



Children's Defense Fund–New York

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Domestic and Gang Violence Victims Become Ineligible for Asylum

On June 11, 2018, Attorney General Jeff Sessions ordered U.S. immigration courts to stop granting asylum to victims of domestic abuse and gang violence. This ruling has already had and will continue to have a tremendous impact on women and children specifically from Central American countries who are fleeing violence. In order to grasp the severity of the ruling, it is essential to first examine the countries with the largest sources of asylum seekers and understand what the violence they are enduring looks like. The conditions in these countries and their impact on individuals illustrate that domestic and gang violence victims are indeed a social group, a characteristic of persecution, and thus, qualify for asylum. Policymakers must recognize this and strive to reverse the recent ruling in order to protect children from being deported back to dangerous regions. Even with the ruling, domestic and gang violence victims still have an opportunity to gain asylum, however, it has become significantly more difficult. The conditions of asylum have not changed, so the fight for these victims must continue.

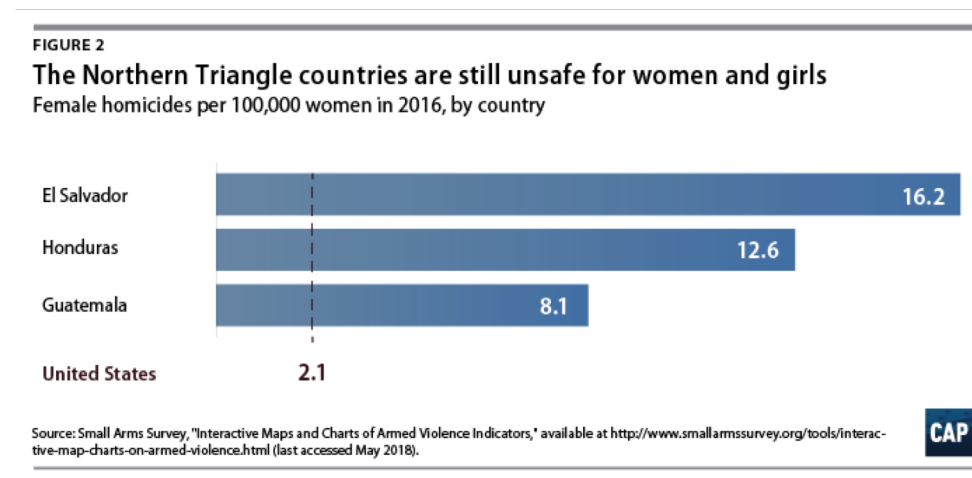


Dame 1 Minuto De. 2016. "Northern Triangle of Central America." <http://dame1minutode.org/northern-triangle-of-central-america/>

Background

Domestic Violence in Central America

Families in Central America continue to seek asylum in the United States in order to escape living in a state of perpetual fear. The Northern Triangle of Central America (NTCA), consisting of El Salvador, Honduras, and Guatemala, has seen a high level of domestic and gang violence against women and children over the years and has been responsible for the majority of asylum seekers to the U.S. UN Women reports that domestic violence rates in the NTCA have reached 50% and that the assaults occur on buses, streets, and in the workplace.¹ Children in these countries are growing up in an environment where *femicide*, a term denoting the killing of women and girls because of her gender, has become a frequent reality. According to the 2016 Small Arms Survey, out of the 25 countries with the highest rates of *femicide* in the world, 14 are in Latin America.



Gang Violence in Central America

Gang violence is also extremely prevalent throughout Central America, and many of the gangs, known as “maras,” attack anyone who crosses their turf whether on the way to school or work. According to the World Bank, there are currently over 900 active gangs in Central America with about 70,000 members.² Children are often the target of gang violence: many young girls are victims of gang rape, are often considered property, and are forced to have sexual relations with gang leaders.³ Likewise, boys are regularly threatened or pressured into joining gangs.⁴ Children as a whole in the NTCA experience harassment, sexual assault, kidnapping, theft, and

¹ UN Women. 2017. "Take Five: Fighting Femicide in Latin America." <http://unwomen.org/en/news/stories/2017/2/take-five-adriana-quinones-femicide-in-latin-america>

² World Bank. 2011. "Crime and violence in Central America: a development challenge." https://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_ENGLISH_CrimeAndViolence.pdf

³ Crisis Group. 2018. "Mafia of the Poor: Gang Violence and Extortion in Central America." <https://crisisgroup.org/latin-america-caribbean/central-america/62-mafia-poor-gang-violence-and-extortion-central-america>

⁴ Washington Office on Latin America. 2017. "Children and Families Fleeing Violence in Central America." <https://wola.org/analysis/people-leaving-central-americas-northern-triangle/>

are thrown off busses on their way to school by gang members.⁵ Due to the constant violence, many children drop out of school, therefore making it extremely difficult for them to find a job and support themselves. Unfortunately, most domestic and gang violence crimes go unpunished and reporting such crimes may result in further violence, thus providing no protection for the victims. Children and their families have increasingly been seeking asylum in the United States to escape these dangers.

Eligibility for Asylum

To receive asylum in the United States, applicants must show that they were persecuted because of one of the characteristics listed below:⁶

- ❖ Race
- ❖ Religion
- ❖ Nationality
- ❖ Membership in a particular social group
- ❖ Political opinion

Meaning of membership in a particular social group

The meaning of “membership in a particular social group” is the most confusing characteristic for qualifying for asylum, as there is little precedent and various interpretations. The characteristic requires that individuals of the group share a “common, immutable” trait such as sex, color, kinship ties, or past experience that is fundamental to one’s identity and cannot be changed.⁷ *Matter of A-R-C-G-* was the first example of a case where persecution because of membership in a particular social group was used as a basis for asylum in the United States.

Domestic and Gang Violence Precedent for Asylum Claims

In 2014, a Guatemalan woman, Aminta Cifuentes (*Matter of A-R-C-G-*), applied for asylum in the U.S. after suffering years of domestic abuse by her husband, which included beatings, acid

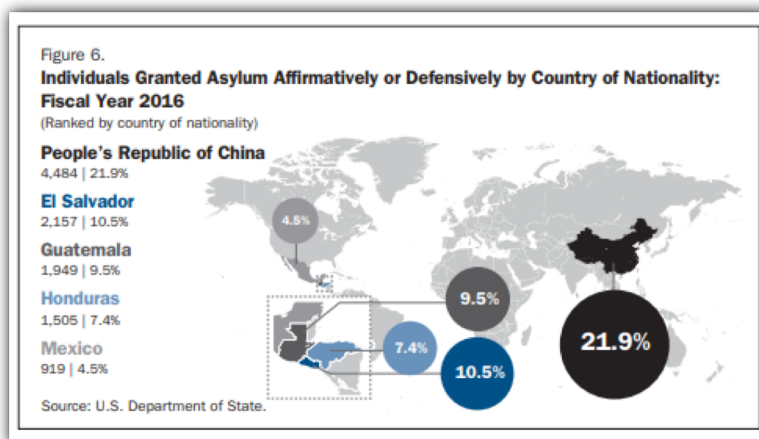
⁵ UNHCR. 2017. "Urgent Help Needed for Central American Children on the Run." <http://unhcr.org/en-us/news/latest/2017/5/592d432c4/urgent-help-needed-central-american-children-run.html>

⁶ U.S. Citizenship and Immigration Services. 2018. “Asylum.” U.S. Department of Homeland Security. <https://uscis.gov/humanitarian/refugees-asylum/asylum>

⁷ U.S. Citizenship and Immigration Services. “Membership in a Particular Social Group.” U.S. Department of Homeland Security. <https://uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-62325/0-0-0-64099/0-0-0-64242/0-0-0-64298.html>

burns, and rape. She was the first domestic violence victim who gained eligibility for asylum.⁸ The Board of Immigration Appeals recognized Cifuentes as being part of a social group, thereby allowing more women to use domestic abuse as a grounds for asylum: “Depending on the facts and evidence in an individual case, ‘married women in Guatemala who are unable to leave their relationship’ can constitute a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3) (2012).”⁹

This 2014 ruling set a precedent particularly for women and children to flee to the U.S. and cite domestic violence and the fear of gang violence in their asylum applications. Since the ruling, around 10,000 people per year have been granted asylum on the basis of domestic and gang violence in their countries of origin.¹⁰ This amount constitutes a large number of the asylum applications from the NTCA. According to the U.N. High Commissioner for Refugees (UNHCR), the overall number of people in the NTCA seeking asylum has increased by eleven-fold between 2011 and 2017.¹¹ For example, in 2016, over 60,000 individuals from the NTCA applied for asylum.¹² Families have been relying on the 2014 domestic and gang violence precedent to escape their home countries in hopes for a better and safer life for themselves and their children.



Mossaad, Nadwa and Ryan Baugh. 2018. “Refugees and Asylees: 2016,” Annual Flow Report. Washington, DC: Office of Immigration Statistics, U.S. Department of Homeland Security.

⁸ Benner, Katie, and Caitlin Dickerson. 2018. "Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum." The New York Times. June 11. <https://nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>

⁹ Matter of A-R-C-G- et al., 26 I&N Dec. 388 (BIA 2014)

¹⁰ 2018. "US Asylum: Domestic and Gang Violence Cases 'no Longer Generally Qualify'." BBC News. June 12. <https://bbc.com/news/world-us-canada-44446923>

¹¹ UNHCR Population Statistics - Data - Overview. 2018. "UNHCR Population Statistics - Data - Asylum Seekers." http://popstats.unhcr.org/en/asylum_seekers

¹² Mossaad, Nadwa and Ryan Baugh. 2018. “Refugees and Asylees: 2016,” Annual Flow Report. Washington, DC: Office of Immigration Statistics, U.S. Department of Homeland Security. https://dhs.gov/sites/default/files/publications/Refugees_Asylees_2016_0.pdf

Recent Ruling by Sessions

The Attorney General's June 11th order reversed a 2016 immigration appeals court ruling that granted asylum to a Salvadoran woman fleeing domestic violence. This woman, referred to as A-B-, claimed that she was sexually, physically, and emotionally abused by her husband for 15 years and was too afraid to return home to El Salvador. She was originally denied asylum by a lower immigration court, but then won an appeal to the Board of Immigration Appeals. However, Sessions then stated that because the woman was a victim of a "private crime" instead of state-sponsored persecution, the crime was not eligible for asylum.¹³ He further remarked that those applicants who claim persecution based on membership in a particular social group must successfully prove that their group shares common characteristics which are socially distinct, that her membership in the group is the main reason for her persecution, and that her home government is not protecting her.¹⁴ Sessions wrote: "The mere fact that a country may have problems effectively policing certain crimes — such as domestic violence or gang violence — or that certain populations are more likely to be victims of crime cannot itself establish an asylum claim."¹⁵

Implications of New Ruling

The Attorney General's recent ruling will affect tens of thousands of women and children who are fleeing the horrific and often fatal violence across Central America. The ruling will also affect victims of domestic and gang violence all around the world who have escaped their home countries and looked to the U.S. for asylum. Beth Werlin of the American Immigration Council stated that the Attorney General's decision will result in us sending children and mothers back to their abusers and criminal gangs.¹⁶ Children will be subjected again to immense danger and will face the risk of being attacked or killed by the gangs they sought to escape.¹⁷ Lastly, this decision has the potential to lead to further limits on asylum claims on the basis of sexual orientation, gender, and child abuse.

¹³ Matter of A-B, 27 I&N Dec. 316 (A.G. 2018)

¹⁴ Snopes.com. 2018. "Attorney General Sessions Reverses Protections for Asylum Seekers Fleeing Domestic Violence, Gangs." <https://snopes.com/news/2018/06/11/sessions-asylum-domestic-gang-violence/>

¹⁵ Siddiqui, Sabrina. 2018. "Trump Administration Moves to End Asylum for Victims of Domestic Abuse and Gangs." The Guardian. June 11. <https://www.theguardian.com/us-news/2018/jun/11/trump-asylum-seekers-abuse-gang-violence-end-jeff-sessions>

¹⁶ American Immigration Council. 2018. "American Immigration Council's Statement on Attorney General's Decision Restricting Access to Asylum for Victims of Domestic and Gang Violence." <https://americanimmigrationcouncil.org/news/american-immigration-councils-statement-attorney-generals-decision-restricting-access-asylum>

¹⁷ UNICEF. 2016. "Risking It All to Escape Gang Violence and Poverty." https://unicef.org/infobycountry/media_92569.html

Recommendations

The exodus of domestic abuse and gang violence victims from Central America has made it very clear that these are not isolated private crimes. Women and children remain the victims of this violence and receive little to no support from their governments, therefore pushing them to seek asylum in the United States. The unresponsiveness of their governments to their reported violence highlights credible political persecution and proves that these victims fall into the category of a social group. Therefore, we urge the administration to make domestic and gang violence a grounds for asylum in the United States again. Children should not be sent back to dangerous environments and neither should their parents. Victims deserve our protection and an opportunity to live without fear. In spite of these negative outcomes of the ruling, many conditions of asylum in the U.S., in fact, have not changed, so the fight for domestic and gang violence victims is not over. Asylum-seekers cannot be sent back home when they have a credible fear of persecution; they still have a chance to make their case. Advocates and lawyers must continue to challenge the Attorney General's decision and asylum seekers must remember that his decision is not a complete denial of all domestic and gang violence-based claims. Victims from the NTCA continue to have an opportunity to be granted asylum on a case by case basis.

This summer CDF-NY interns worked with staff on the 2018 CDF-NY Summer Policy Series. Camila Kirtzman is the primary author of this paper.