



Mexican Asylum System for U.S. Immigration Lawyers FAQ

November 2019

Summary

Mexico has adopted a broader refugee definition than the U.S. and grants a higher percentage of asylum applications. Recognized refugees in Mexico can access rights to work, healthcare, education, and family reunification. Recent U.S. policy changes, however, have overwhelmed the Mexican asylum system and pushed Mexico to militarize its southern border, leading to long wait times, poor-quality decisions, and high levels of detention and deportation without access to the asylum system. Legal barriers, including a bar to applications submitted more than 30 days after entering the country, further limit access to the asylum process. The legal and practical challenges within Mexico's asylum system make clear that it cannot replace the U.S. role in refugee protection. Nonetheless, Mexico may offer better options for certain refugees who cannot find international protection in the U.S. A better understanding of the Mexican asylum system may help U.S. lawyers advise clients who are subject to the U.S. third-country-asylum rule or who are deciding where to seek asylum.

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Who is protected by Mexico's asylum law?

Legal Framework:

1. 1951 Convention Relating to the Status of Refugees
2. Mexican Constitution, Article 11, guarantees the right to seek & receive asylum
3. Cartagena Declaration: voluntary regional protection framework
4. [Law of Refugees, Political Asylum, and Complementary Protection](#) (2011) and its implementing [Regulation](#) (2012)

Mexico has acceded to the 1951 Refugee Convention and its 1967 Optional Protocol, and signed the Cartagena Declaration, a nonbinding regional protection framework. The Mexican Constitution guarantees the right to seek and receive asylum. The Mexican Refugee Law, passed in 2011, establishes the asylum process. This law has a broad definition of refugees eligible for asylum.

A refugee in Mexico is someone who is outside their country of origin and:

- cannot return to that country due to a well-founded fear of persecution on account of race, religion, nationality, political opinion, membership in a particular social group (1951 Convention categories), or gender (added by Mexican asylum law); or
- has fled their country because their life, safety, or freedom was threatened by generalized violence, foreign aggression, internal conflict, massive human rights violations, or other circumstances that have gravely disturbed public order (Cartagena Decl.).

An asylum seeker may be recognized under either prong of the refugee definition. All asylum petitions are decided under the same process and all recognized refugees enjoy the same protections. It is incumbent upon the government to analyze all potential grounds for protection and to issue a well-reasoned decision explaining the rationale for a grant or denial of any individual petition. If a person does not meet the refugee definition, they still may be eligible for complementary protection if they have a well founded fear of torture or their life is in danger in their country of origin.

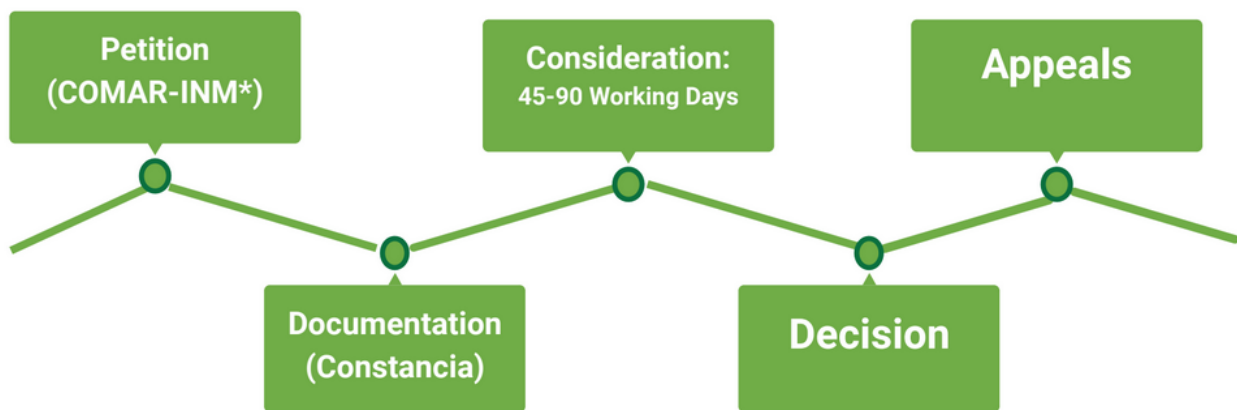
The Mexican government has indicated to the UN High Commission for Refugees (UNHCR) that it will apply the Cartagena Definition to all Honduran and El Salvadoran asylum seekers. This implies *prima facie* recognition that these countries are plagued by generalized violence and/or massive human rights violations. Therefore, an asylum seeker from these countries only needs to show (1) they are from the country (2) they

left due to violence or human rights violations; and (3) they are not excluded for committing a serious crime or human rights violation in their country of origin.

Other relevant laws to know:

1. [Law for the Protection of Children:](#)
 - a. Outlaws administrative detention of children
 - b. Obligates the state to act according to the best interest of the child
2. [Immigration Law:](#)
 - a. Defines legal statuses, including the humanitarian status
 - b. Recognizes rights to free transit, healthcare, and education
 - c. Creates immigration detention and deportation process

What is the Mexican asylum process?



Agencies:

- COMAR: Mexico's refugee commission, la Comisión Mexicana de Ayuda a Refugiados
- INM: Mexico's immigration institution, el Instituto Nacional de Migración

Petition: Asylum petitions should be presented to either COMAR or INM. COMAR is ultimately responsible for the process and its staff are specially trained in asylum practice. INM acts as an intermediary in the many parts of the country without COMAR offices.

Documentation: Upon application, an asylum seeker should be issued a *constancia*. This document proves legal status, is valid throughout the process and protects against deportation. Constancias should be issued immediately but may take weeks to months because of administrative delays.



Consideration: Under law, COMAR has 45 working days to make a decision or 90 working days under exceptional circumstances. Due to backlog, COMAR has recently said that all cases are exceptional and thus subject to the 90-day deadline. This deadline is regularly missed. Consideration can now take 6 months to a year.

Interview: COMAR interviews asylum seekers. The applicant may bring an attorney but is not provided with one. An attorney can help an applicant prepare for the interview, compile evidence and country of origin information, and ensure the interviewer conducts a thorough and legally compliant interview.

Decision: COMAR is required to issue a well-reasoned, written decision, laying out the justification for a grant or denial. If asylum is granted, the applicant becomes a permanent resident. Denials may be appealed administratively and then subjected to judicial review.

What rights do asylum seekers have during the process?

While waiting for a final decision, an asylum seeker should be issued a *constancia*, which documents legal status, and an ID called a Clave Único de Registro de Población (CURP) that permits them to access employment, education, and healthcare. Due to administrative issues, many asylum seekers are not issued CURPs, and even those who have them may be denied access to rights. Legal aid significantly improves the chances of an asylum seeker receiving a CURP and/or accessing rights.

What rights are granted with asylum status?

If asylum is granted, the asylum seeker becomes a permanent resident with the right to stay indefinitely, access employment, healthcare, and education, and apply for naturalization after four years. The naturalization process is long and expensive, however, and few refugees have, as of this date, availed themselves of this process.

Recognized refugees can pass on derivative beneficiary status to family members with them in Mexico and may file reunification petitions for family members outside the country. Family reunification is available for extended family members (up to 4th-level relatives, including cousins, great-grandparents, great-grandchildren, aunts, uncles, etc.), but the petitioner must show a financially-dependent relationship with the beneficiary.



What is the grant rate?

The 2019 asylum grant rates averaged 71%, according to COMAR. This varies by nationality. The grant rate for Guatemalans was only 34% while the rate for Venezuelans was 99%. When complementary protection is considered, the grant rate rises to 86%. However, this does not count abandoned cases or people deported without the opportunity to apply for asylum.

What are the barriers to asylum?

1. 30-Day Bar

Mexican law requires that asylum applicants apply within 30 days of entering the country or show good cause for not having done so. COMAR interprets good cause broadly, and has issued waivers based on lack of information about the process, language barriers, detention, incapacity, incompetence, or similar circumstances. Applicants with competent counsel usually receive waivers. Mexico regular deports or coerces “voluntarily return” of pro se asylum seekers subject to the 30 day bar. Asylum Access Mexico is challenging this law in the courts but it is in force currently.

2. Travel Restrictions

An asylum seeker must remain in the state where they first applied throughout the pendency of their claim, and must sign a form in the state’s COMAR or INM office weekly or biweekly to prove their presence. Violation of this regulation will lead COMAR to deem the application abandoned.

Because most asylum seekers are near the southern and northern borders, this restriction is a significant burden. Mexico’s southern border is poorer, has worse infrastructure, and fewer job opportunities than the rest of the country. There is also a significant presence of Central American gangs and other agents of persecution in the southern states. The northern border states are plagued by violent crime, kidnappings, and high presence of drug cartels. In either case, with the current backlog, asylum seekers may be stuck where they apply for over a year.

3. *INM processing instead of COMAR*

In many parts of the country, including many of the places refugees are gathered at the northern border, there are no COMAR offices. Therefore, refugees must solicit asylum through INM. This creates substantial problems. INM acts as an intermediary, sending applications to COMAR for issuance of status documents and final decisions, which slows down the process considerably. Moreover, INM officers are not trained to sensitively interact with vulnerable or traumatized populations. Although eligibility interviews are done by COMAR (often by phone), INM officials supervise check-ins, receive and transmit documents, and regularly provide erroneous legal advice to asylum seekers.

4. *Language barriers*

Many refugees in Mexico do not speak Spanish fluently. Some speak indigenous languages, Hatian Creole, or come from African or Asian countries. Mexican law requires that the asylum process be conducted in a language the asylum seeker understands, but this requirement is routinely ignored and translators are rarely provided.

5. *Militarized immigration enforcement: see below*

How has recent U.S. policy affected asylum in Mexico?

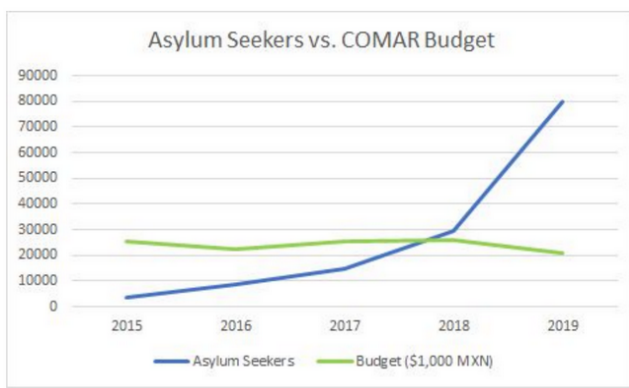
Recent U.S. policies, including metering, the Migrant Protection Protocols, the third country transit rule and tariff threats, have had substantial effects on the Mexican immigration system, leading to an overburdened system and militarized enforcement.

Overburdening of the Asylum System

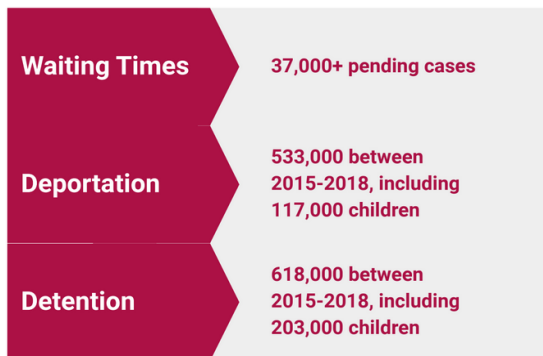
U.S. policies have made it much more difficult for refugees to claim asylum at the U.S. border. Under the “metering” system, Customs and Border Patrol allows only a small, unpredictable, number of asylum seekers to approach a border gate in a day. Asylum seekers are required to put their names on informal lists at the border and wait for weeks or months for their number to be called. Under the Migrant Protection Protocols, asylum seekers are required to wait in Mexico for their hearings in U.S. immigration court. Under the Third Country Transit rule, the Trump Administration has announced

the intention to deny asylum to any applicant who passed through a third country on their way to the U.S. border without soliciting asylum there. The combined effect of these policies is to leave tens of thousands of refugees who intended to seek asylum in the U.S. waiting in Mexico. Some of the affected migrants will decide to stay in Mexico.

These policies have contributed to a substantial increase in refugees seeking asylum in Mexico and the Mexican government has not provided a commensurate budgetary increase to process the applications. COMAR is severely under resourced in comparison with current demand. It only has around 48 protection staff deciding the cases of up to 80,000 asylum seekers.



There have been 60,000 asylum petitions so far in 2019 and COMAR estimates there will be 80,000 by the end of the year. In 2015, there were 5,000 claims and the number was increasing linearly before skyrocketing in 2019 due to U.S. policy changes. The 2015 budget was 25 million pesos (est. \$1.3M USD), while the 2019 budget was only 20 million pesos (est. \$1M USD). The current 2020 budget is 27 million (est. \$1.4M USD). Under these circumstances, COMAR cannot hire or train the needed staff or give applications the necessary attention. This new demand has put a huge stress on the Mexican asylum system and led to an enormous backlog in applications, leaving refugees waiting for over a year.



Militarized Immigration Enforcement under Tariff Threats

In June 2019, the Trump administration threatened significant tariffs on virtually all Mexican exports unless Mexico acted immediately to curtail migration to the U.S. Mexico responded drastically, deploying 6,000 National Guard troops to the southern border, militarizing the southern states and making it much harder for migrants to travel. It increased detention and deportations. It stopped regularly issuing travel permits for refugees to travel to the U.S. border. It threatened private transportation companies and migrant rights activists with human trafficking prosecutions.

This has had a significant impact on the safety and security of migrants throughout Mexico. Refugees are attempting more dangerous routes and have drowned trying to take boats up the Chiapas coast. Those who are detained are frequently deported without the opportunity to claim asylum.

Accessing and interpreting Mexican asylum records as a U.S. immigration lawyer

The Trump Administration's third country transit rule requires U.S. authorities to deny asylum to anyone who passed through another country without seeking asylum there before arriving at the U.S. border. The rule does not apply to anyone who receives a "final judgment" denying protection in a third country. This rule is being challenged in court but the Supreme Court has permitted it to go into effect during litigation. Many U.S. immigration lawyers are attempting to determine how this rule will be applied. Immigration lawyers may need to show that their client has been denied asylum in Mexico or to advise a client to attempt to seek asylum in Mexico prior to entering the U.S. Asylum Access cannot provide an opinion as to how the U.S. government will interpret this rule, but the following sections may help U.S. immigration lawyers to access and interpret Mexican asylum records.

What does a denial of asylum look like? What are other possible statuses from the Mexican asylum system?

We do not know how the U.S. immigration system will apply this policy or interpret Mexican law. However, here are some possible scenarios:

1. Denial on the merits: the client's case has been fully adjudicated and found not to meet the criteria for Mexican asylum. The first denial will be issued by COMAR. It

is unclear if US Immigration Judges and Courts will consider this to be a “a final judgment denying the alien protection” under the IFR. As noted, a denial from COMAR can be administratively appealed through a ‘Recurso de Revision,’ within 15 days of issuance of the decision. It is virtually impossible for an asylum seeker to be successful in this administrative appeal without legal counsel, and *pro se* appeals will likely be denied on procedural grounds. Following administrative denials, an asylum seeker may seek judicial review through an ‘Acción de Amparo’ (similar to a request of injunction or writ of mandamus). Asylum Access cannot offer any opinion as to how the U.S. government will interpret the term ‘final judgment,’ and as of this writing, no official guidance has been issued. A redacted example of a final denial is available [here](#).

2. Denial for the 30-day bar: the client’s application has been rejected because they applied more than 30 days after entering the country without showing good cause. This denial can also be subject to administrative or judicial review. Their case has not been adjudicated on the merits. Again, it is unclear how this type of denial will be interpreted under the IFR.
3. Abandonment: the client left the state in which they initially applied for asylum, or failed to comply with the signing/registration requirements to prove presence, and COMAR determined the case to be abandoned.
4. Humanitarian status
 - a. Asylum seekers are granted temporary humanitarian status during the pendency of their claims.
 - b. The document does not mean the application has been accepted or denied. It is not permanent residency.
5. Grant of Complementary Protection: COMAR determines an asylum seeker does not meet the refugee definition but has a well founded fear of torture, cruel, inhuman or degrading treatment, or death in their country of origin. This protection includes a grant of permanent residence, but no family reunification or straightforward path to naturalization.
6. Asylum grant

How do I get my client’s records from the Mexican asylum system?

There are several options:

1. Go to a Mexican consulate in the U.S. with a written authorization from a client (preferably notarized) and file a formal records request. The consulate will then request the records from COMAR. This is the process COMAR suggests but not all consulates have cooperated consistently.



2. Have your client give power of attorney to a Mexican attorney to request the records from COMAR.
3. Request the records from UNHCR with a privacy waiver from your client.

How can I get more involved with Asylum Access Mexico?

[Asylum Access Mexico](#) (AAMX) has 7 offices throughout Mexico where we help refugees access their rights through legal services, help them find jobs and cultural opportunities through the Hospitality Route, and advocate for improvements to access to and quality of asylum.

We have a robust [volunteer](#) program and are frequently [hiring staff](#). See asylumaccess.org for more information.

Follow Asylum Access Mexico on Twitter [@AsylumAccessMX](#) (mostly in Spanish) and Asylum Access global [@AsylumAccess](#) (mostly in English).

Any other questions? Email brynne.oneal@asylumaccess.org

What other resources are available on the Mexican asylum system?

Mexico's Secretary of Government has collected legal sources on refugee and asylum law: <https://www.gob.mx/comar/documentos/marco-juridico-en-materia-de-refugiados>

COMAR: <https://www.gob.mx/comar>

United Nations Refugee Agency Mexico: <https://www.acnur.org/mexico.html>