

COURTS

# Judge Saves United States Asylum Law, With More Than A Little Snark

He compared Chad Wolf to 'a squatter in a rental building.'

By LORELEI LAIRD

at 4:16 PM



Nobody cares about immigration right now. With the president having recently incited a riot, leading to his second impeachment, and [literally one million](#) new COVID-19 infections this week, that's probably fine.

That said, these distractions make it an excellent time for news to fly under the radar. So I had a look around, and sure enough, a federal judge pretty much saved asylum law last week.

The case was about [a new rule on asylum](#) from the Trump administration, made final in December after the feds ignored all the public comments about it. The stated goal of the new rule was to “streamline” asylum proceedings, which it achieves by limiting who can get asylum. Immigrant advocates call it “Death to Asylum,” and that’s not really an

- “interpersonal animus or retribution,” which is the definition of persecution
- gender, which neatly excludes both victims of domestic violence (who are overwhelmingly female) and trans people
- a slew of conditions related to organized crime, which are clearly aimed at excluding asylum seekers fleeing gang-controlled Central America
- extortion, which is also a thing organized crime does

The rule would also deny asylum to people who spend more than two weeks in a third country before reaching the United States, and allows judges to reject some asylum applications without bothering to hold a hearing.

So of course people sued — [two times](#). These suits make the usual Immigration and Nationality Act and Administrative Procedure Act arguments. However, both suits were filed in late 2020, after which multiple courts had already ruled that Acting DHS Secretary Chad Wolf was not lawfully appointed. [I’ve written about this before](#), and I can’t stop mentally cackling about it, because it’s such an unforced error. The tl;dr is that there are constitutional and statutory rules about who succeeds a Senate-confirmed DHS Secretary, and Trump didn’t follow them, twice, so Wolf has no authority to make any rules. You don’t need to take it from me; the GAO [said as much](#) in August.

Immigration nonprofits racked up four victories on this basis in 2020. On January 8, Judge James Donato of the Northern District of California made it a fifth, [granting a preliminary injunction](#) against the new asylum rule. And he made it clear that he was not pleased:

“

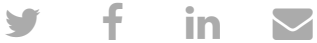
If the government had proffered new facts or law with respect to that question, or a hitherto unconsidered argument, this might have been a worthwhile exercise. It did not. The government has recycled exactly the same legal and factual claims made in the prior cases, as if they had not been soundly rejected in well-reasoned opinions by several courts... . This is a troubling litigation strategy. In effect, the government keeps crashing the same car into a gate, hoping that someday it might break through.

(An 8-track is an analog format for storing recorded music, kids.) He also compared Wolf to “a squatter in a rental building.” When a DOJ attorney argued that the judge should look at former DHS Secretary (and [documented liar](#)) Kirstjen Nielsen’s intent to change the order of succession, even though she didn’t actually do it, the judge said, “You don’t keep peddling the same bucket of fish until someone buys it.”

The good news is that most of these people will be taken out like the trash they are next week, and the Biden administration is free to cancel the rule. But they won’t have Wolf to kick around anymore, because [he resigned as Acting Secretary](#) on Monday. One of the stated reasons was that court rulings challenged his authority, so here’s a high-five to the public interest lawyers who made that possible. *Uno por uno.*

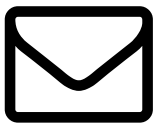
---

*Lorelei Laird is a freelance writer specializing in the law, and the only person you know who still has an “I Believe Anita Hill” bumper sticker. Find her at [wordofthelaird.com](http://wordofthelaird.com).*



#### TOPICS

Courts, Immigration, Legal Asylum, Lorelei Laird



**Love ATL? Let's make it official.  
Sign up for our newsletter.**

Your email address\*

**Subscribe**

- News (daily updates)
- Partner Issues
- Small Law Firms
- In-House Counsel

- Legal Technology
- Law Schools
- ATL Trivia