

*Via Federal e-Rulemaking Portal*  
<http://www.regulations.gov>

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**Re: Comments in Response to Interim Final Rule on Implementing Bilateral and Multilateral Asylum Cooperative Agreements under the Immigration and Nationality Act, DHS Docket No. USCIS-2019-0021 and DOJ Docket No. EOIR-19-0021**

Dear Mr. Davidson and Ms. Reid:

Immigration Equality submits the following comment in response to the above-referenced interim final rule (the “Rule”), which implements life-threatening, so-called asylum cooperation agreements with Guatemala, Honduras and El Salvador. We are profoundly concerned that this Rule will result in countless LGBTQ and HIV-positive people being (a) denied their right to seek asylum in the United States and (b) returned to countries where they are at risk of grave harm. Such a result violates domestic and international law. Thus, we urge the Department of Justice (“DOJ”) and the Department of Homeland Security (“DHS”) to rescind this ill-advised and illegal Rule and the asylum cooperation agreements underlying it.

**I. Immigration Equality**

Immigration Equality is a national organization that advocates for lesbian, gay, bisexual, transgender, queer (collectively, “LGBTQ”) and HIV-positive immigrants. For nearly 25 years, we have worked to secure safe haven and equality for immigrants facing persecution based on their sexual orientation, gender identity, or HIV status. To this end, we provide free legal services and advocacy through our in-house attorneys and nationwide network of pro bono partners. Through this program, we currently represent over six hundred LGBTQ and HIV-positive individuals in affirmative and defensive asylum, withholding of removal, Convention Against Torture (“CAT”) and related applications and proceedings.

In addition to providing direct representation, Immigration Equality offers assistance, support and training to other attorneys on LGBTQ and HIV-positive immigration issues, publishes a

comprehensive manual on the preparation of asylum claims related to sexual orientation and gender identity, and provides training on the adjudication of LGBTQ asylum cases to Asylum Officers within the Department of Homeland Security.

In more than eighty countries, it is either a crime or profoundly dangerous to be LGBTQ, and over the last ten years alone, through our pro bono network, we have represented LGBTQ and HIV-positive clients fleeing persecution from nearly all of these countries. As such, we have developed substantial expertise in the country conditions surrounding the persecution of LGBTQ and HIV-positive populations throughout the world, including in Guatemala, Honduras and El Salvador. Indeed, during the last decade, approximately ten percent of our asylum, withholding of removal and CAT clients have fled persecution in these three countries. *Critically, these clients have prevailed in their claims ninety-eight percent (98%) of the time.* This is because Guatemala, Honduras and El Salvador are profoundly dangerous for LGBTQ and HIV-positive people and sending such individuals to any of these countries under the Rule subjects them to potential abuse, torture and even death.

## **II. The Asylum Cooperation Agreements with Guatemala, Honduras and El Salvador Are Contrary to Law**

As an initial matter, the three asylum agreements that spurred the drafting and publication of the Rule are illegal on their face and represent a dramatic departure from U.S. obligations towards asylum-seekers. Namely, the Rule points to a provision in the Immigration and Nationality Act (INA) which lays out the criteria for safe third country agreements as authority for implementation of the Rule. Similarly, by referencing the statutory language governing safe third country agreements, and by extensive discussion in the Rule of the sole currently existing safe third country agreement, between the U.S. and Canada, the government appears to be basing its authority for the asylum cooperative agreements on the safe third country provision. This reliance is completely misplaced as the asylum cooperative agreements with Guatemala, El Salvador, and Honduras do not fulfill in any way the legal elements of a safe third country agreement. The safe third country provision is cited in the Rule as follows:

Section 208(a)(2)(A) bars an alien from applying for asylum in the United States when the following four requirements are satisfied: (i) The United States has entered into a requisite “bilateral or multilateral agreement”; (ii) at least one of the signatory countries to the agreement is a “third country” with respect to the alien; (iii) “the alien’s life or freedom would not be threatened” in that third country “on account of race, religion, nationality, membership in a particular social group, or political opinion”; and (iv) that third country provides aliens removed there pursuant to the agreement “access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.” (Rule at 63996).

As set forth in detail below, it is our expert opinion that Guatemala, El Salvador, and Honduras are not safe third countries for LGBTQ and HIV-positive people. Accordingly, Immigration Equality urges DHS and DOJ to refrain immediately from taking any further steps to

implement asylum cooperative agreements with these countries or any others where LGBTQ and HIV-positive asylum seekers will face persecution.<sup>1</sup>

### **III. LGBTQ and HIV-Positive Asylum Seekers Are in Grave Danger in Guatemala, El Salvador and Honduras**

#### **a. Guatemala**

Conditions in Guatemala are fundamentally unsafe for LGBTQ and HIV-positive people. Indeed, the violence and abuse to which LGBTQ and HIV-positive people are subjected on a daily basis in Guatemala has been thoroughly documented by the U.S. government, international human rights organizations, and human rights observers. For example, the U.S. Department of State 2018 Human Rights Report for Guatemala (the “2018 Report”) details that in 2018, human rights issues in Guatemala included “crimes involving violence or threats thereof targeting lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons . . . .”<sup>2</sup> An NGO cited in the 2018 Report, reported “35 violent attacks against LGBTI individuals during the year [2018].”<sup>3</sup> Another NGO found that nineteen LGBTQ people were killed in Guatemala between April 20 and November 11, 2018, alone.<sup>4</sup>

The actual violent crime rate against LGBTQ people is likely much higher than reflected by the available statistics. The U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions noted, “[g]iven the lack of official statistics and the likely reticence if not ignorance of the victims’ family members, there is reason to believe that the actual numbers [of murders of LGBTQ people] are significantly higher”<sup>5</sup> than shown in the official statistics. Furthermore, the U.S. Department of State 2018 Human Rights Report acknowledges that law enforcement authorities often perpetrate abuses against LGBTQ people.<sup>6</sup>

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<sup>1</sup> While the request for comments states that these agreements have not entered into force (Rule at 63995, footnote 3), the Trump Administration has certified that Guatemala’s legal framework meets the standard to provide “access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.”

<https://www.vox.com/2019/9/26/20870768/trump-agreement-honduras-guatemala-el-salvador-explained>. Furthermore, there have been reports of individuals and families sent to Guatemala pursuant to the agreement. *See e.g.* <https://www.latimes.com/politics/story/2019-12-10/u-s-starts-pushing-asylum-seeking-families-back-to-guatemala-for-first-time>. The text of the agreement between the U.S. and Guatemala can be found here:

[https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-25288.pdf?utm\\_source=federalregister.gov&utm\\_medium=email&utm\\_campaign=pi+subscription+mailing+list](https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-25288.pdf?utm_source=federalregister.gov&utm_medium=email&utm_campaign=pi+subscription+mailing+list).

<sup>2</sup> Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Guatemala Country Reports on Human Rights Practices—2018*, 1 (March, 2019), <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>

<sup>3</sup> *Id.* at 22.

<sup>4</sup> *Id.*

<sup>5</sup> U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum Report on Mission to Guatemala of 21-25 August 2006, U.N. Doc. No. A/HRC/4/20/Add.2 ¶ 32 (19 February 2007), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/108/99/PDF/G0710899.pdf?OpenElement>

<sup>6</sup> Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Guatemala Country Reports on Human Rights Practices—2017*, 21 (April 20, 2018) [https://www.justice.gov/sites/default/files/pages/attachments/2018/04/24/dos-hrr\\_2017\\_guatemala.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2018/04/24/dos-hrr_2017_guatemala.pdf)

HIV-positive people also experience severe mistreatment in Guatemala. The 2018 Report notes that the Guatemalan government requires individuals to reveal their HIV-status in order to be eligible for certain public benefits.<sup>7</sup> Even more concerning is the fact that HIV-positive people have their confidentiality routinely violated by medical staff through the disclosure of a person's HIV-status.<sup>8</sup> Such disregard for the privacy of HIV-positive patients puts HIV-positive people in further risk of rejection, stigmatization, and even violence.

These violent attacks and murders of LGBTQ and HIV-positive people in Guatemala are pervasive, and human rights observers have long reported the prevalent and systemic targeting of LGBTQ people. For example, in 2016, the Inter-American Commission on Human Rights (IACHR) stated that “[v]arious LGBT rights organizations in [Guatemala] have said publicly that they are targets of violence, threats, attacks on their premises, and harassment because of their work as activists.”<sup>9</sup> Moreover, “LGBT[Q] people in El Salvador, Guatemala and Honduras . . . are particularly affected by the widespread climate of violence and insecurity in the Northern Triangle of Central America. LGBT[Q] people are frequently the target of different forms of violence . . . such as, for example, intimidation, threats, physical aggression, sexual violence and even murder.”<sup>10</sup> Furthermore, the violence against LGBTQ people in Guatemala is culturally ingrained and has “deep roots in ‘patriarchal attitudes and a machista culture,’ as well as structural forms of inequality that marginalize . . . LGBT[Q] people, and justify discrimination and violence against them.”<sup>11</sup>

HIV-positive people are similarly abused, stigmatized and mistreated in Guatemalan society. One common misconception in Guatemala is that HIV-positive people are to blame for their infection or that they “deserve” the diagnosis.<sup>12</sup> Additionally, Guatemalans often associate HIV-positive status with being an LGBTQ person.<sup>13</sup> Therefore, HIV-positive people face additional violence and mistreatment on the basis of their perceived or actual membership in the LGBTQ community.

The Guatemalan government has not responded with the urgency needed to address the violence and abuse experienced by LGBTQ and HIV-positive people. In fact, the government

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<sup>7</sup> Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Guatemala Country Reports on Human Rights Practices—2017*, 21 (April 20, 2018),

[https://www.justice.gov/sites/default/files/pages/attachments/2018/04/24/dos-hrr\\_2017\\_guatemala.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2018/04/24/dos-hrr_2017_guatemala.pdf)

<sup>8</sup> *Id.*

<sup>9</sup> Inter-American Commission on Human Rights, Organization of American States, *IACHR Repudiates Murder of Defender of Trans Rights in Guatemala* (Dec. 2, 2016),

[https://www.oas.org/en/iachr/media\\_center/PReleases/2016/181.asp](https://www.oas.org/en/iachr/media_center/PReleases/2016/181.asp)

<sup>10</sup> Amnesty Int’l, *No Safe Place: LGBTI Salvadorans, Guatemalans and Hondurans Seeking Asylum in Mexico*, 7, (Nov. 27, 2017), <https://www.amnestyusa.org/wp-content/uploads/2017/11/No-Safe-Place-Briefing-ENG-1.pdf>

<sup>11</sup> Rachel Dotson and Lisa Frydman, *Neither Security nor Justice: Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala*, KIND, 4, (May 4, 2017), [https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice\\_SGBV-Gang-Report-FINAL.pdf](https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL.pdf)

<sup>12</sup> Lars Margolis, et. Al., Barriers to HIV testing in Guatemala: A Qualitative Study, 11 *Social Medicine* 23, 28-29 (2017), <https://www.socialmedicine.info/index.php/socialmedicine/article/view/924/1742>

<sup>13</sup> The International Gay and Lesbian Human Rights Commission, et al., *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Guatemala: A Shadow Report* (Mar. 2012), <https://www.outrightinternational.org/sites/default/files/IGLHRC%20Shadow%20Report%20Guatemala%202012.pdf>

treatment of LGBTQ and HIV-positive people is likely to provoke further violence and stigmatization. In 2018, Guatemalan Congress approved a preliminary version of the Life and Family Protection bill.<sup>14</sup> The bill defines “sexual diversity” as “incompatible with the biological and genetic aspects of human beings,” and permits Guatemalans not to “accept non-heterosexual conduct or practices as normal.”<sup>15</sup> Additionally, Guatemala’s newly elected President Giammattei has reportedly advocated for “zero tolerance of the expressions of gender and LGBT identities.”<sup>16</sup> According to the U.N. High Commissioner for Human Rights, “LGBT[Q] people are stigmatized, dehumanized even, by Guatemalan society and media, leaving them particularly vulnerable to violence and ill-treatment.”<sup>17</sup> The recent actions of the Guatemalan Congress and views expressed by President Giammattei contribute to the homophobic climate affecting LGBTQ and HIV-positive people, making Guatemala extremely unsafe for this population.

## **b. Honduras**

LGBTQ and HIV-positive people in Honduras are frequent targets of homophobic violence, abuse, and discrimination. According to the U.S. Department of State 2017 Human Rights Report, Honduran NGOs “reported eight violent deaths of LGBT[Q] persons in the central areas of the country,”<sup>18</sup> while another Honduran organization reported five homicides of LGBTQ people in August.<sup>19</sup> Additionally, national NGOs focused on LGBTQ rights stated that Honduran law enforcement authorities, in particular the Military Police for Public Order, abused and harassed LGBTQ persons.<sup>20</sup> HIV-positive people in Honduras are also subjected to horrific violence and abuse. The Department of State reported on instances of forced sterilizations of HIV-positive women and instances of injured HIV-positive LGBTQ people dying in the hospital because medical personnel refused them treatment due to their HIV status.<sup>21</sup>

These violent acts against LGBTQ people in Honduras are not isolated incidences. Previous U.S. Department of State Human Rights Reports for Honduras (hereinafter “Honduras Reports”) document violence against LGBTQ people as far back as 1996.<sup>22</sup> Although the reports issued between 1997 and 2002 do not specifically address the conditions of LGBTQ population,

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<sup>14</sup> Human Rights Watch, *World Report 2019: Guatemala*, (Feb. 17, 2019), <https://www.hrw.org/world-report/2019/country-chapters/guatemala>

<sup>15</sup> *Id.*

<sup>16</sup> Jeff Abott *Alejandro Giammattei Wins Guatemala’s Presidential Race*, Al Jazeera (Aug. 12, 2019), <https://www.aljazeera.com/news/2019/08/giammattei-appears-win-guatemala-presidential-runoff-190812024805189.html>

<sup>17</sup> Visibles, *UN Launches Guatemala Version of Global LGBT Campaign*, Washington Blade (Nov. 24, 2017), <https://www.washingtonblade.com/2017/11/24/un-launches-guatemala-version-global-lgbt-campaign/>

<sup>18</sup> Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Honduras Country Reports on Human Rights Practices—2017*, 27 (April 20, 2018), [https://www.justice.gov/sites/default/files/pages/attachments/2018/04/24/dos-hrr\\_2017\\_honduras.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2018/04/24/dos-hrr_2017_honduras.pdf)

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *Honduras Country Reports on Human Rights Practices 2016*, 26, 35 (March 3, 2017), [https://www.justice.gov/sites/default/files/pages/attachments/2017/03/06/dos-hrr\\_2016\\_honduras.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2017/03/06/dos-hrr_2016_honduras.pdf)

<sup>22</sup> See 1996 Honduras Report at 9, stating that “the authorities do not adequately defend homosexuals from threats, harassment, or abuse and that some officials support, promote, or engage in such hostile activities.” <https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/hrp96honduras.pdf>

beginning in 2003 and up to the most recent report, the U.S. State Department has consistently documented persistent and widespread violence in Honduras against LGBTQ people.<sup>23</sup>

Similarly, human rights observers have long reported on the prevalent and systemic torture and killing of LGBTQ people. For example, in 2016, the Inter-American Commission on Human Rights (“IACHR”) issued a press release expressing its concern regarding the “acts of police violence against LGBT[Q] human rights defenders in Honduras.”<sup>24</sup> The IACHR stated that “[t]hese killings occurred within context of high levels of violence due to prejudice against LGBT persons in Honduras.”<sup>25</sup> The IACHR explicitly urged the Honduran government to take measures that “address the patterns of violence that exist against human rights defenders of LGBT persons.”<sup>26</sup> The fact that IACHR explicitly called for the Honduran government to protect LGBTQ people evidences that the government does not provide this population with the necessary safety measures, leaving the population vulnerable to violence and abuse.

The violence against LGBTQ people is on the increase in Honduras. The most recent reports state that more than 300 LGBTQ people have been murdered since 2009.<sup>27</sup> “Twenty-one LGBT[Q] people have been murdered since January [2019] . . . up from 18 in the same period last year.”<sup>28</sup> Furthermore, the actual violent crime rate against LGBTQ people is higher than reflected

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<sup>23</sup> See 2003 Honduras Report at 13, stating that “approximately 200 homosexual and transsexual workers were killed between 1991-2003.” [https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/honduras\\_3.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/honduras_3.pdf); 2005 Honduras Report at 11, stating that “Representatives of the sexual diversity rights NGOs . . . asserted that their members regularly experienced abuses, beatings, killings . . . , and other physical and verbal mistreatment from authorities. These groups also reported that due to intimidation, fear of reprisal, and police corruption, gay and lesbian victims of abuse were reluctant to file charges or proceed with prosecutions.” [https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/honduras\\_6.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/honduras_6.pdf); 2008 Honduras Report at 4 and 17, stating that “municipal and preventative police routinely rounded up vulnerable or “delinquent” youth (for example, gay, lesbian, transsexual, sex workers, and drug addicts) without cause or explanation of their rights . . . . There were multiple killings or attacks on persons presumably because of their sexual orientation.” [https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/honduras\\_5.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/honduras_5.pdf); 2010 Honduras Report at 3, stating “There were a number of reported hate crime killings by unknown actors of members of the lesbian, gay, bisexual, and transgender (LGBT) community.” [https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/10/honduras\\_2.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/10/honduras_2.pdf); 2012 Honduras Report at 19 and Representatives of NGOs focusing on sexual diversity rights asserted that police and others harassed and abused their members. The Public Ministry reported 41 violent deaths of LGBT individuals during the year.” [https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/10/Honduras\\_5.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/10/Honduras_5.pdf); 2015 Honduras Report at 32, stating that “As of September NGOs reported 19 LGBTI persons died violent deaths, . . . and that two of the 19 cases were in some phase of the judicial process.” [https://www.justice.gov/sites/default/files/pages/attachments/2016/04/15/dos-hrr\\_2015\\_honduras.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2016/04/15/dos-hrr_2015_honduras.pdf); 2016 Honduras Report at 34, stating that “Representatives of NGOs that focused on the right to sexual diversity alleged that the PMOP and other elements of the security forces harassed and abused members of the [LGBTQ] community.” [https://www.justice.gov/sites/default/files/pages/attachments/2017/03/06/dos-hrr\\_2016\\_honduras.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2017/03/06/dos-hrr_2016_honduras.pdf)

<sup>24</sup> Inter-American Commission on Human Rights, Organization of American States, *IACHR Condemns Killings and Other Acts of Violence Against Human Rights Defenders of LGBT Persons in Honduras* (March 7, 2016), [https://www.oas.org/en/iachr/media\\_center/PReleases/2016/027.asp](https://www.oas.org/en/iachr/media_center/PReleases/2016/027.asp)

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Anastasia Moloney, “Top Americas rights commission condemns Honduras LGBT+ murders,” Reuters, (July 18, 2019), <https://www.reuters.com/article/us-honduras-lgbt-murders/top-americas-rights-commission-condemns-honduras-lgbt-murders-idUSKCN1UD323>

<sup>28</sup> *Id.*

by the available statistics. LGBTQ victims frequently do not report to the police the violence they experience out of fear of discrimination and further abuse by the law enforcement authorities.<sup>29</sup> This fear is justified. As discussed above, the Honduras Reports acknowledge that law enforcement authorities often perpetrate the violence and abuse against LGBTQ people. The rate of impunity for the crimes against LGBTQ people is staggeringly high. “[Ninety-two] percent of crimes committed against of LGBT persons remained unsolved due to lack of investigation.”<sup>30</sup>

Some of the reasons behind violent abuse of LGBTQ people in Honduras include “an entrenched machismo culture” and “discourse of hate, of discrimination, [and] prejudice” that “fuel discrimination against LGBT[Q] people, stymieing efforts to change attitudes . . . .”<sup>31</sup> These attitudes also manifest in the brutal ways in which LGBTQ people are murdered in Honduras. The increase in deaths and the viciousness with which members of the LGBTQ community are murdered is disquieting and concerning. Some of the victims were strangled, shot, and stabbed.<sup>32</sup> Others had their throats slit and some bodies were burned.<sup>33</sup> Furthermore, members of the LGBTQ community are victims of “homicide, attempted homicide, abuse of authority, injuries, illegal detentions, theft, harassment, rape, death threats, domestic violence and assault by individuals, agents of the State security forces, and even family members.”<sup>34</sup>

Lastly, in Honduras the mistreatment of LGBTQ people often overlaps with discrimination against HIV-positive individuals.<sup>35</sup> For example, employers sometimes use HIV status as a stand-in for person’s sexual orientation.<sup>36</sup> Conflation of HIV status and sexual orientation further adds to discrimination and marginalization of HIV-positive people. The Honduran government also fails to provide adequate medical care and protection to HIV-positive people. This is evidenced by the fact that 58% of HIV-positive people in Honduras “are not receiving even the baseline anti-retroviral treatment.”<sup>37</sup>

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<sup>29</sup> KIND, *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet*, 4 (April 2018), <https://supportkind.org/wp-content/uploads/2019/02/SGBV-Fact-Sheet.-December-2018-new-1.pdf>

<sup>30</sup> Excerpt from Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Honduras Country Reports on Human Rights Practices—2014*, 28 (2015),

[https://www.justice.gov/sites/default/files/pages/attachments/2015/06/26/dos-hrr\\_2014\\_honduras.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2015/06/26/dos-hrr_2014_honduras.pdf)

<sup>31</sup> Anastasia Moloney, “Top Americas rights commission condemns Honduras LGBT+ murders,” Reuters, (July 18, 2019), <https://www.reuters.com/article/us-honduras-lgbt-murders/top-americas-rights-commission-condemns-honduras-lgbt-murders-idUSKCN1UD323>

<sup>32</sup> REFWORLD, Ombudsman / Defensoría del Pueblo, *Honduras: En 126 meses: alrededor de 50 municipios escenario de muertes violentas de personas LGTBI en Honduras*, 15 Julio 2019 (Ombudsman/Public Defender, *Honduras: In 126 months around 50 municipalities are a scene of violent deaths of LGBTQ people in Honduras*, July 15, 2019.), <https://www.refworld.org/es/docid/5d2fba8a4.html>

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Deena Hurwitz et al., *Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Honduras: A Shadow Report*, University of Virginia International Human Rights Law Clinic (Oct. 2006).

<sup>36</sup> *Id.*

<sup>37</sup> Morgan Brown, “The Changing Needs of Children, Youth and Families Affacted by HIV” in Honduras, Montana de Luz (January 31, 2018), available at <https://www.montanadeluz.org/the-changing-needs-of-children-youth-and-families-affected-by-hiv-in-honduras>

### c. El Salvador

The situation for LGBTQ and HIV-positive individuals in El Salvador is extremely dangerous. Homophobia and transphobia are rampant. As noted in the U.S. Department of State’s latest El Salvador report (the “Report”), the most serious human rights concerns include “security force violence against lesbian, gay, bisexual, transgender, and intersex individuals.”<sup>38</sup> The Report further notes that “NGOs reported that public officials, including police, engaged in violence and discrimination against sexual minorities. Persons from the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community stated that the PNC [i.e., National Civil Police], and the Attorney General’s Office harassed transgender and gay individuals when they reported cases of violence against LGBTI persons, including by conducting strip searches. As of July 31, the Office of the Human Rights Ombudsman (the “PDDH”) reported eight accusations made by the LGBTI community of five homicides, one unauthorized search, and one harassment complaint... Activists also reported receiving death threats via social media; [and] police generally failed to take action on these reports.”<sup>39</sup>

Recent media reports state, “El Salvador is one of the world’s most violent countries, with a homicide rate from 50.3 to 103 for every 100,000 inhabitants. This murderous violence is also one of the factors causing forced emigration, among members of the LGBTI community.”<sup>40</sup> Most notably, the news media reported that “[t]he main victims [of this violence] are trans women with 67.5 percent of the cases, followed by gay men with 17.2 percent. Trans women are often victims of the sexual slavery by the ‘mara’ gangs, which force them to engage in illegal acts. Widespread impunity that has allowed more than 600 LGBTI citizens to be murdered since 1993.”<sup>41</sup> So far in 2019 the news media have reported at least two homicides of transgender women. Indeed, in the most recent case, a transgender woman known as Camila who the U.S. deported back to her native El Salvador was killed in February of 2019. Camila was the second trans woman reported murdered in El Salvador that month. A trans woman who used the name Lolita was killed with a machete in February of 2019 as well.<sup>42</sup>

The situation for people living with HIV is also dire. According to the Report, “discrimination due to HIV was widespread” and the PDDH reported “discrimination against persons with HIV or AIDS.”<sup>43</sup>

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<sup>38</sup> Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, El Salvador Country Reports on Human Rights Practices—2018, 1 (2019), <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>

<sup>39</sup> *Id.* at 20.

<sup>40</sup> Leave or die, options of the LGBTI community in El Salvador (August 7, 2019) available at <https://www.efc.com/efe/english/world/leave-or-die-options-of-the-lgbti-community-in-el-salvador/50000262-4038604#>.

<sup>41</sup> *Id.*

<sup>42</sup> Transgender woman deported from US murdered in El Salvador (February 17, 2019) available at <https://www.washingtonblade.com/2019/02/17/transgender-woman-deported-from-us-murdered-in-el-salvador/>

<sup>43</sup> Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, El Salvador Country Reports on Human Rights Practices—2018, 20 (2019), <https://www.state.gov/wp-content/uploads/2019/03/EL-SALVADOR-2018.pdf>



#### **IV. Conclusion**

As set forth above, in Immigration Equality's expert opinion, if the asylum cooperative agreements with Guatemala, El Salvador, and Honduras are implemented as proposed in the Rule, LGBTQ and HIV-positive asylum seekers will be removed to countries where they will likely be abused, tortured, or even killed on account of their sexual orientation, gender identity or HIV status. Accordingly, Immigration Equality urges the government to refrain from implementing the Rule and the asylum cooperation agreements underlying it. Immigration Equality instead recommends that any safe third country agreements rigorously follow the requirements of INA 208(a)(2)(A) and the United States' obligations under international law, and follow all appropriate procedures for administrative rulemaking including a notice and comment period prior to the rule taking effect.

Sincerely,

*Bridget Crawford*

Bridget Crawford  
Legal Director  
Immigration Equality