the Rule).

CGRS was founded in 1999 by Karen Musalo<sup>1</sup> following her groundbreaking legal victory in *Matter of Kasinga*<sup>2</sup> to meet the needs of asylum seekers fleeing gender-based violence. CGRS protects the fundamental human rights of refugee women, children, LGBTQ individuals, and others who flee persecution and torture in their home countries. CGRS is an internationally respected resource for gender asylum, renowned for our knowledge of the law and ability to combine sophisticated legal strategies with policy advocacy and human rights interventions. We take the lead on emerging issues, participate as co-counsel or *amicus curiae* in impact litigation to advance the rights of asylum seekers,<sup>3</sup> produce an extensive library of litigation support materials, maintain an unsurpassed database of asylum records and decisions, and work in coalitions with immigrant, refugee, LGBTQ, children's, and

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<sup>2</sup> 21 I&N Dec. 357 (BIA 1996).

<sup>3</sup> See, e.g., *Innovation Law Lab v. McAleenan*, 924 F.3d 503 (9th Cir. 2019); No.3:19-cv-00807-RS (D.N.Cal.) (pending); *Damus v. McAleenan*; No. 1:18-cv-00578-JEB (D.D.C.) (pending); see also *Damus v. Nielsen*, No. 18-578, 313 F.Supp.3d 317 (D.D.C. Jul. 2, 2018); *Grace v. Barr*, 344 F.Supp.3d 96 (D.D.C. Dec. 18, 2018) (gov't appealed), No. 195013 (D.C.Cir. Jan. 30, 2019)); and *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018).

women's rights networks. Since our founding, we have also engaged in international human rights work with a strong emphasis on the Northern Triangle countries to address the underlying causes of forced migration that produce refugees—namely, violence and persecution committed with impunity when governments fail to protect their citizens.<sup>4</sup>

As a critical part of our mission, CGRS educates decision makers to promote laws and public policies that recognize the legitimate asylum claims of those fleeing persecution, with a special focus on women, children and LGBTQ refugees. Our goal is to create a U.S. framework of law and policy that responds to the rights of these groups and aligns with international law.

The present comments relate to the U.S. government's implementation of so-called Asylum Cooperative Agreements (ACA) in order to reduce the number of asylum applicants allowed to present claims in the United States. U.S. law does not provide for such "asylum cooperative agreements." Instead, the Rule points to a provision in the Immigration and Nationality Act (INA) which lays out the criteria for safe third country agreements. By referring to statutory language governing safe third country agreements, and by extensive discussion in the Rule of the sole currently existing safe third country agreement, between the U.S. and Canada, the government appears to be basing its authority for the asylum cooperative agreements on the safe third country provision. This reliance is completely misplaced since the asylum cooperative agreements with Guatemala, El Salvador, and Honduras do not fulfill in any way the legal elements of a safe third country agreement. The safe third country provision is cited in the Rule as follows:

Section 208(a)(2)(A) bars an alien from applying for asylum in the United States when the following four requirements are satisfied: (i) The United States has entered into a requisite "bilateral or multilateral agreement"; (ii) at least one of the signatory countries to the agreement is a "third country" with respect to the alien; (iii) "the alien's life or freedom would not be threatened" in that third country "on account of race, religion, nationality, membership in a particular social group, or political opinion"; and (iv) that third country provides aliens removed there pursuant to the agreement "access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection." (Rule at 63996).

For the reasons set forth below, CGRS urges DHS and DOJ to refrain immediately from taking any further steps to implement asylum cooperative agreements with Guatemala, El Salvador, and Honduras.<sup>5</sup> It is our expert opinion that these countries are not safe, and that many asylum seekers, particularly women and children, could be mistakenly *refouled* under the Rule to these extremely violent countries where

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<sup>4</sup> See, e.g., Karen Musalo, *El Salvador--A Peace Worse Than War: Violence, Gender and a Failed Legal Response*, 30 YALE J. LAW & FEMINISM 3 (2018); Karen Musalo and Blaine Bookey, *Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala*, 10 HASTINGS RACE & POVERTY L.J. 265 (2013).

<sup>5</sup> While the Request for Comments states that these agreements have not entered into force (Rule at 63995, footnote 3), the Trump Administration has certified that Guatemala's legal framework meets the standard to provide "access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection." <https://www.vox.com/2019/9/26/20870768/trump-agreement-honduras-guatemala-el-salvador-explained>. Furthermore, there have been reports of individuals and families sent to Guatemala pursuant to the agreement. See e.g. <https://www.latimes.com/politics/story/2019-12-10/u-s-starts-pushing-asylum-seeking-families-back-to-guatemala-for-first-time>. The text of the agreement between the U.S. and Guatemala can be found here: [https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-25288.pdf?utm\\_source=federalregister.gov&utm\\_medium=email&utm\\_campaign=pi+subscription+mailing+list](https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-25288.pdf?utm_source=federalregister.gov&utm_medium=email&utm_campaign=pi+subscription+mailing+list).

they could be sexually assaulted, or otherwise harmed, tortured, or killed. It is also our expert opinion that these countries do not have asylum systems developed enough to provide the required “full and fair” procedure for determining asylum.

**A. THE SCREENING PROCEDURE DESCRIBED IN THE RULE IS INSUFFICIENT TO PREVENT THE UNITED STATES FROM VIOLATING U.S. AND INTERNATIONAL LAW BY REMOVING AN ASYLUM SEEKER TO A THIRD COUNTRY WHERE SHE MIGHT BE PERSECUTED OR TORTURED.**

**1. The U.S. is bound by the obligation of *non-refoulement*.**

The right to seek asylum is set out in the Universal Declaration on Human Rights.<sup>6</sup> The corresponding State duty of *non-refoulement* is codified in treaties that the United States has ratified,<sup>7</sup> and in our own domestic legislation. It is also a rule of customary international law. It is one of the most important human rights obligations in international law.

Protection against *refoulement* in the context of third country agreements is part of our own domestic law in INA 208(a)(2)(A), which requires that the asylum seeker’s “life or freedom would not be threatened” in that third country “on account of race, religion, nationality, membership in a particular social group, or political opinion.” It is a violation of international law and INA 208(a)(2)(A) to remove an asylum seeker to a third country without an individualized determination that the third country is indeed safe for that asylum seeker, including safe from *refoulement* to her home country, and that she will have access to a full and fair asylum procedure there.

**2. The Rule’s *non-refoulement* screening mechanism is inadequate.**

The Rule’s provision for a screening mechanism to implement the obligation of *non-refoulement* (Rule at 63996) is completely inadequate and will undoubtedly lead to the U.S. violating international and U.S. law. Flaws in the screening mechanism include the requirement that the asylum seeker affirmatively express a fear of removal to the third country, the imposition of an excessively high legal standard that must be met to prevent such removal, and the lack of time provided to prepare for the screening.

The screening mechanism is described as follows:

“If, on the other hand, the alien affirmatively states a fear of persecution or torture in, or removal to, the third country or countries, the asylum officer will then determine whether the alien can establish, by a preponderance of the evidence, that, if the alien were removed to the third country or countries, it is more likely than not that he or she would be persecuted on account of a protected ground or tortured.” (Rule at 64002).

The Rule therefore requires an asylum seeker to affirmatively raise a fear of harm in a third, unknown country and also puts the burden of proving her fear on the asylum-seeker in order to remain in the United States to pursue asylum. Many women and other asylum seekers will be unaware of conditions in these third countries of removal, will not know to affirmatively raise a fear, and will not be able to prove these conditions to the rigorous legal standard required even if they did. At the point in the process where an asylum seeker is screened for these exceptions to removal under an ACA, she has just arrived at the border. She will not be prepared to consider how conditions in a third country where she has spent little or no time could affect her, and few would have the knowledge or presence of mind to

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<sup>6</sup> <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>7</sup> The 1967 Protocol Relating to the Status of Refugees, and the 1984 Convention Against Torture.

affirmatively raise this issue. For those who do raise it, without access to legal representation or a means to research country conditions, it is unfathomable that they would be able to provide sufficient specific and detailed information to meet the screening standard with sufficient proof.

Many of the clients served by CGRS are from Northern Triangle countries. They simply do not have the detailed knowledge of other Northern Triangle countries to be able to establish a fear of persecution or torture, particularly without legal representation or access to research on country conditions. Asylum seekers from outside the region will have even less knowledge of the ACA countries.

The screening standard is too high in that it requires the asylum seeker to meet the same level of proof as the standard for a full merits hearing, an impossible task given the lack of due process protections available for these screening interviews.

The rule also does not mandate a consultation period for an asylum seeker prior to the threshold screening interview, unlike the final rule implementing the U.S.- Canada Safe Third Country agreement. The government attempts to rationalize this by noting that the new ACAs have few exceptions to them as compared to the U.S.-Canada agreement and are therefore less complex, implying that they require less time to adjudicate. (Rule at 64003, footnote 11). This lack of time provided prior to the threshold screening is also in contrast to the 48-hour waiting period afforded to asylum seekers prior the credible fear interview, during which time they are able to adjust to their surroundings, recover from their journey, contact legal service providers, and receive an overview of the credible fear process.<sup>8</sup>

In providing its reasoning for the abbreviated screening process, the government states, “[b]ecause the ACA country of removal did not prompt the alien’s claim, the process for determining simply whether to send the alien to a third country for that consideration is reasonably more minimalistic than the requisite procedures for deciding asylum and withholding of removal claims on the merits.” (Rule at 64004). This line of reasoning is specious. Because a country did not “prompt” an asylum-seeker’s claim does not mean that the asylum seeker could not face persecution or torture in that country, particularly given that all three of these countries are extremely dangerous. Given the conditions in new ACA countries (discussed in greater detail below), this ACA screening is of equal life or death importance as the credible fear interview.

## **B. GUATEMALA, EL SALVADOR, AND HONDURAS ARE NOT SAFE COUNTRIES.**

### **1. Guatemala**

Guatemala is not a safe country for its own people, and asylum seekers from other countries will face the same degree of risk, if not greater.

Guatemala is plagued by epidemic levels of violence, which is perpetrated with virtual impunity by gangs, organized crime, and government security forces. Gender-based violence is also widespread. Guatemala’s rates of femicide (gender-motivated killings) and sexual assault are among the highest in the world, and 99 percent of violent crimes against women are committed with impunity. Over 242,000 Guatemalans have been internally displaced, and every year thousands of Guatemalans are forced to flee the country, many of them seeking safe haven in the United States.

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<sup>8</sup> <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-credible-fear-screening>.

Guatemala has the third highest rate of intentional homicides against women in the world. Guatemala has a rate of 2.6 homicides against women per 100,000, trailing closely behind El Salvador and Honduras.<sup>9</sup> Guatemala has only recently recognized femicide as an official category of intentional homicides, in recognition of the extreme levels of violence against women in the country.<sup>10</sup> In 2008, the government passed the “Law against Femicide and Other Forms of Violence against Women” (Decree 22-2008).<sup>11</sup> Femicide under Guatemalan law is defined as the murder of a woman because of her gender.<sup>12</sup> Between 2014 and 2016, there were 2,264 reported violent deaths of women in Guatemala, of which only 611 were formally reported as femicide.<sup>13</sup> During the same period, only 59 perpetrators were imprisoned.<sup>14</sup> Critics have blamed the failure to report homicides against women as femicides on a variety of factors, including a lack of understanding of the law, gender bias, continued social unrest, poor media coverage, and inadequate efforts on the part of the implementers.<sup>15</sup>

In the first 10 months of 2017, the Guatemalan Public Ministry (*Ministerio Público*) received 51,742 reports of violence against women and 10,963 reports of sexual violence against women and girls.<sup>16</sup> When applying the law in cases of murdered women, the government established a separate system of specialized courts for the prosecution of crimes related to violence against women.<sup>17</sup> Regular courts lack the capacity and expertise to adopt the correct approach and legal perspective to cases involving violence against women.<sup>18</sup> Despite the creation of specialized courts, only a small percentage of reports result in convictions compared to the number of reports as a result of a lack of implementation mechanisms and coordination between criminal justice authorities.<sup>19</sup>

Guatemala’s overall intentional homicide rate was ranked 6th in the world in 2018.<sup>20</sup> The Guatemalan government reports the total annual intentional homicide rate of 2018 at 22.4 per 100,000 people.<sup>21</sup> This homicide rate reflects a total of 3,881 recorded killings in 2018, down from 4,409 murders and a homicide rate of 26.1 in 2017.<sup>22</sup> However, civil society watchdog groups report different figures.<sup>23</sup> The

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<sup>9</sup> Sarah Johnson, *Can health workers stop thousands of women being killed in Guatemala?*, The Guardian (March 7, 2018), <https://www.theguardian.com/healthcare-network/2018/mar/07/health-workers-stop-thousand-women-killed-guatemala-femicide>; Gender Equality Observatory for Latin America and the Caribbean, *Femicide Indicator* (2017), <https://oig.cepal.org/en>.

<sup>10</sup> United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-Related Killing of Women and Girls*, at 52 (2018), [https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18\\_Gender-related\\_killing\\_of\\_women\\_and\\_girls.pdf](https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> Guatemala Human Rights Commission/USA, *Guatemala’s Femicide Law: Progress against Impunity?* (May 2009), [https://www.ghrc-usa.org/Publications/Femicide\\_Law\\_ProgressAgainstImpunity.pdf](https://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf).

<sup>13</sup> The Guardian, *supra* note 15.

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 18.

<sup>16</sup> Ramos, Saira, *Más de 51 mil Mujeres Viven una Situación de Violencia en el País*, PublineWS (Nov. 22, 2017), <https://www.publineWS.gt/gt/noticias/2017/11/22/cifra-violencia-la-mujer-embarazos-menores-2017.htm>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> World Atlas, *Murder Rate By Country* (Jan. 11, 2018), <https://www.worldatlas.com/articles/murder-rates-by-country.html>.

<sup>21</sup> InSight Crime, *2018 Homicide Round-Up* (2018), <https://www.insightcrime.org/news/analysis/insight-crime-2018-homicide-roundup/>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

official tally was short by over 1,000 homicides, placing the total at 4,914 and the murder rate at 28 per 100,000 as reported by the Mutual Support Group (*Grupo de Apoyo Mutuo – GAM*), a non-governmental organization that tracks crime in the country.<sup>24</sup> The discrepancy in the governmental statistics and those offered by GAM speak to the country's inability to accurately report the severity of its homicide rate.<sup>25</sup>

## 2. El Salvador

El Salvador is not a safe country for its own people, and asylum seekers from other countries will face the same degree of risk, if not greater. CGRS founding director Karen Musalo has documented human rights violations in the country for decades<sup>26</sup> and recently returned from another human rights fact-finding trip there. El Salvador has long experienced some of the highest homicide and femicide levels in the world. Although El Salvador's murder rate has declined over the past three years, at 50 killings per 100,000 inhabitants, the country continues to have the highest murder rate in Latin America<sup>27</sup>—one that is five times the rate which the United Nations considers to be epidemic. Furthermore, the recent drop in homicide rates in the country seems to respond to the way crimes are classified by the government, and not to an actual drop in levels of violence, which also accounts for the increasing number of forced disappearances.<sup>28</sup> In El Salvador, sexual violence has increased by almost a third (31 percent) in the last two years,<sup>29</sup> with a girl or woman being raped every four to five hours.<sup>30</sup> According to Salvadoran experts, such statistics represent just a small amount of the actual violence because more than 80 percent of crimes against women are not reported.<sup>31</sup>

Violence against women remains prevalent in El Salvador because it is not taken seriously by government authorities, and impunity therefore prevails. Gender bias infects the process—beginning with the police, to the prosecutors, to the judges themselves, who all too often see gender violence as normal, and blame the woman for bringing it upon herself.

Because regular courts have failed to take gender violence seriously, El Salvador has been forced to create specialized courts to prosecute violent crimes against women, but the specialized courts do not have jurisdiction over the two most common acts of violence against women—rape and domestic violence, where prosecutions remain in the regular courts. The reason repeatedly given by our sources: the prevalence of these crimes would lead to a “collapse” of the specialized courts if they had to deal with them. Even in the areas of their jurisdiction, the specialized courts have been a failure by most measures. Impunity remains unacceptably high; more than 95 percent of the crimes go unpunished.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Musalo, n. 4 above; see also Karen Musalo, *Inside the So-Called “Safe Third”—and Trump’s Latest Attack on Asylum-Seekers*, MS. MAGAZINE, December 4, 2019, <https://msmagazine.com/2019/12/04/inside-the-so-called-safe-third-and-the-trump-administrations-latest-attack-on-asylum-seekers/>.

<sup>27</sup> <https://www.osac.gov/Country/ElSalvador/Content/Detail/Report/d1222be6-4e5d-461f-912c-15f4aec90b02>.

<sup>28</sup> Parker Asmann, *El Salvador to Omit Key Data From Official Homicide Tally*, Insight Crime, July 18, 2019, <https://www.insightcrime.org/news/brief/el-salvador-omit-key-data-homicides/>

<sup>29</sup> <https://www.theguardian.com/global-development/2019/apr/17/teenage-girls-el-salvador-rising-sexual-violence-report>.

<sup>30</sup> <https://msmagazine.com/2019/12/04/inside-the-so-called-safe-third-and-the-trump-administrations-latest-attack-on-asylum-seekers/>.

<sup>31</sup> <http://www.seguridad.gob.sv/dia/monitoreo-y-evaluacion/plan-el-salvador-seguro-pess/>.

El Salvador also struggles to respond to internal displacement. There are currently close to 275,000 internally displaced Salvadorans, with more than 90 percent of them having abandoned their homes because of violence.<sup>32</sup>

### 3. Honduras

Honduras is not a safe country for its own people, and asylum seekers from other countries will face the same degree of risk, if not greater. Honduras has the highest murder rate in the world with a homicide rate of 90.4 per 100,000 people.<sup>33</sup> In 2019, the U.S. Department of State Travel Advisory assessed Honduras at Level 3, indicating that travelers should reconsider travel to the country due to crime.<sup>34</sup> In addition to the homicide rate in Honduras, the country is particularly dangerous for women. In 2018, 10,367 cases of domestic violence were brought before the Honduran court, or an average of 28 cases per day. Of those, only 30% resulted in some sort of prosecution or sentencing, and the specific information about the kind of sentencing was not disclosed.<sup>35</sup> There are few options for female survivors of violence in Honduras. Not only are women victims of violence at home and in the streets, there is a lack of institutional response from the Honduran government. An example of the government's dysfunctional response is that, if a woman brings a complaint to the Public Ministry about experiencing violence, and it issues a restraining order, she herself has to deliver it to her assailant.<sup>36</sup>

Given the extremely high levels of violence in all three of these countries, it is likely that asylum-seekers transferred from the U.S. would be targeted for persecution in these countries on account of their race, nationality, membership in a particular social group or other protected ground, or for harm that rises to the level of torture.

## C. NONE OF THE THREE ACA COUNTRIES IS ABLE TO PROVIDE ASYLUM SEEKERS "ACCESS TO A FULL AND FAIR PROCEDURE FOR DETERMINING A CLAIM TO ASYLUM OR EQUIVALENT TEMPORARY PROTECTION" AS REQUIRED BY U.S. AND INTERNATIONAL LAW.

### 1. Guatemala

CGRS partner and human rights expert Professor Naomi Roht-Arriaza has stated that, "The Guatemalan government has put absolutely no thought or administrative resources into creating a system that is efficient and meets international standards." Furthermore, Professor Roht-Arriaza notes there is evidence that Guatemala's immigration agency is plagued with the same corruption that pervades the country's security forces and other government authorities, warning that "With a corrupt migration authority, asylum seekers returned to Guatemala will be highly vulnerable to extortion, exploitation, or being returned to life-threatening dangers in their home countries."<sup>37</sup>

Guatemala cannot properly process a high volume of asylum claims and its system has historically had many shortcomings. Most significantly, it is unable to handle a large volume of cases. While it has slowly increased the number of cases it handled each year, the average has risen only from 7 cases during

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<sup>32</sup> <https://www.wilsoncenter.org/article/the-hidden-problem-forced-internal-displacement-central-america>.

<sup>33</sup> <https://www.worldatlas.com/articles/murder-rates-by-country.html>.

<sup>34</sup> <https://www.osac.gov/Country/Honduras/Content/Detail/Report/ff459385-017d-4ff2-8a02-15f4aec15a69>.

<sup>35</sup> <https://www.thedialogue.org/analysis/nowhere-to-turn-gender-based-violence-in-the-northern-triangle-and-its-impact-on-migration/>.

<sup>36</sup> *Id.*

<sup>37</sup> See, *CGRS Decries New Rule to Deport Asylum Seekers to Guatemala*, November 19, 2019, <https://cgrs.uchastings.edu/news/cgrs-decries-new-rule-deport-asylum-seekers-guatemala>.

2002-2014 to 82 cases in 2017.<sup>38</sup> In 2018, the United States reported that Guatemala's identification and referral mechanisms for potential asylum seekers were inadequate. Both migration and police authorities lacked adequate training concerning the rules for establishing refugee status.<sup>39</sup>

## 2. El Salvador

El Salvador's asylum system is not equipped to deal with large numbers of asylum applications: the office charged with deciding cases, *Comisión para la Determinación de la Condición de Personas Refugiadas* (CODER) has a single staff person for the entire country.<sup>40</sup> According to the 2018 State Department human rights report, as of July 31st, 2018, only four asylum requests had been submitted.<sup>41</sup>

Since the signing of the agreement between the U.S. and El Salvador, there have been no public reports the government is taking steps to increase the capacity of the country's asylum system. In fact, on December 13, 2019, the president of El Salvador announced that his country is not ready to accept asylum seekers from the U.S., pointing to a lack of facilities, a high murder rate, rampant gang violence, and a lack of jobs.<sup>42</sup>

## 3. Honduras

Honduras, too, has only a nascent asylum adjudication system, with no capacity to take on asylum seekers that the U.S. is unwilling to process. In an August 2019 report, the Inter-American Commission on Human Rights (IACHR) noted that in a period of over eleven years, from January 2008 through July of 2019, only 299 requests for asylum were registered with the National Institute for Migration (*Instituto Nacional de Migración*, or INM) in Honduras, and 50 people were recognized as refugees.<sup>43</sup> The IACHR noted that there were severe delays in processing asylum requests, a defect also acknowledged by the U.S. Department of State.<sup>44</sup>

The National Institute for Migration is in charge of processing immigration related requests. The Institute does not list any publicly available information about the asylum application process<sup>45</sup> and the U.N. High Commissioner for Refugees has noted that substantial clarity is needed on how asylum seekers can seek protection in Honduras.<sup>46</sup>

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<sup>38</sup>[https://www.acnur.org/op/op\\_fs/5b3e64214/informe-del-sistema-de-proteccion-en-guatemala-segunda-edicion.html](https://www.acnur.org/op/op_fs/5b3e64214/informe-del-sistema-de-proteccion-en-guatemala-segunda-edicion.html).

<sup>39</sup> U.S. Department of State, *Country Reports on Human Rights Practices - Guatemala, 2018.*

<sup>40</sup> <https://msmagazine.com/2019/12/04/inside-the-so-called-safe-third-and-the-trump-administrations-latest-attack-on-asylum-seekers/>.

<sup>41</sup> U.S. Department of State, El Salvador 2018 Human Rights Report, <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>

<sup>42</sup> *El Salvador's president says country isn't ready for asylum seekers he promised to take from U.S.*, CBS NEWS, December 13, 2019, <https://www.cbsnews.com/news/el-salvador-president-navib-bukele-not-ready-for-asylum-seekers-he-promised-to-take-from-u-s-60-minutes-2019-12-13/>.

<sup>43</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Honduras*, August 2019, <https://www.oas.org/es/cidh/informes/pdfs/Honduras2019.pdf>.

<sup>44</sup> U.S. Department of State, *Country Reports on Human Rights Practices - Honduras, 2018.*

<sup>45</sup> INM website with information about Migratory Movement Certificates, [http://inm.gob.hn/movimiento\\_migratorio.html](http://inm.gob.hn/movimiento_migratorio.html).

<sup>46</sup> U.N. High Commissioner for Refugees, *MIRPS Analysis, 2017*, <https://www.acnur.org/5b50d83b4.pdf>.



**D. CONCLUSION**

As outlined above, it is CGRS's expert opinion that if the ACAs with Guatemala, El Salvador, and Honduras are implemented as proposed in this Rule, many asylum seekers, particularly women, would be mistakenly removed to these countries where they would be sexually assaulted or otherwise harmed, tortured, or killed. As explained above, the proposed U.S. screening process fails to include safeguards against *refoulement*, and the ACA countries do not have anything near "full and fair" procedures for determining asylum. Accordingly, CGRS urges the government to refrain from implementing any of these asylum cooperative agreements. CGRS instead recommends that any safe third country agreements rigorously follow the requirements of INA 208(a)(2)(A) and our obligations under international law, and follow all appropriate procedures for administrative rulemaking including a notice and comment period prior to the rule taking effect.

Sincerely,

*Kate Jastram*

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