



## **Background Brief April 2018**

### **The Right to Seek Asylum**

#### **Background**

Asylum is one of the core ways the U.S. government honors its legal and moral obligations to people fleeing danger. The right to seek relief from deportation, if you have a well-founded fear of persecution based on a variety of protected grounds, is recognized under U.S. law<sup>1</sup> as well as international conventions to which the United States is a party.<sup>2</sup>

Congress has a critical role to play in protecting the right to seek asylum, including through appropriating funds for programs that support asylum-seekers and withholding funds for efforts that penalize this vulnerable population for and deter them from accessing their rights.

Regrettably, the policies of the last two administrations have gravely undermined the U.S. asylum system. Independent NGOs report that, in the closing months of the Obama administration, U.S. Customs and Border Protection (CBP) began increasingly to disregard the fear claims of individuals apprehended at the U.S.-Mexico border, thereby denying entry to people whose lives and safety may be at risk.<sup>3</sup> Experts in human rights law believe that this practice violates the 1980 U.S. Refugee Act, as well as the UN Refugee Convention.<sup>4</sup>

The Trump administration has added further obstacles to protection by increasing criminal prosecutions against asylum-seekers for crossing the border. U.S. statutes that categorize unauthorized border crossing as a criminal - rather than civil - matter have dubious origins,<sup>5</sup> and raise human rights concerns. Applying these laws to asylum-seekers is particularly harmful and expressly forbidden under international conventions.<sup>6</sup> Nevertheless, human rights monitors report the current administration routinely charges asylum-seekers with federal crimes related to unauthorized border crossing.<sup>7</sup>

These prosecutions are often accompanied by harsh penalties. NGOs have extensively documented the current administration's blanket denials of parole for asylum-seekers who have passed their credible fear interviews,<sup>8</sup> forced separation of parents and children,<sup>9</sup> prolonged detentions in conditions that violate international standards,<sup>10</sup> and wrongful deportation. These actions deter people with *bona fide* asylum claims from seeking the protection to which they are legally entitled.

These policies are an affront to basic humanitarian principles. They also challenge the integrity of the U.S. immigration system and the moral identity of the United States, which has long been a haven for the persecuted.

#### **Unitarian Universalist Service Committee Recommendation**

Congress has the power to halt the expansion of these policies – and to direct U.S. tax dollars to programs that help rather than harm asylum-seekers. The President's budget request for FY2019 includes funding to hold a daily average of 47,000 non-citizens in detention – including many asylum-seekers. It also requests monies to hire 750 additional CBP personnel, despite the agency's complicity in recent rights violations, and more U.S. Attorneys to focus on prosecuting immigration offenses, such as those being used to penalize many asylum-seekers.<sup>11</sup> We ask Congress to deny these requests, and use the FY19 appropriations process instead to support refugee and migration assistance programs that uphold our commitments to some of the world's most vulnerable people.

#### **Additional Resources**

- Human Rights Watch. *In the Freezer: Abusive Conditions for Women and Children in U.S. Immigration Holding Cells*. New York, NY: Human Rights Watch, 2018. Accessed March 30, 2018,

<https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

- Human Rights First. *Punishing Refugees and Migrants: The Trump Administration's Misuse of Criminal Prosecutions*. New York, NY: Human Rights First, 2018. Accessed March 30, 2018, <https://www.humanrightsfirst.org/resource/punishing-refugees-and-migrants-trump-administrations-misuse-criminal-prosecutions>.
- Unitarian Universalist Service Committee. *No Safe Haven Here: Children and Families Face Trauma in the Hands of U.S. Immigration*. Boston: Unitarian Universalist Service Committee, 2015. Accessed March 30, 2018, [http://www.uusc.org/sites/default/files/no\\_safe\\_haven\\_here\\_-\\_children\\_and\\_families\\_face\\_trauma\\_in\\_the\\_hands\\_of\\_u.s.\\_immigration.pdf](http://www.uusc.org/sites/default/files/no_safe_haven_here_-_children_and_families_face_trauma_in_the_hands_of_u.s._immigration.pdf).

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<sup>1</sup> 8 U.S. Code § 1158.

<sup>2</sup> See *Protocol relating to the Status of Refugees*, done Jan. 31, 1967, entered into force Oct. 4, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267.

<sup>3</sup> See Human Rights First, *Violations at the Border* (New York, NY: Human Rights First, 2017), accessed on March 30, 2018, <http://www.humanrightsfirst.org/sites/default/files/hrf-violations-at-el-paso-border-rep.pdf>. See also American Immigration Council et al., Memorandum Re: "U.S. Customs and Border Protection's Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border," accessed March 30, 2018, [https://www.americanimmigrationcouncil.org/sites/default/files/general\\_litigation/cbp\\_systemic\\_denial\\_of\\_entry\\_to\\_asylum\\_seekers\\_advocacy\\_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

<sup>4</sup> See Human Rights First, op. cit. for a legal analysis. See also Refugee Act, Pub. L. No. 96-212, 94 Stat. 102 and *Protocol*, op. cit., Article 33.1.

<sup>5</sup> In short, the law was first proposed by a pro-lynching white supremacist senator from South Carolina in the 1920s. See Kelly Lytle Hernandez, "The History of How Crossing the U.S.-Mexico Border Became a Crime," *Newsweek*, May 1, 2017, <http://www.newsweek.com/history-crossing-us-mexico-border-crime-592252>.

<sup>6</sup> See *Protocol*, op. cit., Article 31.1, accessed March 30, 2018, <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

<sup>7</sup> Human Rights First, *Punishing Refugees and Migrants: The Trump Administration's Misuse of Criminal Prosecutions* (New York, NY: Human Rights First, 2018), accessed March 30, 2018, <https://www.humanrightsfirst.org/resource/punishing-refugees-and-migrants-trump-administrations-misuse-criminal-prosecutions>, and Hope Border Institute, *Sealing the Border: The Criminalization of Asylum Seekers in the Trump Era* (El Paso, TX: Hope Border Institute, 2018), accessed March 30, 2018, <https://www.hopeborder.org/sealing-the-border>.

<sup>8</sup> See *Damus v. Nielsen*, Class Action Complaint, accessed March 30, 2018, [https://www.aclu.org/sites/default/files/field\\_document/final\\_complaint\\_damus\\_v\\_nielsen\\_3\\_15\\_18.pdf](https://www.aclu.org/sites/default/files/field_document/final_complaint_damus_v_nielsen_3_15_18.pdf).

<sup>9</sup> See *Ms. L v. Immigration and Customs Enforcement*, Motion for Class Action Certification, accessed March 30, 2018, <https://www.aclu.org/legal-document/ms-l-v-ice-memorandum-support-motion-class-certification>.

<sup>10</sup> Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (Washington, D.C.: Human Rights Watch, 2018), accessed March 30, 2018, <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

<sup>11</sup> See U.S. Office of Management and Budget, *An American Budget: Budget of the U.S. Government* (Washington, D.C.: Office of Management and Budget, 2018), accessed March 30, 2018, <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.