

## Immigration Court: BIA

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

Date: October 31, 2025

Adjudicated by: Malphrus, Hunsucker, Volkert

Opinion: Malphrus

Tags: Asylum, pretermission, Asylum Cooperative Agreements (ACAs), safe third country

**Question Presented:** Interlocutory appeal re. how IJs must respond to DHS's motions to pretermit cases on the basis of existing ACAs—clarifying when a safe third country bar to asylum applies to a R.**Holdings:**

1. "If the DHS claims that an asylum cooperative agreement bars a respondent from applying for asylum in the United States, the Immigration Judge should determine whether the safe third country bar applies prior to and separate from considering a respondent's eligibility for asylum." 291
2. "A respondent subject to the terms of an asylum cooperative agreement has the burden to establish by a preponderance of the evidence that he or she will more likely than not be persecuted on account of a protected ground or tortured in the relevant third country to avoid application of the safe third country bar and for the respondent to be eligible to seek asylum and other protection claims in the United States." 291

**Rationale:** We have these ACAs, we may as well put them to use.**Facts:** (292-93) Guatemala. Filed timely but barebones application for asylum.**Procedural History:**

- **8.7.25:** DHS filed motion to pretermit under ACA for Honduras.
  - **R's opposition brief:** threats of persecution in Honduras bcz Guatemalan refugees.
- **8.26.25:** IJ denied DHS's motion to pretermit application on the basis of an asylum cooperative agreement, stating that the R had met the exception by expressing fear of going to Honduras.

**Appeals to Statute & Precedent:**

- **INA § 208\_a)(2)(A), 8 U.S.C. § 1158(b)(2)(A):** safe third country bar to asylum
- **8 C.F.R. § 1240.11(h) (2025):** authority of IJs to apply bilateral or multilateral agreements between the U.S. and countries other than Canada. [September 2, 2025]
- ***Matter of M-D-, 24 I&N Dec. 138, 139 (BIA 2007):*** It's okay to do interlocutory appeals occasionally "to correct recurring problems in the handling of cases by IJs"
- ***Matter of A-G-G-, 25 I&N Dec. 486, 488 (BIA 2011):*** firm resettlement bar
- ***Agreement Between the Gov't of the U.S.A. & Gov't of Honduras* (July 8, 2025)**
- ***Matter of H-A-A-V-, 29 I&N Dec. 233 (BIA 2025):*** permissible to pretermit I589 without a full evidentiary hearing in certain circumstances.

**Relevant U.S. History:**

- **NEW REG = 8 C.F.R. § 1240.11(h) (2025):** Implements the safe third country bar through ACAs. Applies to asylum seekers who entered on or after Nov. 19, 2019. Provides a mechanism “for implementation of all existing and future ACAs not previously implemented.”
  - **84 Fed Reg. at 63995-63996** (applied 11/19/2019 to all future agreements)
  - **Exceptions (by preponderance of evidence):**
    - ACA does not apply to alien
    - ACA does not preclude alien from applying for asylum in the US
    - ACA qualifies for an exception
    - Alien has demonstrated that it is more likely than not that he or she would be persecuted on account of a protected ground or tortured in the third country
  - IJ can enter alternate orders of removal to each relevant country, if more than one apply.
- “Problems involving the handling of cases subject to the regulation [8 C.F.R. § 1240.11(h) (2025)] have recently become a recurring issue, and our decision in this matter will provide guidance to IJs and the parties on the proper application of the regulation.” 292
- ACA with Honduras March 10, 2025 – enforced 6/25/25
  - **90 Fed. Reg. at 30080-81, 30086 (June 25, 2025)**
  - Exceptions & limitations: no minors; Honduran nationals, people involved in certain crimes
  - Specifically states that it applies to noncitizens who entered “at anytime” 298

**Discussion:**

- The only evidence respondents submitted in support of their argument was DOS 2023 on Honduras. 293
- “In applying the safe third country bar, the authority delegated to IJs by the regulation is limited to determining whether any of the conditions discussed in 8 C.F.R. § 1240.11(h)(2) apply so as to render the relevant inapplicable to the particular R.” 294
- “IJs do not have authority to make the determination required under section 208(a)(2)(A) of the INA as to whether ‘the alien would have access to a full and fair procedure’ in the third country because the Attorney General has expressly reserved that statutory authority.” 294
- “Similarly, IJs lack authority to determine whether it is in the public interest for an alien subject to an ACA to pursue asylum in the US” – it’s up to the secretary of DHS to determine public interest.
- Implementation:
  - DHS must provide oral or written notice if R is subject to an ACA 295
  - “Once DHS has provided notice, the respondent must have a reasonable opportunity to satisfy his or her burden to show by a preponderance of the evidence that the safe third country bar does not apply because he or she will more likely than not be persecuted or tortured in the relevant third country.” 295
- IJ’s Role:
  - Determine bar’s applicability 296
    - Hold evidentiary hearing to resolve disputed facts 296
    - “Because a R will generally have no substantial connection to the relevant third country, evaluating a respondent’s claim of future persecution or torture in the third country ‘is more straightforward’ than undertaking ‘a complex assessment’ of an asylum applicant’s fear of persecution in his or her home country.” 296 (quoting Fed Reg commentary)

- “reasonably more minimalistic” process (Fed Reg commentary)
- Typically can be covered in an MCH 296
- **“if DHS claims that an ACA bars a respondent from apply for asylum in the US, the IJ should determine whether the safe third country bar applies prior to and separate from considering a respondent’s eligibility for asylum.” 296**
  - “no basis” to consider asylum if the ACA applies.
  - Order R removed to relevant third country.
- NOT IJ’s Role:
  - Determine whether noncitizen has access to full and fair procedures (here or in ACA country) 298
  - Determine whether it’s in the public’s interest to allow noncitizen to apply for asylum 298

**Commentary:**

- Ways to oppose ACA:
  - More than just DOS Report
  - Refugees from \_\_\_\_\_ (nationality persecution)
  - Treatment of refugees (PSG, pattern and practice)
  - ACA implemented AFTER R entered US
  - Due process: full and fair procedure for adjudication
- Note that reliance on *H-A-A-V-* (p.296) for pretermission in an MCH is misplaced—quotes that pretermission without a full evidentiary hearing is appropriate “in certain circumstances” (but those “certain” circumstances are not present here)