



## Right to Asylum Under Siege

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This *Frontera Facts* explores the implications of Attorney General Sessions' recent decision to sharply restrict the ability of those fleeing domestic and gang violence to obtain asylum.

Sessions' decision is based on the false assumption that cases of domestic and gang violence reflect dangers grounded in purely private conduct that does not implicate state authorities.

The duty to protect and promote human rights and to prevent human rights violations is a responsibility central to democratic governance. The prevalence of domestic violence and gang violence in the Northern Triangle of Central America is in many ways connected to the acquiescence and complicity of state authorities. This reflects and reproduces deep structural injustices now further compounded by the U.S government's own responsibility for undermining the protection of victims by denying them asylum.

### What is Asylum?

Asylum is a universal legal protection granted to individuals fleeing persecution or violence in their country of origin. Migrants have the right to seek asylum under U.S. and international law.

### What is the difference between an Asylum Seeker and a Refugee?

Individuals who seek asylum do so upon entry or within the United States. Refugees petition for protection in their respective countries. Asylum and refugee standards are governed by the [UN 1951 Convention and its 1967 Protocol](#), and as well as the United States Refugee Act of 1980.

### Role of Domestic Violence in Asylum

The 1951 Refugee Convention and the 1967 Protocol includes five protected groups: [religion](#), [race](#), [political opinion](#), [nationality](#), and ["membership in a particular social group"](#). The definition of a "particular social group" has long

been unsettled. Major strides were made to include gender and gender violence starting in the 1980s. Women continue to be victims of violence worldwide and continue to bear the weight of discriminatory inequality through [“lack of capital, high wage differentials and gendered work norms, bearing the responsibility for childcare, and exclusion from basic services.”](#)

The question of whether survivors of domestic violence are eligible for asylum has been a central question in immigration law. Attorney General Jeff Sessions’ decision on Matter of A-B- on June 11, 2018, effectively reversed years of struggle for survivors of gang violence and domestic violence, particularly women and children from Mexico and Central America, whose governments have failed to protect them.

- 1985-The decision made by the Board of Immigration Appeals (BIA) in the Matter of Acosta in 1985 led to the extension of protective status to persons who share characteristics that [“might be an innate one such as sex, color, or kinship ties.”](#) Under this decision, judges employ discretion to evaluate persecution based on gender.
- 1996- Violence against women is recognized as systemic despite being frequently marginalized as a [“private matter.”](#) The decision of Matter of Kasinga applied the criteria in Matter of Acosta, to grant [Ms. Kassindja asylum](#) as she escaped her tribe’s practice of genital mutilation.
- 1999-2009- Rody Alvarado, a Guatemalan woman who survived years of domestic violence, was initially granted asylum but the decision was quickly reversed. The BIA [decision](#) concluded that the case failed to provide sufficient evidence that her harm was on account of her husband’s political opinion. 10 years later she was re-granted asylum.
- 2009- In Matter of L-R-, the Department of Justice ruled that [“Mexican women in domestic relationships who are unable to leave”](#) are considered a viable social group under the premise that gender norms and cultural impunity in Mexico enables domestic violence and deprives women of protection. The Matter of Acosta provided a strong basis for the decision made by the Department of Justice as Mexican women became a particular social group.
- 2014- In 2014 in [Matter of A-R-C-G](#) the BIA established a binding precedent that recognized that domestic violence falls under one of the five categories in which asylum can be granted; that is, women fleeing domestic violence are members of a specific social group.
- 2018- In the Matter of A-B, Ms. A.B was seeking asylum under the group of [“El Salvadoran women who are unable to leave their domestic relationships where they have children in common.”](#) In an extraordinary precedent, Attorney General Sessions personally responded to this case and stated that the precedent ruling in Matter of A-R-C-G- [“was wrongly decided.”](#) Sessions’ decision to effectively end protections for those fleeing gang and domestic violence [reversed years of struggle](#).

### Gang Violence

The Northern Triangle region of Central America (El Salvador, Honduras, and Guatemala) has seen a notable increase in organized crime since the Mara Salvatrucha-13, also known as MS-13, gained power. [UNHCR noted that as of 2016, 388,000](#) people had fled from the region with their families, despite enormous risks inherent in these migration processes. Not only do people fleeing gang violence have to undergo a dangerous journey north, but they run the risk of not receiving asylum at the U.S. border.

### What is AG Jeff Sessions decision’s impact?

Attorney General Jeff Sessions’ decision effectively deems survivors of domestic and gang-related violence ineligible for asylum protections on that basis. Women and children are disproportionately affected by his decision. Dismissing the violence they experience as solely a private matter invalidates their claims to asylum and denies them the protections they would otherwise not receive from their countries of origin.

### Conclusion

Sessions’ approach as to these issues must be understood within the broader context of the Trump administration’s overall efforts to limit and deter the exercise of the legal right to asylum. These include the generalized detention of asylum seekers, as well as intensifying efforts to turn away asylum seekers at ports of entry, and to prosecute them and separate families.

This pattern of abuse includes the administration’s increasing insistence on delegating the handling of asylum cases to Mexican authorities, as part of the overall transfer of the burden of immigration enforcement and containment of migration flows from the U.S. to Mexico, particularly as to those fleeing generalized violence and poverty in Central America.

On July 2, 2018, a federal court in Washington D.C. found that widespread abuses of the rights of asylum seekers, including their arbitrary detention and denial of humanitarian parole are unlawful. The [federal court](#) ordered a case-by-case review of whether each asylum seeker in this class-action should be released on humanitarian parole. The case targets five U.S. Immigration and Customs Enforcement field offices in Detroit, El Paso, LA, Newark and Philadelphia that have virtually ceased granting parole since early 2017. Over 1,000 asylum seekers are estimated to have been denied parole just in these five ICE districts. This court decision provides a glimpse of hope towards a recognition of the right to seek asylum, but more is needed.

HOPE will continue to monitor and defend the rights of asylum seekers on both sides of the border, and to hold the U.S., Mexican and other governments accountable for unfolding violations of these rights.

This edition of Frontera Facts was made possible by research undertaken by Hope interns Brian Elizalde, Estrella Loredo, and Mariana Marañón.

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