THE ILLUSION OF SAFETY: EVALUATING THE U.S.-ECUADOR ASYLUM COOPERATIVE AGREEMENT

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ABSTRACT

Questo articolo esamina l'Accordo di cooperazione in materia di asilo (ACA) tra Stati Uniti ed Ecuador, che autorizza il trasferimento dei richiedenti asilo in territorio ecuadoriano. L'analisi sostiene che tale intesa rappresenta una preoccupante esternalizzazione delle responsabilità statunitensi, sollevando criticità sia per il diritto interno che per il diritto internazionale sui rifugiati. La designazione di «Paese terzo sicuro» esige che lo Stato ospitante garantisca procedure eque, protezione effettiva e il rigoroso rispetto del principio di non-refoulement. Tuttavia, la fragilità istituzionale dell'Ecuador compromette questi standard. Le recenti riforme legislative hanno limitato l'accesso all'asilo, mentre l'escalation di violenza interna, gli sfollamenti e la diffusa xenofobia espongono le popolazioni vulnerabili a rischi estremi. Di conseguenza, l'articolo solleva profondi dubbi sulla legittimità di questi trasferimenti, configurandoli come una de facto *elusione degli obblighi di protezione.*

This post examines the Asylum Cooperation Agreement (ACA) between the United States and Ecuador, which authorises the transfer of asylum seekers to Ecuadorian territory. The analysis argues that this agreement represents a worrying externalisation of U.S. responsibilities, raising critical issues for both domestic and international refugee law. The designation of a «safe third country» requires the host state to guarantee fair procedures, effective protection, and strict compliance with the principle of non-refoulement. However, Ecuador's institutional fragility compromises these standards. Recent legislative reforms have restricted access to asylum; while escalating internal violence, displacement, and widespread xenophobia expose vulnerable populations to extreme risks. Consequently, the article raises serious doubts about the legitimacy of these transfers, characterising them as a de facto circumvention of protection obligations.

SUMMARY: 1. Introduction. – 2. The Framework of Third Country Transfers. – 3. The U.S.-Ecuador Agreement and Administrative Overreach. – 4. Ecuador's Internal Deficiencies to Guarantee Protection. – 5. Conclusions.

1. Introduction

Bilateral agreements allowing the transfer of asylum seekers to «safe third country»[1] jurisdictions have become a highly controversial tool for externalizing migration control.

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[1] Regarding the definition of a safe third country, see among others M.T. GIL-BAZO, *The Safe Third Country Concept in International Agreements on Refugee Protection: Assessing State Practice*, in *Netherlands Quarterly of Human Rights*, n. 33/1, 2015, pp. 44, 45.

These arrangements operate on the strict legal premise that the receiving state is fully capable of providing effective protection in accordance with international refugee law. While the externalization of asylum processing is not a novel concept in global migration management, its application has expanded significantly in recent years, particularly within the Americas.

The United States (U.S.) has increasingly pursued complex migration cooperation arrangements with countries across the Americas and Africa, a systemic strategy aimed at externalizing asylum processing and deterring irregular migration. To date, the U.S. has reportedly approached at least fifty-eight countries to sign such bilateral migration agreements, successfully securing pacts with over ten nations. This strategy has been recently reinforced by executive actions prioritizing stringent border security and the summary removal of undocumented individuals. Within this rapidly evolving legal landscape, a relatively vague Asylum Cooperative Agreement (ACA) between the U.S. and Ecuador has recently surfaced. This arrangement demands rigorous scrutiny, as it raises questions regarding whether Ecuador actually meets the stringent legal and institutional conditions required to qualify as a «safe» third country under both U.S. domestic law and overarching international protection standards.

2. The Framework of Third Country Transfers

Evaluating the U.S.-Ecuador ACA requires analysing the legal framework governing transfers to a «safe third country». At the international level, the 1951 Refugee Convention's principle of *non-refoulement* prohibits transferring individuals to territories where they face persecution. Domestically, while Executive Order 14165 (issued in January 2025) prioritizes negotiating additional «safe third country» agreements, such accords remain strictly bound by 8 U.S.C. 1158(a)(2)(A). Under this statute, individuals can only be transferred if their life or freedom is not threatened on account of «race, religion, nationality, membership in a particular social group, or political opinion», and if they are guaranteed access to a «full and fair procedure» for determining an asylum claim.

Nevertheless, the U.S. has expanded these agreements beyond robust asylum systems to fragile Central American countries, like El Salvador and Guatemala, which have sparked intense litigation—most notably in *U.T. v. Barr*—for demonstrably endangering asylum seekers. Although these specific agreements were temporarily suspended, they catalysed a systemic shift toward asylum externalization. This trend prompted the United Nations High Commissioner for Refugees to warn that such policies fundamentally violate international law and gravely threaten vulnerable populations. Echoing these concerns, the Inter-American Commission on Human Rights (IACHR) formally condemned the proliferation of these bilateral agreements between OAS Member States. Furthermore, the IACHR indicated that these coercive transfer frameworks grant excessive State discretion and lack individualized assessments, creating severe protection gaps. By systematically

denying basic due process, these agreements deprive asylum seekers of their right to judicial review, family life, and personal liberty. Consequently, affected individuals are frequently subjected to arbitrary detention and substandard conditions, with virtually no legal recourse to challenge their removal or pursue their asylum claims.

3. The U.S.-Ecuador ACA and Administrative Overreach

The details of the U.S.-Ecuador ACA, along with the administrative tactics used to enforce it, reveal a troubling disregard for international legal standards. The agreement, facilitated through diplomatic notes signed in July 2025 and officially published in the Federal Register in November 2025, authorizes the transfer of asylum seekers from U.S. territory to Ecuador. The published agreement does not clarify its terms and states that a later instrument will define the criteria for eligibility for transfer. To date, these conditions remain undisclosed, severely undermining the legal certainty of those impacted by the agreement. Furthermore, under the ACA Rule, this agreement—much like its predecessors—can be applied retroactively. This retroactive application, combined with the fact that it requires neither a prior connection to nor a transit history through Ecuador, constitutes a procedural deficiency that has directly triggered the federal litigation detailed below.

a) Administrative implementation

Ecuador's Foreign Minister publicly confirmed that the country could receive up to 300 individuals per year under this framework. While the agreement gives Ecuador full discretion to accept groups of asylum seekers, regional experts suggest there are underlying political motivations. Facing a severe economic contraction, Ecuador may be leveraging this agreement to secure urgently needed preferential trade access to the U.S. market. Although no physical transfers were officially confirmed by March 2026, administrative enforcement is already underway. Between December 2025 and February 2026, courts pretermitted the cases of Latin American asylum seekers. Immigration Judges across jurisdictions are relying on the mere existence of the U.S.-Ecuador ACA to summarily pretermit applications and order imminent removals to Ecuador.[2] By granting these dismissals without evidentiary hearings or meaningful safety analyses, the courts are stripping petitioners of their right to seek protection in the U.S.

[2] For instance, see the plaintiffs' allegations in *Shinwari and Tovar Figueroa v. Hermosillo* (Jan. 2026); *Jhonson Diaz v. Noem* (Feb. 2026); *Hurtado v. Unknown Party* (Feb. 2026); *Gamez v. Parra* (March 2026).

b) Litigation and case law

According to legal intermediaries, asylum seekers facing sudden deportation under this bilateral agreement may legally invoke three statutory exceptions to halt the transfer: qualifying as an unaccompanied minor, holding valid travel documents for another safe country, or proving by a preponderance of the evidence a likelihood of persecution or torture. However, this places a burden of proof on those facing immediate removal to Ecuador. Moreover, a textual analysis of the agreement itself reveals a profound lack of built-in safeguards or mechanisms for access to justice. The official diplomatic notes establish a framework based on complete discretion for both nations. Because the agreement mandates no explicit right to an individualized assessment or judicial review prior to transfer, it creates a severe structural gap in access to justice.

Exploiting this ambiguity, the executive branch—via the Department of Homeland Security (DHS)—exerts significant pressure on the immigration court system. Relying merely on the agreement's existence rather than formalized, transparent transfer criteria, DHS aggressively files eleventh-hour motions requesting that immigration judges pretermit (dismissal without a hearing) or deny pending asylum applications. Immigration attorneys report that these executive motions now constitute up to ninety-five percent of their caseloads. This tactic critically compromises due process, blindsiding legal counsel and shifting an overwhelming burden onto the asylum seeker to rapidly prove imminent danger under extreme time constraints.

Even if the ACA acts as a jurisdictional bar to a standard asylum claim, individuals legally retain the right to be evaluated for withholding of removal and protections under the Convention Against Torture (CAT). Consequently, immigration judges play a critical role in preserving minimum due process; by mandating individualized evidentiary hearings for these specific claims rather than acceding to executive motions for summary dismissal, they can ensure that vague diplomatic assurances do not culminate in illegal *refoulement*.

In this regard, federal courts have intervened to protect asylum seekers from unlawful detention while awaiting deportation under the U.S.-Ecuador ACA. For example, in *Jhonson Diaz v. Noem et al* and *Shinwari and Tovar Figueroa v. Hermosillo*, judges granted habeas corpus relief to a Cuban and a Venezuelan national, respectively, after both were subjected to mandatory detention even before their deportation orders to Ecuador became administratively final. In both cases, the district courts ruled that summarily detaining individuals whose deportation orders were still subject to active appeals severely violated their Fifth Amendment due process rights. Consequently, the government was ordered to immediately release the Venezuelan petitioner—who had been abruptly arrested despite complying with her lawful parole—and to provide the Cuban petitioner with either a prompt bond hearing or immediate release.

4. Ecuador's Internal Deficiencies to Guarantee Protection

An evaluation of Ecuador's asylum framework reveals profound internal deficiencies that critically hinder its compliance with the statutory obligations of safety, due process, and *non-refoulement*. Asylum seekers and migrants transferred to the nation must navigate a hostile environment marked by persistent violence, discrimination, and entrenched barriers to legal regularization. To establish why Ecuador fails to meet safe third country standards, this analysis examines four critical areas: restrictive asylum legislation, severe institutional underfunding, an unprecedented internal armed conflict, and disparate protection outcomes driven by systemic bias and xenophobia:

a) Legal constraints

The October 2025 reforms to Ecuador's Organic Law on Human Mobility have significantly altered the country's asylum framework, raising serious concerns about procedural fairness. By imposing stringent security-based barriers, this revised legal architecture severely restricts access to protection, subjecting refugees to expedited procedures, diminished legal safeguards, and an environment of pervasive suspicion. Amendments to Article 103 expand the grounds of inadmissibility, permitting security authorities to outright block applications by designating them as «illegitimate» threats or «abusive claims» related to irregular entry. Additionally, Article 141.B establishes an accelerated deportations regime for foreigners held in pretrial detention, enabling summary expulsions before criminal guilt is proven or protection claims are evaluated. Compounding these hurdles, revised Article 143.A explicitly strips *non-refoulement* safeguards from individuals who have not yet formally registered their asylum requests.

While the bilateral agreement includes a formal clause protecting asylum seekers from refoulement «until a final decision has been made», the treatment of individuals who resided in the U.S. long before the agreement's enactment remains a critical legal vulnerability. The primary issue is whether Ecuadorian authorities will afford these individuals due process or summarily dismiss their claims. There is a profound risk that authorities might rely on a flawed legal presumption—that a prolonged stay in the U.S. naturally invalidates the immediacy of the threats faced in their home country—to justify swift denials and subsequent deportations.

b) Institutional capacity

Furthermore, despite historically hosting one of the largest refugee populations in the region—with the United Nations High Commissioner for Refugees reporting over 81,000 recognized refugees and international organizations assisting more than 73,000 displaced persons in 2024 alone, —Ecuador's asylum infrastructure is critically compromised by

severe financial deficits. By January 2026, the system was operating at a mere seven percent of its required funding, a chronic shortfall that severely undermines the state's practical capacity to process, support, and protect vulnerable populations.

c) Security Concerns

Driven by transnational organized crime, Ecuador is enduring a profound security crisis. Between 2019 and 2024, homicides skyrocketed by 429 percent, prompting the government to declare an «internal armed conflict». Despite heightened military intervention, the violence escalated further in 2025, with homicides surging an additional forty percent by September and the national rate reaching an unprecedented 50.91 per 100,000 inhabitants—ranking among the highest globally. Fuelled by rampant extortion and trafficking orchestrated by domestic and Colombian criminal syndicates, this pervasive instability internally displaced approximately 316,000 people between 2022 and 2024.

Sending vulnerable foreigners to a country that has declared an internal conflict is incompatible with the legal mandate to guarantee their protection. This is especially true given the increase in internally displaced persons in recent years, and the fact that the U.S. is one of the countries where Ecuadorians have sought asylum.

d) Discrimination and protection outcomes

Beyond the formal legislative framework, a safe third country designation requires an empirical examination of how the receiving nation's asylum system operates in practice. Protection outcomes in Ecuador demonstrate disparate impacts based on nationality. Available public data suggests that refugee recognition rates for Cuban nationals have historically been extremely low,[3] despite Cubans comprising the third-largest demographic of asylum seekers in the country. Even for neighbouring populations, the system has exhibited systemic hostility; between 2012 and 2014, Ecuador enforced restrictive refugee laws that resulted in an estimated ninety-five percent rejection rate for Colombian asylum seekers. Migrants and refugees frequently encounter substantial structural barriers, societal discrimination, and pervasive xenophobia, which analyses show are often inflamed by media-driven narratives linking migration directly to criminality. Alarmingly, a 2025 presidential measure officially revoked a prior decree, effectively paralyzing the extraordinary regularization programs that had previously served as a lifeline for thousands of displaced individuals, thereby forcing many into precarious, undocumented situations.

The reality of daily survival for refugees in Ecuador is grim. A comprehensive report found that approximately one-third of migrants and refugees residing in Guayaquil feel

[3] Notably, Ecuadorian authorities currently publish aggregated statistics on asylum approvals and denials without disaggregating the data by nationality.

inherently unsafe in their host communities due to pervasive extortion and threats from criminal networks, forcing many to abandon their homes to survive. Historical precedent further illustrates the tangible dangers of these structural biases. The IACHR has previously expressed severe concern over Ecuador's treatment of asylum seekers, specifically documenting the arbitrary detention and summary deportation of Cuban migrants in 2016 without due process, constituting a direct violation of the principle of *non-refoulement*. Furthermore, Amnesty International has extensively documented that the Ecuadorian state systematically fails to protect refugee women who are survivors of gender-based violence. This institutional failure leaves these women highly vulnerable, as their precarious legal status precludes them from accessing justice without the constant fear of deportation.

5. Conclusions

A critical evaluation of the U.S.-Ecuador ACA reveals a complex framework that, while ostensibly grounded in diplomatic cooperation and mutual discretion, presents severe procedural and human rights challenges in its implementation. Although the agreement relies on Ecuador's formal adherence to the 1951 Refugee Convention and includes diplomatic assurances of safety, the legality of third-country transfers ultimately depends on the receiving state's practical capacity to offer effective, accessible, and impartial protection. However, as this analysis demonstrates, the convergence of Ecuador's restrictive 2025 migration reforms, pervasive xenophobia, and unprecedented internal violence creates profound structural barriers to a fair asylum process.

Furthermore, the operationalization of this agreement within U.S. immigration courts—characterized by the retroactive targeting of asylum seekers, last-minute prosecutorial motions, and the circumvention of individualized risk assessments—highlights a troubling erosion of due process. Rather than acting as a mechanism for shared humanitarian responsibility, the current execution of the agreement risks facilitating the externalization of asylum obligations at the expense of vulnerable populations. Until it can be demonstrated that robust security measures and procedural fairness will be guaranteed in practice, the legal and moral viability of these transfers to Ecuador will remain deeply in doubt.

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