



11-2020

## The Asylum Search: How the Supreme Court's Potential Ruling in the East Bay Sanctuary V. Barr Case May Change Our Interpretation of Asylee Rights Through the Honduras Deal

Reeve Churchill  
*Fordham University*

Wislande Francisque  
*Fordham University*

Follow this and additional works at: <https://research.library.fordham.edu/fulr>



Part of the [Immigration Law Commons](#), [International and Area Studies Commons](#), [International Law Commons](#), [Law and Society Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

### Recommended Citation

Reeve Churchill & Wislande Francisque, *The Asylum Search: How the Supreme Court's Potential Ruling in the East Bay Sanctuary V. Barr Case May Change Our Interpretation of Asylee Rights Through the Honduras Deal*, 2 Fordham Undergrad. L. Rev. (2020).

Available at: <https://research.library.fordham.edu/fulr/vol2/iss1/8>

This Note is brought to you for free and open access by the Journals at Fordham Research Commons. It has been accepted for inclusion in Fordham Undergraduate Law Review by an authorized editor of Fordham Research Commons. For more information, please contact [considine@fordham.edu](mailto:considine@fordham.edu), [bkilee@fordham.edu](mailto:bkilee@fordham.edu).

**NOTE**

**THE ASYLUM SEARCH:  
HOW THE SUPREME COURT’S POTENTIAL RULING IN THE  
EAST BAY SANCTUARY V. BARR CASE MAY CHANGE OUR  
INTERPRETATION OF ASYLEE RIGHTS THROUGH THE  
HONDURAS DEAL**

Reeve Churchill\* and Wislande Francisque\*\*

*In this Note, the authors Reeve Churchill and Wislande Francisque will examine the changing interpretation of asylee rights by analyzing the Honduras Deal, the 9th District Court case East Bay Sanctuary v. Barr (2020), and Trump v. Hawaii. The Honduras Deal is evidence of the Trump Administration’s harsh restrictions towards asylum seekers. This note will contextualize the Honduras Deal through the examination of two court cases: East Bay Sanctuary v. Barr and Trump v. Hawaii. In the latter case, the Supreme Court ruled that the President has the power to bar entry to any group of immigrants that he feels are dangerous to American interests.<sup>331</sup> In East Bay Sanctuary v. Barr, the East Bay Sanctuary Covenant argued that the travel ban ignored U.S. Code § 1158, and violated the Immigrant and Naturalization Act as well as the Administrative Procedure Act.<sup>332</sup> Though the East Bay Sanctuary won the case in this Court, the decision was appealed and will possibly be argued before the Supreme Court. This note will argue that if this case reaches the Supreme Court, it is likely that the justices will overturn the decision of the Ninth Circuit Court based on the precedent set in Trump v. Hawaii. The effects of such a decision will impact the ability of asylum seekers to receive asylum in the United States, establishing a clear precedent for the future of asylum seekers in the United States.*

I. INTRODUCTION.....89  
    A. *The Honduras Deal*..... 89  
    B. *Precent in East Bay Sanctuary v. Barr*.....89

---

\* B.A. Candidate for International Studies and French Language & Literature, Fordham College at Rose Hill, Class of 2022. It has been an honor to write as a Senior Editor for the Fordham Undergraduate Law Review. This Note would not have been possible without the immense support of all past and present Editorial Board members of FULR, especially Naomi Izett, David Rossman, and Tyler Raciti. Additional thanks are due to Wislande Francisque, my co-author. Without her hard work and support, this Note would never have come to fruition.

\*\* Staff writer for the Fordham Undergraduate Law Review, Fordham University, Class of 2022.

<sup>331</sup> 1182(f) of the Immigrant and Naturalization Act.

<sup>332</sup> *East Bay Sanctuary Covenant v. Barr*, CCRJUSTICE.ORG, (2019),

<https://ccrjustice.org/home/what-we-do/our-cases/east-bay-sanctuary-covenant-v-barr>.

II. IMMIGRANT RIGHTS IN THE ERA OF AMERICA-FIRST POLICIES.....	91
III. HOW PRECENT SET IN TRUMP V. HAWAII WILL AFFECT THE HONDURAS DEAL AND <i>EAST BAY SANCTUARY V. BARR</i> .....	93
IV. THE POSSIBLE IMPACT.....	94
V. A NEW PRECENT FOR THE HONDURAS DEAL.....	96
VI. CONCLUSION.....	98

## I. INTRODUCTION

### A. *The Honduras Deal*

On Wednesday September 25, 2019, the Trump Administration signed the Honduras Deal. This deal reflected the changing notion of immigrant rights in the era of Donald Trump.<sup>333</sup> The deal specifically focuses on asylum seekers at the US-Mexican border who seek asylum in the United States without first having applied for asylum in a third country. Those who seek asylum in the United States would be sent to Honduras if they failed to apply for asylum in a third country first. Similar deals have been struck with Guatemala and El Salvador in the past.<sup>334</sup> These countries have abnormally high rates of murder,<sup>335</sup> drug trafficking,<sup>336</sup> and civil unrest.<sup>337</sup> *Mara Salvatrucha*, or MS-13 is a “criminal-economic-military-political power” with ties to cartels in Mexico<sup>338</sup> and is especially prominent in Honduras, El Salvador, and Guatemala.<sup>339</sup> The Overseas Security Advisory Council, OSAC, reported that “there are an estimated 7,000 [to] 10,000 gang members in [Honduras,] a country with an approximate population of eight million

<sup>333</sup> *U.S. Announces Asylum Deal With Honduras, Could Send Migrants to One of World’s Most Violent Nations*, THE WASHINGTON POST, (2019), [https://www.washingtonpost.com/immigration/us-announces-asylum-deal-with-honduras-could-send-migrants-to-one-of-worlds-most-violent-nations/2019/09/25/cca94a86-dfb6-11e9-8fd3-d943b4ed57e0\\_story.html](https://www.washingtonpost.com/immigration/us-announces-asylum-deal-with-honduras-could-send-migrants-to-one-of-worlds-most-violent-nations/2019/09/25/cca94a86-dfb6-11e9-8fd3-d943b4ed57e0_story.html).

<sup>334</sup> *Id.*

<sup>335</sup> Douglas Farah & Kathryn Babineau, *The Evolution of MS 13 in El Salvador and Honduras*, 7 PRISM 58 (2017), [https://www.jstor.org/stable/pdf/26470498.pdf?ab\\_segments=0%252Fbasic\\_SYC-4802%252Ftest1&refreqid=excelsior%3Ac3682078e7bcadf288f9ec250e4b42d3](https://www.jstor.org/stable/pdf/26470498.pdf?ab_segments=0%252Fbasic_SYC-4802%252Ftest1&refreqid=excelsior%3Ac3682078e7bcadf288f9ec250e4b42d3).

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*, at 59.

<sup>339</sup> *Id.*

people.”<sup>340</sup> Under the Honduras Deal, asylum seekers, regardless of their country of origin, who fled persecution and civil wars in their home countries may again experience extreme violence if they are deported from the United States to Honduras, El Salvador, and Guatemala.

*B. Precedent in East Bay Sanctuary v. Barr*

On October 1, 2019, the East Bay Sanctuary argued that the issuing of an executive order banning any sort of immigration to the United States was an overstep of President Trump’s executive power.<sup>341</sup> This case, known as *East Bay Sanctuary v. Barr*, was argued as a response to the two Executive Orders signed by President Trump which, in tandem, barred Central American immigrants from applying for asylum if they entered the United States outside of a designated point of entry.<sup>342</sup> According to the East Bay Sanctuary, “the right to determine whether a particular group of applicants is categorically barred from eligibility for asylum is conferred on Congress.”<sup>343</sup> Since the series of travel bans were issued by executive order, Congress was left out of any decision making, Congress was unable to take part in decision-making, which the East Bay Sanctuary argued was unlawful.<sup>344</sup>

Furthermore, *East Bay* argued that the series of travel bans were unlawful because the Trump administration largely ignored the standing definition of “asylum seeker” under US Code § 1158. It states that an alien may apply for asylum when they are within United States borders and may be granted asylum by the Attorney General.<sup>345</sup> In *East Bay Sanctuary v. Barr*, attention was called to US Code § 1158, where a set of exceptions that prevent immigrants from seeking asylum already exists.<sup>346</sup> In the Immigration and Naturalization Act, Congress laid out exceptions to individuals who cannot seek asylum in the United States. These exceptions include the presence of a third safe country where an individual’s “life or freedom would not be

---

<sup>340</sup> Country Security Report, Overseas Security Advisory Council, Honduras 2019 Crime & Safety Report (2019), <https://www.osac.gov/Content/Report/ff459385-017d-4ff2-8a02-15f4aec15a69>.

<sup>341</sup> Order Granting Preliminary Injunction, Case No. 19-cv-04073-JST, Sept. 19, 2019, <https://ccrjustice.org/sites/default/files/attach/2019/07/Preliminary%20Injunction%20Decision.pdf>.

<sup>342</sup> Appeal from the United States District Court for the Northern District of California Jon S. Tigar, District Judge, Presiding, No. 18-17274, Feb. 28, 2020, <https://cases.justia.com/federal/appellate-courts/ca9/18-17274/18-17274-2020-02-28.pdf?ts=1582912966>.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> 8 U.S.C. § 1158 (1980).

<sup>346</sup> *Id.*

threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum.”<sup>347</sup> In *East Bay Sanctuary v. Barr*, the plaintiff argues that the Trump travel ban was an additional exception not covered by the Immigration and Naturalization Act, and was an exception that that ignored whether the asylum seeker was safely resettled.<sup>348</sup> Furthermore, the East Bay Sanctuary argues that this policy vilifies asylum seekers of color at the Southern border, since a large majority of the affected immigrants are people of color.

Although the District Court overturned the case,<sup>349</sup> Attorney General William Barr submitted a stay pending appeal to the Supreme Court of the United States.<sup>350</sup> By September 11, 2019, Justice Kagan granted the application for stay. If a writ of certiorari is sought and denied, the stay pending appeal terminates automatically and the decision of the lower court stands. If the Court grants the writ of certiorari, the order will terminate when the Court enters its judgment. Justice Ginsburg joined Justice Sotomayor in dissenting from the stay pending appeal.<sup>351</sup> Justice Sotomayor wrote that “once again the Executive Branch has issued a rule that seeks to upend longstanding practices regarding refugees who seek shelter from persecution.”<sup>352</sup> She further claims that the Trump administration kept this ban from the public for too long.<sup>353</sup> The federal government is required by law to receive public input before making decisions on laws. For these reasons, Justices Sotomayor and Ginsburg felt that the application for stay was “an extraordinary request” of which the government was undeserving.<sup>354</sup>

## II. IMMIGRANT RIGHTS IN THE ERA OF AMERICA-FIRST POLICIES

---

<sup>347</sup> *Id.*

<sup>348</sup> *East Bay Sanctuary Covenant v. Barr*, *supra* note 2.

<sup>349</sup> Order, Case No. 19-18487, Aug. 16, 2019, <https://www.scotusblog.com/wp-content/uploads/2019/09/19-16487o.pdf>.

<sup>350</sup> *Stay Pending Appeal Law and Legal Definition*, USLEGAL, (2019), <https://definitions.uslegal.com/s/stay-pending-appeal/>.

<sup>351</sup> 588 U.S. \_\_\_\_ (2019), [https://www.supremecourt.gov/opinions/18pdf/19a230\\_k531.pdf](https://www.supremecourt.gov/opinions/18pdf/19a230_k531.pdf).

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Supreme Court Update: The Court says US can implement rule that bans most asylum applications at the Southern Border*, AMERICAN BAR ASSOCIATION, (Sept. 19, 2019), [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/publications/washingtonletter/sept\\_2019\\_washington\\_letter/sc\\_outside\\_gao\\_0919/](https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/sept_2019_washington_letter/sc_outside_gao_0919/).

The U.S. Code § 1158 is meant to protect asylum seekers,<sup>355</sup> however, the Honduras Deal reflects the Trump administration's criminalization of them.<sup>356</sup> According to the U.S. Code § 1158, "any alien who is physically present in the United States or who arrives in the United States... irrespective of such [an] alien's status, may apply for asylum in accordance with this section..."<sup>357</sup> Few exceptions exist in which the U.S. Attorney General may determine that an immigrant is not qualified to apply for asylum, all of which are laid out in this section of the Code.<sup>358</sup> Within the context of the Honduras Deal, the most important exception is that asylum "shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country... in which the alien's life or freedom would not be threatened..."<sup>359</sup> According to these exceptions, the Honduras Deal directly violates the rights of asylum seekers, as the Trump administration is sending refugees to dangerous third-world countries, wherein the likelihood of their death is statistically higher than it would be in the United States.

The Honduras Deal additionally ignores precedent set by the District Court case *East Bay Sanctuary v. Barr*. This case was brought to the U.S. District Court in San Francisco in July of 2019 after an executive order barred immigrants from seeking asylum if they didn't seek refuge in a third country first. The Deputy Assistant Attorney General, Scott G. Stewart, argued that the ban was necessary to quell the overwhelming number of migrants entering the country through Mexico.<sup>360</sup> According to the United States Justice Department, asylum filings have quadrupled since 2014 yet fewer than twenty percent of Central American applicants are granted asylum.<sup>361</sup> Neal Katyal, the attorney for the East Bay Sanctuary, argued that the ban "radically rewrites" asylum law and violates both the Immigration and

---

<sup>355</sup> 8 U.S.C. § 1158 (1980).

<sup>356</sup> Chiara Galli, *No Country for Immigrant Children: From Obama's "Humanitarian Crisis" to Trump's Criminalization of Central American Unaccompanied Minors*, 6 CALIFORNIA IMMIGRATION RESEARCH INITIATIVE: RESEARCH BRIEF SERIES, (2018),

[https://www.researchgate.net/publication/326877028\\_No\\_Country\\_for\\_Immigrant\\_Children\\_From\\_Obama's\\_Humanitarian\\_Crisis\\_to\\_Trump's\\_Criminalization\\_of\\_Central\\_American\\_Unaccompanied\\_Minors](https://www.researchgate.net/publication/326877028_No_Country_for_Immigrant_Children_From_Obama's_Humanitarian_Crisis_to_Trump's_Criminalization_of_Central_American_Unaccompanied_Minors).

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> 8 U.S. Code § 115, 2A.

<sup>360</sup> *Id.*

<sup>361</sup> Emergency Motion Under Circuit Rule 27-3 For Administrative Stay and Motion for Stay Pending Appeal, No. 19-16487 (Aug. 2 2019),

<https://www.politico.com/f/?id=0000016c-543b-da83-a96c-d6fb9acb0000>.

Naturalization Act and the Administrative Procedure Act.<sup>362</sup> According to the East Bay Sanctuary, the Honduras Deal was not an exclusion set forth in US Code § 1158, rendering it invalid.<sup>363</sup>

Despite these violations, the Honduras Deal is unlikely to face any legal action as a result of the precedent set by *Trump v. Hawaii*. If the Honduras Deal does not face any legal action, then it will continue to violate asylee rights and invalidate the U.S. Code. The Honduras Deal reveals that the perceived rights of asylum seekers are vastly different from their practiced rights.

### III. HOW PRECEDENT SET IN *TRUMP V. HAWAII* WILL AFFECT THE HONDURAS DEAL AND *EAST BAY SANCTUARY V. BARR*

Although the Honduras Deal clearly violates the Immigration and Naturalization Act and ignores the precedent set in the California District Court case *East Bay Sanctuary v. Barr*, this Note argues that the precedent set in the Supreme Court case *Trump v. Hawaii* will protect the Honduras Deal from any legal action. While it is still uncertain if the Supreme Court will hear arguments in the *East Bay Sanctuary v. Barr*, it is likely that the decision of the District Court will be overturned if the justices accept the case. In a similar case, *Trump v. Hawaii*, the legality of Executive Order No. 13,769, more commonly referred to as the “Muslim ban,” was argued before the Supreme Court of the United States.<sup>364</sup> This Executive Order limits immigrants from seen Muslim-majority countries from entering the United States. Many believed that President Trump’s decision was ideologically rooted in xenophobia and islamophobia,<sup>365</sup> similar to the Honduras Deal. The Trump administration stated that the ban was a protective measure which was necessary to “establish adequate standards to prevent infiltration by foreign terrorists.”<sup>366</sup> Ultimately, the court ruled in favor of the Trump administration with a vote of 5-4.<sup>367</sup> Chief Justice John Roberts wrote the majority opinion which stated that the executive order did not exceed President Trump’s

---

<sup>362</sup> *U.S. District Court Denies Request for Temporary Restraining Order Halting Trump Administration’s New Rule Curbing Asylum Applicants*, JUSTIA, (July 24, 2019), <https://news.justia.com/u-s-district-court-denies-request-for-temporary-restraining-order-halting-trump-administrations-new-rule-curbing-asylum-applicants/>.

<sup>363</sup> *East Bay Sanctuary Covenant v. Barr*, *supra* note 2.

<sup>364</sup> *Trump v. Hawaii*, OYEZ, (2017), <https://www.oyez.org/cases/2017/17-965>.

<sup>365</sup> *Supreme Court Update: The Court says US can implement rule that bans most asylum applications at the Southern Border*, *supra* note 25.

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

authority as the president has “the power to suspend the inflow of immigrants to the United States in the Immigration and Nationality Act § 1182(f).”<sup>368</sup> Justices Neil Gorsuch and Samuel Alito joined the majority opinion, while Justices Anthony Kennedy and Clarence Thomas concurred.<sup>369</sup> Since the East Bay Sanctuary is making a similar argument, it is highly unlikely that the Supreme Court will break precedent in an abundantly similar case. Furthermore, the majority found that the ban did not discriminate against Muslim individuals, but instead reflected “a sufficient national security justification.”<sup>370</sup> This is especially important because the East Bay Sanctuary similarly argues that the Honduras Deal is an act of discrimination, too. As of December 2, 2019, *East Bay* moved closer to the Supreme Court when oral arguments were made in the Ninth Circuit Court of Appeals.<sup>371</sup> The case is still pending.<sup>372</sup>

In *Trump v. Hawaii*, four justices refused to join the majority opinion and two separate dissents were filed. These dissenting opinions could provide crucial assistance to the outcome of *East Bay*. Firstly, Justice Stephen Breyer filed a dissent which Justice Elena Kagan joined. In this dissent, Justice Breyer examined evidence which suggested that the government was not actually applying promised exemption and waiver programs for asylum seekers; he felt that the case should be handed over to District Court.<sup>373</sup> In this case, the plaintiff in *East Bay* could use this dissent to argue that the travel bans are best argued in District Courts. Furthermore, the dissent written by Justice Sotomayor, joined by Justice Ginsberg, argued that the travel ban should fail because it was introduced by President Trump as a “total and complete shutdown of Muslims entering the United States.”<sup>374</sup> This could prove useful to *East Bay* because of the harmful rhetoric with which the Trump administration described asylum seekers from Central America.<sup>375</sup> The rhetoric suggests that the Honduras Deal was created out of the

---

<sup>368</sup> *Id.*

<sup>369</sup> Hilary Hurd & Yishai Schwartz, *The Supreme Court Travel Ban Ruling: A Summary*, LAWFARE, (June 26, 2018), <https://www.lawfareblog.com/supreme-court-travel-ban-ruling-summary>.

<sup>370</sup> Memorandum Opinion, Civil Action No. TDC-17-0361, (May 2, 2019), [https://www.brennancenter.org/sites/default/files/Zakzok%20Opinion\\_0.pdf](https://www.brennancenter.org/sites/default/files/Zakzok%20Opinion_0.pdf).

<sup>371</sup> *East Bay Sanctuary Covenant v. Barr*, *supra* note 2.

<sup>372</sup> *Id.*

<sup>373</sup> *Trump v. Hawaii*, *supra* note 36.

<sup>374</sup> Jenna Johnson, *Trump Calls for Total and Complete Shutdown of Muslim Entering the United States*, THE WASHINGTON POST, (Dec. 7, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/>.

<sup>375</sup> Estefania Castañeda Pérez & Blanca Ramirez, *The Continuum of Legal Violence Against Central American Migrants*, USC DORNSIFE, (July 24, 2019), <https://dornsife.usc.edu/csii/blog-continuum-legal-violence-against-central-am-migrants/>.



“vilification of Central American immigrants seeking asylum,” rather than a necessary protective measure.<sup>376</sup> However, because the *Trump v. Hawaii* case was recently decided in favor of Trump, it is highly unlikely that the same Supreme Court who ruled in favor of Trump will rule against him in a similar case only a few years later.

#### IV. THE POSSIBLE IMPACT

A Supreme Court ruling in *East Bay v. Barr* may significantly affect the entrance of asylum seekers and perhaps be used as a model in future immigration cases. A few additional nonprofit organizations — the Capital Area Immigrants’ Rights Coalition of Washington and the Refugee and Immigrant Center for Education and Legal Services — challenged this new rule of the Honduras Deal in tandem with the East Bay Sanctuary. The nonprofit organizations argued that the “new rule violates the Immigration and Naturalization Act because the immigration act states unequivocally that applicants have a right to appeal for protection after reaching U.S. soil.”<sup>377</sup> As stated previously, in the Immigration and Naturalization Act, “any alien who is physically present in the United States or who arrives in the United States irrespective of such alien's status, may apply for asylum.”<sup>378</sup> The words “physically present” suggests that any persons are granted these rights, with some necessary restrictions, when they reach U.S. soil. Unless, as stated in Section 2A, that such an alien's life is not threatened in their original country.<sup>379</sup> However, if the *East Bay v. Barr* decision does not align with the Immigration and Naturalization Act, the Supreme Court would fail to realize that not only would the new rule contradict standing legislation but also that the entire asylum process would become paradoxical.

To have one law that guarantees the protection of asylees upon arrival on U.S. soil, but yet another that limits these protections is inherently problematic. This process would compound the already challenging process of seeking asylum by forcing asylees to seek help elsewhere before seeking help in the U.S. The majority of asylum seekers are refugees who are fleeing war, persecution, and political upheaval.<sup>380</sup> They are in search of protection and consolation in another country to escape the difficult circumstances in

---

<sup>376</sup> *Id.*

<sup>377</sup> *U.S. District Court Denies Request for Temporary Restraining Order Halting Trump Administration’s New Rule Curbing Asylum Applicants*, *supra* note 33.

<sup>378</sup> 8 U.S.C. § 1158 (1980).

<sup>379</sup> *Id.*

<sup>380</sup> *Refugees in America*, INTERNATIONAL RESCUE COMMITTEE, (2019), <https://www.rescue.org/topic/refugees-america>.

their countries of origin. Persecution may be the cause of religious differences, nationality, political affiliation, and race.<sup>381</sup>

According to the International Rescue Community (IRC), “the Trump administration confirmed it is proposing an annual admissions ceiling for refugees at 18,000 for fiscal year [of] 2020.”<sup>382</sup> A successful appeal of *East Bay* would certainly be the reinforcement that Trump would need to argue for an annual admission ceiling. One can assume that the number of refugees granted access into the U.S. would be so few that asylum as a system would be highly discouraged, even when the necessary circumstances for international refuge are present. As stated by the IRC, “out of the more than 22 million refugees in the world, less than one percent are considered for resettlement worldwide.”<sup>383</sup> The U.S. is on track to decrease the percentage dramatically. If *East Bay* is appealed by the Supreme Court, there would be a significant decrease in asylum seekers due to the lack of compliance to the law assuming that many seekers who are given asylum in other countries continue to seek asylum in the U.S.

#### V. A NEW PRECEDENT FOR THE HONDURAS DEAL

*East Bay Sanctuary v. Barr* will certainly set precedent for the Honduras Deal, especially if the decision favors the argument presented by the government. To reiterate, the Honduras Deal is already an Executive Order, so it’s legal until a court rules against it.<sup>384</sup> This deal states that those who seek asylum in the US would be deported to Honduras, one of the most dangerous countries in Latin America.<sup>385</sup> The Trump Administration’s position in *East Bay* and the Honduras Deal both clearly seek to reduce the flow of immigrants into the country. *The East Bay* case demands that asylum seekers first be denied asylum in a third country while the Honduras deal deports asylum seekers into another country. To quote the East Bay Sanctuary on the matter:

In effect, the rule forbids almost all Central Americans—even unaccompanied children—to apply for asylum in the United States if they enter or seek to enter through the southern border, unless they were first denied asylum in Mexico or another third country.<sup>386</sup>

---

<sup>381</sup> 8 U.S. § 1101.

<sup>382</sup> *Refugees in American*, *supra* note 52.

<sup>383</sup> *Id.*

<sup>384</sup> *U.S. Announces Asylum Deal with Honduras, Could Send Migrants to One of World’s Most Violent Nations*, *supra* note 3.

<sup>385</sup> *See supra* note 5.

<sup>386</sup> *East Bay Sanctuary Covenant v. Barr*, *supra* note 2.

To understand what the East Bay case is, it is proper to examine what it entails. The quote above shows which group this rule targets, “the rule forbids all Central Americans...”<sup>387</sup> and specifies that there would be no exception whether or not an individual is an unaccompanied child.<sup>388</sup>

Here’s how the case went: the plaintiff “moved for a preliminary injunction preventing Defendants from moving forward with the Rule’s implementation.”<sup>389</sup> A preliminary injunction is “an injunction that may be granted before or during trial, with the goal of preserving the status quo before final judgment.”<sup>390</sup> This implies that the government may not proceed to enforce their new ruling on asylum seekers before final judgment is reached. Therefore, the federal government cannot take any further action to execute the rule. This can be seen as a way to stall the impact of the new rule. The goal was for the preliminary injunction to be warranted nationwide. However:

[the] defendants requested a stay pending an appeal to the Ninth Circuit Court, arguing that the nationwide scope of the injunction was unwarranted and would serve to undermine the constitutional and statutory authority of the Executive Branch.<sup>391</sup>

There is an element of truth in this. The Executive Branch has the power to execute rules made by Congress as we see in our Constitution, but the motion to take the preliminary injunction nationwide does not undermine the constitutional or statutory authority of the executive branch.

The necessary and proper clause, a possible argument, states that “...all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers...”<sup>392</sup> is distinctively given to the Legislative Branch. However, in this case the executive branch is actually the one carrying out that clause through the multiple deals signed with foreign countries. The purpose of the deal is to decrease the flow of immigrants into this country. To the Trump Administration, this may be a necessary and proper act. The preliminary injunction in *East Bay* would no longer stand as a legitimate and legal way of stopping the government from continuing to implement the new

---

<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> *East Bay Sanctuary Covenant v. Barr*, 4:19-cv-04073, (Feb. 26, 2020), <https://www.clearinghouse.net/detail.php?id=17245>.

<sup>390</sup> *Preliminary Injunction*, LEGAL INFORMATION INSTITUTE, [www.law.cornell.edu/wex/preliminary-injunction](http://www.law.cornell.edu/wex/preliminary-injunction).

<sup>391</sup> *East Bay Sanctuary Covenant v. Barr*, *supra* note 61.

<sup>392</sup> Necessary and Proper Clause, U.S. CONST. art. I, § 8, cl. 18.

rule. According to Deputy Assistant Attorney General Scott G. Stewart, the goal is to stop the “ongoing crisis” at the US border.<sup>393</sup>

The Trump administration would be able to take further steps in implementing the rule, perhaps by expanding on the new rule. Along with the Honduras Deal, there are other similar deals to it that were signed with El Salvador<sup>394</sup> and Guatemala<sup>395</sup> – all prior to when the *East Bay Sanctuary v. Barr* case was filed. It is to be expected that many future deals bearing a similarity to the Honduras Deal will be signed with other countries. *East Bay v Barr* would be the point of reference in order for many deals, such as the Honduras Deal to take into effect. It would strengthen the executive branch’s power by giving it more jurisdiction over foreign affairs when, in the past, such power was given to the legislative branch. As seen above, the Necessary and Proper Clause explicitly grants jurisdiction on foreign affairs to Congress.

## VI. CONCLUSION

Federal Judicial and Legislative content that decides the fates of millions is worth exploring. The Honduras Deal ensures that those at the U.S.-Mexico border who are seeking asylum in the United States are not granted permission to enter unless they seek asylum in a third country first. If they have failed to do so they would be deported to a dangerous country where they could experience extreme violence. There is some irony in fleeing one’s dangerous native country only to be sent to a dangerous foreign country, however, people are risking their lives to flee violence in their home country only to be met with violence in a new country where they lack familial connections. This issue is not simply a question of ethics and morals: the Trump Administration’s actions violate earlier legal precedent and legislative laws that protect refugees.

The Honduras Deal violates the Immigration and Naturalization Act and ignores lawful precedent that was established in the San Francisco District Court case *East Bay Sanctuary v. Barr*. The repercussions of the Honduras Deal and the East Bay case include a renewed definition of asylum seekers that contradicts the US Code § 1158, an overstep in the executive power, a costly trip for the asylum seekers, and most importantly an abridgement of rights granted to asylum seekers in the Immigration and Naturalization Act.

---

<sup>393</sup> *U.S. District Court Denies Request for Temporary Restraining Order Halting Trump Administration’s New Rule Curbing Asylum Applicants*, *supra* note 33.

<sup>394</sup> Mary Louise Kelly, *DHS Signs Deal To Send Asylum-Seekers From U.S. Border To Honduras*, NPR, (2019), <https://www.npr.org/2019/09/30/765834542/dhs-signs-deal-to-send-asylum-seekers-from-u-s-border-to-honduras>.

<sup>395</sup> *Id.*

*East Bay Sanctuary v. Barr* and the Immigration and Naturalization Act would guarantee two very different rights: the Naturalization Act would give access to the asylum seekers once they reach U.S. soil. However, the ruling would also require that they apply for asylum in a third country despite reaching U.S. soil. This is a contradiction that would aggravate the immigration flow rather than ameliorate it.

\* \* \*