

Human Rights First

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://www.humanrightsfirst.org/blog/sweeping-guatemala-agreement-illegal-and-inhumane>

Public Facing Advocacy Writing

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Areas of Focus

Current Initiatives

Department of Homeland Security (DHS) Acting Secretary Kevin McAleenan is [in Guatemala](#) this week to work out key terms that are pivotal to implementing the agreement the two countries entered into late last week to deny asylum protection in the United States. These include questions relating to the volume and scope of transfers under the agreement. While these and other glaring gaps may explain the Trump Administrations delay in sharing an official copy of the agreement, a posted [translation](#) raises a range of serious concerns.

Contrary to McAleenans [description](#), the deal allows the United States to do much more than return asylum seekers who transited through Guatemala back to that country. The agreement is a radical and sweeping outsourcing agreement, riddled with holes, unresolved questions and fatal flaws that will make it illegal, unworkable, and counterproductive, as well as harmful to asylum seekers.

Under this deal, the United States could potentially send asylum seekers from any country (save Guatemala), who arrive at any port of entry or between ports of entry, to Guatemala, regardless of whether they transited through Guatemala or had any connection whatsoever with the country. Under its sweeping terms the United States could setting aside the illegality send a Chinese individual who sought asylum at JFK airport off to Guatemala.

The terms of this arrangement are so sweeping that it could essentially outsource Americas responsibility to receive and host refugees seeking asylum to another country the kind of [disastrous arrangement](#) Australia entered into with Papua New Guinea and Nauru. But in this case, the United States is planning to ship refugees to a country from which many thousands have been fleeing in search of protection.

While the Washington Post [reports](#) that McAleenan is telling Guatemalans the plan would start slowly and with single adults from Honduras and El Salvador, the agreement is unclear and incoherent on many points, leaving major questions unaddressed. Its clear from the text that the parties have not agreed on the number of people to be transferred, that the implementation plan has not been agreed, and that standard operating procedures are to be developed in the future. The agreement will only enter into force when, and if, both countries exchange notes indicating each party has complied with their necessary domestic legal procedures.

Certainly, this defective agreement will face legal scrutiny in the United States. Regardless of the scope and volume of transfers ultimately agreed upon, the pact comes nowhere near meeting the legal requirements for an agreement that would allow DHS to transfer an asylum seeker to a third country. [U.S. law](#) is clear that asylum seekers cannot be removed to a third country where their lives or freedoms would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, or where they would not have a full and fair procedure for determining a claim to asylum or equivalent temporary protection.

As Human Rights First [detailed](#) last month, refugees in Guatemala are at risk not only due to their inherent vulnerabilities as refugees, but also on account of their race, nationality, gender, sexual orientation, gender identity and other reasons. Various groups including indigenous people, LGBTQ persons, women targeted for violence, and children threatened by deadly gangs face persecution that forces them to seek protection outside the country. The State Departments own human rights report reveals that rape, femicide, violence against women, trafficking in persons, violent attacks against LGBTQ persons, and gang-recruitment of displaced children are all serious problems in Guatemala. Moreover, Guatemalas [asylum system](#) with only three or four officers to interview asylum seekers barely exists. The U.N. Refugee Agency concluded that the countrys mechanisms for identifying and referring asylum seekers for refugee assessments are inadequate. [A number of members](#) of Congress have already spoken out against the agreement.

Certainly, the agreement will also face legal hurdles in Guatemala. While the deal was still being negotiated, five former Guatemalan foreign ministers and the countrys human rights ombudsman [filed a motion](#) asking Guatemalas Constitutional Court to block the agreement. The court ruled that the accord could not be signed unilaterally by Guatemalan President Morales without the approval of the countrys Congress. The agreement may very well be illegal for other reasons as well. Guatemalas state attorney for human rights [criticized](#) the pact as illegal, saying it violates the Vienna Convention because Guatemala signed under duress given President Trumps threats of tariffs, taxes on remittances and a ban on the travel of Guatemalans to the United States. Earlier this week, his office filed [a new motion](#) to nullify the deal.

The Trump Administrations efforts to force the agreement through, despite the court ruling, along with its refusal to support the

Guatemalan anti-corruption commission, are damaging efforts to restore the rule of law and fight corruption in Guatemala. The Washington Office on Latin America (WOLA) has [warned](#) that the U.S. government is sending an incredibly damaging message to the region: appeasing President Trump's agenda takes priority over respecting rule of law or upholding human rights, explaining that [b]uilding greater security, prosperity, and good governance in Guatemala is the most effective long-term way of deterring irregular migration.

The bottom line is that this agreement will strand thousands of people in gravely dangerous places and block them from receiving meaningful protection. Yet again, the Trump administration will present those seeking asylum in the United States with [unsolvable dilemmas](#). In this case, the Sophies choice will be: to seek asylum in a country where they will not be protected from violence or return to persecution, or to abandon their asylum claims and risk their lives at home.

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