Seeking Asylum in a Modern Society: Global Responses to Latin American Migration

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Rebecca Dickinson

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Seeking Asylum in a Modern Society: Global Responses to Latin American Migration

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Abstract:

The United States is no stranger to asylum seekers and refugees. The most famous seaport in the country houses a 305-foot-tall statue of a woman bearing a torch with words from the poem *The New Colossus* by Emma Lazarus etched at her feet: “‘Give me your tired, your poor, /Your huddled masses yearning to breathe free.’”¹ The Statue of Liberty is a symbolic representation of open arms to immigrants from all walks of life. But if everyone is welcome, why do so few actually gain entrance?

US interventionism policies in the 20th century have defined the lives of millions of Latin American citizens and created or contributed to deteriorating political, social, and economic conditions. These, along with the threat of violence from persecutory groups, is a common cause of forced migration. Due to its geographic position and relative stability, the United States offers an appealing location for many individuals who must flee their homes. However, entry into the United States as a migrant is not an easy task. Many who reach the southern border apply for asylum to escape persecution, only to discover that not all violence is protected and the process itself takes time with no guaranteed result. The process of asylum in the United States is a complicated and extensive procedure riddled with injustice, frequently failing to protect the most vulnerable. By studying the history and trends of asylum policies in the United States we hope to learn more about the system in place in our country and how years of policy changes have impacted one of the largest groups of asylum seekers and refugees. Furthermore, by contrasting these trends against comparable countries, we can evaluate their balance and identify potential areas for change.

A. The United States:

Introduction

Immigration and migration to the United States from Latin American countries is not a novel occurrence. The two regions have a lengthy political and economic history that extends as early as the 1600s when colonies were first founded in the New World. The constant ebb and flow of people from other regions, not just Latin America, to the United States is a representation of the unequal distribution of opportunities that are influenced by a myriad of unpredictable factors. Natural disasters, growing violence, political upheavals, and policy changes all represent major causes of migration and may influence refugee or asylee status of those fleeing uncertain circumstances. These effects are largely unpredictable, therefore asylum and refugee policies in the United States have been reactive in an attempt to keep the flow of refugees and asylum seekers at a low level. Historically, these laws have been applied in a discriminatory manner, favoring white refugees and asylum seekers from European countries over non-white applicants. Posed to the American public as a way to maintain economic achievements and preserve American culture, all while extending humanitarian aid; the laws that attempt to control the movement of people across our southern border are restrictive and harmful to those who are attempting to seek refuge in the US.

The movement of people from one country to another plays a critical role in the allocation of resources and available aid in the destination country. Attempts to regulate this movement are done to protect a county’s individual assets and citizens from any potential resource drain. However, the United Nations (UN) found that when supported by appropriate policies, migration can contribute to substantial economic growth and development.\(^2\) In 2016 alone, migrants sent over $429 billion in remittances back to low- and middle-income countries. Their presence stimulates the economies of their country of residence and their hard-earned money can then be used to stimulate the economy of the country they are sending it to.\(^3\) Therefore, the tension between lowering and raising the immigration cap in destination countries such as the United States comes back to a tug-of-war between fear of resource drain and the potential to stimulate the economy and protect the innocent. In the end, favoring protection over


\(^3\)Ibid.
potential loss, many Latin American migrants are left at the U.S.-Mexico border, victims of modern-day economic and cultural fearmongering. To quote sociologist Marta Tienda, “Fairness is not a defining feature of U.S. immigration policy toward Latin Americans.”

There are only a few subtle differences between the designation of refugee and asylum seeker in the United States. As of March of 2021, the Department of Homeland Security (DHS) defines refugee status as someone who is outside of their home country but not yet in the U.S. who is unable to return home due to credible fear of persecution. Whereas an asylum seeker is someone who meets the definition of a refugee but is already in the United States or arriving at a port of entry (POE). The U.S. adopted this definition of asylum seeker in 1980s to correspond more closely with the United Nations (UN) definition and provide more extensive legal protection and aid to those granted asylum. Within that singular definition of asylum, there are three subtypes that exist in the U.S.: affirmative asylum, defensive asylum, and derivative asylum. Affirmative asylum is a standard asylum claim in which the applicant fits the asylee status definition as provided by the DHS. There is an extensive interview process and applicants must prove they have credible fear and a reason to not be returned to their home country. Defensive asylum refers to an asylum claim that attempts to prevent deportation from the U.S.. This typically occurs if an applicant is determined to be ineligible for affirmative asylum or:

“they are placed in removal proceedings because they were apprehended in the United States or at a U.S. POE without proper legal documents or in violation of their immigration status; or were apprehended by U.S. Customs and Border Protection (USCBP) trying to enter the United States without proper documentation, were placed in the expedited removal process, and were found to have a credible fear of persecution or torture by an asylum officer.”

Derivative asylum can be claimed on behalf of children or family of persons granted asylum in the U.S.. Derivate asylum is only granted to a person’s spouse or unmarried children under the age of 21, stepchildren are only eligible if the original applicant married the biological parent of the

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child before the child’s 18th birthday and have been the legal parent of the child in question for at least two years.\textsuperscript{8} Those who win asylum are called asylees and are granted entrance into the US, they can accept U.S. employment, and can request travel documents such as passports.\textsuperscript{9} Refugees must apply for a Permanent Residence Card (green card) one year after arriving to the U.S. and asylees are not mandated to but may apply for one within this one-year time frame as well.\textsuperscript{10}

Asylum seekers and refugees are not the only people who come to the U.S. border, the two other most popular categories are migrants and immigrants. Migrants are people who move from one place to another in search of better work opportunities and living conditions usually for a shortened period, whereas immigrants seek the same opportunities but look to stay in their destination country for a longer period or permanently. Throughout this paper I will refer to immigrants as groups of people who are leaving their home country in search of a better quality of life, including but not limited to asylum seekers, refugees, and migrants. When a law or process directly applies to asylum seekers only, then I will specify asylum seeker vs immigrant.

For the purposes of this project, I will be focusing on affirmative asylum with a few mentions of defensive asylum and its use as it pertains to Latin American asylum seekers. I will also be focusing on the process of claiming asylum itself, with minimal references to the process that occurs after asylum is granted such as the role of Refugee Resettlement Agencies (RRAs) and the Permeant Residence Card application process.

**Asylum process and components**

Within the United States, there are two governing bodies that handle asylum applications, the Department of Homeland Security (DHS) and the Department of Justice (DOJ). Within the DHS, there are three main departments that focus on immigration, migration, refugees, and asylum seekers: The United States Citizenship and Immigration Services (USCIS), Immigration Customs and Enforcement (ICE), and the United States Customs and Border Patrol (USCBP). All three of these departments used to be consolidated as the Immigration and Naturalization

Service (INS) until 2003 when it was dissolved and transformed into these three entities. The USCIS houses the asylum office which handles direct asylum applications and conducts interviews for applicants. ICE and USCBD may encounter asylum applicants at the border if they are attempting to cross or within the United States if they are found to have immigrated illegally. The DOJ handles the legal side of immigration including the U.S. Immigration Court and the Executive Office of Immigration Review (EOIR). The EOIR houses the Board of Immigration Appeals (BIA) which is the highest administrative body responsible for interpreting and applying immigration law. Applications that are denied asylum under the DHS can be referred to or appeal to the DOJ under the U.S. immigration court.

As stated previously, affirmative asylum is considered the standard. To apply for affirmative asylum, the asylum seeker would apply directly through the asylum department within the USICS who will then grant an interview to approve or deny the request. In this interview with an asylum officer, an applicant must prove they have credible fear and a reason to not be returned to their home country. If their request for affirmative asylum is not granted, then the applicant will receive a notice of intent to deny (NOID) which must be appealed within 16 days for USCIS reconsideration or the applicant will be deported. Denials of asylum through USCIS can also be referred to immigration court, which is housed under the DOJ. A case that begins as affirmative asylum that is then redirected to the immigration court is now considered to be defensive asylum because the applicant is now fighting against removal from the U.S..

Credible Fear

To fit the criteria for affirmative asylum, the applicant must have clear and convincing evidence of “credible fear” or the notion that returning an individual to their home country could cause harm.\(^{11}\) The concept of credible fear only applies if an applicant’s life and/or freedom are being actively threatened on the basis of “...race, religion, nationality, membership in a particular social group, or political opinion...”\(^{12}\) However, much of what defines “credible fear” is up for interpretation by the asylum officer conducting the interview or the immigration court judge. In 1999, the Board of Immigration Affairs ruled against an asylum seeker whose credible fear claim was based on domestic violence because the court saw this to be a private issue within her own


\(^{12}\) Ibid.
family as opposed to a public-facing threat. Later in 2003, the Ninth Circuit Court of Appeals and Justice Department established the R-A rule which dictates there are certain instances where domestic violence could constitute a public issue, for example if a county has weak or ineffective domestic violence laws. Other threats such as cartel persecution are also not considered to be a clear and present danger because the threat of criminality is not protected by U.S. asylum laws. In an exchange with an immigration lawyer, one bemused asylum seeker asked sarcastically: “You’re saying we can only prove danger [from the cartel and general violence] if we turn up dead?” to which the lawyer responded, “Even then, if it’s not the right reason it’s not protected.”

This is not to say that there is a lack of justifiable danger in Latin American countries, of the 31 states in Mexico, all are listed on U.S. travel advisory as places to reconsider travel due to crime and violence. These states include border towns where present-day asylum applicants are forced to wait for their court hearings and interviews. The international organization Médicos sin Fronteras (Doctors Without Borders) found of the immigrant populations surveyed at their Latin American treatment facilities, almost half of those interviewed mentioned at least one violent event or exposure to a violent situation as the “key reason for deciding to migrate.” Those who are denied asylum and deported also face increased danger. There have been at least 1,544 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against asylum seekers and immigrants forced to return to Mexico as of February 21, 2021. Among these reported attacks are “341 cases of children returned to Mexico who were kidnapped or nearly kidnapped.” As shocking as these figures are, they are most likely to be underreported as the nearly 71,000 individuals who have been forced to return to their home country have not been interviewed.

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14 Ibid.
18 Ibid.
Somewhat of an outlier in this “credible fear” barrier is the what the United States Government believes is a credible threat to democracy. An excellent example of this is the reaction of the United States to the spread of communism. During the Cold War from 1947-1991, the United States Congress passed the Refugee Relief Act of 1953 which added the term “escapee” to potential status of refugees. This designation identifies someone who has fled “…from the Union of Soviet Socialist Republics or other Communist, Communist-dominated, or Communist occupied area of Europe.”21 Although this law only extended to European countries, it paved the way for passing of the Cuban Adjustment Act (CAA) in 1966. In the wake of the Cuban Revolution and dictator Fidel Castro’s rise to power, there was a mass exodus of Cubans to the United States. Among other goals, the CAA act looked to provide “refuge” for victims of communism and did not require Cuban immigrants to meet the definition of refugee status.22 With the passing of this act, the U.S. hoped to “further [their] efforts in the ideological war against communism.”23 While this anticommmunist ideology was shared by the American public at the time, it does represent the political and ideological biases inherent in the system which undermine humanitarian intentions.

Economic Barriers

In addition to the legal fees associated with hiring an attorney to argue an asylum case, there are also fees associated with filing legal documents within the U.S. courts system. For all asylum cases there is a set paperwork that needs to be completed correctly and filed in a timely manner and many of these forms have an associated fee. As of January 2020, the fees associated with asylum applications skyrocketed from a baseline average of $105 per filing to an average of $554.24 Oftentimes, before an asylum applicant reaches this step in which they would be filling out most of this paperwork, they would have already unfortunately discovered the hidden fees sprinkled throughout the process. For example, non-English speaking asylum applicants must provide their own translator for interviews and any necessary paperwork.25 Economic barriers impact not only Latin American asylum seekers but everyone who comes to the U.S. to seek

23 Ibid.
25 Ibid.
asylum. As of February 1, 2021, of the over 71,000 deportation cases seen in the immigration courts, only 5,500 people had legal representation. Of the 32,638 cases that resulted in a removal order or deportation, 97.3% of cases did not have legal representation. Access to legal council is not a right that is extended to those who are applying for asylum or attempting to avoid deportation. In a court system inundated with backlogged cases, access to effective legal counsel allows for meaningful and fair hearings for immigrants and enables court hearings to be more efficient and effective.

Arrivals & Trials
One cannot argue that Latin American asylum seekers simply do not come to the United States for fear of denial of entry, asylum applications filed in the U.S. from 2017 to 2019 show a steady presence of Latin American countries. In 2019, Venezuela and El Salvador were two of the top three leading countries of origin for asylum seekers granted affirmative or defensive asylum. Just the year before in 2018, Venezuela, El Salvador, Guatemala, and Honduras were the top four leading nationalities for asylum applications filed with USCIS. These high rates of applications are not surprising as Gallup found that 1/5 of potential migrants, nearly 158 million adults worldwide, cite the U.S. as their desired future residence with Canada, Germany, France, Australia, and the United Kingdom all rounding out the top six. In addition to being one of the leading senders of asylees to the U.S., Latin American countries are also among the top asylum denial rates. According to the data from the TRAC Immigration Project, of the over 611,000 people who applied for affirmative or defensive asylum in the United States between the years of 2001 to 2019, over half were denied entry and 65% of those who were denied entry were from Latin American countries.

26 Syracuse University, “Details on MPP (Remain in Mexico) Deportation Proceedings.”
30 Ibid.
33 Syracuse University, “Asylum Denial Rates Continue to Climb”
If an applicant is denied asylum through the UCIS, their case can be referred to immigration court. While this may seem like a chance at a fair trial, the DOJ also has its own set of issues. If someone fails to appear at their scheduled hearing, they run a very high risk of being ordered to deport in absentia by immigration judge which essentially means the defendant will be deported because they were not present for their own trial. However, it is hard to attend the hearing when immigrants have given a court mandated notice to appear for the hearing that “... bears no date or time.”

It is equally challenging when the time listed on the court mandated order is for a time in which the courts are not open, in fact there was one reported case of a trial scheduled for 1:00 am. Additionally, there have been reports of asylum seekers never receiving their notice of appointment in the mail or their notice was sent to the wrong address. While filing paperwork with a case worker to schedule his court date, one asylum seeker was told he would be given information via Facebook and the website was then listed as his home address.

At the end of July 2016, over 500,000 immigration applications were waiting to be heard, forcing many judges to make rapid decisions with extremely limited resources. The TRAC Immigration Project reported at the average waiting time for many applicants was over 678 days, nearly two years. As one judge described it, “[It’s like] doing death-penalty cases in a traffic court setting.”

Why the United States?
People around the world, not just Latin American citizens, make the choice to leave their home country behind for various reasons. These reasons can be classified as “push factors” and “pull factors.” Push factors are events that drive people away from their home, such as violence, threats of persecution, or political instability whereas pull factors are circumstances that make a destination country look like an attractive or safe place to be. The incredibly strong pull factor of the United States stems from its geographic location and history of political stability. The rising

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violence and declining access to opportunities in many Latin American countries, in particular countries in the Northern Triangle (El Salvador, Guatemala, and Honduras), creates a strong push factor, diving families away from their homes and towards other countries like the United States. When speaking to the Atlantic Council in 2015, former White House Chief of Staff General John F. Kelly said the mass movement towards the U.S.-Mexico border is due to “In many ways [parents] trying to save their children from the violence in their own country.”

It is nearly impossible to identify all the push factors that drive Latin American citizens to our borders, but the strong pull factor the land of opportunity cannot be ignored.

United States History

The United States is a nation founded by immigrants who have fought hard to earn their place in this country and provide for themselves and their families. The path to claiming asylum in the United States is not easy and the system that governs these laws and policies is a vast network of rules and regulations that must be followed perfectly. The history as well as the cultural and societal contexts that have led to the foundation of our asylum system need to be examined to understand our present-day system and identify areas for repair.

1953 - 1969

In the years following World War I, the United States was facing a rising number of immigrants with minimal legal ways to help govern and regulate their entrance. To aid in this process, in 1924 the Immigration Act was passed which upheld older laws that limited the number of immigrants who could enter the United States based on national quotas. The national quotas were defined as “two percent of the total population of the foreign-born of each nationality in the United States as recorded in the 1890 census.” The majority of United States citizens that were counted in the census in 1890 were white or European, therefore white countries were able to immigrate to the United States at higher rates than their non-white counterparts. Nearly 30 years after its passage in 1952, President Eisenhower upheld the national quota system when he signed off on the Immigration Nationality Act (INA). Considered to be the

most comprehensive piece of immigration legislation at the time, this legislature upheld the national quota system defined in the 1924 Immigration Act but adjusted it to reflect “one-sixth of one percent of each nationality’s population in the United States in 1920.” In 1952, the majority of the U.S. population was still reporting as white or European, therefore nearly 85% of the visas allotted were provided to immigrants from Northern and Western Europe. Apart from being discriminatory, this law also offered limited provisions for refugees and asylum seekers were not yet identified as their own category. This law also permitted the U.S. attorney general to admit refugees on a parole basis but no standardized procedure or laws were implemented to regulate its use. Therefore, because this power was also outside of judicial review, it became the main method for concealing the ad hoc style of refugee admissions. In response to tensions growing between Soviet nations, a year later the 1953 Refugee Relief Act defined a refugee as someone who was seeking refuge in a non-communist state and a 1957 amendment to this law redefined a refugee as someone fleeing from a communist state.

As the Cold War slowly developed between the United States and the Soviet Union, a vast majority of Latin American governments willing sided with the United States despite feeling largely ignored and annoyed with the U.S. government’s preoccupation with fighting communism. It wasn’t until one of the largest fruit companies in the U.S. claimed to be under attack from a communist supported Guatemalan government that the United States decided to interfere with one of its allies. In 1954, Guatemala was under the Presidential leadership of Colonel Jacobo Arbenz whose extended political freedom to all Guatemalan citizens, including communists. Arbenz believed heavily in agrarian reform and under Decree 900 he helped to redistribute undeveloped lands held by rich landowners to landless farmers who constituted nearly 90% Guatemala’s population. This redistribution of lands included those held by the United Fruit Company, a U.S. business, who felt they had not been adequately compensated for

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41 Ibid.
42 Ibid.
45 Ibid.
48 The Baltimore County History Labs Program, Baltimore County Public Schools, and The UMBC Center for History Education. RS#01: Background on the Guatemalan Coup of 1954. The UMBC Center for History Education. E Guatemalan Coup of 1954.
the 40% of land taken by the Arbenz administration.\textsuperscript{49} Fearing this to be a communist backed attack on a U.S. business, the United States government and the newly formed Central Intelligence Agency (CIA) assisted antigovernment counterrevolutionaries and neighboring Latin American rulers to overthrow Arbenz and replace him with a CIA-approved military dictator named Colonel Carlos Castillo Armas.\textsuperscript{50} Under the leadership of Armas, suspected communists were rounded up and executed and the social welfare programs initiated under Arbenz were crushed. Although Secretary of state Jon Foster Dulles declared Guatemala saved from the regime of communist imperialism and that the new leadership of Armas would represent a “new and glorious chapter to the already great tradition of the United States,” Armas was assassinated three years later in 1957.\textsuperscript{51} Politics in Guatemala then disintegrated into years of coups coupled with the brutal repression of the Guatemalan people which has extended to present day.

Stateside in 1954, the influx of immigrants coming from Latin American countries had not diminished so the Eisenhower administration launched “Operation Wetback” which looked to perform a nationwide sweep of undocumented Mexican immigrants in response to growing anger over USCBP’s inability to stop the flow of illegal workers. This act authorized over 1000 Border Patrol agents along with local law enforcement to target small immigrant neighborhoods in California, Arizona, and Texas.\textsuperscript{52} The influx of workers from Mexico can be directly linked back to the Bracero Program that provided temporary visas for short-term contract work for Mexican citizens in the U.S..\textsuperscript{53} The Immigration and Naturalization Service (INS), now the USCIS, ICE, and UCBP, reported over 1.1 million deportations from this operation, but that number is difficult to quantify because it is not known who left voluntarily. Realistic estimates put deportations around 300,000.

In addition to Operation Wetback and the CIA-backed coup in Guatemala, 1954 is also known for the start of the historic exile and mass migration of Cuban immigrants to the U.S.. When Fidel Castro rose to power in 1959 and the communist regime began to seize private property, many wealthy Cubans fled the island and let behind many of the middle and lower classes. As the years progressed, in addition to human rights atrocities, the Cuban economy also

\textsuperscript{49} Ibid.
\textsuperscript{50} Ibid.
began to plummet and the rapidly deteriorating conditions lead people to escape in any way possible, including fleeing to America. Between the years of 1959-1990, nearly one million Cuban citizens immigrated to the U.S.. Many of these Cuban immigrants were children who participated in *Operación Pedro Pan* (Operation Peter Pan). This U.S.-sanctioned program was a covert collaboration between U.S. government and the Catholic Churches of Miami designed to secretly take Cuban children out of the risky situation in their home country. From 1960 to 1962, nearly 14,000 unaccompanied Cuban children were sent from their parents in Cuba to Miami, Florida to be cared for by stateside relatives or members of the Catholic Charities in Miami. During the Cold War from 1947-1991, it was believed by many that rescuing children from potential indoctrination into Communism was worth it at any cost, even if it meant sending them to the United States with no supervision.

Although President John F. Kennedy had only a short time in office before his untimely death, he did have an impact on Latin American immigrants and the overall relationship between the U.S. and Latin American countries. The failed Bay of Pigs invasion in 1961 defined the start of the rapidly deteriorating relationship with Cuba. Just under a year later in 1962, the Cuban Missile Crisis ended Operation Peter Pan and diplomatic relations with the U.S.. In June of 1962, Congress enacted the Migration and Refugee Assistance Act which marked Congress' first endeavor to provide ongoing relief to a defined group of refugees. This act provided relief for the resettlement of Cubans as well as international assistance programs to be administered by the President to meet any potentially unexpected refugee influxes. Before his death in 1963, President Kennedy did help author amendments to the Immigration and Nationality Act which was signed into law by his predecessor Johnson in 1965. These amendments were historic in that this was the first time the United States recognized immigrant suffering is an ongoing phenomenon which requires permanent basis for admission of refugees into the country. Never before had the U.S. government acknowledged the flow of refugees is not and was not a phase, but rather a normal and standard occurrence. Amendments to this act also abolished the national

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57 Ibid.
58 Ibid.
59 Ibid.
60 Ibid.
origin quota system, gave special privilege to immigrants with needed skills, and established a political/ideological basis for refugee and asylum claims.\textsuperscript{61} Also momentous in the late 1960s was the adaptation and ratification of the 1967 United Nations Protocol by the U.S., which was the updated version of the 1951 Refugee Convention. This protocol outlined the components necessary for an applicant to be considered a refugee. Although representatives of the United States had helped to write the original protocol in 1951, this acceptance was significant in that it was one of the first human rights conventions that the U.S. formally ratified and adopted.\textsuperscript{62} Unfortunately, the 1951 protocol did not include a guarantee to an international right to asylum and while the 1967 adaptation did attempt to do this, the inclusion of asylum was abandoned after it was met with resistance at the 1977 UN Conference of Government Representatives.\textsuperscript{63}

Therefore, during this time asylum policies were still linked to foreign policy and people fleeing governments that were friendly to the U.S. had an incredibly difficult time receiving asylum.\textsuperscript{64}

1969-1981

The relationship in 1970s between the United States and Latin American countries were defined by U.S.-supported campaigns against leftist threats in Argentina, Chile, Bolivia, Brazil, Paraguay, and Uruguay known as Operation Condor. Operation Condor was a vast network of political and warfare tactics used to destroy communism across Latin America. It “effectively integrated and expanded the state terror unleashed across South America during the Cold War” and erased any sense of democracy.\textsuperscript{65} Tens of thousands of Latin American citizens were murdered or disappeared by U.S.-supported military governments and the resulting damage of this deep interference has left the region unstable and still struggling to cope. The persistent violence and instability that has plagued Latin American countries to present day as a result of this interference by the U.S. is a common reason why people decide to flee their homes.

It wasn’t until late in the presidency of Jimmy Carter that the United States finally designated separate terms for refugee and asylum seeker. The 1980 Refugee Act included

\textsuperscript{61} Ibid.
\textsuperscript{64} Ibid.
provisions for asylum and the treatment of asylum claims. It defined an asylum seeker as a foreign national in the U.S. or arriving at a port of entry who also meets the definition of a refugee. This act also looked to address the long-held criticism of the United States for their preference of admitting refugees hailing from communist countries.\textsuperscript{66} In addition to redefining categories, this act also raised the annual ceiling for refugees from 17,400 to 50,000 and created a process for reviewing and adjusting this ceiling to meet any emergencies.\textsuperscript{67} The 1980 Refugee Act brought U.S. in line with international Human Rights Standards of other UN countries who had all adopted 1967 amendments to the UN 1951 Refugee Convention. Prior to this act, there was not a legally outlined and defined way to treat those asylum claims in the U.S.. Many people who would fit the category of an asylum seeker were categorized as a refugee and sometimes admitted under the parole status administered by the U.S. Attorney General.

Passage of the 1980 Refugee Act played a paramount role in the mass migration of asylum seekers from Cuba and Haiti in what became known as the Mariel Boatlift. Over a six-month period, approximately 125,000 Cubans and 25,000 Haitians arrived in Florida fleeing the rapidly deteriorating conditions in their home countries. In response, the Carter administration labeled all Cubans and Haitians who had arrived in the U.S. as a result of this airlift as “Cuban-Haitian Entrants” and used the parole basis still granted to the attorney general to admit them.\textsuperscript{68} Those who did not qualify for residency under the 1966 Cuban Adjustment Act or the newly passed 1980 Refugee Act were provided special adjustments that paved the way for the designation of Temporary Protected Status.

1981 - 2001

Throughout the 1980s there was a continued rise in asylum claims from Latin American countries which only served to highlight the injustices still present in the system. Civil wars in Central America during the 1980s contributed to the forced migration of hundreds of thousands of people. Salvadoran and Nicaraguan asylum seekers represented over half of asylum applicants during this time but had drastically different success rates. The U.S. opposed the communist Nicaraguan government and therefore Nicaraguan asylum seekers had a high approval rate,

\textsuperscript{66} Council on Foreign Relations, "U.S. Postwar Immigration Policy."
\textsuperscript{68} Ibid.
peaking at around 84% acceptance.69 Meanwhile, Salvadorian applicants had a very low asylum approval rate of nearly 2% because their government was backed by the U.S..70 This treatment was not unnoticed by the U.S. congress. In a hearing on mass asylum in 1981, New York congresswoman Shirley Chisholm criticized the Carter administration claiming, “The United States has been far more interested...in responding to refugee concerns when we gain some political benefit than addressing deep-seated humanitarian need.”71

The beginning of Reagan’s Presidency in 1981 was a massive change from his predecessor. In the beginning of his term, the Reagan administration attempted to regain control of American borders by implementing and enforcing sanctions against employers of illegal immigrants and increased detention of those caught. The 1986 Immigration Reform and Control Act mandated employers affirm the immigration status of their employees and attempted to end the process of hiring undocumented immigrants. It also enhanced consideration for asylees from China due to their “one child policy” and gave Chinese applicants priority over other racial categories.72 This act was passed one year into a class action lawsuit filed in 1985 by the American Baptist Churches and other organizations claiming the Justice Department was overtly discriminatory when considering asylum claims of Salvadorian and Guatemalan citizens. This case was settled outside of court in the 1990s known as the ABC Settlement Agreement. This settlement gave Guatemalans and Salvadorian asylum seekers a stay of deportation removal, allowed them to present their asylum case in court de novo, and set up various detention restrictions for those who qualify.73

The 1990s marked an increasingly turbulent decade as the number of asylum cases began to slowly surpass the number of refugees being admitted. The 1989 Panama Invasion under Operation Just Cause to arrest Manuel Antonio Noriega gained scrutiny from the UN who denounced this operation as power grab to promote U.S. economic interests.74 The invasion lasted 42 days and several thousand Panamanian citizens died, including soldiers and civilians.

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69 Ibid.
70 Ibid.
71 Ibid.
Of those who managed to escape the physical violence, over 20,000 were left without a home. According to José Antonio Sánchez Román, Spanish historian and assistant professor at the University of Complutense in Madrid, the effects of U.S. interventionalist policy in Latin America are largely negative and based solely the desire to strengthen U.S. economic and political sectors. Simply put, the United States “no llevaran democracia [they did not bring democracy].”

U.S.-backed political upheaval in Central America, a coup d’etat of democratically elected Haitian President Betrad Aristide in 1991, and threatening speeches by Fidel Castro in Cuba caused a rise in the number of people fleeing to the U.S. by boat. Of the over 40,00 Haitians who fled, only 10,490 were allowed to apply for asylum and the remaining escapees were intercepted by the U.S. Coast Guard and sent back to Haiti. The number of Cuban citizens intercepted by the Coast Guard and U.S. Border Patrol reached a post-Mariel Boatlift high of around 40,000 in 1994. In response to this mass exodus and to create a fair system for asylum seekers, the U.S. established asylum officer corps in 1990 that had an adjudicatory function to promote neutrality within the INS who were handling most of the asylum applications at the time. However, by the mid-1990s, this addition was still proven to be ineffective as newly designated asylum officers were struggling to keep up with the number of incoming asylum seekers.

Recognizing the strain on the system despite the new improvements and still struggling to handle the high levels of illegal immigrants, U.S. congress and the Clinton administration authorized Operation Gatekeeper in 1994. This act doubled the number of Border Patrol agents at the U.S.-Mexico border and authorized $50 million to build a 14-mile security fence. Human rights groups denounced this decision by the Clinton administration and over the next fifteen years this militarization has been related to the deaths of more than five thousand people who attempted to cross more treacherous terrain to avoid the wall.
Simultaneously in 1994, Cuban dictator Fidel Castro threatened the U.S. with permitting a mass exodus of Cuban citizens if the Coast Guard did not take measures to stop illegal boat departures from Cuba. Concerned with the possible threat of conflict and looking to prevent a greater mass influx of refugees and asylum seekers, the U.S. adapted what became known as the “Wet Food, Dry Foot” policy for Cuban citizens, also called the U.S.-Cuban Migration Accord.\textsuperscript{81} This agreement stated the U.S. Coast Guard would do their best to intercept any illegal boat departures from Cuba and send them back, and those that were able to escape the Coast Guard and make it to U.S. soil would be eligible to apply for asylum. No story better embodies the struggle faced by millions of Cubans attempting to escape rapidly deteriorating conditions than that of Elian Gonzales. In 1999, five-year-old Elian Gonzales was found in the coastal waters off Florida after his mother and ten other Cuban citizens died attempting to reach the United States. Despite massive protests urging the U.S. government to allow Elian Gonzales to stay with relatives in the U.S., ultimately their custody claims were denied, and Elian was sent back to Cuba to live with his father.\textsuperscript{82}

Rising nativist and xenophobic sentiment in the U.S. gave way to the true defining moment for asylum policy, the passage of the 1996 Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA). The IIRIRA act restricted many of the progressive asylum policies outlined in the 1980 Refugee Act and made a few substantial changes to the Immigration Nationality Act including mandatory detainment followed by expedited removal of foreign nationals who arrive at a POE without proper documentation. It also expanded the mandatory detention of foreign nationals who arrive without proper documentation but claim they have credible fear and should not be returned to their home country.\textsuperscript{83} But the most impactful portions of this law for Latin American citizens was the introduction of the “safe third-party” contingency and the one-year deadline. This law stated that foreign nationals who can be returned to a “safe third-party country” would be barred from claiming asylum in the United States. This third-party country is one that is not the original country of residence of the immigrant and a country that would not threaten the life or freedom of the immigrant, usually at the discretion of the Attorney General.\textsuperscript{84} The one-year deadline states all asylum applicants must file their complete application

\textsuperscript{81} Wassem, 3.
\textsuperscript{82} Council on Foreign Relations, “U.S. Postwar Immigration Policy.”
\textsuperscript{83} Wassem, 12.
\textsuperscript{84} “8 U.S. Code § 1158 - Asylum.” Legal Information Institute.
within one year of their arrival date to the U.S.. Both these policies are still used for asylum cases today.

Less than a year after the passage of the 1996 Illegal Immigrant Reform and Immigrant Responsibly Act, the U.S. government settled a legal case from 1985 pertaining to the treatment of immigrant children in detention facilities. In 1985, minor Jenny Flores was strip searched, forced to share living quarters with male adults, and was prevented from being released to non-guardian relatives in the U.S.. The ACLU, the Center for Human Rights and Constitutional Law, and others sued the INS on behalf of Jenny and minors like her resulting in the Flores Settlement Agreement. The Flores Settlement Agreement of 1997 imposed several restrictions on the INS and their treatment of minors including releasing children from legal detention without any unnecessary delay, placing children in the least restrictive setting that is appropriate to their age and needs, and implementing standards for the care and treatment of children in these detention facilities.\textsuperscript{85} The Flores Settlement Agreement has been expanded on multiple times in 2003, 2015, 2016, and 2018 and still remains the foremost piece of legislation impacting the treatment of minors at the border. Between the years of 2017 and 2018, the number of asylum seekers who have sought to initiate the asylum process by claiming credible fear during deportation has skyrocketed due to the 2015 and 2016 amendments made to the Flores Settlement Agreement. In 2018 alone, the quantity of immigrants apprehended by Border Patrol claiming credible fear was 10-fold higher than a decade before, and 67 percent above the full year statistics for 2017 figure, reaching almost 93,000 claims.\textsuperscript{86} The 2015 and 2016 amendments that require both accompanied and unaccompanied children to be released without delay (a maximum of 20 days) while their parents can still be detained to await their court date.\textsuperscript{87}

2001-2020

In the early 2000s, the U.S. shifted its focus from its external borders to the immigrants currently residing in the country. In 2001, the Bush administration passed the Development, Relief, and Education for Alien Minors Act (DREAM Act) which paved the way for citizenship for nearly 2.1 million minors who were brough to the U.S. illegally as children.\textsuperscript{88} For many

\textsuperscript{87} Ibid.
\textsuperscript{88} Council on Foreign Relations, "U.S. Postwar Immigration Policy."
looking to come to the U.S., the passage of the DREAM Act looked like a promising change in the attitude towards Latin American immigration. Those who were looking to come the United States for a better future for their children saw this as a promise of acceptance into the traditionally homogeneous culture. However, all this changed after the terrorist attacks on September 11, 2001.

In the aftermath of September 11, 2001, the flow of refugees and asylees into the United States virtually stopped, including the nearly 20,000 refugees and asylum seekers who had already completed the prerequisites prior to entry.\(^89\) Fearing potential security concerns, the Bush administration sought to increase the power of the DHS to detain non-citizens without charge. On October 26th, President Bush signed the USA Patriot Act of 2001 which allowed the Attorney General to detain any non-U.S. citizen suspected of involvement with terrorist organizations for up to a week without charge.\(^90\) The USA Patriot Act also granted funds for border reinforcement between the U.S. and Canada, which shifted much of the focus away from illegal immigration at the Southern border between the U.S. and Mexico. However, despite this shift in focus, the pre-existing xenophobia towards Latin American citizens and potential immigrants remained deep-seated in U.S. culture. For example, in an effort to expose undocumented immigrants in their community, police officers in Phoenix, Arizona started stopping persons because of their skin color or use of the Spanish language.\(^91\) This was unfortunately not an uncommon practice as the Los Angeles Police Department Ramparts Division reported similar behavior of violation of constitutional rights of citizens and immigrants over many years. As much as we would like to think these actions are isolated incidents in response to the growing fear of terrorism, the strong beliefs of the American public influence the quantity of asylum seekers let into the country as well as their country of origin.

Obama era asylum laws were far from an improvement to his predecessor. There were a few wins for Latin Americans already in the U.S., including the Deferred Action for Childhood Arrivals Program (DACA) which allowed temporary deportation relief for children who were brought to the U.S. illegally. During his two terms in office, the Obama administration also raised the immigration caps to a record high since 1995 in response to the increasing number of

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\(^90\) Ibid.

displaced persons worldwide. But between the years of 2009 to 2015, the Obama administration removed more than 2.5 million people through immigration orders, at that time this was a quantity higher than any other president in the 20th century.\(^{92}\) In response to the influx of immigrants across the U.S.-Mexico border, the population in detention facilities grew as well. The 2014 Migration Crisis Plan authorized nearly $3.7 billion to deal with the crisis at the border and the deteriorating conditions in detention centers.\(^{93}\) The Obama administration attempted to keep families together while in detention and wanted cases processed as quickly as possible, but that came with major legal and humanitarian backlash, especially from human rights lawyers who believed faster case processing would not give immigrants an equal opportunity to gain entrance.\(^{94}\) This backlash was only compounded by a 2015 ruling by the U.S. district court for the central district of California which stated the federal government’s family detention policy violated the terms of the Flores Settlement Agreement and imposed additional regulations on government detention.\(^{95}\)

Asylum cases are not impacted by immigration caps or refugee admissions, but asylum seekers are still subjected to the same treatment at the boarder as immigrants. In 2015, the ACLU filed seven total cases on behalf of Central American asylum seekers fleeing extreme sexual violence and death threats who were determined to have no credible fear and put into deportation proceedings.\(^{96}\) In all seven cases, the Obama administration argued that is has the power to deport asylum seekers without any oversight or review from the federal courts. Thankfully in each of these seven cases, the judicial courts granted these asylum seekers new interviews, had their deportation orders vacated, and allowed them all to be released from detention.\(^{97}\)

Former President Donald J. Trump’s policy towards migration, immigration, and asylum seekers are more in line with his xenophobic beliefs on foreign policy than the economic concerns he so often claims. We tend to think of Obama and Trump as presidential foils, but the Obama era of asylum practices and policies demonstrate the two are strikingly similar. Much like


\(^{95}\) Human Rights First. "The Flores Settlement and Family Incarceration: A Brief History and Next Steps."


\(^{97}\) Ibid.
his predecessor, the Trump administration was also reprimanded by the judicial courts for failure to comply with obligations under the Flores Agreement. In 2017, the U.S. District Courts found the administration had failed to meet regulatory standards pertaining to border patrol facility conditions such as access to food and water, safe temperatures, safe sleeping conditions, and sanitary guidelines.98

Immigration detention centers themselves are not new, as shown previously they existed under the Obama administration, but the concept of family separation and the “zero tolerance policy” for illegal entry into the U.S. was completely new, despite what President Trump had previously claimed.99 The Trump administration’s “zero-tolerance policy” was announced in April of 2018 by U.S. Attorney General Jeff Sessions as a way to enforce criminal prosecution of illegal entry into the U.S..100 This policy resulted in immigrant parents traveling with children being detained at the border, criminally prosecuted, and separated from their families in what the organization Human Rights Watch called “an effort to punish families.”101 The increasingly inhumane conditions in detention facilities at the border between the U.S. and Mexico symbolizes the intentional cruelty associated with the Trump administration’s purposeful isolation of children and the rapidly disintegrating relations between the U.S. and Latin American countries. The zero-tolerance policy was eventually repealed in June of 2018 due to severe backlash, however during that short period of time more than 2,800 families were separated and as of October 2020, 545 children remained separated from their parents.102 In an interview with Francis Gusman, a refugee escaping violence in Honduras who elected to apply for refugee status in Mexico as opposed to the U.S., the notion of family separation is shocking. “‘They have bigger hearts in Mexico than in the United States,’ said Gusman, sitting in her wheelchair outside the hostel. ‘How can they separate children? That is inhuman. Do they know what a mother feels like not being with her child? They don’t know what it is to suffer.’”103

98 Human Rights First, “The Flores Settlement and Family Incarceration: A Brief History and Next Steps.”
101 Ibid.
A lack sympathy for people attempting enter to America for a chance at a safer life is a hallmark of the Trump Administration. At the Republican Jewish Coalition Leadership Meeting in Las Vegas in 2019, President Trump said:

“[The] Asylum program is a scam. Some of the roughest people you’ve ever seen - people that look like they should be fighting for the UFC. They read a little page given to them by 3… [in monotone voice, mockingly] ‘I am fearful for my life… I am very worried that I will be accosted back home”’

To curb the level of asylum seekers and lower the overall refugee and migrant entries into the U.S., Trump enacted the Migrant Protection Protocols (MPPs) in January of 2019 along with an imposed refugee ceiling of 30,000; the lowest level since the inception of the INA in 1980. The MPPs force asylum seekers to wait in their country of origin or the closest country outside of the U.S. while their case plays out in U.S. immigration court. Those who have fled southern Latin American countries, like Argentina and Venezuela, are sometimes forced to wait in Mexico because it is the closest country to the Southern border. The Trump administration claims MPPs were enacted to “restore order to immigration and asylum policies,” but instead they have just created more chaos and confusion. The organization Human Rights First, has found that due to these “remain in Mexico” protocols, over 1300 reports of violent attacks, including 318 kidnappings or attempted kidnappings of children. As a direct result of this policy, thousands of asylum applicants are forced to wait in squalid camps at the U.S.-Mexico border where they have endured “frequent flooding, insect infestations, and feces washed up from the river.”

Shortly after enacting the MPPs in 2019, the Trump administration enacted the Asylum Eligibility and Procedural Modifications, also known as the Transit Ban. This ban prevented asylum seekers entering the United States specifically through the southern border if they had

108 Ibid.
traveled through a third country prior to entering the United States. There are only two exceptions: an applicant must show they are a victim of severe form of trafficking (such as sex trafficking) or the asylum seeker can prove they received a final asylum rejection order from a third party country they passed through on their way to the U.S.. Proving oneself to be a victim of human trafficking or sex trafficking is an extremely difficult standard to meet and many of the third party countries asylum applicants pass through on their way to the U.S. do not have well-functioning asylum systems that would be able to provide a notice of rejection in a timely manner. The transit ban was used to deny asylum to hundreds of refugees and overall asylum grant rates declined by 32 percent for Cubans and nearly 30 percent for Venezuelans compared to the year before the ban took effect. The transit ban has caused the U.S. to deny asylum to “persecuted pro-democracy advocates, torture survivors, and people targeted due to their sexual or gender identities including many determined by immigration judges to be refugees under U.S. law.” Under the transit ban, some asylum seekers have been denied all relief and ordered to be deported. The Transit Ban was eventually found to be unlawful in the case *Cair Coalition v. Trump (2019)* and nationally struck down on June 30, 2020, however lasting damage was done, and the U.S. failed to protect thousands of asylum seekers it had the legal and moral obligation to protect.

In the wake of the COVID-19 pandemic, Vice President Mike Pence ordered the borders be closed, including POEs, despite top CDC advisors stating “...there was no valid public health reason to issue it… and there was no evidence it would slow the coronavirus…” The Trump administration claims they have the power to enact sudden and direct change under Title 42 of U.S. Code which gives the government broad power to act during a crisis. They believe the pandemic gives the government the authority to shut down borders and expel immigrants who have already made it in the U.S. despite no real reason for rejection. As of October 14, 2020,
U.S. CBP reported 197,371 expulsions under Title 42. Mass deportations and turning asylum seekers away at the border is in direct violation with the United States’ commitment to provide a safe location for those who seek entrance. There is no public health rationale to the closing of the borders and public health experts state that the fair and just treatment of refugees in no way will undermine efforts to combat the spread of COVID-19. In the wake of the global pandemic, the United Nations High Commissioner for Refugees (UNHCR) urged member nations to not allow measures restricting asylum to become disguised as public health protection, and the Trump administration’s complete elimination of human rights at the southern border are a direct representation of this disguise. As the organization Human Rights First stated “The [Trump] administration’s effective elimination of humanitarian protections at the border violates U.S. asylum and anti-trafficking laws, due process protections, and treaty obligations.”

In 2020, Trump signed into act the Safe Third Country Agreements for countries in the Northern Triangle (Guatemala, Honduras, and El Salvador). This agreement can bar migrants from U.S. asylum and send them to these countries instead, including migrants fleeing from one of these countries. For example, if someone who applied for asylum from Honduras had their application rejected, they may be sent to Guatemala or El Salvador under this act. Since November of 2020, the U.S. has deported at least 1000 adults and children seeking asylum to Honduras, El Salvador, and Guatemala. None of the countries in the Northern Triangle have asylum systems equipped to handle any influx of refugees and/or immigrants who might enter from this agreement nor do they represent a “safe third country.” Doctors Without Borders reported in 2018 that living conditions in the NTCA (Northern Triangle of Central America) were comparable to that of “war zones” due to the systematic exposure to violence that their populations face every day. In a 2019 interview with 60 minutes, Nayib Bukele the president of El Salvador said this agreement made in September is “…full of a lot of ‘ifs’” and that they “are not prepared right now [to handle refugee/migrants potentially staying in the country because] we don't have asylum capacities” President Bukele expressed his concerns about this

117 Ibid.
118 Ibid.
119 U.S. Customs and Border Protection Budget Request for FY2021.” House Committee on Appropriations.
120 Medecines sans Frontieres, “No Way Out.”
proposal and the lack of resources in his country to President Trump, Bukele was told to simply “give them a tent.” El Salvador needs the help and financial support of the U.S. to operate, and after signing this agreement, the Trump administration released the $58.2 million in aid they had been withholding since April when aid was cut off due to an influx of migrants from the Northern Triangle Countries.\(^{121}\) \(^{122}\)

In January 2021, just nine days before his administration was set to leave office, Donald Trump set forth a series of new regulations that would restrict how asylum is granted.\(^{123}\) These restrictions made is easier for immigration judges to accept and/or reject asylum requests and “[hardened] the categories of people who face persecution for their race, religion, nationality, political opinion or membership in social group.”\(^{124}\) This rule change would also eliminate what is commonly referred to as “gender-based asylum,” which specifies asylum claims that specifically impact women and gender-based violence. These rule changes would impact “Women fleeing rape and severe domestic violence, LGBTQ+ individuals facing deadly attacks, and those escaping other fatal gender-based harms.”\(^{125}\) The Justice Department press release on these new laws claims this proposal would “allow for ‘streamlined proceedings’” in an attempt to mitigate the growing backlog of cases.\(^{126}\) As seen under the Obama administration, “streamlined proceedings” deny asylum seekers a chance at a fair trial and put undo pressure onto the court system to make rapid decisions.

B. Germany & The United Kingdom

Much like the United States, the movement of people across the European Union (EU) has been shaping culture and society for hundreds of years. Before 2015, generally low levels of


immigration to EU countries and the tendency to focus on “emigration and intra-EU mobility” has meant that immigration was typically not an issue that provoked high levels of political or public concern. However, in 2015, the rising conflict of the Syrian Civil War and other humanitarian disasters caused millions of people to flee their homes to search for asylum and refuge in western countries. Coupled with the rise in populist rhetoric, this unforeseen mass influx of refugees and asylum seekers in Western countries caused an uprising of xenophobic sentiment that was exploited by the mass media and radical right wing political forces. This xenophobic uprising was mirrored in the United States with the election of President Donald Trump in November 2016. The belief that immigration is a violent assault that poses any immediate danger is nothing more than a thinly veiled attempt to expose irrational fears and create a sense of impending doom. The rise in populist and anti-immigrant parties throughout Europe created a cultural divide that has made it nearly impossible to find a unanimous solution to a growing problem.

In 2020, the European Union (EU) and the European Commission (EC) passed new legislation to update the current Common European Asylum System (CEAS). The CEAS are a series of legislative measures written to help EU member states manage mass migration in a cohesive and humanitarian way. The newest pact on migration and asylum aimed to take a holistic and honest approach towards the situation to facilitate cooperation and trust between member states. In addition to “improve and faster procedures throughout the asylum and migration system,” these new updates also look to create a “comprehensive approach for efficient asylum management” between member states. Cooperation and communication between member states is paramount in management of asylum applications. Germany is a member of the EU and is required to follow these procedures. Great Britain, on the other hand, is no longer a member of the EU after their official departure on January 31, 2020, and therefore they are not required to follow CEAS guidelines.

129 Ibid.
130 Ibid.
132 Ibid.
Despite the geographical difference between the U.S., the UK, and Germany, the two European countries still see their fair amount of Latin American asylum seekers. According to the European Council, in 2019 Latin American asylum seekers represented 19% of the first-time asylum applications, a higher percentage than the Middle East.\(^{132}\) The year 2019 showed a higher number of applications on average reflecting the deteriorating security, violence, and socioeconomic situations in part of Venezuela and Central America.\(^{133}\) Citizens from these countries represent one of the largest groups seeking international protection in the U.S. and have become one of the fastest growing groups seeking international protection in Europe. According to the UNHCR global trends report for 2019, Germany registered one fifth of the 400,000 unaccompanied asylum-seeking child (UASC) applications (87,000) followed by Sweden (60,600), Italy (30,000) and the United Kingdom (22,000).\(^{134}\) These four countries together registered half of all UASC asylum claims worldwide, mainly by unaccompanied children from Afghanistan, Eritrea and Syria.\(^{135}\)

**Germany**

In 2015, while facing the largest mass migration of refugees and asylum seekers in modern day history, German Chancellor Angela Merkel declared “We can do this!” and opened the borders. Between the years of 2015 and 2016, Germany became one of the leading countries the EU’s migration crisis and received over one million first-time asylum applications.\(^{136}\) This decision to take in a record number of asylum seekers and refugees came as shock to some and even gathered some criticism from her own party, especially because Germany’s asylum processing system was unprepared to deal with the large influx of applications.\(^{137}\) However, Germany was able to adapt and make the changes necessary to produce one of the most efficient and effective asylum systems in the world.

Merkel and her administration first started by expanding the staff and the resources available to the Federal Office for Migration and Refugees (Bundesamt fur Migration und...
She then looked to extend community programs that focused on inclusion and integration of refugees into German society. By 2018, 72% of asylum seekers had been granted protection in Germany and had gained the right to work without restriction. Successful integration of immigrants into German society has benefitted Germany’s aging labor market and simultaneously aided in growing the German economy. Much of this success would not be possible without the positive attitude of the German population towards immigrants commonly referred to as Welkom-menskultur (“welcome culture”). This accepting attitude may be a contributor as to why between the years of 2010 to 2019, Germany received the highest number of asylum applications at 2.1 million with the United States slightly behind slightly behind with 1.7 million applications. In September of 2015, nearly 66% of German citizens surveyed believed that permitting a large number of refugees into the country was the right thing to do, and nearly 14 years later there is still widespread support.

Process

As of 2021, Germany is a European Union Member State which indicates they must follow the Common European Asylum System (CEAS). As a member of the EU, Germany has adopted the UN definition of a refugee and asylum seeker. The UN definition and corresponding German law entitled the Asylum and Residence Act, defines a refugee and asylum seeker as someone who has a “well-founded fear of persecution in his country of origin on account of his race, religion, nationality, political opinion or membership of a particular social group.” Much like the United States, the agents of persecution and credible fear must be well established. The applicant also must currently reside outside their own country where they had habitual residence and cannot or does not want to return due to fear of persecution. Additionally, an applicant is ineligible for asylum in Germany if they have committed a crime, acted in violation against the UN, and/or are currently receiving protection or assistance from the UN, with exception of UNHCR.

138 Ibid.
140 European Commission. “Statistics on Migration to Europe.”
141 Keita, Sekou, and Helen Dempster. “Five Years Later, One Million Refugees Are Thriving in Germany.”
According to German national law, asylum is a constitutional right granted to everyone who is fleeing political persecution so long as they have not traveled to Germany from a safe third country. A safe third country is any EU country as well as Norway and Switzerland. This unfortunately discriminates against anyone looking for political asylum in Germany who may have traveled on land. Recipients of this type of asylum are given a residence permit for three years which can be renewed so long as the political situation in the applicant’s home country remains unsafe.\textsuperscript{144} There is also a secondary type of asylum entitled subsidiary protection which indicates an individual is not threatened by political persecution but could potentially suffer from human rights violations in their home country. Recipients of this type of asylum are given a residence permit for one year which can be renewed if the applicant’s home country remains unsafe.\textsuperscript{145} The third and final type of asylum is the result of a national ban on forced return to the applicant’s home country. If an applicant does not qualify for refugee or asylee status, or subsidiary protection, then the Federal Office will give one last check to ensure there is no credible reason to not return an applicant to their home country. Those who qualify for this final type of asylum may be suffering from a serious illness and it would cause undo harm to transport. Recipients of this type of asylum will receive a residence permit for at least one year with the possibility of renewal.\textsuperscript{146}

Prior to the asylum decision, there is a lengthy process which all asylum applicants must follow. All asylum seekers arriving in Germany must report to a state organization to claim asylum, usually at a reception center. Once someone registers for asylum, data such as fingerprints and photographs are recorded and compared to available information in the Central Register of Foreigners as well as the Federal Criminal Police Office to ensure the applicant is not a security risk.\textsuperscript{147} Once the applicant has been registered, they receive their proof of arrival (Ankunftsnachweis) which is evidence that the applicant is entitled to state benefits like house, medical aid, and food. After the proof of arrival has been granted, an asylum seeker will begin their application and interview. In Germany, translators are provided free of charge to ensure the applicant receives vital information. If the applicant passes the preliminary interview, then they

\textsuperscript{144} Ibid.
\textsuperscript{145} Ibid.
\textsuperscript{146} Ibid.
are granted a certificate of their permission to reside in Germany (Aufenthaltsgestattung) while they complete the asylum process. Those who do not pass the initial interview because their claims are unfounded or inadmissible can be appealed. If the appeal is also rejected, the applicant is required to leave the country.\textsuperscript{148}

Following passage of the initial interview is the Dublin Examination. The Dublin III Regulation applies to all EU member states to ensure that asylum applications are filed in the correct country. If an applicant has passed through another EU country or has attempted to claim asylum in another EU country, they will be deferred to said country to start/complete their asylum claim. If an applicant is entitled to their asylum claim in Germany as a result of the Dublin Examination, then a personal interview will take place and the Federal Office (BAMF) will decide if an applicant will be granted asylum, subsidiary protection, or a stay of removal. On average, this decision by the BAMF takes about 6 months.\textsuperscript{149} Unlike the United States, sufficient time is given to all applicants and they may provide any evidence to support their case, including photographs, documents, medical reports, etc. Also, unlike the U.S., there are multiple options for those whose asylum applications have been rejected by the BAMF.

Rejected applicants can file legal complaints against the BAMF’s decision and have their case reviewed by the Administrative Court who can overturn the BAMF decision. Rejected applicants can file for a subsequence asylum application (Asylfolgeantrag) if they have new evidence that will provide proof of persecution in their home country or if the status of their home country has changed and is now no longer safe. Rejected applicants can also petition for a tolerated stay (Duldung) if there are obstacles to deportation, such as they are incapable of traveling due to a medical condition or lack of travel documents. The other options include hardship regulations (Hartefallregelung) which indicates that you are well adjusted to Germany and leaving would cause immense distress, a direct petition (Landestag – state parliament, or Bundestag – German federal parliament) asking the parliament to review your asylum case again, and finally there is Church Asylum (Kirchenasyl) in which a church may be able to find a solution and protect the applicant from deportation. If all options are exhausted and the applicant

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\textsuperscript{148} Ibid.
\end{flushleft}
is still unable to find protection and remain in Germany, then they will be granted a notice to leave and must vacate the country by the date listed.

Great Britain

Trapped in a time of change after their departure from the EU, the United Kingdom has recently come under scrutiny for its potential new approach to their asylum system. UK Home Secretary Priti Patel has promised a complete overhaul of the current “broken” system, but her approach has been criticized by many human rights groups.150 In response to a six-week government consultation to allow parliament to review and improve the proposed policy, over 190 refugee, human rights, legal, and faith groups have signed a public statement claiming the government’s New Plan for Immigration is “vague, unworkable, cruel and potentially unlawful.”151 Posed to the public as a way to create a faster and more fair asylum system, the proposed policy would introduce a third party clause, introduce rapid removal of rejected asylum applicants from the UK, introduce jail time for deported asylum applicants with criminal records who come back to the UK, and more.152 This proposed law ignores the humanitarian and international obligations the UK has as a UN member state. In addition, these proposed changes rely heavily on the cooperation of EU countries, which the UK has been unable to confirm.

In essence, without EU support, this law would be mostly symbolic as the UK would be unable to act on many of the promises. However, for the over 61,000 asylum seekers who are currently in the process of claiming asylum in the UK or waiting their case to be processed, this proposed law could present a serious challenge.153

Process

Although their official exit from the European Union ended January 31, 2020, Great Britain does have some remaining ties to the organization, including the foundation of its asylum policies. To make a claim for asylum or international protection, an applicant must be recognized as a refugee under the 1951 United Nations Convention Relating to the Status of Refugees. You

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152 Casciani, "Priti Patel Pledges Overhaul of Asylum Seeker Rules."
must have left your country of origin and be currently unable to return due to well-founded fears regarding your persecution based on one of the following reasons: race, religion, nationality, political opinion, or membership of a particular social group.\textsuperscript{154}

In the United Kingdom, the Home Office handles the immigration and the asylum process. Upon arriving, it is paramount that an asylum seeker claims asylum immediately by telling immigration officials or putting a claim in with the Home Office. If an applicant does not act immediately, it can sometimes be considered evidence that someone is not in immediate danger and should not be considered for the asylum process.\textsuperscript{155} After the asylum claim is filed with the Home Office, the applicant is given a screening interview to determine basic information. After this screening interview, an applicant is granted “temporary admission” and can stay temporarily in the UK while their asylum application is being processed. If at any point an applicant is found to have permanently moved from their listed residence or has missed a check-in with their asylum officer, then they may be detained. Sometime after the screening interview, an applicant will be issued a substantive interview to provide evidence of persecution. The time between these interviews can vary from months to years, but they are usually rapidly scheduled.\textsuperscript{156} At the substantive interview a representative of the Home Office will decide if the applicant should be granted asylum. These interviews are intense and can be incredibly challenging for the applicant. As one nongovernmental organization warned about the substantive interview process:

“You are going to be asked questions about things that may be very difficult to talk about. Be prepared for not being believed. The Home Office interviewer may say openly that they do not believe you.”\textsuperscript{157}

The wait time between the substantive interview and the official decision from the Home Office is on average 6 months.\textsuperscript{158}

There are three possible positive outcomes when claiming asylum in the UK. The first is a positive decision in which the Home Office believes the applicant’s asylum claims fall under the status for protection as outlined in the Refugee Convention. Applicants who receive this


\textsuperscript{156} Ibid.

\textsuperscript{157} Ibid.

\textsuperscript{158} Ibid.
claim are eligible to remain in the UK for 5 years, have the right to work, find alternative housing, and apply for family reunion and apply for UK travel documents. The second possible outcome is humanitarian protection. This outcome is incredibly similar to a positive decision by the Home Office; however, the applicant cannot apply for UK travel documents. The final positive outcome is a leave to remain. This may be granted if an asylum case is refused but for the safety and well-being of the applicant, it is best if they remain in the UK. This is typically granted to unaccompanied minors and in certain circumstances of human trafficking.

Denials of asylum in the UK follow a very similar convoluted process as the U.S.. There are several options to appeal the decision of the Home Office, all of which require judicial review by the various court systems in the UK. Overturning the denial of asylum from the Home Office at any one of these courts will grant the applicant a positive decision (so long as it is not appealed by the Home Office), and a negative decision by the courts will results in deportation.

C. Comparing the U.S. vs. Ger & GB

When comparing the present-day asylum laws in the United States, Germany, and the United Kingdom, there are a few glaring differences between the U.S. and her European counterparts. First, the asylum laws and applications in the U.S. are overseen by multiple governmental bodies whereas in the UK and Germany, they are primarily handled by one. This is one of the factors that has contributed to the considerably shortened waiting times for asylum applicants Germany and the UK compared to that of the U.S.. Secondly, in response to an increase of immigration, Germany allocated funding for services that would be essential for both German citizens and incoming immigrants. Community involvement and integration programs for immigrants entering Germany are a fantastic way to foster community level collaboration and eliminate social cohesion problems. A study performed by the Organization for Economic Co-operation and Development found that restrictions on immigration do not necessarily lead to better integration of the migrants and there is no obvious link between the total population and immigrant integration outcomes.\(^{159}\) The found that, if anything, countries with a high proportion of immigrants tend to have better integration outcomes.\(^{160}\) Therefore, as Germany continued their


\(^{160}\) Ibid.
high rates of immigration, their immigrant populations were more easily integrated into the existing community and culture, whereas in the U.S. and UK, the low levels of immigration worked against them and created a less integrated population. It is also important to acknowledge Germany is not perfect and xenophobic sentiments do exist in the country. A poll published by the Statista Research Department in April of 2021 found that of 2,500 respondents, nearly 25.6% believed that Germany is dangerously at risk because of “all the foreigners.” These sentiments exist in the U.S. and the UK as well.

If the United States could make two immediate changes to help the existing asylum structure, it would be to expand the resources available to the governing bodies handling all asylum cases and the introduction of productive collaboration strategies with neighboring countries. Expanding the available resources to hire more immigration judges, asylum officers, lawyers, and translators would all help facilitate a smoother and more productive system. The addition of more immigration judges, especially judges with diverse backgrounds, would ease the burden currently on the immigration courts and provide a new perspective on asylum and immigration cases. The addition of more asylum officers would allow for an increased number of asylum cases to be processed, heard, and therefore more decisions to be granted. The addition of free and publicly available translators within both the interview process and court system would ensure one less economic barrier for asylum seekers and would also aid in the court setting for easier communication between the judge and applicant. The addition of more immigration lawyers would also help ease trials and eliminate much of the legal confusion that currently exists when defendants attempt to represent themselves in deportation cases. Expanding the available resources for asylum cases would also benefit Refugee Resettlement Agencies who help guide many immigrants and asylum seekers through the next steps after asylum is granted.

Modeled after the EU structure for international collaboration, the U.S. needs to think how we work with out neighbors to create an effective and beneficial system that does not place undue burden on one country, but instead creates a shared desired outcome. A weak attempt at this idea has been made by the Trump administration, however sending asylum seekers to countries that openly admit they are not prepared for an influx will just lead to a humanitarian disaster. Focusing on collaboration and not intervention in Latin America will allow the U.S. to

provide aid and potentially alleviate some of the causes of forced migration. The focus should be on collaboration with international organizations like the UN, UNHCR, and World Health Organization (WHO) so that the United States can look to rebuild some of the broken relationships it has with Latin American countries. Only through purely humanitarian efforts and the promotion of political stability and economic prosperity can the US hope to ease the suffering of asylum seekers throughout Latin America.

D. Conclusion:
The movement of people seeking protection to the U.S. and Europe is nothing new. Bipartisan politics minimize or eliminate the struggle faced by thousands of Latin American immigrants who come to the southern border searching for hope in a new country. Universal stigmatization ignited by the recent political climate undermines all aspects of humanity and we as a nation tend to forget this false narrative has an extraordinarily large impact on human lives.

It is impossible to know with complete certainty all the reasons why people flee their home country and apply for asylum in the U.S., but there are many common contributing factors that need to be considered, especially in asylum cases. Year after year, the U.S. has remained one of the most popular destinations for asylum seekers worldwide.162 The recent presidency of Donald J. Trump has shown increased effort towards a deterrence-based approach to stem the flow of migrants at the southern border, but this is not effective. Simply eliminating the ability for asylum seekers and refugees to enter the country does not diminish the push factors that placed them in this position, nor does it help our overwhelmed and backlogged immigration system. Cooperation with neighboring countries and a renewed effort to help alleviate political, economic, and social issues in Latin America is the way forward.

References and Helpful Documentation

References


Anker, Deborak. "U.S. Immigration and Asylum Policy: A Brief Historical Perspective."


Armus, Teo. "The Parents of 545 Children Separated at the Border Still Haven't Been Found."


In 2019, procedures at the average time was 10.7 months.


Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear, § 8 CFR Parts 208 and 235 (2020).


The Baltimore County History Labs Program, Baltimore County Public Schools, and The UMBC Center for History Education. RS#01: Background on the Guatemalan Coup of 1954. The UMBC Center for History Education. E Guatemalan Coup of 1954.


Helpful Documentation

Figure 1:
Applying for Affirmative Asylum in the US

1. **Department of Homeland Security (DHS)**
   - NOID must be appealed within 16 days to the asylum office or request to appeal to the immigration courts
   - **Deportation** if application rejected
   - Ruling overturned
   - Board of Immigration Appeals (BIA)
     - **Ruling confirmed**
     - **Deportation**

2. **Application confirmed**
   - Reaches Asylum in the US
   - **Temporary Protected Status (TPS)** as needed
   - TPS - only applies to special circumstances

3. **Asylum Office**
   - Application confirmed
   - NOID received
   - **Application rejected**
   - Ruling overturned
   - Department of Justice (DOJ)
     - Must first file a "notice to appeal" and pay associated fees
     - **Application rejected**
   - **Petition to Review - US Court of Appeals**
     - Ruling confirmed
     - **Deportation**

*assuming the applicant is not a minor, can prove clear and present danger, is not eligible for resettlement, presents no threat of criminality towards the US, is already residing in the US or at the US border at the time of application, can pay the application fees, can attend all court hearings and dates without an issue, is able and willing to wait 6 months up to a few years for asylee status and protection
Figure 2: Applying for Asylum in Germany

- Subsidiary protection
- Recognized as a refugee or asylum seeker under the Geneva Refugee Convention
- Residence permit (due to national ban on deportation)
- Apply for asylum via the Federal Office for Migration and Refugees (BAMF)
- Preliminary interview
- Temporary residence permit ("Aufenthaltsgestattung") issued
- Hearing at BAMF office
- "Simple" rejection ("einfachen Ablehnung")
- Rejected "obviously unfounded" ("offensichtlich unbegründet")
- Petitions must demonstrate strong reasons for remaining in Germany which are not commonly shared by other rejected asylum seekers
- All these appeal options could result in granted asylum or deportation
- Appeal options
  - Tolerated Stay ("Duldung")
  - Petition
  - Church Asylum
  - Complaint
  - Legal action against BAMF decision
  - Hardship regulations ("Härtenfallantrag")
- Sent to other European country under the Dublin III convention
- Dublin examination checks to see if asylum procedure should take place in Germany or another European Country.
Figure 3:

Applying for Asylum in the UK

An asylum claim can be made upon arrival to the UK at a POE or from within if the individual is already in the country.

Apply for asylum within the Home Office

Screening interview

If all appeal rights have been exhausted, an asylum seeker may submit further unconsidered evidence to the Home Office as a "fresh claim."

The Home Office will decide to proceed with the asylum process of detain the individual.

One Stop Notice of Decision to Deport

Interview under caution

The interviewer believes the individual may have entered illegally, a secondary interview will take place called an "Interview Under Caution."

Substantive Interview

Denied

Granted refugee status, humanitarian protection, or discretionary leave within the UK usually for a period of five years.

Accepted

Appeal or Judicial review

Deportation