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## Draconian Deadline: Asylum Filing Ban Denies Protection, Separates Families

The one-year-filing deadline bar on asylum claims is a refugee ban. Enacted into law in 1996, the filing deadline bans asylum for any individual who did not apply for protection within one year of arriving in the United States, with very limited exceptions. The ban is inefficient, counterproductive, inhumane, and unlawful. It returns refugees to persecution and torture in violation of U.S. law and treaty obligations, leaves refugees in permanent limbo with inadequate forms of humanitarian protection, indefinitely separates families, and undermines integration. The U.N. Refugee Agency (UNHCR) has [confirmed](#) that denial of legitimate asylum claims based solely on failure to file before a deadline violates international law.

**The filing deadline ban is a technical requirement that has blocked tens of thousands of bona fide refugees from asylum.** By 2008, more than [53,400](#) asylum seekers had had their cases denied, rejected, or delayed due to the filing ban. Refugees denied asylum solely due to the filing deadline ban include, for instance: a Guinean man who was imprisoned and tortured by military police officers for being a suspected dissident; an LGBT Salvadoran man who was abducted by government agents and physically, sexually, and verbally assaulted for his sexual orientation; and a Tanzanian woman who was detained by her country's government and raped, burned, and beaten. The ban is especially draconian because it is often impossible for refugees to apply for asylum within one year, as many are unable to secure legal counsel, do not speak English, do not know that they are eligible for asylum or that they are required to apply within one year, or are traumatized by the persecution or torture they suffered.

Barred from asylum by the filing deadline, the only option for many refugees is to seek withholding of removal or protection under the Convention Against Torture (CAT), extremely [limited](#) forms of relief that do not confer permanent legal status, force refugees to live under constant threat of deportation, and do not allow them to reunify with their families. These deficient forms of protection are often impossible to secure because they require applicants to meet a heightened standard of proof. Refugees denied asylum solely due to the filing ban who are deemed not to meet the high burden for withholding of removal or protection under CAT are ordered deported to danger.

**The U.S. Citizenship Act of 2021, which was [introduced](#) in [Congress](#) in February 2021, proposes to eliminate the asylum filing deadline ban, among other provisions.** A provision to eliminate the filing deadline ban was also included in the bi-partisan Senate immigration reform [bill](#) of 2013, as well as in successive versions of the [Refugee Protection Act](#). Human Rights First welcomes efforts to repeal the filing deadline ban and has [opposed](#) its [use](#) for [decades](#). The elimination of the filing deadline ban would:

- Prevent the return of refugees to persecution and torture based on a technical filing deadline in violation of U.S. obligations under the 1951 Refugee Convention, 1967 Refugee Protocol, CAT, and the [International Covenant on Civil and Political Rights](#);
- Permit refugees with well-founded fears of persecution to secure stable legal status with a path to citizenship and live in safety in the United States, rather than leaving them only with deficient protection from removal that is difficult to obtain and leaves refugees in permanent limbo, unable to rebuild their lives;

- ☑ Prevent the separation of refugee families, which is the direct result of a ban that deprives refugees of asylum and its process for bringing family members to safety, and instead ensure refugees can reunite with their spouses and children, who are often stranded in danger in their home countries; and
- ☑ Reduce the immigration court backlog, which has skyrocketed to over [1.3 million cases](#), by stopping the wasteful and needless referral of cases from the Asylum Office to the immigration courts solely because of the filing deadline ban.

## Counterproductive as a Purported Anti-Fraud Measure

The former Immigration and Naturalization Service [opposed](#) the ban, explaining that it would “frustrate and hamper efforts” to reform and was unnecessary because other measures had already successfully addressed abuse in the asylum system. Indeed, the U.S. asylum system already has many tools that are designed to identify fraud, including mandatory security checks across multiple federal databases, supervisory review, interpreter monitors, required signatures under penalty of perjury, and legal penalties and permanent bars on immigration benefits for applicants who file fraudulent applications. The one-year deadline, however, [fails](#) to effectively identify fraud and instead bans or delays protection for many refugees.

Applicants who file for asylum after one year are not less likely to have a valid asylum claim. In fact, a 2010 [study](#) that analyzed the outcome of affirmative asylum applications since the ban took effect found that the grant rate for timely applicants was exactly the same as the grant rate for late applicants who overcame the filing ban, which eviscerates any argument that late applicants lack valid asylum claims. The study found that but for the ban, the asylum office would likely have granted asylum to more than 21,000 additional refugees.

## Violates International Law, Inflicts Serious Harm, and Wastes Government Resources

**The asylum filing ban has long been discredited as an inhumane measure that is inconsistent with principles of international law.** When the ban was enacted in 1996, then President Clinton said that he would “seek to correct provisions in this bill that are inconsistent with international principles of refugee protection, including the imposition of rigid deadlines for asylum applications.” UNHCR has [repeatedly warned](#) that denying asylum claims based on a filing deadline would violate international law. Before Congress enacted the filing ban, a UNHCR Representative [wrote](#) to then Senator Orrin Hatch, warning that the ban would violate international law because the “United States is obliged to protect refugees from return to danger regardless of whether a filing deadline has been met.” By implementing the one-year filing deadline, the United States violates its obligations under the Refugee Convention as well as its duty to interpret treaties in good faith.

**The filing ban punishes refugees who are unable to file for asylum within one year of arriving in the United States** because of the countless and insurmountable barriers they face, including severe trauma, lack of legal counsel, inability to speak English, financial and housing insecurity, separation from family, physical and mental health needs, and lack of familiarity with the U.S. immigration system. Women are [13 percent](#) more likely to file untimely asylum applications than men. According to [Physicians for Human Rights](#), many women asylum seekers are fleeing gender-based and domestic violence, female genital mutilation, and other forms of persecution that can leave them severely traumatized and carrying profound stigma which prevents them from recounting their stories to government officials. This draconian

ban returns people to life-threatening dangers regardless of why they were unable to file within one year of arriving, in contravention of UNHCR [guidance](#) cautioning that “an applicant for refugee status is normally in a particularly vulnerable situation . . . and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country . . . [h]is application should therefore be examined . . . with an understanding of an applicant’s particular difficulties and needs.”

**Moreover, the ban is wasteful and inefficient, adding thousands of cases per year to the immigration court backlog.** When individuals apply for asylum affirmatively, the U.S. Citizenship and Immigration Services (USCIS) Asylum Office typically conducts an interview and adjudicates their case. Asylum seekers barred by the filing ban are then referred from the Asylum Office into immigration court removal proceedings, where an immigration judge considers their case anew. The referral into immigration court proceedings of cases of refugees who would have been granted asylum but for the deadline is a waste of government resources because it expends the resources of the immigration court, including those of judges, clerks, and ICE attorneys—to litigate a technicality. Those resources could instead be allocated to evaluating the actual merits of asylum cases or could simply be saved or re-allocated to other matters. According to USCIS [data](#), in Fiscal Year 2018 alone, **18,050 cases were referred from the Asylum Office to immigration court due solely to the filing ban – 39.2 percent of referrals in cases adjudicated that year.** The filing ban adds a high volume of cases per year to the enormous immigration court backlog and forces immigration judges to re-adjudicate asylum applications that often would have already been granted but for the filing ban.

## **Deported to Danger, Left in Limbo, and Separated from Family**

The filing deadline returns refugees to persecution and torture in violation of U.S. law and treaty obligations, permanently leaves refugees in limbo with inadequate forms of protection, and indefinitely separates families. Because the ban only allows for extremely limited exceptions, it punishes refugees who were unable to file for asylum because of severe trauma, lack of representation, and other barriers.

**Over the years that the filing deadline ban has been in effect, refugees denied asylum solely due to the filing ban and ordered deported to persecution and danger in their home countries include:**

- **A [Chinese woman](#) who feared persecution and torture in China for her assistance to North Korean refugees** was determined by the immigration judge to face a clear probability of torture but was denied asylum by the immigration judge based on the filing deadline and ordered deported to China by the Board of Immigration Appeals.
- **A [Colombian woman](#) who was persecuted and whose son was murdered by the FARC** for her peaceful political activities and assistance to the victims of the FARC was denied asylum based on the filing ban and ordered deported. The immigration judge denied all protection because she did not meet the high standard for withholding of removal and protection under CAT and ordered her deported to Colombia.
- **An immigration judge denied protection due to the filing ban to a [Senegalese woman](#) who had fled her country after refusing to undergo female genital cutting (FGC) and a forced marriage.** She applied for asylum after learning that her sister was forced to undergo FGC. The immigration judge erroneously concluded that this event did not qualify as a “changed circumstance” exception to the filing deadline and denied all protection despite finding that she faced a “reasonable possibility” of persecution if returned to Senegal.

- **A [10-year-old Pakistani girl](#) who fled with her parents after the family received death threats and suffered assassination attempts due to their Shi'a Muslim faith was ordered deported due to the filing deadline ban.** Her father had applied for asylum within one year of entering and included his wife and child as derivative applicants based on his lawyer's advice. When he was granted withholding of removal, he could not petition for his wife and daughter, who subsequently filed their own applications for asylum. While the girl's mother was granted withholding, the child was denied all relief and ordered deported.

**Refugees denied asylum under the filing ban who manage to secure deficient forms of protection such as withholding of removal or protection under CAT have no pathway to legal status or citizenship and no way to reunify with family members who remain in danger abroad.** They are forced to live with a deportation order, are required to regularly apply for renewal of their employment authorization, are ineligible for most government benefits, and are routinely subject to invasive monitoring requirements by Immigration and Customs Enforcement. These limitations prevent refugees from integrating into their U.S. communities and leave them in permanent limbo. For example:

- **A Salvadoran refugee denied asylum because of the filing deadline has been separated from his three young children for 11 years.** While the immigration court recognized him as a refugee, he was granted only the limited protection of withholding of removal, meaning he cannot petition to reunite with his children nor travel abroad to visit them in a third country. The man, who is currently represented by the Human Rights Initiative of North Texas, told Human Rights First: **"I have all these memories of my kids, and I want them here by my side. It's hard to sleep at night thinking of them."** He also lives with the uncertainty that he could be deported to danger: "I don't have a permanent immigration status. I am worried they will send me back to El Salvador."
- **A [Tanzanian woman](#) who was detained by the Tanzanian government and raped, burned, beaten, and starved for refusing to marry a local policeman and undergo female genital cutting was permanently separated from her children in Tanzania due to the filing deadline ban.** She was denied asylum because she filed for asylum 18 months after her arrival in the United States. She was granted protection under CAT, but without asylum status she is unable to petition for her family.

Other refugees denied asylum due to the filing ban and forced to live under the permanent threat of deportation with deficient forms of U.S. protection include:

- **A [woman from Jordan](#) who had been beaten and held prisoner by her brothers for marrying without their permission** was denied asylum along with her husband due to the filing deadline ban even though they had received ineffective legal assistance when a lawyer incorrectly told the couple they were ineligible for asylum when they consulted him within the one-year filing period.
- **An LGBT Salvadoran refugee who fled after being abducted by government agents and physically, sexually, and verbally assaulted for three days because of his sexual orientation** was denied asylum due to the filing deadline ban and granted the deficient protection of withholding of removal. Unrepresented before the immigration court and unfamiliar with U.S. asylum law, he believed that he only had to comply with the deadline for the asylum application set by the immigration judge, which was more than one year after his arrival, according to the Human Rights Initiative of North Texas.
- **An immigration judge denied asylum on the basis of the filing deadline ban to a [Kenyan refugee](#) from the Kikuyu tribe who had been raped, imprisoned, and tortured.** The woman,

who was granted the deficient protection of withholding of removal, had been raped for refusing to undergo female genital cutting and tortured for helping another woman escape a forced marriage.

- **A Brazilian refugee who was a child when he, his mother, and his sister were granted withholding of removal due to domestic violence in the early 2000s due to the filing deadline ban has faced major barriers to education and work in the United States.** The man, now in his thirties, could not attend college because he did not qualify for financial aid and was rejected from serving in the U.S. Coast Guard due to his withholding status. He has lost employment because of difficulties renewing his work permit. In his current job as a commercial truck driver, he has repeatedly faced problems renewing his driver's license because his work permit is only valid for one year. Reflecting on how the filing deadline ban has impacted their lives, his mother who missed the one-year filing deadline because she was unaware that asylum existed said: **"it derailed his entire career . . . a person's life can be turned completely upside down because of one small detail."**

The filing deadline ban has condemned countless refugees to deportation to their home countries or permanent limbo in the United States due to a technicality. Immigration judges have even used the filing deadline ban to deny asylum to refugees who *did* apply for asylum within one year, concluding that they had not presented sufficient proof of the exact date that they entered the United States. For instance:

- **An immigration judge denied asylum to a [Congolese human rights advocate and nurse](#) who was tortured and raped by the Congolese government because of her human rights advocacy and Catholic faith.** Even though she applied within a year of arriving in the United States, the immigration judge found that she was ineligible under the filing ban because she could not prove the exact date that she entered the country.
- **An [Eritrean refugee](#) who fled after being tortured for her Christian beliefs and forcibly conscripted into military service was denied asylum due to the filing deadline ban despite applying for asylum four months after entering the United States.** The immigration judge determined that she was nonetheless barred by the filing deadline ban because she did not have a passport with a date of entry.
- **An immigration judge denied asylum to an [Ethiopian refugee](#) who fled female genital cutting and other persecution and applied for asylum within six months of entry,** finding that the woman did not establish by clear and convincing evidence that she had applied within a year.

The [exceptions](#) to the asylum filing deadline are extremely limited, unfairly applied, and fail to protect refugees. While there is an exception to the asylum filing deadline for "changed circumstances" in the conditions of the applicant's country of origin or changes in the applicant's circumstances materially affecting eligibility for asylum, adjudicators frequently refuse to apply this exception even where asylum seekers have suffered egregious subsequent harm or new circumstances have drastically increased their risk of persecution, denying asylum in violation of the statute and regulation. Refugees denied asylum protection despite putting forth credible evidence to establish that they qualify for a changed circumstances exception to the filing deadline ban include:

- **An immigration judge denied asylum to a [Guinean man](#) because of the filing deadline even though the man applied shortly after he learned that the Guinean military searched his former home, his children went missing, and two of his friends were imprisoned.** He had fled Guinea after being imprisoned and tortured by military police officers and blacklisted for being a

suspected dissident. The judge determined that his missing children and the military's continued pursuit of him were not a change of circumstances under the exceptions to the filing ban.

- **An immigration judge denied asylum to a K'iche' Mayan woman from Guatemala under the filing deadline ban even though she applied for asylum after learning that her persecutors had tracked down and threatened her minor daughters in Guatemala.** The woman, who is represented by Human Rights First, had been beaten, stalked, and threatened for nearly ten years because she was an indigenous woman and community leader who had publicly testified against her persecutors in a criminal trial. The judge found that the death threats against her daughters did not meet the changed circumstances exception, denied asylum, and granted withholding of removal, forcing each of her five children to pursue separate forms of immigration relief.
- **A [lesbian refugee](#) from Russia was denied asylum under the filing deadline ban despite submitting her application shortly after learning that her partner in Russia had been raped and beaten to the point of mental incapacitation, which should have qualified the woman for the "changed circumstances" exception.** Before fleeing Russia, the woman had been sexually assaulted, expelled from school, and subjected to treatment to "cure" her sexual orientation.
- **A Christian woman who survived brutal religious persecution was denied asylum due to the one-year-filing ban despite presenting expert testimony and other evidence that the persecution of Christians in her country had worsened significantly, including through targeted laws, and that she had begun practicing her faith more publicly and proselytizing in the United States.** In determining the woman had not met the "changed circumstances" exception, the immigration judge disregarded expert testimony regarding worsening persecution and relied on a Department of State report that had not been entered into evidence. As a result, the woman, who is represented by the Bronx Defenders, remains separated from her child, likely for years, while her case is on appeal.
- **A [woman from Mali](#) who was subjected to female genital cutting at the age of 12 and forced to marry an abusive man was denied asylum due to the filing deadline ban despite having applied shortly after her abusive ex-partner threatened to return her baby to Mali to undergo female genital cutting.** Unaware of the protections for people fleeing their home countries, the woman had not applied for asylum within one year of arriving in the United States. The immigration judge held that she did not qualify for the "change circumstances" exception.
- **A U.S. Court of Appeals upheld an asylum denial to a 63-year-old [Ethiopian woman](#) under the filing deadline ban even though she had filed for asylum after her husband's terrifying disappearance in Ethiopia,** which should have qualified as a change in circumstances. She had fled Ethiopia after being detained and persecuted by the government because of her involvement in a local women's group and her husband's work as a political dissident. The immigration judge found that she was ineligible for asylum because her husband's disappearance was not a change in circumstances. In upholding the denial, the Eighth Circuit dismissed her husband's disappearance as "just another incident in a pattern of events that had already caused her to fear persecution."

There is also an exception to the filing deadline ban for "extraordinary circumstances," which, according to USCIS [training materials](#), may "include, but are not limited to, severe family or spousal opposition, extreme isolation within a community, profound language barriers, or profound difficulties in cultural



acclimatization.” Refugees denied asylum or referred into removal proceedings based on the one-year filing deadline who should have qualified for the “extraordinary circumstances” exception include:

- **A [Kenyan woman](#) was barred from asylum under the filing deadline ban even though she presented evidence that she had been unable to timely file because of Post-Traumatic Stress Disorder she suffers as a result of severe persecution.** The woman had been forced to marry against her will, raped for failing to conceive, attempted suicide after her husband and tribal elders tried to subject her to female genital cutting, and beaten and raped again after she recovered. The immigration judge unfairly determined that the woman did not qualify for the extraordinary circumstances exception to the filing deadline ban, despite her diagnosis of Post-Traumatic Stress Disorder (PTSD), because she had managed to find work to survive while homeless and isolated in the United States – describing her as having “entrepreneurial skills.”
- **A lesbian woman from South America was denied asylum and granted only withholding of removal because of the filing ban, despite presenting evidence that her PTSD and severe depression, fear of coming out to her family, and abusive intimate relationships constituted “extraordinary circumstances.”** After fleeing to the United States, the woman was forced to hide her sexual orientation from her siblings, on whom she depended financially and emotionally, for fear they would ostracize her. Because she could not come out to her siblings, she also could not seek their support in escaping multiple abusive relationships with other women. The woman was diagnosed with PTSD and severe depression from the decades of harm she suffered in her home country and the United States, according to the New York University Immigrant Rights Clinic.
- **A [Central American woman](#) suffering from depression, intrusive memories, nightmares, and suicidal tendencies after fleeing 11 years of abuse** was denied asylum under the filing deadline ban. The woman had been repeatedly raped by her partner – a policeman – who also banged her head into cinder blocks, whipped her with cables and wires, and dragged her through the streets by her hair. The immigration judge disregarded a psychologist’s findings about her trauma and mental state and held that her situation did not constitute “extraordinary circumstances.”
- **The asylum office referred a Mexican man who provided information to the U.S. Drug Enforcement Administration (DEA) to immigration court on the basis of the filing deadline.** The man, who is represented by Human Rights First, risked his life in Mexico to help the DEA investigate the murder of a Special Agent by Mexican drug traffickers, in exchange for which the DEA promised him permanent status in the United States. He spent over two decades trying to contact the DEA but did not receive a response. When the drug trafficker who had ordered the Special Agent’s murder re-emerged from hiding and formed an alliance with a major Mexican cartel, the man sought asylum — just three months after his last attempt to contact the DEA. Cartels exercise extensive [control](#) across Mexico, often with the complicity of government officials. Despite these circumstances, the asylum office referred the man to the immigration judge based on the filing deadline ban.
- **An immigration court judge denied asylum to a [Nepalese refugee](#) fleeing domestic violence despite her diagnosis of PTSD, which had prevented her from filing for asylum within one year.** The judge incorrectly reasoned that because she continued to suffer PTSD at the time that she submitted her asylum application, the diagnosis could not have been the cause for the delay.
- **A [Guatemalan refugee](#) who suffered from PTSD after fleeing domestic violence was denied asylum because she had not filed her application within one year.** The immigration judge

wrongly claimed that because she had worked and paid bills since arriving in the United States, PTSD could not have prevented the woman from applying for asylum.

**Refugees are unable to apply for asylum within one year because of countless barriers not taken into account by the limited exceptions to the deadline**, including severe trauma, lack of legal counsel, inability to speak English, financial and housing insecurity, separation from family, physical and mental health challenges, and lack of familiarity with the U.S. immigration system. Asylum seekers who could not meet the filing deadline due to difficult circumstances or lack of understanding of the asylum process include:

- **A bisexual Honduran man who fled years of violence for his sexual orientation and perceived femininity missed the one-year-filing deadline after he and his partner were kidnapped and assaulted in the United States and received deficient legal representation.** After crossing the border into the United States, the man and his then-partner, a trans woman, were kidnapped, held hostage, and threatened with death by a couple who claimed to have ties to a gang. The couple spent a year in homeless shelters and other insecure living situations after escaping the kidnapping. They managed to secure legal representation, but their attorneys stopped communicating with them and failed to ensure that he filed for asylum before the deadline. They are now represented by Human Rights First.
- **During his first year in the United States, an unrepresented man from the Central African Republic who fled religious persecution was unable to timely file an asylum application because he was suffering further trauma while living in a homeless shelter and coping with isolation from his family.** The man suffered daily flashbacks and nightmares about the severe beating and hand grenade attack he had survived in his country of origin and worried constantly about his wife and children, whom he had been forced to leave in danger. He struggled to sleep in the shelter because his roommates often fought violently, one of whom overdosed on drugs and died in their room. The man is currently represented by Human Rights First.
- **An LGBT Salvadoran refugee did not file his application within a year of arriving because he was unrepresented and mistakenly believed he had already applied for asylum after an asylum officer found he had a credible fear of persecution.** When he was released on bond, he believed he had been granted asylum. His unfamiliarity with U.S. immigration law and inability to secure representation, limited formal education beyond the fourth grade, and lack of English prevented him from understanding that he still needed to formally apply for asylum. When an immigration judge later scheduled a deadline for the man to file an asylum application more than one year after his arrival in the United States, the man did not understand the significance of the form he was instructed to file, believing he had already been granted asylum, according to the Human Rights Initiative of North Texas. He was subsequently denied asylum due to the filing deadline and only granted withholding by the immigration judge.



ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 40 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in Los Angeles, New York, and Washington D.C.

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