

Asylum in the United States

Each year, thousands of people arriving at our border or already in the United States apply for asylum, a form of protection from persecution. Asylum seekers must navigate a difficult and complex process that can involve multiple government agencies. Those granted asylum can apply to live in the United States permanently and gain a path to citizenship and can also apply for their spouse and children to join them in the United States. This fact sheet provides an overview of the asylum system in the United States, including how asylum is defined, eligibility requirements, and the application process.

What Is Asylum?

Asylum is a protection grantable to foreign nationals already in the United States or arriving at the border who meet the international law definition of a “refugee.” The [United Nations 1951 Convention](#) and [1967 Protocol](#) define a refugee as a person who is unable or unwilling to return to their home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹ Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980.² Asylum is technically a “discretionary” status, meaning that some individuals can be denied asylum even if they meet the definition of a refugee. For those individuals, a backstop form of protection known as “withholding of removal” may be available to protect them from harm if necessary.³

As a signatory to the 1967 Protocol, and through U.S. immigration law, the United States has legal obligations to provide protection to those who qualify as refugees. The Refugee Act established two paths to obtain refugee status—either from abroad as a resettled refugee or in the United States as an asylum seeker.⁴

How Does Asylum Help People Fleeing Persecution?

An asylee—or a person granted asylum—is protected from being returned to his or her home country, is authorized to work in the United States, may apply for a Social Security card, may request permission to travel overseas, and can petition to bring family members to the United States.⁵ Asylees may also be eligible for certain government programs, such as Medicaid or Refugee Medical Assistance.⁶

After one year, an asylee may apply for lawful permanent resident status (i.e., a green card).⁷ Once the individual becomes a permanent resident, they must wait four years to apply for citizenship.⁸



Vic Hinterlang

What Is the Asylum Application Process?

There are two primary ways in which a person may apply for asylum in the United States: **affirmatively** and **defensively**. A regulation issued in 2022, referred to as the Asylum Processing Rule, created a third pathway for some individuals arriving from the border which includes elements of both affirmative and defensive asylum processes, on an expedited timeline.⁹

Affirmative Asylum: A person who is not in removal proceedings (or a person who has been designated as an “unaccompanied child,” even if in removal proceedings) may affirmatively apply for asylum through U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS). If the USCIS asylum officer does not grant the asylum application and the applicant does not have a lawful immigration status, he or she is referred to the immigration court for removal proceedings, where he or she may renew the request for asylum through the defensive process and appear before an immigration judge.¹⁰

With or without counsel, an asylum seeker has the burden of proving that they meet the definition of a refugee.

Defensive Asylum: A person who is in removal proceedings may apply for asylum defensively by filing the application with an immigration judge at the Executive Office for Immigration Review (EOIR). In other words, asylum is applied for as a defense against removal from the U.S. Unlike the criminal court system, EOIR does not provide appointed counsel for individuals in immigration court, even if they are unable to retain an attorney on their own.¹¹

Asylum Processing Rule: Since May 31, 2022, some individuals entering the United States are being processed under an interim final rule. These individuals are first put in expedited removal and if they express fear of persecution or torture, are given a credible fear interview, a process that initiates a defensive asylum claim. However, rather than having their case sent directly to an immigration judge, people processed under this rule are referred to an asylum officer for a non-adversarial Asylum Merits Interview between 21-45 days after the credible fear determination. This interview mirrors that of an affirmative asylum claim. An asylum officer can then either grant asylum or deny asylum. If denied, the case is referred to an immigration judge. Additionally, a person who is denied asylum by an asylum officer is also assessed at the time for eligibility for withholding of removal and protection under the Convention Against Torture—another feature of defensive asylum processes.

All three processes require that an individual be physically present in the United States or at a port of entry before they can be initiated.

With or without counsel, an asylum seeker has the burden of proving that they meet the definition of a refugee. In order to be granted asylum, an individual is required to provide evidence demonstrating either that they have suffered persecution on account of a protected ground in the past, and/or that they have a “well-founded fear” of future persecution in their home country.¹² An individual’s own testimony is usually critical to their asylum determination.

Certain factors bar individuals from asylum. For example, with limited exceptions, individuals who fail to apply for asylum within one year of entering the United States will be barred from receiving asylum. Similarly, applicants who are found to pose a danger to the United States, who have committed a “particularly serious crime,” or who persecuted others themselves, are barred from asylum.¹³

Is There a Deadline for Asylum Applications?

An individual generally must apply for asylum within one year of their most recent arrival in the United States.¹⁴ In 2018, a federal district court found that DHS is obligated to notify asylum seekers of this deadline in a [class-action lawsuit](#) that challenged the government's failure to provide asylum seekers adequate notice of the one-year deadline and a uniform procedure for filing timely applications.¹⁵

Asylum seekers in the affirmative and defensive processes face many obstacles to meeting the one-year deadline. Some [individuals face traumatic repercussions](#) from their time in detention or journeying to the United States and may never know that a deadline exists. Even those who are aware of the deadline encounter systemic barriers, such as lengthy backlogs, that can make it impossible to file their application in a timely manner. In many cases, [missing the one-year deadline](#) is the sole reason the government denies an asylum application.¹⁶ Under the expedited asylum process, a person who passes a credible fear interview is considered to have applied for asylum, which means that the one-year filing deadline is automatically satisfied.¹⁷

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What Happens to Asylum Seekers Arriving at the U.S. Border?

Beginning in 2004, DHS subjected most noncitizens who were encountered by, or presented themselves to, a U.S. official at a port of entry or near the border to **expedited removal**, a process which authorizes DHS to issue rapid removal orders to certain individuals who have recently entered the country.¹⁸

To help ensure that the United States does not violate international and domestic laws by returning individuals to countries where their life or liberty may be at risk, individuals subjected to expedited removal who express a fear of returning to their home country are given a “fear interview.” Importantly, while the process described below is how asylum seekers should be processed under law, at times CBP officers do not properly follow this process.

In some circumstances, DHS may choose not to put a person in expedited removal proceedings for various reasons. Individuals who are not placed in expedited removal proceedings are generally given a “Notice to Appear” in immigration court, which formally begins their removal proceedings, where they will be required to submit an asylum application to an immigration court. Some people issued a Notice to Appear are released directly at the border, instead of being detained.

“Credible” and “Reasonable” Fear Interviews

Fear interviews are part of the expedited removal process. When a person is put into the expedited removal process, if they express a fear of returning to their home country or request to seek asylum, they are first screened to see if they could establish that they have a fear of persecution or torture.¹⁹

Generally speaking, there are two “levels” of fear interviews, most commonly referred to as “credible fear” and “reasonable fear.” A person is said to have a “credible fear” if they can demonstrate a “significant possibility” that they will be able to establish eligibility for asylum or withholding of removal under the Immigration and Nationality Act or withholding of removal or deferral of removal under the Convention Against Torture.²⁰ A person establishing a “reasonable fear” of persecution or torture has to demonstrate a higher likelihood that they would be eligible for relief from removal.²¹

The fear screening process has been periodically altered by new rules issued by various presidential administrations. Those rules are also often the subject of litigation, making the exact process an individual is subjected to (including the standard of proof needed to establish a “credible” fear) subject to regular change. Additionally, many of the rules are applied only to a subset of individuals, often seemingly at random, due to changing logistical, diplomatic, or humanitarian factors. Therefore, the credible and reasonable fear interview process may be applied differently to different people depending on things such as when they arrived at the border, where they arrived, what country they arrived from, whether they entered at a port of entry or between ports of entry, and other considerations.

At the credible or reasonable fear interview, if an individual is found by the asylum officer to have met the standard applied to them, they are then referred to

proceedings where they can submit an application for asylum or other similar protections. Usually, this is done via a referral to an immigration court, where a person is put in removal proceedings initiated with a Notice to Appear. Some pilot programs such as that created by the Asylum Processing Rule created an alternative venue, where people would have their full asylum cases reviewed by an asylum officer rather than an immigration judge, on a significantly truncated timeline.

If the asylum officer determines the person did **not** establish either credible or reasonable fear, their expedited removal order stays in place. Before removal, the individual may request review of the fear determination by an immigration judge. If the immigration judge overturns a negative fear finding, the individual is treated as if they passed their fear interview and is placed in further removal proceedings through which the individual can seek protection from removal, including asylum.²² If the immigration judge upholds the negative finding by the asylum officer, the individual will be removed from the United States.²³

- In Fiscal Year (FY) 2023 (a year in which the Title 42 pandemic border expulsion policy was in effect for eight out of 12 months), USCIS found 53,965 individuals to have credible fear.²⁴ These individuals, many of whom were detained during this screening process, will be afforded an opportunity to apply for asylum defensively and establish that they meet the refugee definition.
- The number of credible fear cases has skyrocketed since the procedure was implemented—in FY 2009, USCIS completed 5,523 cases. Case completions reached an all-time high in FY 2023 at 148,440.²⁵
- In FY 2023, two-thirds of which occurred during Title 42, USCIS found 1,950 individuals to have reasonable fear.²⁶

How Long Does the Asylum Process Take?

Overall, the asylum process can take years to conclude. In some cases, a person may file their application or pass a credible or reasonable fear screening and receive a hearing or interview date years in the future. Backlogs, which were already long before the pandemic, have only grown longer since then due to COVID restrictions and months- or years-long closures in some courts and asylum offices.

- As of October 31, 2023 there were 1,050,620 affirmative [asylum applications pending with USCIS](#).²⁷
- The [backlog in U.S. immigration courts](#) continues every month to reach all-time highs, with over 2.93 million open removal cases as of October 21, 2023.²⁸ At the end of FY 2023, 782,067 defensive asylum applications and 155,544 affirmative asylum applications initially denied by USCIS were pending in immigration courts.²⁹
- Individuals with an immigration court case who were ultimately granted relief—such as asylum—in FY 2023 had waited more than 1,364 days on average for that outcome. Virginia had the longest wait times, averaging over 2,200 [days until relief was granted](#) in the immigration case.³⁰

Asylum seekers, and any family members waiting to join them, are left in limbo while their case is pending. The backlogs and delays can cause prolonged separation of refugee families, leave family members abroad in dangerous situations, and make it more difficult to retain pro bono counsel who are able to commit to legal services for an extended period of time for the duration of the asylum seeker's case.³¹

Although asylum seekers may apply for work authorization after their case has been pending for 150 days (or longer in some circumstances),³² the uncertainty of their future impedes employment, education, and trauma recovery opportunities.³³

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What Happens to Asylum Seekers While Their Application Is Processed?

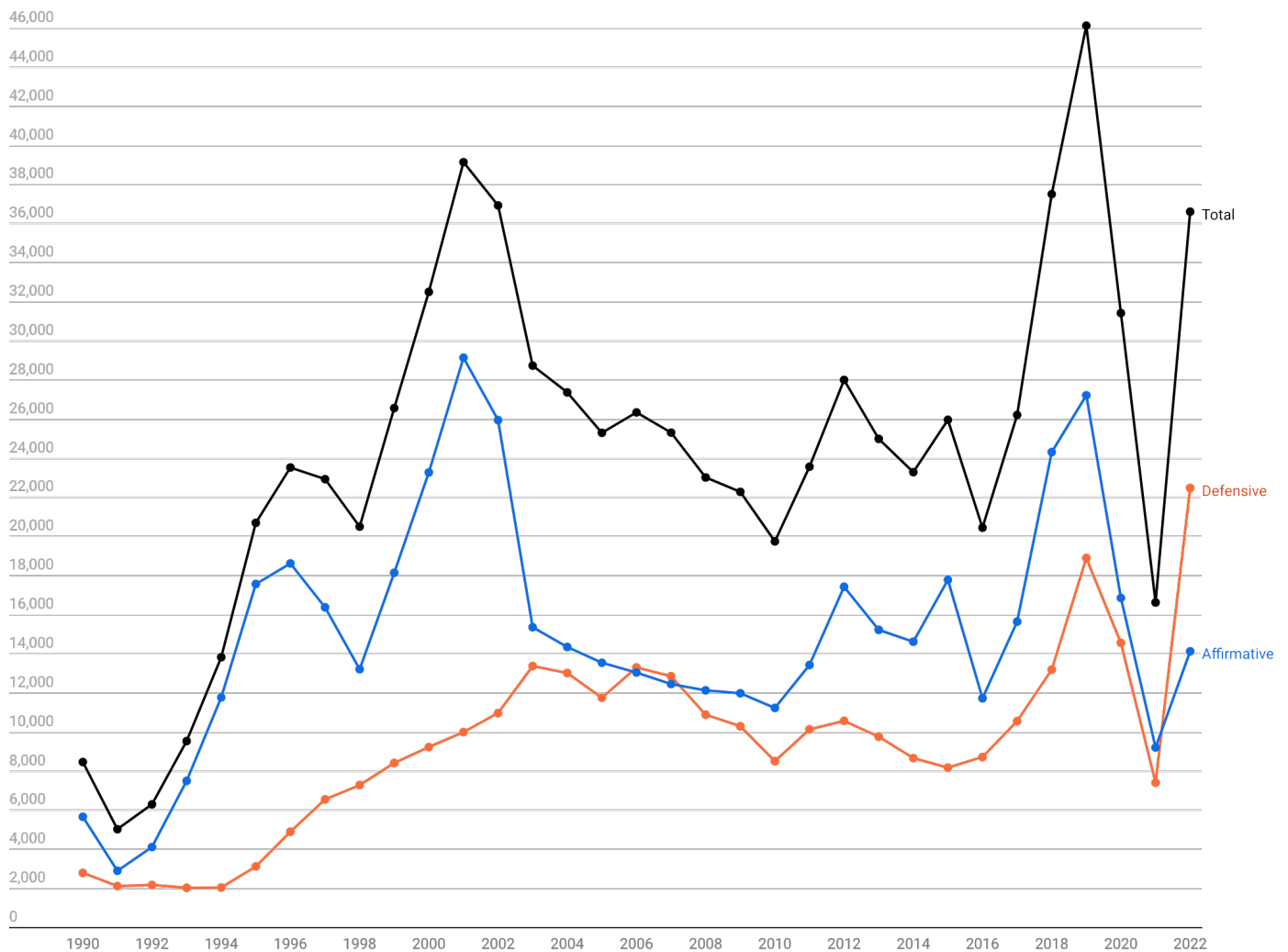
Asylum seekers include some of the most vulnerable members of society—children, single mothers, victims of domestic violence or torture, and other individuals who have suffered persecution and trauma. While U.S. law provides arriving asylum seekers the right to remain in the United States while their claim for protection is pending, the government has argued that it has the right to detain such individuals, rather than release them into the community.³⁴ Some courts have rejected this interpretation and held that asylum seekers meeting certain criteria have a right to a bond hearing.³⁵ Advocates have challenged the practice of detaining asylum applicants without providing a meaningful opportunity to seek parole, including class-action suits that document the prolonged detention—sometimes lasting years—of individuals with credible fear awaiting adjudication of their claim for asylum.³⁶

Detention exacerbates the challenges asylum seekers already face and can negatively impact a person's asylum application. Studies have found that detained individuals in removal proceedings are nearly five times [less likely to secure legal counsel](#) than those not in detention.³⁷ This disparity can significantly affect an individual's case, as [those with representation are more likely to apply for protection](#) in the first place and successfully obtain the relief sought.³⁸

How Many People Are Granted Asylum?

In FY 2022, 36,615 individuals were granted asylum (excluding derivatives). These numbers represented a significant rebound from FY 2021, when the asylum system nearly shut down because of the COVID-19 pandemic.

FIGURE 1: INDIVIDUALS GRANTED ASYLUM AFFIRMATIVELY OR DEFENSIVELY: FISCAL YEARS 1990 TO 2022



Source: Office of Immigration Statistics, *2022 Yearbook of Immigration Statistics* (Washington, D.C.: U.S. Department of Homeland Security, 2023), Table 16.

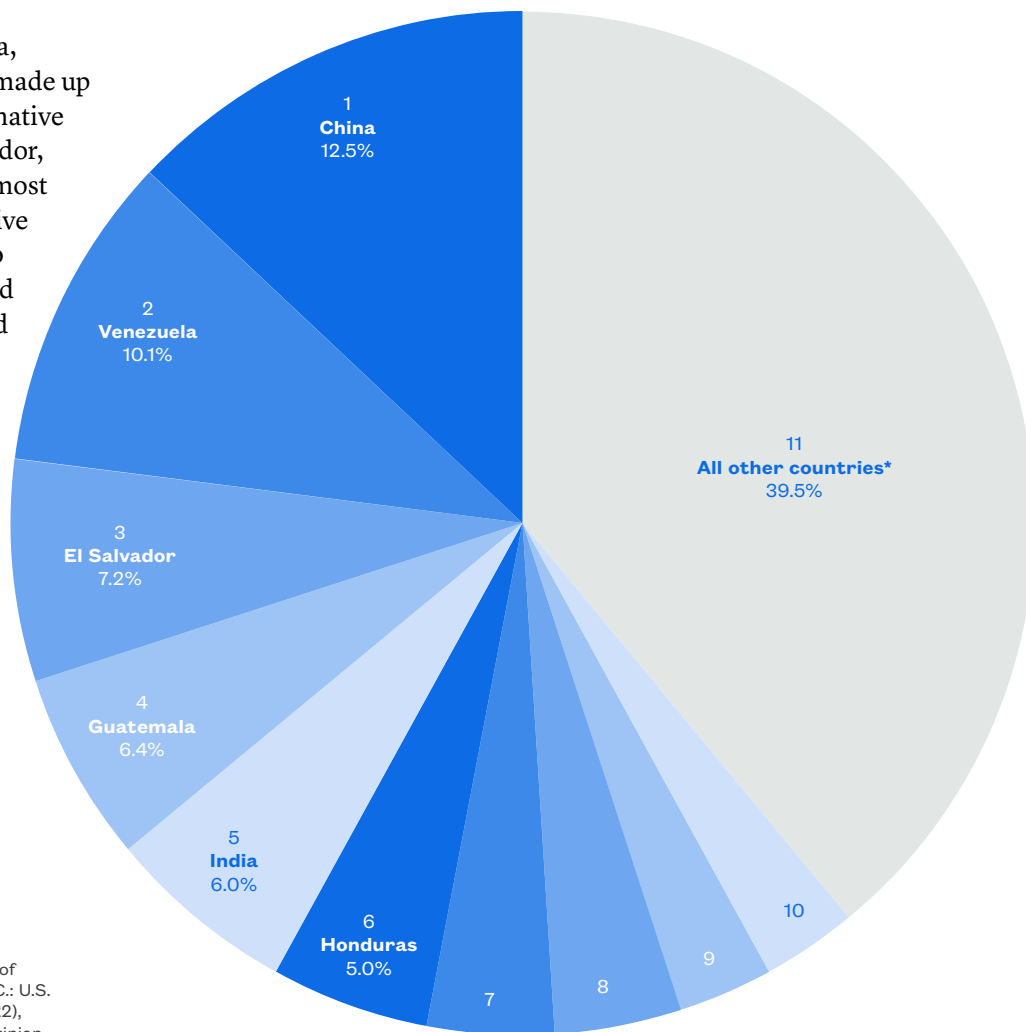
FIGURE 2: TOTAL ASYLUM GRANTS BY COUNTRY OF NATIONALITY, FISCAL YEAR 2022

1	China, People's Republic	12.5%
2	Venezuela	10.1%
3	El Salvador	7.2%
4	Guatemala	6.4%
5	India	6.0%
6	Honduras	5.0%
7	Afghanistan	4.1%
8	Turkey	3.4%
9	Russia	3.2%
10	Mexico	2.7%
11	All other countries*	39.5%

120+
nationalities

were represented among all individuals granted asylum in FY 2022.

In FY 2022, nationals of China, Venezuela, and Afghanistan made up over one third of 14,134 affirmative asylum grants, while El Salvador, China, and India made up almost one fifth of the 22,481 defensive asylum grants. More than 120 nationalities were represented among all individuals granted asylum in FY 2022.³⁹



Source: American Immigration Council analysis of government data. Office of Immigration Statistics, 2022 Yearbook of Immigration Statistics (Washington, D.C.: U.S. Department of Homeland Security, 2022), Tables 17D and 19D. *Includes the Palestinian Territories and countries with less than 10 individuals granted asylum in FY 2022.

Endnotes

- 1 U.N. General Assembly (U.N.G.A.), *Convention Relating to the Status of Refugees*, § 1(A)(2), U.N. Treaty Series (Vol. 189), at 137 (July 28, 1951), available at <http://www.refworld.org/docid/3be01b964.html>; U.N.G.A., *Protocol Relating to the Status of Refugees*, U.N. Treaty Series (Vol. 606), at 267, (January 31, 1967), available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b3ae4>.
- 2 8 U.S.C. § 1101(a)(42).
- 3 American Immigration Council, “The Difference Between Asylum and Withholding of Removal,” October 6, 2021, <https://www.americanimmigrationcouncil.org/research/asylum-withholding-of-removal>.
- 4 8 U.S.C. §§ 1157-1158. This fact sheet does not describe the law or process for gaining refugee status abroad.
- 5 *Ibid.* §§ 1158(b)(3), (c); 8 C.F.R. § 208.21.
- 6 8 U.S.C. § 1522(c). For case examples, see Lindsay M. Harris, “From Surviving to Thriving? An Investigation of Asylee Integration in the United States,” *N.Y.U. Review of Law & Social Change* 40, no. 29 (2016): Appendix A, <https://socialchangenyu.com/from-surviving-to-thriving-an-investigation-of-asylee-integration-in-the-united-states/>.
- 7 8 U.S.C. § 1159(b).
- 8 *Ibid.* §§ 1159(b), 1427(a)(1); 8 C.F.R. § 209.2(f).
- 9 U.S. Immigration and Citizenship Services, “Factsheet: Implementation of the Credible Fear and Asylum Processing Interim Final Rule,” <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/fact-sheet-implementation-of-the-credible-fear-and-asylum-processing-interim-final-rule>.
- 10 8 C.F.R. §§ 208.2, 208.13-14.
- 11 See 8 U.S.C. § 1229a(b)(4)(A); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990).
- 12 8 U.S.C. § 1158(b)(1)(A) (declaring that a person may be granted asylum if they fit the definition of a “refugee” in 8 U.S.C. § 1101(a)(42)).
- 13 *Ibid.* § 1158(a)(2), (b)(2). In some cases, an individual may be eligible to apply for a more limited form of protection.
- 14 *Ibid.* § 1158(a)(2)(B).
- 15 *Mendez Rojas v. Johnson*, 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018). This case, including implementation of the court’s decision, currently is stayed pursuant to a joint interim stay agreement that offers relief to class members. For updated information, see American Immigration Council, Dobrin & Han, PC, and the Northwest Immigrant Rights Project, “Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications: Frequently Asked Questions,” April 13, 2018, https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf.
- 16 See, e.g., Royce B. Murray and Kathryn Shepherd, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers* (Washington, D.C.: American Immigration Council, 2016), <https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers>; National Immigrant Justice Center, et al., *The One-Year Asylum Deadline and the BIA: No Protection, No Process* (Chicago, IL: 2010), 6, <https://www.immigrantjustice.org/research-items/report-one-year-asylum-deadline-and-bia-no-protection-no-process>.
- 17 8 C.F.R. 1208.3(a)(2).
- 18 The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (1996).
- 19 U.S. Citizenship and Immigration Services, “Questions and Answers: Credible Fear Screenings,” <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening>.
- 20 8 C.F.R. 208.30(e).
- 21 8 C.F.R. 1208.31.

- 22** 8 C.F.R. § 1208.30(g)(2)(iv)(B)-(C). Following the immigration judge's finding of positive credible fear and thus commencing removal proceedings, an individual may apply for asylum and request withholding of removal, which may be approved whether or not asylum is granted. 8 C.F.R. § 208.16(a)-b) [The applicant for withholding of removal has the burden of establishing that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion.]; 8 C.F.R. §§ 208.16(c), 208.17(a) [The burden is on an individual applying for withholding of removal under the Convention Against Torture to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. If protection is granted, it will be in the form of withholding of removal or deferral of removal.].
- 23** 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A).
- 24** U.S. Citizenship and Immigration Services, "Semi-Monthly Credible Fear and Reasonable Fear Receipts and Decisions," <https://www.uscis.gov/tools/reports-and-studies/semi-monthly-credible-fear-and-reasonable-fear-receipts-and-decisions>.
- 25** Ibid.
- 26** Ibid.
- 27** U.S. Citizenship and Immigration Services, "Number of Pending Form I-589, Application for Asylum and for Withholding of Removal," https://www.uscis.gov/sites/default/files/document/data/AsylumFiscalYear2024ToDateStats_231031.xlsx.
- 28** Transactional Records Access Clearinghouse at Syracuse University, "Immigration Court Backlog through October 2023," accessed December 11, 2023, <https://trac.syr.edu/phptools/immigration/backlog/>.
- 29** Executive Office for Immigration Review, "Defensive Asylum Applications," October 12, 2023, https://www.justice.gov/d9/pages/attachments/2019/05/17/16_defensive_asylum_applications.pdf; Executive Office for Immigration Review, "Affirmative Asylum Applications," October 12, 2023, https://www.justice.gov/d9/pages/attachments/2019/05/17/15_affirmative_asylum_applications.pdf.
- 30** Transactional Records Access Clearinghouse at Syracuse University, "Immigration Court Processing Time by Outcome," accessed December 18, 2023, http://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php; see also Human Rights First, In the Balance: Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems (Washington, D.C.: April 19, 2016), 1-2, <https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-In-The-Balance.pdf>.
- 31** See, e.g., Human Rights First, *Tilted Justice: Backlogs Grow While Fairness Shrinks in U.S. Immigration Courts* (Washington, D.C.: October 17, 2017), <https://humanrightsfirst.org/wp-content/uploads/2022/10/hrf-tilted-justice-final1.pdf>. Leigh Barrick, *Divided by Detention: Asylum-Seeking Families' Experiences of Separation* (Washington, D.C.: American Immigration Council, August 2016), <http://www.americanimmigrationcouncil.org/research/divided-by-detention-asylum-seeking-families-experience-of-separation>.
- 32** U.S. Citizenship and Immigration Services, "The 180-Day Asylum EAD Clock Notice," last updated August 2023, <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf>.
- 33** 8 C.F.R. § 1208.7(a); 8 U.S.C. § 1158(d)(2). For case examples see Human Rights First, "The U.S. Immigration Court: A Ballooning Backlog that Requires Action" (Washington, D.C.: March 15, 2016), <https://humanrightsfirst.org/wp-content/uploads/2022/10/HRF-Court-Backlog-Brief.pdf>.
- 34** 8 U.S.C. §§ 1225(b), 1226(a), (c). See also *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018).
- 35** *Padilla v. Immig. and Cust. Enft.*, 953 F.3d 1134 (9th Cir. 2020); American Immigration Council, "Challenging Credible Fear Interview and Bond Hearing Delays," <https://www.americanimmigrationcouncil.org/litigation/challenging-credible-fear-interview-and-bond-hearing-delays>.
- 36** See, e.g., *Damus v. Nielsen*, 1:18 CV 00578-JEB (D.D.C. Mar. 15, 2018).
- 37** Ingrid Eagly and Steven Shafer, Access to Counsel in Immigration Court (Washington, D.C.: American Immigration Council, 2016), 5, <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>.
- 38** Ibid.
- 39** Ibid.