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Asylum Cooperative Agreements and the Limits of Lawful Transfer

An Analysis of the U.S.–Ecuador Agreement Under International and Domestic Law

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Abstract: Asylum Cooperative Agreements (ACAs) are binding international agreements that regulate the transfer of asylum seekers between states and operate within the framework of international refugee and human rights law. These agreements require that actions taken pursuant to the transfer framework be implemented consistently with the parties' obligations under applicable international law, thereby embedding international protection standards within its operative provisions and shaping the legal conditions under which transfers may occur.

This article examines the legal framework governing the application of ACAs in the United States and uses the U.S.–Ecuador ACA as a case study to illustrate how the applicability analysis should be conducted. It analyzes four principal legal constraints on the lawful application of ACAs: (1) the requirement of effective protection in the receiving state under international refugee and human rights law, (2) the obligation of individualized adjudication by immigration judges, (3) the statutory and procedural preconditions for transfer, and (4) the rule of non-retroactivity under international and domestic law.

Applying this framework to the U.S.–Ecuador ACA, the article evaluates structural deficiencies in the agreement, including the absence of defined eligibility criteria and implementing mechanisms, as well as documented country conditions in Ecuador relevant to the safe third-country inquiry. It argues that lawful application of an ACA requires strict adherence to international protection standards, the existence of operational eligibility criteria, satisfaction of statutory transfer requirements, and prospective application consistent with the rule of non-retroactivity. Where these conditions are not satisfied, the agreement cannot be lawfully applied within the governing statutory and international legal framework.

Introduction

Under § 208(a)(2)(A) of the Immigration and Nationality Act (INA), Congress authorized the executive branch to conclude international agreements permitting the transfer of certain asylum applicants to a third country where their life or freedom would not be threatened and where a full and fair procedure for determining asylum claims is available. Asylum Cooperative

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Agreements (ACAs) constitute one form of such safe third-country arrangements and operate at the intersection of domestic statutory authorization and the international refugee protection regime.

In 2025, the United States concluded ACAs with several countries, including Ecuador, Uganda, Honduras, Guatemala, and Paraguay.[1] Under these agreements, the United States may propose the transfer of certain asylum applicants present in its territory to one or more of these countries so that the receiving state may examine their request for protection. Where an applicant is determined to be subject to one of these agreements, the individual becomes ineligible to pursue asylum in the United States and may instead be removed to the designated third country.

ACAs are legally binding international agreements governed by international law and intended to regulate the transfer of asylum seekers between states.[2] As such, they operate within the framework of international refugee and human rights law and require that actions taken pursuant to the transfer framework be implemented consistently with the parties' obligations under applicable international law.[3] The determination of whether an ACA applies in an individual case must be conducted through an interpretation of the relevant domestic regulations in harmony with the applicable international legal obligations incorporated in the agreement.[4]

The governing regulations assign immigration judges the responsibility to determine whether an applicant is subject to the terms of an ACA and whether removal to the designated third country is appropriate under the agreement.[5] This determination requires a structured and individualized adjudicatory analysis rather than a categorical or automatic application of the agreement. ACAs are likewise subject to the rule of non-retroactivity under international and domestic law, which presumes that international agreements apply prospectively unless a contrary intention is clearly expressed.[6]

This article examines the legal framework governing the application of ACAs in U.S. removal proceedings and uses the agreement concluded between the United States and Ecuador as a case study to illustrate how the applicability analysis should be conducted.[7] It analyzes the international legal nature of ACAs, their incorporation of obligations arising under international refugee law and international human rights law, the regulatory structure that assigns immigration judges the responsibility to determine their applicability in individual cases, and the procedural framework reflected in the Board of Immigration Appeals' (BIA) decision in *Matter of C-I-G-M- & L-V-S-G-*.[8]

It then develops the analytical framework that should guide this determination, including the role of interpretive guidance issued by the United Nations High Commissioner for Refugees (UNHCR), the requirement that transfers ensure effective protection in the receiving state, and the principle of non-retroactivity under international and domestic law. Applying this framework to the U.S.–Ecuador ACA in the context of Venezuelan nationals, particularly Venezuelan women, the article evaluates whether the legal and structural conditions necessary for lawful transfer are satisfied, including the existence of defined eligibility criteria, the fulfillment of statutory and procedural preconditions for transfer, and the implications of documented country conditions in Ecuador for the safe third-country inquiry.

The Safe Third Country: A Ground of Ineligibility for Asylum Within the United States

Section 208(a)(2)(A) of the Immigration and Nationality Act

Section 208(a)(2)(A) of the INA, codified at 8 U.S.C. § 1158(a)(2)(A), provides that an applicant is ineligible for asylum in the United States if the applicant may be removed, pursuant to a bilateral or multilateral agreement, to a third country other than the applicant's country of nationality or, in the case of a stateless person, the country of last habitual residence, where the applicant's life or freedom would not be threatened on account of a protected ground and where a full and fair asylum procedure is available. The bar does not apply if the Attorney General determines that granting asylum in the United States serves the public interest.[9]

Implementation of the Safe Third-Country Bar

Section 208(a)(2)(A) of the INA requires, for the implementation of this provision, the existence of a treaty or international agreement with a third country to which the United States may remove individuals who are not nationals of that country. This provision shows that Congress not only contemplated that such arrangements could be formalized through international treaties but also expressly authorized the executive branch to implement the provision through executive international agreements.

ACAs fall within the category of ex ante congressional–executive agreements, which arise when Congress, through legislation enacted pursuant to the bicameral legislative process, authorizes the executive branch to conclude international agreements.[10] In this instance, the relevant statutory authorization is provided by the INA, which empowers the executive branch to conclude bilateral or multilateral agreements governing the transfer of asylum seekers to third countries.

Congressional–executive agreements are generally understood to possess the same domestic legal status as treaties.[11] Because they are concluded pursuant to congressional authorization enacted through the ordinary legislative process, such agreements, including the ACAs, operate as federal law within the U.S. legal system. As a result, they participate in the well-established "last-in-time" rule, under which courts apply whichever instrument, whether a statute or an international agreement, constitutes the most recent expression of the sovereign will of the United States.[12]

U.S. Department of State regulations define an international agreement as an undertaking between states or their agencies that the parties intend to be legally binding and governed by international law.[13] Because ACAs fall within this category, their provisions must be given operative legal effect in the domestic adjudicatory process. Accordingly, when determining the applicability of an ACA in an individual case, the adjudicator must interpret the relevant provisions with due regard to the international obligations, including the implications of the *last-in-time* rule where conflicts with domestic law arise.

Regulatory Authority Under 8 C.F.R. § 1240.11(h) (2025) for the Application of ACAs

Regulation 8 C.F.R. § 1240.11(h) assigns to the immigration judge the authority to determine whether an asylum applicant is subject to the terms of an ACA and, if so, whether "under the relevant agreement, the alien should be removed to the third country or whether the alien should be permitted to pursue asylum or other protection claims in the United States."[14]

The regulation further provides that this bar applies unless the immigration judge determines, by a preponderance of the evidence, that the agreement does not apply, that a regulatory exception applies explained by the applicable published Federal Register document setting out each agreement and its exceptions, or that it is more likely than not that the individual would face persecution on account of a protected ground or torture in the designated third country.[15]

If no exception applies and the required risk of persecution or torture is not established, the individual must be ordered removed to the relevant third country, where the person may pursue protection claims under that country's legal framework. However, this does not prevent the individual from seeking other forms of relief from removal for which they may be eligible.[16]

In exercising this authority, therefore, the immigration judge must address three distinct inquiries. First, the adjudicator must determine whether the relevant ACA, also referred to in statutory terms as a safe third-country agreement, applies to the respondent.[17] Second, if the agreement is applicable, the immigration judge must determine whether the respondent qualifies for any exception to its application. Third, if no exception applies, the adjudicator must assess whether the respondent has demonstrated that it is more likely than not that they would face persecution or torture in the designated receiving country.[18]

Finally, when assessing whether an asylum applicant is subject to the terms of an ACA, immigration judges must act in compliance with the requirements of due process. This obligation entails not only providing the applicant with a meaningful opportunity to oppose any request to pretermit the asylum application on the basis of an ACA, but also conducting the adjudication in a manner that ensures the decision complies with the principles of fundamental fairness.[19] In this context, due process requires that the immigration judge evaluate the applicability of the agreement through a fair and individualized determination that allows the applicant to present arguments and evidence relevant to whether the ACA properly applies to the case.

Matter of C-I-G-M- & L-V-S-G-: The BIA's Approach to Applying ACAs in Removal Proceedings

On October 31, 2025, the BIA issued its precedent decision in *Matter of C-I-G-M- & L-V-S-G-*, addressing the application of the ACA with Honduras and clarifying the procedural framework governing the safe third-country bar under § 208(a)(2)(A) of the INA. The BIA held that when the U.S. Department of Homeland Security (DHS) asserts that an ACA bars a respondent from seeking asylum in the United States, the adjudicator must first determine whether the safe third-country bar applies before considering the merits of any asylum or protection claim.[20]

The decision also emphasizes that DHS must provide the respondent with oral or written notice of its intent to remove the respondent to a third country pursuant to the relevant agreement, after which the respondent must be given a reasonable opportunity to demonstrate that the ACA does not apply because they will more likely than not be persecuted on account of a protected ground or tortured in the relevant third country.[21]

A proper interpretation of 8 C.F.R. § 1240.11(h)(2)(i)-(ii) indicates that the burden to demonstrate that the ACA does not apply, because the respondent will more likely than not be persecuted on account of a protected ground or tortured in the relevant third country, arises only after the immigration judge has determined both the applicability of the relevant agreement and the absence of any regulatory exception permitting the respondent to pursue asylum in the United States.

To conclude that this burden arises merely because DHS has notified the respondent of its intent to remove the individual pursuant to an ACA would effectively render the agreement automatically applicable, thereby nullifying the procedural safeguards established by the regulation. Indeed, the BIA has explained that a respondent subject to the terms of an ACA bears the burden, under 8 C.F.R. § 1240.11(h)(2)(iii), to establish by a preponderance of the evidence that they more likely than not be persecuted on account of a protected ground or tortured in the relevant third country.[22] By negative implication, a respondent who is not subject to an ACA, because the immigration judge has determined that the agreement does not apply or that a regulatory exception exists under 8 C.F.R. §§ 1240.11(h)(2)(i)-(ii), does not bear that burden.

The decision further clarifies that the immigration judge does not have authority to determine whether the designated third country provides a "full and fair" asylum procedure or whether it would be in the public interest for the respondent to pursue asylum in the United States, as those determinations are expressly reserved to the Attorney General and the U.S. Secretary of Homeland Security.[23] Finally, the BIA clarified that the ACA with Honduras could apply even though it entered into force after the respondent arrived in the United States, concluding that such application does not constitute impermissible retroactive application.[24]

Finally, the most notable aspect of this decision is not the particular conclusions reached by the BIA, some of which are open to question, as will be analyzed later in this article, but rather what the BIA did not address. Specifically, the BIA did not develop, and instead remained silent regarding the analytical process that immigration judges must follow to determine whether an ACA is applicable in a particular case, nor did it identify the legal framework that should guide that determination. This omission underscores the importance of understanding the nature and scope of these agreements, as well as the manner in which domestic regulations must be interpreted and applied in light of the legal framework governing ACAs.

The International Legal Nature of ACAs

ACAs as Binding International Agreements Governed by Refugee and Human Rights Law

As previously discussed, ACAs are legally binding agreements ruled by international law that regulate the transfer of asylum seekers between states. As such, they fall within the scope of international refugee law and are also informed by international human rights law, which imposes obligations on states parties regarding the treatment of individuals within their territory and subject to their jurisdiction.[25]

Consistent with this legal framework, ACAs provide that actions carried out under them must be conducted in accordance with applicable international law.[26] By incorporating these international legal obligations directly into their operative provisions, these agreements embed international refugee and human rights standards within their implementation.[27]

When the international and domestic legal frameworks are considered together, it becomes clear that applicability determinations under an ACA cannot be automatic or categorical. Rather, they require a structured and individualized adjudicatory analysis conducted by the immigration judge pursuant to the governing statutory and regulatory provisions and interpreted in light of the agreement's incorporated international commitments and the principles of applicable international law.

Interpretive Consequences: The Role of UNHCR and International Benchmarks

Accordingly, when assessing the applicability of ACAs, the immigration judge may not confine the analysis to domestic statutory or regulatory provisions alone but must interpret and apply the agreements in accordance with the incorporated international legal obligations. This obligation necessarily includes consideration of authoritative guidance issued by the UNHCR, the entity expressly entrusted by the Convention Relating to the Status of Refugees[28] with supervising its application.

While UNHCR guidance is not binding in the same manner as treaty-based obligations, it constitutes highly persuasive authority in interpreting refugee law obligations,[29] including the right to seek asylum and the standards for ensuring effective and meaningful protection of asylum seekers' human rights. The court's analysis must therefore be aligned with these internationally recognized benchmarks, which are expressly incorporated into the ACAs.

Effective Protection and Individualized Assessment as Conditions for Lawful Transfers Under ACAs

UNHCR explains that transfer agreements such as ACAs generate concrete and enforceable obligations for participating states, including the obligation to admit the transferred individual into the receiving state's territory, grant lawful stay for the duration of the asylum process, provide access to a fair and efficient state's asylum procedure, and ensure protection against refoulement.[30]

UNHCR further emphasizes that such agreements must guarantee standards of treatment commensurate with the Refugee Convention and international human rights law, and that their implementation may not reduce or undermine the human rights of asylum applicants. Protection of fundamental human rights in the receiving state is therefore an essential condition of the legality of any transfer agreement, and international protection must be accessible and effective in law and in practice.[31] Consistent with these principles, UNHCR guidance also makes clear that the existence of a transfer agreement does not relieve the transferring state of the obligation to conduct an individualized assessment of whether the agreement may lawfully be applied in a particular case.[32]

In this framework, the adjudicator's applicability determination requires an evaluation of whether: (1) the receiving state will in fact admit the respondent and grant lawful stay; (2) the level of protection and the human rights conditions in the receiving country satisfy the standards required under the Refugee Convention, its 1967 Protocol Relating to the Status of Refugees,[33] and international human rights law; (3) any real risk of refoulement exists; and (4) the respondent will have access in practice to a fair, efficient, and meaningful asylum procedure.[34] With respect to this fourth consideration, the BIA clarified in *Matter of C-I-G-M- & L-V-S-G-* that the responsibility rests with the Attorney General and the U.S. Secretary of Homeland Security, rather than with immigration judges.[35]

ACA Inapplicability Where International Legal Standards Are Not Met

Where this analysis reveals the absence of reliable and concrete guarantees of effective protection, including where human rights deficiencies undermine treatment commensurate with international standards, the transfer agreement is contrary to international law and must be deemed inapplicable in the individual case. International law is likewise breached when such agreements are used primarily as instruments of responsibility-shifting or "externalization," rather than as mechanisms of genuine responsibility-sharing.[36]

Therefore, where the purpose or practical effect of an ACA is to restrict access to the territory or asylum system of the state where protection was sought, or to relocate asylum seekers to environments in which their rights are diminished or their protection needs remain unmet, the immigration judge must conclude that application of the ACA in the individual case is incompatible with the state's international obligations and therefore legally inapplicable.

Non-Retroactivity and the Temporal Scope of Asylum Cooperative Agreements

Under international law, treaties and international agreements apply only prospectively unless a contrary intention is clearly expressed in their text. Article 28 of the Vienna Convention on the Law of Treaties codifies this customary rule of non-retroactivity, providing that treaty provisions do not bind a state with respect to any act, fact, or situation that occurred before the treaty or agreement entered into force for that State. This principle reflects customary international law recognized by the United States and operates as a foundational safeguard of legal certainty.[37]

ACAs, as binding international agreements governed by international law, are subject to this default rule of prospective application. Absent clear textual language authorizing retroactive effect, an ACA governs only situations arising after its entry into force and does not extend to conduct, entries, or applications predating that moment.

This principle of non-retroactivity is reinforced by established doctrines of statutory interpretation in U.S. law. Under the long-standing *Charming Betsy* canon,[38] U.S. statutes and regulations should be construed, where reasonably possible, in a manner consistent with international law.[39] Accordingly, domestic provisions governing the implementation of ACAs must be interpreted in light of the customary international law rule against retroactive treaty application unless Congress has clearly expressed a contrary intent.

Likewise, U.S. jurisprudence has a "deeply rooted" presumption against retroactive application of legislation, based on principles of "[e]lementary considerations of fairness," "settled expectations should not be lightly disrupted . . . the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place."[40] The standard to rebut this presumption is "demanding," requiring "a clear indication from Congress that it intended such a result."[41] The language rebutting the presumption of retroactivity must be "so clear that it could sustain only one interpretation."[42]

Taken together, these principles establish that ACAs apply prospectively unless: (1) the agreement contains an express retroactivity clause, (2) the agreement has been validly amended to authorize retroactive application, or (3) Congress has clearly and unequivocally directed retroactive implementation in the governing statute. In the absence of such express authorization, ACAs must be construed and applied in accordance with the rule of prospective effect.

Structural and Legal Deficiencies in the U.S.–Ecuador ACA

Before analyzing the structural and legal deficiencies of the ACA concluded with Ecuador, it is worth noting that the analysis developed in this article applies equally to the other ACAs concluded by the United States, as they likewise constitute international agreements governed by international law and implemented through the same statutory and regulatory framework.[43] As such, they are subject to the same interpretive principles and legal constraints examined here.

Absence of Defined Eligibility Criteria and Implementing Mechanisms

UNHCR guidance requires that transfer agreements clearly define the conditions under which transfers may occur, including specific eligibility criteria and safeguards necessary to ensure the rights and safety of asylum seekers. UNHCR cautions that where such agreements lack defined criteria or adequate safeguards, or leave international protection needs unmet, they risk constituting an unlawful externalization of refugee protection obligations, and that where these guarantees cannot be agreed to or met, transfer is not appropriate.[44]

The ACA between the United States and Ecuador confirms that the criteria necessary to determine individual applicability have not yet been developed.

The ACA expressly provides that the parties will "develop operational processes to assist with the implementation of this Agreement through a subsequent instrument, including, among other things, clear criteria to determine eligibility for transfer to the Republic of Ecuador."[45]

By its own terms, therefore, the ACA contemplates that a future instrument is required to establish the eligibility criteria governing who may be transferred. Until such criteria are defined, accessible, and operational, the ACA does not supply the standards necessary to determine whether it applies to any particular asylum seeker.

Public reporting further confirms this lack of defined criteria. Press statements by Ecuadorian authorities indicate that "both countries will later work on an additional instrument that will detail the operational procedures and specific criteria to define who is eligible" and that the program would be limited to persons of certain nationalities, without identifying which nationalities are included or clarifying whether Venezuelan asylum seekers fall within the scope of the ACA. This information underscores the absence of publicly articulated eligibility standards.[46]

In the absence of the "clear criteria" expressly contemplated by the ACA, the immigration judge cannot lawfully fulfill the regulatory obligation under 8 C.F.R. § 1240.11(h) to determine whether the ACA applies to the respondent. Where DHS invokes the ACA with Ecuador as a basis for transfer, it bears the burden of establishing the ACA's applicability and is therefore required to attach or expressly identify the "subsequent instrument" through which the parties were to define the operational procedures and eligibility criteria governing transfer.[47]

This implementing instrument is not ancillary; it is the mechanism through which eligibility is defined and the scope of the ACA is operationalized. Absent its submission or incorporation into the record, no legally ascertainable standard exists by which the immigration judge can evaluate eligibility for transfer. Under such circumstances, application of the ACA is not merely unsupported; it is legally indefensible and inconsistent with the ACA's own terms and governing international protection standards, rendering the ACA inapplicable.

Failure to Satisfy the Safe Third-Country Standard: Ecuador's Human Rights Conditions

The assessment of whether Ecuador qualifies as a safe third country for the Venezuelan respondent is a threshold determination that the immigration judge must undertake as part of deciding whether the ACA is applicable. This analysis flows from the obligation to ensure that any application of the ACA guarantees standards of treatment consistent with the Refugee Convention and international human rights law, and that implementation of the ACA does not reduce or undermine the human rights of asylum applicants.[48]

This inquiry is distinct from the subsequent analysis of whether the respondent has demonstrated that it is more likely than not that he or she would face persecution or torture in the receiving country, which arises only after the immigration judge has determined that the ACA is applicable and that no exception to its application applies.

Accordingly, at this stage, the immigration judge's analysis is not confined to whether the respondent faces persecution on one of the five protected grounds under asylum law. Rather, it requires an assessment of whether the respondent's fundamental human rights would be compromised as a result of the receiving country's action or inaction, here Ecuador. The inquiry into whether the respondent has demonstrated a likelihood of persecution or torture applies only at the later stage of analysis, after the court has found the ACA applicable and no exception to its application exists.

In applying this standard, the safe third-country inquiry cannot be conducted in the abstract but must be grounded in the concrete human rights conditions facing the particular category of individuals subject to transfer. The respondent's nationality and, where applicable, their gender are therefore legally relevant characteristics in assessing whether Ecuador satisfies the requirement of effective protection.

In this framework, the immigration judge's analysis must begin with the general conditions affecting migrants and asylum seekers in Ecuador and then proceed to consider whether those conditions assume heightened significance where the respondent is from a particular nationality, such as Venezuela. Where the respondent is a woman, the inquiry becomes more acute still, as gender-based violence, particularly when combined with xenophobia, may produce compounded vulnerabilities that bear directly on the adequacy of protection under international refugee and human rights law.

The publicly available country-conditions evidence demonstrates significant structural deficiencies relevant to the safe third-country inquiry. The 2024 Department of State Human Rights Report on Ecuador notes that "on January 9, President Daniel Noboa decreed a state of emergency to stem escalating violence from local and transnational organized crime groups [and] directed police and military forces to conduct enhanced security operations against these groups to address security threats."[49]

The report further states that "migrants and refugees were particularly vulnerable to hazardous and exploitative working conditions," including complaints that Venezuelans were being paid below the minimum wage. It also documents discrimination and limited access to formal employment, education, and housing, all of which affected migrants' and refugees' ability to integrate.[50]

Likewise, the U.S. Department of State's 2023 Country Reports on Ecuador document serious and systemic human rights violations affecting migrants and asylum seekers, including Venezuelans. The report indicates that migrants and refugees "experienced gender-based violence and human trafficking," and that authorities observed "an increase in forced labor, sex trafficking, and the forced recruitment of migrants and refugees into criminal activity," particularly by criminal groups operating along Ecuador's borders.[51]

The U.S. Department of State further notes that "continued migrant and refugee arrivals at irregular crossings, due to visa requirements for Venezuelan nationals; increasing xenophobia; and a lack of local and municipal government coordination or capacity … complicated the government's ability to address and prevent abuses." Migrants reported "a lack of trust, significant corruption, and xenophobia in public institutions, including within police and the Attorney General's Office, that made it difficult to report abuse."[52]

At the same time, access to basic rights remained severely limited, with barriers to education, health care, employment, and housing exacerbated by discrimination and the deterioration of public services.[53] The report also underscores that "migrants and refugees were particularly vulnerable to hazardous and exploitative working conditions," including receiving wages below the legal minimum and working in the informal sector, where labor protections are not effectively enforced.[54]

Human Rights Watch's most recent report on Ecuador states that homicide rates are at "unprecedented levels" and notes that President Noboa acknowledged that the country was in an "internal armed conflict."[55] The report further indicates that many migrants and asylum seekers in Ecuador face significant difficulties in obtaining regular immigration status and achieving meaningful integration.[56]

These risks faced by migrants are particularly pronounced with respect to Venezuelan nationals. An article published in the *Yale Review of International Studies* documents that Venezuelan migrants in Ecuador face pervasive and systematic human rights violations driven by xenophobia and discrimination, noting that "98 percent of Venezuelan migrants have experienced discrimination on the basis of their national identity."[57]

The article further describes how xenophobic attitudes have, in certain instances, escalated into violence, including episodes in which Ecuadorian citizens carried out "indiscriminate attacks against any Venezuelans they found," forcibly expelling individuals from their homes and "throwing stones and burning their belongings."[58]

The article explains that such acts place "the rights to life, liberty, security, and dignity of Venezuelan migrants at risk" and constitute violations of the prohibition against discrimination based on nationality.[59] In addition to physical violence, Venezuelans are subjected to systemic abuses in housing and employment, including being denied rental opportunities or forcibly evicted solely because of their nationality, practices that "directly violate their right to adequate housing."[60]

They are also exploited in the labor market, where many work without contracts and earn wages "42 percent lower than that of Ecuadorian nationals," or are not paid at all.[61] The article further underscores that these abuses engage state responsibility, emphasizing that when xenophobic conduct by private actors is not prevented, investigated, or punished, "the State fails to comply with its positive duties under international human rights law" due to a lack of due diligence.[62]

The risks described above assume even greater gravity where the respondent is a Venezuelan woman. Amnesty International documents that Venezuelan refugee women in Ecuador face systemic and heightened human-rights violations, particularly gender-based violence, discrimination, and the absence of effective state protection. The organization observes that "[g]ender-based violence is a systemic and prevalent problem in Ecuador: two out of three women experience some form of gender-based violence during their lives. In this context Venezuelan refugee women are at even greater risk of physical, psychological, sexual, patrimonial, gynecological-obstetric and cyber violence in public and private spaces."[63]

It further notes that "[v]arious vulnerability factors, coupled with stereotypes that hypersexualize Venezuelan women, increase their exposure to trafficking, sexual exploitation and other forms of gender-based violence."[64] Despite the existence of a formal legal framework, Amnesty International concludes that "the Ecuadorian state is failing to guarantee the rights of Venezuelan refugee women at different levels."[65]

The report further documents that "Ecuadorian authorities are failing to guarantee the rights of Venezuelan women survivors of gender-based violence by not providing the appropriate conditions for them to access protection mechanisms and justice," and that institutional responses are marked by "sexist and xenophobic prejudices and stereotypes, which constitute a further form of violence against Venezuelan women."[66]

As a result, the "combination of obstacles renders access to justice and reparation for Venezuelan women little more than a utopia. Moreover, it violates their right to a life free of violence, which the state has an obligation to guarantee to all women, without discrimination."[67]

Additional reporting confirms the structural and intersectional nature of these harms. Amnesty International's report notes that women constitute "approximately 50% of the Venezuelan refugees in Ecuador,"[68] and that "72% of the Venezuelan women surveyed . . . believed that this population faces some type of gender-based violence in Ecuador," identifying psychological violence, workplace sexual harassment, and domestic physical violence as among the most prevalent forms.[69]

The report further emphasizes the existence of "sexist and xenophobic stereotypes by public officials towards Venezuelan women" that obstruct access to justice.[70] Consistent with these findings, Amnesty International warns that Ecuador "is joining Colombia and Peru in its unacceptable treatment of

Venezuelan women who survive gender-based violence," and that the "Ecuadorian State is not guaranteeing the rights of Venezuelan women to seek protection as refugees and to a life free from violence."[71]

Taken together, the foregoing country conditions reports indicate that Ecuador does not ensure conditions of safety, dignity, or effective protection for individuals transferred pursuant to an ACA. UNHCR has emphasized that such agreements must guarantee treatment commensurate with the Refugee Convention and international human rights law, and that their implementation may not reduce or undermine the rights of asylum applicants. Effective protection in the receiving state is therefore an essential condition of the legality of any transfer arrangement and must be accessible and effective both in law and in practice.[72]

Where reliable and concrete guarantees of effective protection are absent, particularly where systemic human rights deficiencies undermine treatment consistent with international standards, the application of a transfer agreement is contrary to international law and must be deemed inapplicable in the individual case.[73] This conclusion is reinforced by the terms of the ACA with Ecuador, which expressly provides that the parties' actions under the ACA "shall be in accordance with" their obligations under the Refugee Convention, its 1967 Protocol, the Convention Against Torture, and other applicable international obligations.[74]

International law is likewise breached where such arrangements function primarily as mechanisms of responsibility-shifting or "externalization," rather than genuine responsibility-sharing, resulting in the transfer of asylum seekers to conditions in which their fundamental rights are not adequately protected.[75] The application of the ACA under the present conditions would therefore fail to satisfy not only international legal standards but also the express requirements of the ACA itself. Under these circumstances and, following the individualized assessment required by international and domestic law, the immigration judge would lack a legally sufficient basis to determine that Ecuador satisfies the safe third-country standard and, consequently, to conclude that the ACA is applicable.

Failure to Establish the Statutory and Procedural Preconditions for Lawful Transfer Under the ACA

Under 8 U.S.C. § 1158(a)(2)(A), the applicability of an ACA presupposes that the receiving state will accept the individual and afford access to a full and fair procedure for determining a claim to asylum or equivalent protection. These requirements constitute statutory and regulatory preconditions for a lawful transfer.

The BIA addressed related issues in *Matter of C-I-G-M- & L-V-S-G-*, in the context of the ACA with Honduras, sustaining that the preamble to the regulation reserves authority to the Attorney General and the U.S. Secretary of Homeland Security to make this categorical determination and that the immigration judge is precluded from making that determination.[76]

Even assuming arguendo that this interpretation were correct,[77] the immigration judge retains the independent authority to determine the applicability of the ACA in an individual case. In this context, the immigration judge must be able to verify, based on the record, that the statutory and regulatory prerequisites to transfer have in fact been met, including that the requisite determinations by the Attorney General and the U.S. Secretary of Homeland Security exist as a predicate to lawful transfer.

The BIA's statement in *Matter of C-I-G-M- & L-V-S-G-* that authority to make such determinations is reserved to the Attorney General and the U.S. Secretary of Homeland Security cannot be read to preclude the immigration judge, in the exercise of their adjudicatory function, from requiring evidence that such determinations have in fact been made. Nothing in *C-I-G-M- & L-V-S-G-* requires an immigration judge to presume that the antecedent determinations of the Attorney General or the U.S. Secretary of Homeland Security have been validly made in the absence of record evidence.

Rather, the decision holds only that the immigration judge may not substitute their own judgment as to whether a "full and fair procedure" exists or whether removal serves the "public interest." The BIA did not hold otherwise, and any such interpretation would be inconsistent with the immigration judge's duty to assess the applicability of the ACA within the governing regulatory framework, which includes the applicable international obligations that the ACAs expressly incorporate.

Therefore, where DHS fails to submit, or otherwise include in the record, evidence establishing that these determinations have been made, the statutory conditions for the application of the bar under 8 U.S.C. § 1158(a)(2)(A) remain unestablished. In the absence of such a showing, the immigration judge cannot properly conclude that the ACA's preconditions have been fulfilled.

Moreover, where the absence of such a determination is coupled with country conditions materials, such as the reports discussed above regarding Ecuador, indicating that the receiving state does not provide access to a full and fair procedure for seeking asylum, the legal consequence is that the ACA cannot be deemed applicable under the governing statutory and international framework.

Retroactive Application and Due Process Concerns

The general rule of non-retroactivity discussed above applies with full force to the ACA between the United States and Ecuador. Nothing in the text of the U.S.–Ecuador ACA clearly expresses an intention that the ACA apply to acts, entries, or asylum applications that predate its entry into force. In the absence of such language, the default rule of prospective application governs.

The BIA's decision in *Matter of C-I-G-M- & L-V-S-G-* does not alter this conclusion. In that case, the BIA's analysis turned on the existence of an amendment to the ACA with Honduras authorizing retroactive application.[78] That textual predicate is entirely absent from the ACA with Ecuador, which has not been amended and contains no clause clearly permitting retroactive effect. Nor does 8 U.S.C. § 1158(a)(2)(A) contain any express authorization for the retroactive application of an ACA.

Accordingly, the reasoning of *Matter of C-I-G-M- & L-V-S-G-* cannot be extended to justify retroactive application in the Ecuador context or to support an interpretation of U.S. regulations that would contravene international law and the *Charming Betsy* canon. In the absence of clear statutory or textual authorization, the ACA must therefore be applied prospectively.

Conclusion

ACAs are binding international instruments that operate within the framework of international refugee law and international human rights law. Although the specific language of each agreement varies, they generally require that actions taken pursuant to the transfer framework be carried out in accordance with the parties' obligations under applicable international law. By incorporating these international legal obligations into their operative provisions, ACAs embed international protection standards within their implementation. As a result, the legality of any transfer under these agreements depends not only on domestic statutory authorization, but also on compliance with international benchmarks, including the requirement of effective protection and the prohibition of refoulement.

The regulatory scheme governing ACA proceedings places the immigration judge at the center of the applicability inquiry under 8 C.F.R. § 1240.11(h). Applicability is not automatic; it requires a structured legal analysis through which the adjudicator must determine whether the agreement applies, whether any regulatory exception is triggered, and whether the respondent faces a risk of persecution or torture in the designated receiving country. Because ACAs constitute binding international agreements concluded pursuant to congressional authorization, they form part of the governing legal framework within which immigration statutes and regulations must be interpreted.

Accordingly, the immigration judge's task is not merely administrative but decisively legal: the judge must ensure that the transfer of an asylum applicant is consistent with the statutory requirements of the INA, the implementing regulations, the international obligations incorporated in the agreement, and the fundamental guarantees of due process even though the framework articulated in *Matter of C-I-G-M- & L-V-S-G-* assigns certain threshold determinations and discretionary authority to the Attorney General and the U.S. Secretary of Homeland Security rather than to the immigration judge. The integrity and legality of the ACA regime therefore depend in significant measure on the immigration judge's faithful execution of this adjudicatory responsibility.

The ACA with Ecuador presents structural deficiencies that bear directly on its lawful implementation. By its own terms, the ACA contemplates the adoption of a subsequent instrument defining operational procedures and eligibility criteria. In the absence of such defined and accessible criteria, no legally ascertainable standard exists by which eligibility for transfer can be assessed. Under these circumstances, invocation of the ACA without the implementing framework it presupposes renders its application legally unsupported and inconsistent with its own intention.

Moreover, the safe third-country inquiry requires a concrete evaluation of conditions in the receiving state. Publicly available country conditions materials indicate significant human rights concerns affecting migrants and asylum seekers in Ecuador, including heightened and intersectional vulnerabilities for certain nationalities and for women. Where reliable and concrete guarantees of effective protection are lacking in law or in practice, transfer would be incompatible with the international obligations expressly incorporated into the ACA. In such circumstances, the immigration judge would lack a legally sufficient basis to conclude that the safe third-country standard has been satisfied.

Likewise, as a matter of both international and domestic law, ACAs are subject to the rule of non-retroactivity. Absent clear textual authorization in the ACA, a valid amendment expressly providing for retroactive effect, or an unequivocal directive from Congress, ACAs must be applied prospectively only. The ACA with Ecuador contains no such retroactivity clause, and the governing statute does not supply one. Accordingly, retroactive application would contravene customary international law, established canons of statutory interpretation, and the deeply rooted presumption against retroactivity in U.S. jurisprudence.

Taken together, these considerations demonstrate that lawful application of an ACA requires strict adherence to international protection standards, clear and operational eligibility criteria, satisfaction of statutory transfer preconditions, and compliance with the rule of prospective effect. Where these conditions are not met, the ACA cannot be deemed applicable within the governing statutory and international legal framework.

Finally, due to the significant consequences that the application of an ACA may have in a particular case, when DHS seeks to pretermit an asylum application and request removal pursuant to an ACA, the applicant's attorney must be prepared to contest the applicability of the agreement. Counsel should challenge whether the ACA applies to the case. If the agreement is determined to apply, counsel must identify any applicable regulatory exceptions.

If no exception is available, counsel must also be prepared to present evidence demonstrating that the applicant may face persecution or torture in the proposed receiving country. Effective representation requires ensuring that the immigration judge has a complete record upon which to evaluate the legality of the proposed transfer. If DHS raises the request during the hearing, counsel should be prepared to oppose it on both legal and factual grounds and request sufficient time to submit a written response in order to preserve the applicant's due process rights.

Notes

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1. *See* Implementation of the Asylum Cooperative Agreement Between the Government of the United States of America and the Government of Honduras, 90 Fed. Reg. 30,076 (July 8, 2025); Implementation of the Asylum Cooperative Agreement Between the Government of the United States of America and the Government of Uganda, 90 Fed. Reg. 42,597 (Sept. 3, 2025); Implementation of the Asylum Cooperative Agreement Between the Government of the United States of America and the Government of Guatemala, 90 Fed. Reg. 31,670 (July 15, 2025); Implementation of the Asylum Cooperative Agreement Between the Government of the United States of America and the Government of Paraguay, 90 Fed. Reg. 60,114 (Dec. 23, 2025).

2. David Harris, International Human Rights Law 89, 540, 543 (Daniel Moeckli et al. eds., 3d ed. 2018); María-Teresa Gil-Bazo, *The Safe Third Country Concept in International Agreements on Refugee Protection: Assessing State Practice*, 33 Neth. Q. Hum. Rts. 51, 66-67 (2015).

3. *Id.*

4. U.N. High Comm'r for Refugees, International Agreements for the Transfer of Refugees and Asylum-Seekers ¶ 10 (Aug. 7, 2025), https://www.refworld.org/policy/legalguidance/unhcr/2025/en/150357.

5. In particular, 8 C.F.R. § 1240.11(h)(1) provides that the immigration judge shall determine whether, under the applicable agreement, the noncitizen should be removed to the designated third country or permitted to pursue asylum in the United States. Accordingly, the proper application of this provision requires an interpretation that takes into account both the domestic and international legal obligations that inform its implementation.

6. Vienna Convention on the Law of Treaties art. 28, May 23, 1969, 1155 U.N.T.S. 331.

7. 90 Fed. Reg. 51,376 (Nov. 17, 2025).

8. Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291 (BIA 2025).

9. INA § 208(a)(2)(A), 8 U.S.C. § 1158(a)(2)(A).

10. Timothy J. Keeler et al., *Sole Executive Agreements and Their Role in US Law*, Mayer Brown (Apr. 12, 2023), https://www.mayerbrown.com/en/insights/publications/2023/04/sole-executive-agreements-and-their-role-in-us-law.

11. *See* Frederic L. Kirgis, *International Agreements and U.S. Law*, ASIL: Insights (May 27, 1997), https://www.asil.org/insights/volume/2/issue/5/international-agreements-and-us-law.

12. Stephen P. Mulligan, Cong. Rsch. Serv., RL32528, International Law and Agreements: Their Effect upon U.S. Law (July 13, 2023), https://crsreports.congress.gov/product/pdf/RL/RL32528.

13. *See* 22 C.F.R. § 181.2(a)(1).

14. 8 C.F.R. § 1240.11(h)(1).

15. 8 C.F.R. §§ 1240.11(h)(2)(i),(ii),(iii).

16. 8 C.F.R. § 1240.11(h)(4).

17. INA § 208(a)(2)(A); 8 U.S.C. § 1158(a)(2)(A).

18. 8 C.F.R. §§ 1240.11(h)(1)-(2)(i)-(iii).

19. Am. Immigr. Laws. Ass'n, Representing Clients in Immigration Court 15 (5th ed. 2018).

20. Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291 (BIA 2025).

21. The BIA's requirement that the DHS provide the respondent with notice of the ACA country to which it intends to remove them is consistent with well-established due process and opportunity to be heard jurisprudence. *See, e.g.*, Andriasian v. INS, 80 F.3d 1033, 1041 (9th Cir. 1999) (explaining—in the context of a non-ACA third country removal case—that basic due process requires the government to provide ample notice of its intent to remove to a third country); *accord* Ibarra-Perez v. United States, 154 F.4th 989, 995 (9th 2025).

22. Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291, 297 (BIA 2025).

23. Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291, 294-95 (BIA 2025).

24. Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291, 298 (BIA 2025).

25. Harris, *supra* note 2; Gil-Bazo, *supra* note 2.

26. The ACAs concluded with Honduras, Paraguay, Guatemala, and Uganda, like the U.S.–Ecuador agreement, expressly provide that actions undertaken by the United States and the partner states pursuant to the agreements shall be carried out in accordance with the international legal obligations identified therein.

27. Tally Kritzman-Amir, *Asylum-Seekers Are Not Bananas Either: Limitations on Transferring Asylum-Seekers to Third Countries*, 43 Mich. J. Int'l L. 699, 707 (2022); Natalie Lerner, *Rights as Remedies: Using Latin American Legal Channels to Halt U.S. Border Externalization*, 29 Lewis & Clark L. Rev. 181, 195 (2025); Daniel E. Rabbani, *Redefining the Safe Third Country Exception of the Immigration and Nationality Act in the Wake of Trump*, 86 Brook. L. Rev. 1065, 1083, 1087 (2021).

28. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention].

29. Kritzman-Amir, *supra* note 27.

30. U.N. High Comm'r for Refugees, Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers ¶ 18 (Sept. 2019), https://emergency.unhcr.org/sites/default/files/2023-05/UNHCR%2C%20Guidance%20on%20Responding%20to%20Irregular%20Onward%20Movement%20of%20Refugees%20and%20Asylum-seekers%2C%20Sept%202019.pdf.

31. *Id.*; U.N. High Comm'r for Refugees, Legal Considerations Regarding Access to Protection ¶¶ 4, 7, 10 (Apr. 2018), https://www.refworld.org/policy/legalguidance/unhcr/2018/120729; International Agreements for the Transfer of Refugees and Asylum-Seekers, *supra* note 4, ¶¶ 4, 7, 11; U.N. High Comm'r for Refugees, Summary

Conclusions on the Concept of "Effective Protection" ¶ 15 (Dec. 2002), https://www.refworld.org/reference/confdoc/unhcr/2003/28901.

32. International Agreements for the Transfer of Refugees and Asylum-Seekers, *supra* note 4, ¶ 10; Summary Conclusions on the Concept of "Effective Protection," *supra* note 31, ¶ 9; U.N. High Comm'r for Refugees, Note on the "Externalization" of International Protection ¶ 9(a) (May 28, 2021), https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534; U.N. High Comm'r for Refugees, Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum-Seekers ¶ 3(vi) (May 2013), https://www.refworld.org/sites/default/files/attachments/57d29e034.pdf.

33. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter 1967 Protocol].

34. Guidance on Responding to Irregular Onward Movement, *supra* note 30, ¶ 18; U.N. High Comm'r for Refugees, Legal Considerations Regarding Access to Protection, *supra* note 31, ¶¶ 4, 7, 10; U.N. High Comm'r for Refugees, Considerations on the "Safe Third Country" Concept (July 1996), https://www.refworld.org/policy/legalguidance/unhcr/1996/15886; Summary Conclusions on the Concept of "Effective Protection," *supra* note 31, ¶ 15.

35. Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291, 294 (BIA 2025).

36. International Agreements for the Transfer of Refugees and Asylum-Seekers, *supra* note 4, ¶¶ 11, 13, 16; Note on the "Externalization" of International Protection, *supra* note 32, ¶¶ 2 to 9; Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum-Seekers, *supra* note 32, ¶¶ 3(vii), 6; Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers ¶ 25, *supra* note 30; Lerner, *supra* note 27, at 183.

37. In investment-treaty litigation involving the United States, both the United States and other states have relied on Article 28 as reflecting the general principle of treaty non-retroactivity, affirming that, absent an express provision to the contrary, treaties do not operate retroactively and do not bind a state with respect to acts, facts, or situations that occurred or ceased to exist prior to the treaty's entry into force for that state. *See* Colombia's Written Observations on the United States' Non-Disputing Party Submission (Corrected Version), Alberto Carrizosa Gelzis et al. v. Republic of Colom., PCA Case No. 2018-56 (May 15, 2020).

38. The *Charming Betsy* canon is a principle of statutory interpretation providing that acts of Congress and federal regulations should be construed, where reasonably possible, so as not to conflict with international law. The doctrine originates from *Murray v. The Schooner Charming Betsy*, 6 U.S. 64 (1804), in which the Supreme Court held that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." Although first articulated in a maritime context, the *Charming Betsy* canon applies broadly to all domestic statutes and regulations that intersect with international law, including immigration and human rights law. *See U.S. Legal Forms, Legal Resources, Definition C, "Charming Betsy Canon: Understanding the Charming Betsy Canon: A Key Legal Principle,"* https://legal-resources.uslegalforms.com/c/charming-betsy-canon.

39. *Id.*

40. Landgraf v. USI Film Products, 511 U.S. 244, 265 (1994).

41. INS v. St. Cyr, 533 U.S. 289, 316 (2001).

42. *Id.* at 317 (quoting Lindh v. Murphy, 521 U.S. 320, 328 n.4 (1997)).

43. *See supra* note 27.

44. International Agreements for the Transfer of Refugees and Asylum-Seekers, *supra* note 4, ¶¶ 4, 16; Summary Conclusions on the Concept of "Effective Protection," *supra* note 31, ¶ 12; Note on the "Externalization" of International Protection, *supra* note 32, ¶ 5; Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum-Seekers, *supra* note 32, ¶¶ 3(v)(vii), 6.

45. 90 Fed. Reg. 51,376, 51,379 (Nov. 17, 2025).

46. De qué trata el acuerdo firmado por Estados Unidos y Ecuador, que afecta cientos de migrantes solicitantes de asilo, La Nacion (Nov. 17, 2025), https://www.lanacion.com.ar/estados-unidos/de-que-trata-el-acuerdo-firmado-por-estados-unidos-y-ecuador-que-afecta-cientos-de-migrantes-nid17112025/; Esto dice el acuerdo para que Ecuador reciba a migrantes solicitantes de asilo provenientes de Estados Unidos, Primicias (Oct. 1, 2025), https://www.primicias.ec/politica/acuerdo-ecuador-estados-unidos-migrantes-extranjeros-asilo-tercer-pais-seguro-109442/.

47. Pursuant to Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291, 295 (BIA 2025), DHS must provide oral or written notice that it intends to rely on a particular ACA(s) to remove non-citizen to a third country and, of course, with the notice requirement comes the requirement to provide an adequate opportunity to be heard. *See, e.g.*, DVD v. U.S. Dep't of Homeland Sec., ___ F. Supp. 3d ___, 2026 WL 521557 (D. Mass. Feb. 25, 2026); *see also* Hernandez v. Becerra, 2026 WL 479957 (Feb. 20, 2026).

48. Legal Considerations Regarding Access to Protection, *supra* note 31, ¶¶ 2, 4, 7, 10; International Agreements for the Transfer of Refugees and Asylum-Seekers, *supra* note 4, ¶¶ 7, 13, 16; Considerations on the "Safe Third Country" Concept, *supra* note 34; Summary Conclusions on the Concept of "Effective Protection," *supra* note 31, ¶¶ 9, 15; Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum-Seekers, *supra* note 32, ¶¶ 3(ii)(vii)(vii), 6.

49. U.S. Dep't of State, Bureau of Democracy, H.R. & Lab., 2024 Country Reports on Human Rights Practices: Ecuador (2025), https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/ecuador/.

50. *Id.*

51. U.S. Dep't of State, Bureau of Democracy, H.R. & Lab., 2023 Country Reports on Human Rights Practices: Ecuador (2024), https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/ecuador.

52. *Id.*

53. *Id.*

54. *Id.*

55. *World Report 2025: Ecuador*, Hum. Rts. Watch, https://www.hrw.org/world-report/2025/country-chapters/ecuador.

56. *Id.*

57. Shannon Guerra, *A "Growing Concern": The Public's Xenophobia Toward and Discrimination Against Venezuelan Migrants in Ecuador*, Yale Rev. Int'l Stud. (Mar. 28, 2021).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Ecuador: Unprotected in Ecuador: Venezuelan Refugee Women Survivors of Gender-Based Violence*, Amnesty Int'l (Nov. 17, 2022), https://www.amnesty.org/en/documents/amr28/6137/2022/en/.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Facts and Figures: Unprotected in Ecuador*, Amnesty Int'l (Nov. 17, 2022), https://www.amnesty.org/en/latest/news/2022/11/facts-and-figures-unprotected-in-ecuador/.

69. *Id.*

70. *Id.*

71. *Ecuador: Another State Following the Regional Trend of Discrimination and Lack of Protection for Venezuelan Survivors of Gender-Based Violence*, Amnesty Int'l (Nov. 17, 2022), https://www.amnesty.org/en/latest/news/2022/11/ecuador-venezuelan-survivors-gender-based-violence/.

72. Legal Considerations Regarding Access to Protection, *supra* note 31, ¶¶ 4, 7, 10; International Agreements for the Transfer of Refugees and Asylum-Seekers, *supra* note 4, ¶¶ 4, 7, 11; Summary Conclusions on the Concept of "Effective Protection," *supra* note 31, ¶ 15.

73. Guidance Note on Bilateral and/or Multilateral Transfer Arrangements of Asylum-Seekers, *supra* note 32, ¶¶ 3(vii).

74. 90 Fed. Reg. 51,376, 51,378 (Nov. 17, 2025).

75. International Agreements for the Transfer of Refugees and Asylum-Seekers, *supra* note 4, ¶¶ 11, 13, 16; Note on the "Externalization" of International Protection, *supra* note 32, ¶¶ 2-9; Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers, *supra* note 30, ¶ 25.

76. Matter of C-I-G-M- & L-V-S-G-, 29 I. & N. Dec. 291, 298 (BIA 2025).

77. The BIA erred as a matter of law since that purported reservation of authority appears nowhere in the statutory text of 8 U.S.C. § 1158(a)(2)(A) or in the operative regulatory language of 8 C.F.R. § 1240.11(h). To the contrary, settled case law makes clear that "it is the language of the regulatory text, and not the preamble, that controls." *See* Nat'l Wildlife Fed'n v. EPA, 286 F.3d 554, 570 (D.C. Cir. 2002); *see also* Peabody Twentymile Mining, LLC v. Sec'y of Labor, 930 F.3d 992, 998 (10th Cir. 2019); *see* Mejia-Velasquez v. Garland, 26 F.4th 193, 202 (4th Cir. 2022).

78. In *Matter of C-I-G-M- & L-V-S-G-*, the BIA asserts "the ACA Honduras, as amended, specially states that it applies to aliens who arrived in the United States at any time. 90 Fed. Reg. at 30,079-80, 30,082-86; *see also* Avero Belgium Ins. v. Am. Airlines, Inc., 423 F.3d 73, 81 (2d Cir. 2005) (explaining that a treaty may govern conduct that occurred before the treaty entered into force when such an 'Intention appears from the treaty or otherwise established' (citation omitted)."