

## Protection Postponed: Asylum Office Backlogs Cause Suffering, Separate Families, and Undermine Integration

The Biden Administration has inherited a large and growing backlog of asylum claims. As of September 2020, more than 386,000 applications were awaiting adjudication by the Asylum Division of U.S. Citizenship and Immigration Services (USCIS). This backlog exploded under the Obama Administration, which increased the use of expedited removal and redirected asylum officers from adjudicating asylum cases to instead conduct fear screenings. Over the past four years, the backlog continued to grow as the Trump Administration diverted Asylum Division resources to block and turn back refugees seeking U.S. asylum protection – in violation of U.S. laws and treaty obligations.

As a result, refugees face catastrophic, years-long delays to receive an asylum interview. Although U.S. law requires the government to conduct asylum interviews within 45 days of filing, many asylum seekers – including those who filed applications during the Obama Administration – have waited years. They are trapped in legal limbo without permanent status and are often subjected to prolonged separation from their families, including many who are living in danger abroad. While waiting, asylum seekers are often unable to pursue educational opportunities or secure employment, all the while living in fear that they could be deported to persecution or torture.

The backlog coincides with record levels of global refugee displacement. At the end of 2020, the U.N. Refugee Agency (UNHCR) reported that more than 26 million refugees were displaced worldwide, including refugees from Cameroon, Central African Republic, China, El Salvador, Eritrea, Guatemala, Honduras, Nicaragua, Russia, Syria, South Sudan, Venezuela, and Yemen, as political repression, civil conflicts, and other violence forced people to flee their homes in search of protection. For instance, since 2014, political violence in Venezuela has led to an 8,000 percent increase in the number of Venezuelans seeking refugee protection worldwide, with over 100,000 Venezuelans seeking refuge in the United States. Since September 2016, Venezuelans have filed more affirmative asylum applications each month with USCIS than asylum seekers of any other nationality.

Despite these acute needs, U.S. policies and practices are forcing more asylum seekers to wait even longer to receive protection as Asylum Division resources are diverted to implement harsh and flawed border policies, including the expansive use of expedited removal. In fiscal years (FY) 2016 and 2019, an astounding 89 percent of asylum officers were temporarily reassigned from adjudicating affirmative asylum to other duties, including screenings for asylum seekers placed in expedited removal as well as those subjected to the Trump Administration's illegal policies to block refugees at the southern border, such as the Migrant Protection Protocols (MPP) and Asylum Cooperative Agreements (ACA).

At the same time, USCIS's decision to prioritize more recent applicants – the so-called "last in, first out" (LIFO) policy – has failed to reduce the backlog, essentially freezing those already waiting for interviews while adding new asylum seekers to the backlog each year. During the COVID-19 pandemic, the backlog has continued to expand and wait times have grown even longer.

This report, which builds on Human Rights First's prior research, examines the human impact of the backlog through interviews with our asylum clients who have been waiting years for asylum office interviews. It also

analyzes government policies and data to explain underlying causes of the backlog, challenges it poses, and opportunities to resolve it.

*Key findings:*

- ☑ **The affirmative asylum backlog grew under the Trump Administration, reaching a historic high of more than 386,000** pending applications at the end of FY 2020. Among the asylum seekers stuck in the backlog are thousands from Venezuela, who since September 2016 have filed more affirmative asylum applications than people of any other nationality, with many seeking protection from persecution by the repressive Venezuelan government.
- ☑ **Asylum seekers wait for years in the backlog for their claims to be adjudicated.** Without a change in the Asylum Division’s interview scheduling priorities, USCIS’s plan to eliminate the backlog in six years would leave many asylum seekers waiting years – some waiting potentially more than a decade. Asylum seekers who filed applications during the Obama Administration – and who are now at the end of the line due to the adoption of the “last in, first out” scheduling policy in January 2018 – continue to wait for asylum officer interviews. The large majority of interviews currently scheduled are for applications submitted in the last three months; for example, only four percent of asylum interviews scheduled in April/May 2020 were from cases pending more than 100 days. The Bellevue Program for Survivors of Torture (PSOT) reported that only 18 percent of its clients whose cases were pending in the affirmative asylum backlog prior to January 2018 had received interviews as of 2020. Of the more than 300 Human Rights First clients stranded in the affirmative backlog, 80 percent have been waiting for more than two years for an interview, with average wait time of more than four years, as of April 2021. In addition, years-long, post-interview delays have become increasingly common for refugees from Iran, Iraq, Syria, Yemen and other nationalities who are eventually granted asylum, as USCIS takes extreme amounts of time to conclude security and background vetting and additional reviews.
- ☑ **Harsh and flawed border policies, including the expansive use of expedited removal, worsen the backlog by diverting Asylum Division resources away from resolving affirmative asylum claims.** During the Obama and Trump Administrations (FY 2016 to FY 2019), an astounding 89 percent of the 535 asylum officers in the Asylum Division were temporarily diverted from adjudicating affirmative asylum cases to other duties, including screenings for asylum seekers placed in expedited removal as well as those subjected to illegal Trump Administration policies – MPP and ACA – to block refugees at the southern border.
- ☑ **Despite efforts to hire new staff, the Asylum Division continues to lack sufficient asylum officers.** USCIS was authorized to employ up to 1,296 asylum officers in FY 2020, but as of April 2020 it had only 866 on staff. In addition, low retention of experienced asylum officers is a problem. Many retired, transferred to other USCIS divisions, or quit to avoid implementing, or being complicit in, the Trump Administration’s illegal asylum policies.
- ☑ **The human consequences of the backlog are devastating.** The backlog prolongs family separation, leaving many children and spouses in danger for years. Delays also undercut pro bono legal representation and harm asylum seekers’ mental health, leaving them in limbo and potentially compounding their trauma from persecution and torture experienced in their home countries. Meanwhile employment and education are often placed on hold while asylum seekers are forced to wait for years without permanent legal status. Those caught in the backlog include: A father, who has been separated from his children for six years and had his request to expedite his asylum case denied despite his brother's political imprisonment in Yemen and efforts by a local militia to target his teenage son; an asylum seeker from the Central African Republic who has not seen his three daughters or wife in more than four years; and an Iranian asylum seeker, who has suffered homelessness during a more than five-year wait for an asylum interview.

- ☑ **Fraud and security screenings have grown unchecked and surpassed their necessary roles as fraud and security checks.** USCIS components tasked with implementing the Trump Administration’s rhetoric of “extreme vetting” have drained substantial agency resources to pre-screen asylum applications that could, and should, be more effectively devoted to conducting interviews with asylum seekers. The post-interview vetting and background check process has also ballooned in a discriminatory fashion that affects some nationalities, including asylum applicants from Iran, Iraq, Syria, and Yemen, more than others.

*Human Rights First urges the Biden Administration to:*

### **U.S. Citizenship and Immigration Services and its Asylum Division**

- ☑ Address the backlog of pending asylum applications.
  - Prioritize applications pending the longest for interview, while the Asylum Division also schedules interviews for child applicants and other recently filed applications, and consider authorizing overtime for asylum officers who volunteer to help clear the backlog of affirmative cases.
  - Create an effective process to advance asylum interviews for applicants with medical, humanitarian or other pressing concerns, including family members in danger abroad, and ensure access to advance parole for applicants with emergent reasons to travel abroad temporarily.
- ☑ Modernize and improve asylum office processes to promote efficiency.
  - Ramp up hiring and establish initiatives to boost retention of asylum officers, including encouraging experienced asylum officers who quit or transferred out of the Asylum Division to return.
  - Ensure cases are accurately resolved and unnecessary referrals to immigration court minimized through hiring of qualified asylum officers, appropriate and accurate training and oversight, and review of all referrals and denials while Trump administration policies and rulings remain under review.
  - Establish a process for individuals to apply directly to USCIS for cancellation of removal, such as through a separate USCIS application and adjudication unit, so that applicants for this humanitarian relief can be referred for assessment and these cases do not add to asylum backlogs.
  - Allow electronic filings, establish online interview scheduling and rescheduling, create a uniform short notice list, and provide longer interview notice periods to reduce rescheduling.
  - Assess application processing and vetting efforts, such as the Asylum Vetting Center (AVC) and Fraud Detection and National Security (FDNS) Directorate, to identify ways to improve efficiency and effectiveness of USCIS resources.
- ☑ Revoke illegal Trump Administration policies, including unprecedented asylum application fees, new and increased fees for initial and renewed work authorization, and other rules that prevent, limit, or delay refugees from supporting themselves and their families while waiting for asylum decisions.
- ☑ Promote transparency by providing regular, public updates on asylum officer interview schedules, as recommended by the USCIS Ombudsman and agreed to by USCIS, reinstating quarterly national stakeholder meetings, and releasing quarterly data fully disaggregated by nationality and other characteristics.

### **Department of Homeland Security (DHS)**

- ☑ Withdraw expansions of expedited removal to the interior of the United States and between ports of entry, and exercise DHS’s discretion at and between ports of entry to reject the use of expedited removal to avoid diverting substantial asylum office staffing and resources to screen people likely to be entitled to apply for

asylum. USCIS has noted that high volumes of expedited removal screenings “place[] great strain on the resources of the USCIS Asylum Division.”

- ☑ End the Migrant Protection Protocols and the misuse of Title 42 public health authority to summarily expel asylum seekers and fully rescind the asylum cooperative agreements, entry and third-country transit asylum bans, and other illegal policies that block refugees from requesting U.S. asylum protection, weaponize expedited removal, and divert asylum officers from adjudicating affirmative asylum claims.

#### United States Attorney General

- ☑ Vacate Attorney General and Board of Immigration Appeals rulings that rig asylum adjudications against refugees, including *Matter of A-B-*, *Matter of A-C-A-A-*, and *Matter of L-E-A-*, which purport to limit asylum for survivors of domestic violence, people persecuted on account of their family relationships and other particular social groups.

#### United States Congress

- ☑ Provide appropriations to hire additional asylum officers to clear the backlog of affirmative asylum applications and ensure that new applications are timely adjudicated.

## USCIS’s Role in Asylum Adjudication

Seeking asylum in the United States is a complex process. Individuals present in the United States who are not in immigration removal proceedings can apply for asylum with the USCIS Asylum Division by voluntarily filing an “affirmative” asylum application. Generally, asylum seekers can be barred from asylum if they do not apply within one year of their arrival unless they meet certain limited exceptions – a harsh ban that denies asylum to refugees and separates refugee families. Asylum seekers who apply affirmatively are usually not detained while they wait to present their claim.

Affirmative asylum applicants receive a non-adversarial interview with an Asylum Division officer to determine whether they meet the legal definition of a “refugee”—a person unable or unwilling to return to her country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. Applicants must present evidence to support their case and convince the asylum officer of their credibility, a process that may be made difficult by the lingering effects of persecution, torture, or other trauma. Although U.S. law requires that asylum interviews generally be conducted within 45 days of filing, wait times for the scheduling of asylum interviews, as discussed below, may extend for years.

If the officer does not grant the asylum application and the applicant does not otherwise have valid immigration status, the case will be “referred” to the immigration court, where an attorney from U.S. Immigration and Customs Enforcement (ICE) will argue for the person’s removal from the United States and an immigration judge will consider the asylum case or other available forms of relief from removal. Between FY 2013 and 2017, **most affirmative asylum claims referred from the asylum office and decided by immigration judges were ultimately granted**, according to DOJ data. Thus, referrals to court do not necessarily indicate that an asylum claim lacks merit.

In addition, the Asylum Division considers asylum applications of unaccompanied children who are subject to immigration court removal proceedings. While an unaccompanied child’s asylum claim is being considered, the immigration judge may adjourn the hearing to allow time for the Asylum Division to issue a decision. The judge will consider the merits of an unaccompanied child’s case only if it is not granted by the asylum officer and is “referred” to the court.

Although affirmative asylum applicants and unaccompanied children may present their cases directly to an asylum officer, asylum seekers who seek protection upon arrival at a port of entry without valid travel documents or enter without inspection are currently unable to apply for affirmative asylum if they are placed in expedited removal. DHS has discretion in many cases to parole these asylum seekers into the United States and to refer them to regular immigration court removal proceedings. However, DHS tends to place these asylum seekers in expedited removal or, for those who have a prior removal order, in reinstatement of removal proceedings.

When DHS uses expedited removal, [Section 235](#) of the Immigration and Nationality Act (INA) requires asylum officers to conduct protection screening interviews—known as credible fear interviews (CFI) and reasonable fear interviews (RFI)—with people subject to expedited removal or reinstatement of removal, respectively. These screenings determine whether the United States can immediately deport them to their country of origin or whether they must be referred to the immigration court for a hearing. While the Trump Administration has repeatedly attempted to unlawfully raise [the standards](#) applied during these interviews, the INA requires that during a credible fear interview, an asylum officer must determine whether there is a “[significant possibility](#)” that a person could establish an asylum, [withholding of removal](#), or [torture protection](#) claim before an immigration judge. In a reasonable fear interview the officer [determines if there is a “reasonable possibility”](#) of future persecution based on one of the five protected grounds under the refugee definition and for potential eligibility for protection under the [Convention Against Torture](#).

## The Human Impact of the Asylum Backlog

Long wait times for adjudication of asylum claims have devastating effects on refugees and their families. Delays prolong the separation of families—by years—leaving children and spouses of many refugees stranded in danger abroad. [Mental health experts](#) warn that extended anxiety due to delays and temporary status hinders asylum seekers’ ability to recover from past trauma. Limited access to employment and educational opportunities impede asylum seekers’ ability to support themselves and their families and to rebuild their lives in the United States. **Of the more than 300 Human Rights First clients stranded in the affirmative backlog, 80 percent have been waiting for more than two years for an interview, with average wait time of more than four years, as of April 2021.**

### Prolonged Family Separation

Many asylum seekers stuck in the backlog are separated from spouses, children, and other family members, many of whom are stuck in danger abroad. Once individuals are granted asylum, they may petition for their children and spouse to join them in the United States. But asylum seekers awaiting adjudication cannot sponsor qualifying family members under a pending application. While it is possible to request expedited scheduling of an asylum interview based on urgent humanitarian concerns, including danger to family abroad, the process for doing so is opaque to unrepresented asylum applicants, and the Asylum Office has in recent years been unreliable in responding to such requests even when made by lawyers.

Long waits are often destructive to asylum seekers’ mental health and relationships with family members left behind. As Dr. Asher Aladjem, Chief Psychiatrist at the Bellevue Program for Survivors of Torture, [told](#) Human Rights First, asylum seekers struggle with “the sense that their own lives aren’t only in limbo, but the whole family and the children and the whole [familial] system that they’re part of is impacted.” The [Center for Victims of Torture](#) recently noted that “prolonged uncertainty” for asylum seekers in the backlog separated from family members in danger “can cause such acute feelings of hopelessness and depression that it can result in suicidality.” In addition, [researchers](#) find that lengthy family separations caused by asylum adjudication backlogs often leave asylum seekers in “a state of fear and guilt due to their sense of having made family members targets of persecution.” Asylum seekers in the backlog whose families remain stranded abroad include:

- **Ibrahim<sup>1</sup>, a Pakistani human rights activist, has waited for his asylum interview since 2015 while his wife and children remain in danger in Pakistan due to his work on behalf of marginalized groups.** USCIS denied his request to expedite his asylum interview despite credible threats against his family. Ibrahim's youngest daughter was just three years old when he fled Pakistan. As Ibrahim's wait continues to grow, he laments the time separated from his children as they grow up without him. "I have lost my children – even if I see them again, I will never have those years back."
- **Jean, an opposition party activist from the Central African Republic, has not seen his wife and three daughters for more than four years.** He fled in 2016 after government authorities arrested, imprisoned, and tortured him for his political views. Because Jean was unable to bring his family with him as he fled, his wife and children are stranded alone in Cameroon. "I miss my family every day. Whenever I feel hopeless or tired, I think of my children. When I think of them, it gives me the courage to continue."
- **Aaron, an Ethiopian refugee waiting in the backlog for over five years, saw his relationship with his fiancée break down due to their separation.** "I met someone who I fell in love with. I thought we would be able to get married, and she could come from Ethiopia to live with me." But without asylum Aaron lacked the immigration status to bring his fiancée to the United States. "After more than a year of waiting, she had to move on with her life and married someone else. It crushed me."
- **Ali, who fled political persecution in Yemen, has been separated from his wife and children for nearly six years as he waits for an interview.** His wife, children, and other family in Yemen are in grave danger due to Ali's former business dealings with the U.S. government. Since Ali fled Yemen, the authorities detained his brother after they discovered WhatsApp messages from Ali on his phone. "They took him because of me. No one in my family knows where he is or when he will be released, or even if he is alive. . . . If they do that to him, what could happen to me or other members of my family?"

Refugees reunited with their families after receiving asylum continue to deal with the trauma of long-term family separation caused by the asylum backlog, including:

- **Syed, a Bangladeshi journalist who received asylum in 2018, was separated from his family for three years while in the asylum backlog.** His wife and three children finally joined him in the United States in late 2019 after USCIS approved their derivative asylee petitions. "My daughter was an infant when I was imprisoned, and when I was released, she didn't remember me. I was forced to leave the country to save my life while my wife was pregnant. My two youngest children had no memories of me ever living with them in Bangladesh." Now Syed and his family are working to build relationships and recover the years they lost. "Our separation is something we are still trying to heal together."
- **Maya, a Pakistani asylum seeker, was separated from her two children for three years while waiting in the asylum backlog.** Her children recently escaped from their abusive father and rejoined their mother in the United States. "I still feel shaky and weak when I think about those years apart. It was traumatizing for all of us."

## Mental Health Consequences

Many asylum seekers have endured severe persecution and faced further trauma during dangerous journeys to the United States. After arriving in the United States, they may experience even more suffering resulting from family separation, the inability to work, discrimination, and the anxiety of waiting for the outcome of their asylum case.

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<sup>1</sup> All names are pseudonyms to ensure the confidentiality and safety of asylum seekers and their families.

Case delays impede asylum seekers' ability to overcome trauma and may compound it. As Dr. Melba Sullivan, a staff psychologist at the Bellevue Program for Survivors of Torture (PSOT), explained to Human Rights First, prolonged delays in the adjudication of asylum claims is an “ongoing stressor,” causing asylum seekers to experience prolonged exposure to the trauma trigger of uncertainty of future protection. These delays also increase “clinical service backlogs” for mental health providers, such as PSOT, and “diminish[ their] ability to take in new cases.” Asylum seekers who have experienced significant mental health consequences as a result of their prolonged wait in the backlog include:

- **Rita, an asylum seeker from Kosovo, has been waiting more than two years to learn whether she has received asylum.** An award-winning journalist, Rita is suffering from post-traumatic stress disorder (PTSD) exacerbated by her wait for a decision in her case and the lack of support for asylum seekers. “I cannot describe the feeling of uncertainty when I came here. I had many dark moments during the first six months here when I didn’t have permission to work.”
- **Farah, an asylum seeker from Bahrain, has been struggling since applying for asylum in April 2015.** When Farah began experiencing depression, she was unable to receive psychological treatment because, without permanent legal status, she did not qualify for medical insurance and could not afford treatment.
- **Paul, an LGBT asylum seeker from Cameroon, suffers from depression, which he attributes to persecution he endured due to his sexual orientation and trauma he continues to experience while separated from his family.** “My last romantic partner was arrested and killed. I was so afraid that I would be next, or my family would be hurt. So, I had to flee. But now I feel sad when I am not able to speak to my children or see their faces.”
- **Ali, a Yemeni asylum seeker, has felt suicidal and despondent.** “I think about killing myself. I see my kids grow up so far from me. My son only knows his father on the phone – he doesn’t remember me.” For Ali, the delay in receiving an asylum interview feels as difficult as leaving his family behind. “Applying for asylum means you’ve already lost everything. My family, security, community, country. And now you just keep waiting. Waiting, waiting, waiting. This is almost the hardest part because there is absolutely nothing you can do.”
- **Yusuf, a gay man seeking asylum from Tajikistan, faced a mental health crisis when his asylum case went from the front of the line to the back in 2018.** “It was catastrophic for me. I felt overwhelmed and depressed. The hardest part was that my whole life was upended . . . I felt that I had no control over my life at all.” Yusuf still finds it difficult to cope as he sees more recent applicants have their cases resolved. “I haven’t even had my interview. It has been so hard.”
- **Sophie, an asylum seeker from Burkina Faso who was subjected to female genital mutilation and years of domestic violence, has struggled to maintain her mental health after her asylum interview was cancelled and subsequently pushed to the back of the backlog line following the switch to “last in, first out” in 2018.** Sophie’s depression, PTSD, anxiety, and insomnia have at times been so severe that she has been unable to work. “Today, I’m not sure if I am distressed because of my abuse or because I have been waiting for an answer in my case for so long. It is difficult for me to know whether my panic attacks are due to bad memories from the past or due to anxieties I have about my current situation.”

### **Asylum Seekers Left Vulnerable, Integration Delayed by Barriers to Economic Stability**

Under U.S. law, refugees who are granted asylum are automatically authorized to work, but asylum seekers must apply for and may only receive work authorization after their case has been pending for at least 180 days. Asylum seekers may be required to renew work permits each year, at a cost of \$495, while their cases are

pending. Frequent delays in processing initial and renewal applications by USCIS mean that work permits often take many months to arrive, placing asylum seekers in perilous financial situations while they wait.

The Trump Administration, through a series of administrative rules, sought to increase the period asylum seekers must wait to apply for work authorization to 365 days, bar asylum seekers from authorization who apply more than one year after last arriving in the country, and charge a prohibitive \$580 fee for initial employment authorization as well as similarly high fees for work authorization renewals. The rules also eliminated fee waivers for indigent asylum seekers. Federal courts have partially enjoined the changes to work authorization eligibility and preliminarily enjoined the USCIS fee changes. In June 2020, USCIS eliminated a requirement that initial work authorization for asylum seekers be processed within 30 days.

Even without these new restrictions, the inability to work for at least six months after applying for asylum leaves many asylum seekers, already vulnerable and traumatized, in precarious situations. Those without means to survive must rely on friends, family, or local communities for support. But many lack support networks and face further difficulties in informal or illicit labor markets and tenuous housing. With no support from the federal government for housing or basic necessities, many asylum seekers experience homelessness, including:

- **Leila, a 56-year-old Iranian asylum seeker, has struggled to find secure housing, at times sleeping in subway cars.** For a period, Leila was forced to live at a homeless shelter. “There was a time when I no longer felt safe at the shelter, so I went to stay with friends, then a church acquaintance, then with other people in my community.” But when COVID-19 hit, Leila’s friends could no longer take her in. **“I was sleeping on the subway because no one could house me.** These are the moments when you realize you truly are an immigrant – you don’t have family, resources, or belongings.”
- **Mary, who fled Kenya to protect herself from being forcibly subjected to female circumcision, has repeatedly experienced homelessness.** Mary has resided in the United States for nearly two years and has not yet received her work authorization. She has at times had to resort to sleeping in homeless shelters. Mary is now living with a family who informally employs her as a nanny, but she is afraid that she could once again be on the streets without a job before she receives permission to work.
- **Alexander, Nadia, and their two sons, who fled race-based attacks in Russia, were evicted from their apartment and are now facing homelessness as they struggle to find support services.** The homeless shelter where the family stays is closing, and they have only weeks to find new housing. But very limited support is available to asylum seekers. As Alexander noted, some “programs require an interview date or a green card to be eligible for assistance – **but the reason I need assistance is because I don’t have an interview date or a green card.** The system is set up for me to fail, and to never be able to access the basic programs I need to be able to keep my family fed, housed, and healthy on my own.”
- **Yusuf was homeless for a year after applying for asylum in 2016.** He often went days without eating and sometimes slept in airport waiting areas. Harassed in homeless shelters because of his sexuality, Yusuf said that he “would sometimes sleep in the subway for safety.”

Asylum seekers without work authorization or who experience delays in renewing work permits often face difficulty in obtaining or maintaining employment. Those who do secure employment can find themselves working under exploitative circumstances and dangerous conditions, such as:

- **Maria and Jorge, who fled government persecution in Venezuela in 2014, have encountered significant barriers to housing, work, and health care in the United States without permanent status.** When the couple first arrived, they depleted their savings and Jorge took dangerous informal work to survive. When Jorge was injured on the job, the family could not afford the \$1,500 treatment he needed.



Maria told Human Rights First: “I had to convince the doctor to teach me how to care for him at home instead of receiving care in the office.” Even now, as they remain in limbo without asylum status, Maria reported, “we cannot buy a home, return to school, or get a credit card because of our status.”

Asylum seekers who were professionals in their home countries can often find only lower-skilled jobs with employers who are willing to hire asylum seekers with temporary work authorization. They include:

- **Latif worked as a software engineer in Libya but has been unable to find work in his profession while he waits for his asylum interview.** Instead, he has been teaching software engineering at a nonprofit. “Many of my students come into my classes without any expertise, then they receive full-time jobs that I also have applied for. It is very frustrating.” **Latif’s wife, Melissa, is a doctor, but she cannot return to school to obtain U.S. medical credentials because she is ineligible for federal financial aid as an asylum seeker.** She has also been unable to find full-time work in the medical field despite multiple unpaid internships and stints as a volunteer.
- **In the Central African Republic, Jean worked as a computer programmer but is now struggling to earn enough to survive and support his wife and daughters who were forced to flee to Cameroon.** Jean now works as a rideshare driver, but COVID-19 has dramatically reduced his earnings. “I am lucky if I earn \$100 each day. I have to pay my car lease, rent, electricity, internet, insurance – and I have to eat and send money to my wife. It isn’t working at all.”

Without permanent legal status, many asylum seekers struggle to continue their education, as do their children who are with them in the United States and included in their claims. Thirty-one states do not provide in-state tuition rates to certain categories of immigrants, including asylum seekers. As a result, few asylum seekers qualify for in-state tuition or financial aid for higher education. Indeed, some states will not offer in-state tuition rates even after a person is granted asylum, either delaying in-state consideration until one year after the asylum grant or until the person is granted permanent residence, depending on the state. The lack of permanent status also impedes access to basic services that require official identification, including opening a bank account, renting a vehicle, or establishing a credit history to rent an apartment. Asylum seekers struggling to pursue educational opportunities in the United States include:

- **Usman, a Yemeni medical student, has not been able continue his medical studies while waiting nearly five years for an interview.** He fled Yemen in his fifth year of medical school and cannot afford to continue his education because he is not eligible for loans or other financial support. “I was doing really well in school. But you do what you have to do.” Usman now works as a driver for a ride-sharing service and has struggled even to open a checking account. Banks refuse to accept the temporary state ID card he was issued because its period of validity is tied to his temporary work permit.
- **Amal, an activist in Yemen, has not been able to return to school to continue her work as a community organizer and human rights activist.** “I can’t go because I am working so much [and] because it is so expensive.” Without permanent status, Amal does not qualify for financial aid. She was also recently rejected from leasing a car because of her immigration status. “These small things could make our lives easier, but asylum seekers waiting for their interview can’t access them. I am in limbo.”
- **Amir, who applied for asylum in 2016 after fleeing Egypt, may be suspended from his dentistry program if he does not soon receive renewal of his work authorization.** The human resources office at his dental residency program notified him that if he does not receive an extension of his work authorization before April 2021, he will be placed on leave from his dental residency.
- **Maya’s son, Isaac, was unable to attend the university where he was accepted because he does not qualify for financial aid.** “We could not find a scholarship to provide funding for tuition. We tried our

best but couldn't afford it. I know my son will work hard and be professionally successful, but I sometimes worry that he has lost out on opportunities and experiences because of our status."

- **By the time Samer and his family, asylum seekers from Syria, were finally granted asylum in 2021, after a nearly seven-year wait, their older child had been forced to miss a year of college due to her lack of eligibility for financial aid.** After filing for asylum, the family waited three years for an asylum interview and a further three and a half years for a decision after the case disappeared into USCIS's security and background checks and centralized review peculiar to the cases of Syrians and certain other nationalities. This delay created many hardships for the family. They had to put plans of home ownership on hold due to their lack of permanent status. After the family's oldest child graduated high school, she could not qualify for financial aid to attend college. Samer has now been granted asylum, but his daughter will still have to wait an additional year to qualify for in-state tuition rates, as the state where the family resides does not consider non-citizens to be residents for tuition purposes until a year after they are granted asylum or permanent residency.

The COVID-19 pandemic has left asylum seekers, who already struggle to build economic stability while forced to wait months for work authorization and have limited access to education and training opportunities, even more vulnerable. Asylum seekers are rarely able to access state and local safety net programs and are not eligible for Medicaid in nearly all states. Because many asylum seekers work part-time or in positions where they are not treated as employees, they may not qualify for protections awarded to full-time employees. Asylum seekers in the backlog who have suffered the economic and health consequences of the pandemic include:

- **Isabelle, a Salvadoran asylum seeker, lost her job as a housekeeper and went two months without pay when she fell sick with COVID-19.** In El Salvador, Isabelle faced death threats by the MS-13 gang that controls large parts of the country as well as severe domestic violence. She has been waiting for an asylum office interview since applying in 2016. Because of her status as an asylum seeker, Isabelle was ineligible for unemployment benefits when she was fired.
- **Mahmoud, an asylum seeker from Bahrain, went without pay for weeks when he contracted COVID-19 while working for a major online retailer.** Even though Mahmoud was working full-time when he fell ill, he was not provided health insurance and could not afford to pay for a COVID-19 test. Because he could not officially confirm that he had COVID-19, his employer refused to give him paid leave. Instead, he was forced to take time off without pay. "I was sick for three weeks, twenty-four hours a day. I was terrified."
- **Luis, a Venezuelan asylum seeker, contracted COVID-19 likely while working as ride-share driver.** Hospitalized in intensive care for sixteen days, Luis convalesced at home for another three months. Luckily, Luis and his wife, Manuela, had purchased health insurance through an exchange. But Luis was out of work for nearly six months. Without permanent legal status, Luis and Manuela were ineligible for federal government relief and they are still reeling financially from Luis' time out of work. "It sometimes feels more difficult to survive in the United States than in Venezuela."

## Impaired Access to Counsel

Legal representation can vastly improve asylum seekers' chances of receiving protection. In 2020, asylum seekers with legal representation were nearly twice as likely to receive asylum protection in immigration court compared to asylum seekers without an attorney. Access to counsel also improves system efficiency. The U.S. Commission on International Religious Freedom noted that "lack of counsel not only disadvantaged detainees but also burdens the system, since unrepresented cases are more difficult and time consuming for adjudicators to decide." Despite the undisputed importance of legal counsel, the government does not generally fund legal

representation in asylum proceedings. Indigent asylum seekers must rely on the limited resources of nonprofit organizations, law school clinics, and law firm pro bono programs.

Long delays at the Asylum Division impair the ability of pro bono legal providers to accept cases for representation and create obstacles for private immigration attorneys. A survey of 24 pro bono coordinators at major law firms conducted by Human Rights First in 2016 found that over 60 percent of pro bono professionals view delays at the asylum office as a negative factor in their firm’s ability to take an affirmative asylum cases. Because associates at major law firms generally do not remain at the firm for more than a few years, years-long case delays mean cases must be reassigned – sometimes repeatedly. Moreover, many attorneys who take on a pro bono case will not take on other pro bono matters until the pending case is resolved. Similarly, law school clinics, whose students generally rotate each year, waste resources and worry about putting clients through retraumatizing interviews as wait times become prolonged. For private attorneys, managing cases in the backlog often without taking concrete steps on the asylum application for many years can create both logistical and financial difficulties. Years-long delays in adjudicating the asylum application also increase the sheer volume of work required of advocates over the life of the asylum case, due to the need to update asylum applications to deal with evolving conditions in the home country or changes in applicants’ personal circumstances, and the need to apply to renew work permits—several times, in many cases—for the principal applicant and all included family members, and to deal with the many challenges the lack of lasting status poses for asylum applicants.

## The Backlog Stagnates

As of September 2020, the number of asylum applications pending before the ten USCIS asylum offices was more than 386,000. According to the USCIS Ombudsman the affirmative asylum backlog has continued to grow even as the number of applications received has fallen. USCIS has noted that high volumes of expedited removal screenings “place[] great strain on the resources of the USCIS Asylum Division.” The current backlog began to grow under the Obama Administration, which increased the use of expedited removal and diverted asylum officers from adjudicating full asylum claims to conducting expedited removal fear screenings. Using expedited removal against refugee populations diverts asylum office resources toward screening individuals who are overwhelmingly entitled to full assessments of their eligibility for humanitarian protection. In 2015, for instance, 88 percent of asylum-seeking families who were placed in expedited removal passed credible fear interviews, demonstrating the redundancy and wastefulness of channeling limited asylum office resources to screen asylum seekers. Even with variations in grant rates at different times, the vast majority of asylum seekers subjected to these screenings qualify for full asylum hearings. Positive credible fear rates during the Obama and George W. Bush administrations averaged nearly 80 percent.

The backlog’s rate of growth slowed after the last-in, first-out policy was implemented in January 2018, but the LIFO policy has failed to reduce the size of the backlog, and most newly filed asylum applications continue to be placed into the growing backlog. In its response to the 2020 USCIS Ombudsman report, USCIS acknowledged in December 2020 that LIFO and other restrictive Trump Administration policies aimed at limiting

Fiscal Year	Affirmative Asylum Applications Filed	New Reasonable Fear Requests	New Credible Fear Requests	Total Affirmative Applications Pending at End of Fiscal Year
2012	46,659	5,053	13,880	20,143
2013	45,403	7,733	36,035	38,345
2014	57,840	9,084	51,101	71,152
2015	84,182	8,015	48,052	116,774
2016	115,926	9,632	94,048	209,806
2017	142,818	10,273	78,564	303,513
2018	107,803	11,048	99,035	319,563
2019	84,312	13,197	105,439	339,836
2020	93,134	8,721	30,839	386,014

Sources: 2018, 2019 & 2020 USCIS Ombudsman reports and USCIS statistics.

access to the U.S. asylum system have not reduced “the number of pending [affirmative] cases.”<sup>2</sup> The temporary closure of asylum offices on March 18, 2020 due to the COVID-10 pandemic and resulting reductions in interview volume since offices began to re-open on June 4, 2020 has caused the backlog to expand further; nearly 50,000 cases were added to the affirmative asylum backlog in FY 2020. According to the Trump Administration’s proposed USCIS budget for FY 2021, “[u]nder current assumptions . . . USCIS is aiming to eliminate the [affirmative asylum] backlog within six years.” Without a change in the Asylum Division’s priorities, **USCIS’ six-year timeline would leave many asylum seekers waiting for substantial periods – some potentially for as many as ten years – just to receive an interview with an asylum officer.**

The volume of asylum applications received by USCIS corresponds with high levels of global refugee displacement. Targeted violence by transnational criminal organizations and human rights abuses by government forces in El Salvador, Guatemala, and Honduras has led to a significant increase in asylum requests in the United States, as well as in other countries in the region. Since 2014, political repression in Venezuela has led to an 8,000 percent increase in the number of Venezuelans seeking refugee protection worldwide, with over 100,000 Venezuelans seeking refuge in the United States. Since September 2016, Venezuelans have filed more asylum applications each month with USCIS than any other nationality and, as of March 2019, account for nearly one-third of all new USCIS asylum applications. A continuing authoritarian crackdown in Egypt and a deepening human rights crisis in Turkey have led thousands to seek asylum in the United States. In FY 2019, refugees from Egypt and Turkey were the third and fourth largest recipients of asylum by nationality at the asylum office, respectively. Widespread human rights abuses by government forces and armed groups in Cameroon have led to the displacement of nearly one million people, roughly 10,000 of whom have sought asylum at the southern U.S. border. The Chinese government’s crackdown on political dissent in Hong Kong, repression of ethnic Uighurs, and other state violence has driven thousands of Chinese citizens to seek refuge abroad. Many refugees have also sought protection from violence in Yemen, where political dissidents have fled atrocities committed by U.S.-backed Saudi forces.

The Trump Administration’s diversion of significant Asylum Division resources away from conducting asylum interviews and toward expedited removal was a major impediment to addressing the affirmative asylum backlog. The expansive use of expedited removal and reinstatement of removal and the corresponding increases in credible and reasonable fear interviews, which peaked in FY 2019 with nearly 120,000 fear interview requests, prevented asylum officers from addressing backlogged cases. In addition, deploying asylum officers to weaponize screening interviews to deny refugees access to U.S. asylum hearings undercuts the Asylum Division’s ability to adjudicate pending claims. Asylum officers have, for instance, carried out nearly 20,000 screening interviews for individuals subject to MPP who fear being returned to Mexico and over 1,000 interviews for asylum seekers transferred to Guatemala under an asylum cooperative agreement between the United States and Guatemala.

Even as the number of asylum officers has increased in recent years, the diversion of resources to carry out border enforcement policies meant to block refugees from the U.S. asylum system has prevented the Asylum Division from effectively addressing the backlog of asylum seekers awaiting interviews. According to the USCIS Ombudsman’s 2020 report, “between FY 2016 and FY 2019, the Asylum Division . . . temporarily assign[ed] on average 475 asylum officers each year in response to other program needs within USCIS” including “to conduct fear screenings at the border” – meaning that **an astounding 89 percent of the 535 asylum officers employed on average each year were temporarily diverted from adjudicating affirmative asylum applications.**

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<sup>2</sup> USCIS also acknowledged that Trump Administration policies aimed at increasing asylum fees, delaying and limiting work authorization, regulations to severely limit asylum eligibility, the third-country transit asylum ban, and the ACAs are intended to disincentivize refugees from applying for asylum in the United States with the effect of “significantly chang[ing] the inflow of affirmative applications.”

As the backlog continues to grow, thousands of asylum seekers have been made to wait for years to have their applications for protection adjudicated. Since January 2018, USCIS has not made public the average wait time for backlogged cases, but the 2018 USCIS Ombudsman [report](#) indicated that, **as of March 2018, the average waiting time from application to interview was well over two years at several asylum offices and nearly three years for some applications pending before the Newark asylum office.** Many asylum seekers caught in the backlog at that time are still waiting for an interview with an asylum officer. The hundreds of asylum seekers represented by Human Rights First with backlogged affirmative asylum claims have been waiting, on average, more than four years for an interview. The Bellevue Program for Survivors of Torture (PSOT) similarly [reported](#) that only 18 percent of its clients whose were pending in the affirmative asylum backlog prior to January 2018 had been scheduled for interview as of 2020.

## Asylum Backlog: Causes and Challenges

Several factors are responsible for the continued growth of the asylum backlog. Chief among these are decisions to use expedited removal expansively and the Trump Administration's illegal border policies that imposed a substantial burden on the asylum office to screen individuals under policies intended to block asylum seekers from accessing the U.S. asylum system. In addition, staffing challenges, shifting scheduling priorities, and the impacts of the COVID-19 pandemic have undercut USCIS's ability to adjudicate new cases and begin to address the still growing backlog, leaving thousands of asylum seekers waiting many years for an interview.

### Expansive Use of Expedited Removal

As the USCIS [Ombudsman](#) has noted, expedited removal and attendant fear screenings for asylum seekers placed into these proceedings "impact USCIS' available resources and inhibit the agency's ability to reduce the affirmative asylum backlog."

In its 2015 Report, the USCIS [Ombudsman](#) wrote, "[s]pikes in requests for reasonable and credible fear determinations, which have required the agency to redirect resources away from affirmative asylum adjudications, along with an uptick in new affirmative asylum filings, are largely responsible for the backlog and processing delays." This increase in the use of expedited removal originated under the Obama Administration. Through FY 2019, the number of credible and reasonable fear screenings continued to grow under the Trump Administration's use of expedited removal, as escalating violence and persecution in Cameroon, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela and elsewhere led increasing numbers of refugees to seek protection at the southern border.

The Trump Administration [hailed](#) expanded expedited removal as an important tool to improve efficiency in asylum processing and "reduce the significant costs to the government associated with full removal proceeding before an immigration judge." However, it has had the opposite effect, contributing to an overwhelming backlog of asylum cases and redirecting hundreds of asylum officers to the border to conduct screening interviews of people whose cases overwhelmingly warranted a full asylum assessment.

Successive administrations have expanded the geographic and temporal implementation of expedited removal. Originally, expedited removal was applied only at ports of entry,<sup>3</sup> but in [2004](#), DHS expanded its use to areas within a 100-mile border zone and within two weeks of an individual's entry to the United States. In July 2019, the Trump Administration [announced](#) a vast expansion of expedited removal to apply to non-citizens

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<sup>3</sup> Immigration officers however retain discretion to apply expedited removal or place an individual in full immigration court removal proceedings. See *Matter of E-R-M & L-R-M*, 25 I&N Dec. 520 (BIA 2011). Finding that "Congress' use of the term 'shall' in section 235(b)(1)(A)(i) of the Act does not carry its ordinary meaning, namely, that an act is mandatory. It is common for the term 'shall' to mean 'may' when it relates to decisions made by the Executive Branch of Government on whether to charge an individual and on what charges to bring."

apprehended anywhere in the United States up to two years after they arrived. Although this expansion of expedited removal was temporarily enjoined, the preliminary injunction was lifted in June 2020, and expanded expedited removal remains in place as of March 2021.

In addition to the geographic and temporal expansion of expedited removal, the Trump Administration's "Humanitarian Asylum Review Process" (HARP) and "Prompt Asylum Case Review" (PACR) programs also diverted significant asylum office resources to conduct fear screenings. Under these programs, first introduced in October 2019, asylum seekers were forced to undergo credible fear screenings while detained in notoriously cold and inhumane Customs and Border Patrol (CBP) facilities at the border where they are unable to meet with attorneys. This "streamlined" process not only made it extremely difficult for asylum seekers to consult with a lawyer or prepare for their interviews, but also required additional asylum office staffing to conduct fear interviews on very short notice. Through mid-March 2020, when the Trump Administration paused the use of PACR and HARP, approximately 5,290 individuals had been placed into these removal programs. In a February 2021 executive order, the Biden Administration directed DHS to "cease implementing" PACR and HARP.

The Trump Administration's repeated attempts to change the credible fear screening standard established by Congress and impose additional requirements have made screening interviews increasingly complex and time consuming. The administration's third-country transit asylum ban, which USCIS asylum officers applied in more than 43,000<sup>4</sup> screening interviews between July 2019 and June 2020, required officers to determine whether asylum seekers qualified for an exception to the transit ban before then conducting the fear screening interview at the heightened reasonable fear standard. The policy, which was vacated by a federal court in June 2020 but was re-issued by the Trump administration as a final rule in December 2020, was subsequently enjoined again in February 2021. The Trump administration also finalized rules to apply criminal and public health bars at fear screening stage that would further complicate these preliminary interviews. In addition, USCIS has repeatedly attempted to heighten the credible and reasonable fear screening standards, including 2019 alterations that were vacated by a federal court in November 2020.

In May 2019, Border Patrol agents began conducting credible fear interviews after receiving a two-week limited training on asylum. Efforts to deputize CBP staff to conduct fear screenings, a task historically conducted by specialized asylum officers, have resulted in major discrepancies in the rate of positive determinations compared to interviews conducted by trained USCIS asylum officers. Analysis by the Migration Policy Institute of USCIS data shows that between May 2019 and May 2020, **CBP officers determined that asylum seekers had a credible fear of persecution at half the rate compared to screenings carried out by trained USCIS asylum officers – meaning that they acted to deny these asylum seekers the ability to even have a full asylum hearings**. In August 2020, a federal court blocked the use of CBP officers to conduct fear screenings, finding that the two-to-five-week training CBP officers received was "in no way comparable" to the formal training for USCIS asylum officers and that the government's contention the trainings were equivalent was "poppycock." The USCIS Ombudsman noted in June 2020 that "CBP officers' competing law enforcement duties" limited their ability to conduct temporary assignments as asylum officers, but did not consider whether law enforcement officers were well-positioned to fairly and impartially protect the rights of asylum seekers.

Overall, the number of credible and reasonable fear screenings declined by 65 percent in FY 2020 compared to 2019, as new Trump Administration policies including MPP, ACA transfers to Guatemala, and expulsions under a Centers for Disease Control and Prevention (CDC) order effectively eliminated humanitarian protections at the border and blocked the vast majority of refugees from requesting U.S. protection at ports of entry. At the same

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<sup>4</sup> According to USCIS data, 25,096 people were subjected to the third-country transit ban during screenings between July and September 2019, and 18,124 between October 2019 and June 2020.

time, significant asylum office resources were diverted to “screen” asylum seekers who were ultimately returned, transferred, or expelled under these new illegal policies.

## Border Policies to Block Refugees

Trump Administration border policies diverted asylum officers from conducting affirmative asylum interviews to conduct screenings not established by Congress, but instead designed to deny asylum seekers access to the U.S. asylum system. In February 2021, the Biden Administration issued an executive order instructing DHS and other agencies to promptly review several of these policies which had worsened the asylum backlog as Asylum Office resources were syphoned off to conduct screening interviews. In late January 2021, the Biden Administration suspended placing new individuals into MPP and has now begun to parole asylum seekers returned to Mexico to the United States to continue their asylum proceedings. Following the executive order, the U.S. Department of State also announced that it had “suspended and initiated the process to terminate” the asylum cooperative agreements.

- **“Migrant Protection Protocols”**: Significant asylum office resources were devoted to implementing MPP, which was used by the Trump Administration beginning in January 2019 to forcibly return tens of thousands of asylum seekers and migrants to dangerous border regions of Mexico to await U.S. immigration court hearings. People placed in the MPP program who fear return to Mexico are entitled to a fear screening interview conducted by a USCIS asylum officer. Although many individuals have been blocked by CBP officers and Border Patrol agents from even requesting such interviews, nearly 20,000 MPP fear screening interviews were conducted by USCIS asylum officers, as of December 2020. DHS has imposed an impermissibly high burden on asylum seekers to establish that they fear return to Mexico. Asylum seekers must prove that it is “more likely than not” that they would face persecution or torture in Mexico. This standard is equivalent to that required to receive withholding of removal protection in immigration court, i.e. a standard higher than for asylum and far higher than the standard to establish a reasonable or credible fear of persecution, the standard asylum officers normally apply in screenings.

As of February 2021, when the Biden Administration’s wind down of MPP began, there had been at least 1,544 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against individuals DHS sent to Mexico under MPP. Yet very few of those placed in MPP have been determined to have a fear of Mexico. According to DHS, only 13 percent of individuals who received screenings were found to have sufficient fear of being returned to Mexico to be removed from MPP, as of October 2019. Vox reported that in some cases asylum officers’ positive MPP fear determinations were overruled by DHS officials. Asylum officers wrote in an amicus brief in support of a case challenging the MPP policy that “MPP diverts the limited resources of asylum officers to carry out a task they did not perform before,” and “exacerbates the backlog.”

- **Asylum Cooperative Agreements**: Asylum officers were also diverted from adjudicating affirmative asylum applications to screen asylum seekers transferred to Guatemala under the ACA the United States signed with Guatemala in July 2019. Under the agreement, the Trump Administration sent asylum seekers from El Salvador and Honduras to Guatemala even though the country lacks the asylum infrastructure to accommodate them as a “safe third country,” often resulting in the forced abandonment of asylum claims and the return of asylum seekers who have a well-founded fear of persecution to their home countries. The rule implementing the ACA requires asylum officers to determine whether an asylum seeker is subject to transfer to Guatemala under the ACA. Officers are only required to screen for a fear of persecution in Guatemala if the asylum seeker affirmatively states a fear of being sent there. Acting CBP Commissioner Mark Morgan testified that approximately 1,000 individuals had been sent to Guatemala under the ACA, as of February 2020. In mid-March 2020, Guatemala suspended ACA transfers from the United States in

order to curb the spread of COVID-19 to the country after deportees from the United States repeatedly tested positive on arrival. As noted above, the Biden Administration has suspended the ACAs.

## Staffing Challenges

The Asylum Division continues to face hiring and staff turnover challenges that contribute to the backlog. In FY 2020, USCIS was authorized to employ 1,296 asylum officers, but only 866 asylum officers were on board as of April 2020 – meaning that hundreds of authorized positions were vacant. Despite a significant increase in asylum officers from the 528 employed by the Asylum Division in early January 2017, USCIS continues to identify staffing shortages as one of the primary causes of the affirmative asylum backlog.

Retaining experienced asylum officers, which has long been an issue, became an even greater problem as the Trump Administration implemented a series of illegal policies that returned refugees to harm including the transit ban, MPP, and the ACA with Guatemala. As the union for USCIS asylum officers wrote in an amicus brief opposing MPP, that policy “places [asylum officers] at risk of participation in the widespread violation of international treaty and domestic legal obligations—something that they did not sign up to do when they decided to become asylum and refugee officers for the United States government.”

The Los Angeles Times reported that in response to MPP and other Trump Administration asylum policies, asylum officers were “retiring earlier than planned and quitting.” One asylum officer noted that while the “stresses of the job” often lead asylum officers to leave after two to three years, working under “an agency head who routinely bashes the program and a president who bashes the program” has resulted in even higher turnover.<sup>5</sup> Replacing experienced staff requires substantial training resources and time. USCIS estimates that it takes “a minimum of 6 months on the job for an asylum officer to be proficient enough to adjudicate asylum applications” at the pace of an experienced officer. Trump Administration policies that completely diverged from the fear screening and affirmative asylum process enacted by Congress, such as MPP and the third-country transit asylum ban, not only diverted asylum staff but also pulled training officers preparing new asylum officers to adjudicate affirmative adjudications.

The turnover in asylum officer staff during the Trump Administration is likely to have continued consequences for asylum adjudications. For instance, a former asylum officer, who quit in protest of the MPP policy, has raised concerns about the hiring of asylum office staff “who tend to favor the [Trump] administration’s policies,” and whose continued tenure, “even in a new administration . . . will affect institutional norms and capacity at the Asylum Office,”<sup>6</sup> which already needlessly referred many cases to immigration court that should have decided by the asylum office.

## Scheduling and Interview Policies

Modifications to asylum interview scheduling priorities have significantly impacted asylum seekers’ wait times.

In January 2018, USCIS began processing the most recently filed affirmative asylum applications – a reversion to an earlier policy known as “last in, first out” (LIFO). Prior to LIFO, USCIS processed asylum cases in the order in which they were filed. In instituting the LIFO policy, USCIS stated that its “aim [was] to deter individuals from using asylum backlogs solely to obtain employment authorization by filing frivolous, fraudulent or otherwise non-meritorious asylum applications” and that LIFO would “allow[] USCIS to decide qualified applications in a more

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<sup>5</sup> Asylum officer attrition rates are difficult to quantify, since the numbers reported by USCIS do not include asylum officers who transfer from the Asylum Division to other divisions within the agency.

<sup>6</sup> Comments by Douglas Stevens, 17th Annual Immigration Law and Policy Conference, Migration Policy Institute, “Protection in Disarray: The Dismantling of the U.S. Asylum System” (Sept. 22, 2020).



efficient manner.” However, the change in policy has left many refugees with bona fide asylum claims languishing in a years-long limbo waiting for an asylum interview.

When LIFO was adopted in 2018, USCIS announced that it would schedule asylum interviews under a tiered priority system. **First Priority** cases include applicants whose interview had to be rescheduled; **Second Priority** is made up of new applications pending for 21 days or less; and the catch-all **Third Priority** category covers “all other pending affirmative asylum applications . . . starting with newer filings and working back towards older filings.” As a result, overnight, USCIS shifted the longest pending applications from the front of the backlog line to the very end.

The 2020 USCIS Ombudsman report indicates that, since at least April 2020, USCIS has created a **Fourth Priority** area that encompasses “[a]ll pending affirmative asylum applications that are over 100 days old.” USCIS has not, however, publicly announced the creation of a fourth priority category nor included it in its description of the affirmative asylum process on its website. It is unclear whether the creation of this category has had much impact on the scheduling of backlogged cases, as “most interview slots are taken by the first and second priorities, giving little movement to the Third Priority and older cases,” according to the USCIS Ombudsman report. Only four percent of asylum interviews scheduled in April/May 2020 were from the fourth priority.

USCIS’ asylum scheduling creates needless rescheduling requests and slows adjudication of asylum claims. Asylum offices often provide only two or three weeks’ notice when scheduling interviews. With worsening delays in mail delivery, asylum seekers and their attorneys may receive notice of an interview just days before it is scheduled. Given this lack of notice, many applicants or their attorneys will be compelled to request to reschedule the date of their interview, leaving affirmative asylum interview slots unused. In addition, the automatic USCIS scheduling system does not allow for prior coordination of interview dates with applicants’ lawyers, who in many cases are forced to reschedule due to conflicts with other client matters. In the past, before the asylum office had any backlogged cases, interviews were consistently filed a set number of days following the receipt date, so legal representatives and their clients could reliably anticipate the interview date based on the date of filing. Now, even in the case of interviews that are timely scheduled, the timing is unpredictable, leading to the need to reschedule interviews. While some asylum offices have so-called “short notice” lists to fill last-minute interview openings, the Asylum Division has not, to date, adopted a more formal or uniform policy for all asylum offices. Some asylum offices previously overbooked asylum interviews to fill interview slots of applicants who missed their interviews. However, to enforce social distancing at asylum offices and in waiting rooms, USCIS reduced the number of scheduled in-person interviews, leading to longer wait times.

The Asylum Division’s efforts to address pending affirmative applications filed more than 10 years after the individual’s last entry to the United States have removed some cases from the backlog but also created additional inefficiencies. Currently, the only way to receive the form of humanitarian relief known as cancellation of removal is during removal proceedings before an immigration judge. However, there is no application route for individuals who may be eligible for this relief, and some individuals (or their attorneys) are believed to have filed applications for asylum anticipating that the case could then be referred into removal proceedings to seek this relief. The Asylum Division identified 50,000 cases where individuals had filed for asylum more than 10 years after arriving in the country (though of course, many of these persons may just have been late-filing asylum seekers), and began a pilot project to notify these applicants of an option to waive their asylum interviews and proceed directly to immigration court. As of May 2019, approximately 26 percent of the 6,500 individuals who received notices for the pilot waived an asylum interview. As a result, these cases were simply forwarded into removal proceedings, without the need to waste asylum office time. However, with respect to the remaining applicants, rather than conducting full asylum interviews, the Asylum Division scheduled these asylum seekers for interviews solely to determine whether the individual qualified for an exception to the one-year-filing deadline. Those found to qualify for an exception were often required to then attend a second interview scheduled weeks

later, creating additional inefficiencies in scheduling. As of May 2019, 30,000 cases in which the applicant filed an asylum application more than 10 years after arrival in United States remain in the backlog. Establishing an alternative mechanism to allow individuals to apply for cancellation affirmatively with USCIS, as recommended above, would help to avoid these cases needlessly adding to the asylum office and immigration court backlogs.

### **COVID-19 Impacts on the Backlog**

During the COVID-19 pandemic, both the size of backlog and the wait that asylum seekers face has continued to grow. On March 18, 2020, asylum processing came to a standstill as USCIS temporarily closed its offices. Although asylum offices began a staggered reopening on June 4, 2020, the number of daily appointments has been reduced to ensure social distancing. USCIS estimates that at least 4,000 and as many as 12,000 asylum interview slots were lost during the closure, and that affirmative asylum completions may be reduced by as much as 50 percent until offices reopen at normal capacity. Indeed, the asylum office backlog expanded by over 15,000 cases during the third quarter of FY 2020 during the asylum office closure, compared to an increase of fewer than 5,000 cases during the second quarter of FY 2020 when the asylum office received a similar number of new affirmative applications. Given the limited number of asylum interviews conducted since asylum offices began to reopen, the backlog is likely to continue to increase.

### **Misuse of Limited Resources in Additional Screenings**

The U.S. asylum system is rigorous, requiring detailed interviews, as well as extensive background vetting. Screening asylum applications to detect the small number of cases that raise security and fraud concerns during asylum adjudications is an important safeguard for the integrity of the U.S. asylum system. However, in recent years, the Fraud Detection and National Security (FDNS) Directorate and other USCIS components tasked with implementing the Trump Administration's rhetoric of "extreme vetting" – part of a broader effort to falsely portray immigration and asylum cases as lacking in merit – have drained substantial agency resources to pre-screen asylum applications that could, and should, be more effectively devoted to conducting interviews with asylum seekers. While some fraud issues may be identifiable on review of the application itself, DHS has long acknowledged that the credibility determination made by the interviewing asylum officer is the "determining factor" in fraud detection. The post-interview vetting and background check process has also ballooned in a discriminatory fashion that affects some nationalities, including asylum applicants from Iran, Iraq, Syria, and Yemen, more than others. It poses a major challenge to securing protection for asylum seekers and their families within a reasonable timeframe.

The expansion of pre-interview screening and vetting mechanisms predates the Trump Administration. A 2015 Government Accountability Office (GAO) report concluded that while USCIS has "mechanisms to investigate fraud in individual applications," the agency had not "assessed fraud risks across the asylum process, in accordance with leading practices of managing fraud risks" and recommended that USCIS take several targeted steps to assess fraud risks and detect fraud in individual cases, including developing and implementing additional trainings, mechanisms to collect reliable data on FDNS's efforts to combat fraud, asylum-specific guidance for FDNS officers, and pre-screening of asylum applications for indicators of fraud, to the extent that these fraud detection tools are "relevant or cost-effective." In response, USCIS began planning in 2017 for a substantial centralized pre-screening center for asylum applications through the Asylum Vetting Center (AVC), currently under construction in Atlanta, GA. While USCIS has stated that it anticipates the AVC will enhance its ability to address "systemic" fraud concerns and, through pre-screening, free up regional asylum office resources to reduce the asylum backlog, given the agency's substantial budgetary and personnel investment, the AVC raises questions about whether it meets the GAO report's recommendation to implement only "relevant or cost-effective" fraud detection tools. It remains unclear whether the AVC is the most efficient and cost-effective method for addressing fraud, as it substantially diverts resources from asylum adjudications, which are

themselves an important tool in assessing credibility and identifying potential fraud. The AVC will ultimately be staffed by some 300 personnel, including asylum officers who could otherwise be deciding backlogged asylum cases.

The data made public by USCIS on FDNS's effectiveness reveals that the vast sums spent on FDNS have resulted in very limited improvements to USCIS's fraud analysis and detection processes. In FY 2018, for instance, USCIS budgeted 67 million dollars for FDNS activities and that year used its ATLAS tool to screen 15.5 million immigration filings and biometrics enrollments, but detected fraud or security concerns in just 0.03 percent of cases. Of the 1,400 credible and reasonable fear cases referred to FDNS for review in FY 2017 and FY 2018, FDNS made a formal finding of a fraud or safety concern in less than one percent of referred cases. Despite the GAO's recommendations that USCIS collect data on and assess FDNS's progress, since the 2015 GAO report, no public reports have been released on the effectiveness of FDNS screening of affirmative asylum applications. The union for USCIS asylum officers has called for an audit of FDNS and a "re-examination" of its role, saying it "has grown beyond its original designation as a support service to adjudicators."

In addition, last year USCIS implemented other unnecessary interviews that divert asylum office resources away from adjudicating pending cases. In November 2020, USCIS announced that it would begin to systematically interview all resettled refugees and asylees (individuals granted asylum in the United States) who are applying to bring a qualifying spouse or child to the United States through an I-730 petition. These interviews are not required by law or regulation and are generally not needed to resolve I-730 petitions since the petitioning refugee/asylee has already been interviewed in connection with their resettlement case or asylum application and undergone security and fraud screenings. USCIS has acknowledged that the additional interview requirement "may lengthen the overall adjudicative process" for I-730 relative petitions. Requiring such interviews may also contribute to the affirmative asylum backlog as the agency diverts asylum officers to conduct them, which Human Rights First attorneys in Los Angeles have already reported occurring for some asylee clients. As of September 2020, nearly 26,000 I-730 petitions were pending adjudication – a steep increase from June 2016 when fewer than 9,000 were awaiting decision. Further delays in the I-730 process are particularly devastating since USCIS was already taking close to two years to adjudicate these petitions, which are then subject to additional, often lengthy wait times before spouses and children receive appointments for interviews with U.S. consulates abroad.

### **Attorney General Rulings Rig Adjudications Against Refugees**

Any effort to resolve the asylum backlog must address the Trump Administration's weaponization of the U.S. asylum adjudication system, including the Asylum Division, to deny refugees protection. Asylum grant rates plummeted in the wake of Trump Administration policies and Attorney General asylum rulings that attempt to limit asylum eligibility for survivors of domestic violence and individuals persecuted because of their family relationships, including Matter of A-B- and Matter of L-E-A. As a result, the asylum office has referred increasing numbers of affirmative cases to the immigration court, where judges determine the asylum seeker's claim. The asylum referral rate grew by 35 percent from FY 2015, when about 50 percent of asylum claims were referred by asylum officers to the immigration court, compared to FY 2019, when nearly 70 percent were sent to the courts. These referrals needlessly subject asylum seekers to additional years-long delays for adjudication of their requests for protection in immigration court, where judges ultimately grant most asylum claims referred from the asylum office. The Biden Administration announced in its February executive order that it would issue new regulations on particular social group claims within 270 days and conduct a comprehensive review to evaluate whether U.S. protections "for those fleeing domestic or gang violence" are consistent with international law.

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## Hope Beyond the Interview

Despite the hardships and trauma inflicted by years in the asylum backlog, many of the asylum seekers interviewed remain hopeful that the United States will welcome and protect refugees and reunite their families.

- **Manuela, a Venezuelan asylum seeker who has been in the backlog since 2016, sought refugee protection in the United States to safeguard her family.** “We felt that our rights would be valued here. . . . If we receive asylum, our lives would change completely. We would have calm. We would be secure knowing we would not be thrown out of the United States and returned to Venezuela. It would change everything for us.”
- **Mahmoud, a Bahraini journalist who has waited for his asylum interview since April 2015 is hopeful that receiving asylum will help him feel in control of his life again and build a new life.** “I know it is not going to be a magical event where everything improves in a single moment. But at least I could move forward – at least I could put all of this behind me.”
- **Alexander, a Russian asylum seeker who has faith that the United States will protect him and his family, despite waiting more than five years for his asylum interview.** “I still believe the United States is a country of laws, and the laws will work for the good of the people. I hope that politicians will prioritize the needs of asylum seekers. . . . I hope no other families will have to endure what we have experienced.”
- **Paul, a Cameroonian asylum seeker, expressed thanks to the organizations and individuals that have helped him survive during his wait in the backlog.** “[A]lthough I was surprised by the lack of aid from the [U.S.] government, I was impressed by the generosity of people. I was very afraid when I first came. I felt hopeless. But people made me feel welcome when I needed it most. I received free clothes and meals from churches and shelters. Those necessities allowed me to get to where I am today.”

**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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