

Asylum Office Backlog and Delays

November 2016

THE U.S. ASYLUM SYSTEM is facing a growing crisis. Over the last four years, the backlog of asylum applications pending with the U.S. Citizenship and Immigration Service (USCIS) Asylum Division has risen sharply. As of September 2016, there were over 194,000 affirmative asylum cases pending, a dramatic increase from the 32,560 that were pending in 2013. Most people who file asylum applications with USCIS are waiting over two years, and many will wait longer, to have their asylum applications adjudicated by USCIS asylum officers.

Cases pending before the Asylum Division have increased by a factor of six—from 32,560 in 2013 to 194,986 as of September 2016.

The backlog in the U.S. asylum system follows both a global increase in displacement, as well as policy shifts executed by the Obama Administration. Global displacement has reached record highs as wars, conflict, and persecution have caused more people to flee their homes. The targeted violence of transnational criminal organizations in Central America's Northern Triangle—Guatemala, El Salvador, and Honduras—has led to a significant increase in protection requests in the United States, as well as in other countries in the region.¹ In response to the increased number of children and families seeking protection at the U.S. southern border, the Obama Administration began subjecting families and other individuals to the expedited removal process, diverting significant numbers of asylum officers from the affirmative asylum interview process to instead conduct credible fear and reasonable screening interviews.

Delays in adjudication are compounded for asylum seekers whose cases are referred into immigration court removal proceedings, where they face several more years of delay. The backlogs in the immigration courts are detailed in a March 2016 Human Rights First Brief.²

These backlogs and delays prolong, by years, the time that refugees are separated from their families and limit their ability to integrate and rebuild their lives in this country. The backlogs also threaten to undermine the integrity of the asylum system. Indeed, understaffing and long delays were viewed as factors that contributed to the filing of some fraudulent asylum claims in the 1990s.

Recommendations

The Department of Homeland Security (DHS) and the USCIS, with the support of Congress, should take steps to see that the Asylum Division has capacity to conduct affirmative asylum interviews generally within 60 days of the filing of an asylum application.³ Specifically:

- DHS and the White House must make staffing increase a priority, and request appropriations if necessary. USCIS should hire all 533 currently funded asylum officer positions and DHS should increase the total number of asylum officer positions to 800, which requires funding 267 additional positions. DHS should fund 117 new asylum officer positions in Fiscal Year (FY) 2017, growing the corps to 650. An additional 150 officers should be added the following year to bring to total to 800 asylum officers.
- DHS should roll back the use of expedited removal in areas between ports of entry, and end the use of expedited removal against Central American families and other vulnerable populations with high percentages of asylum seekers. UNHCR has recognized a growing refugee crisis in the Northern Triangle.⁴ The use of expedited removal against known refugee populations

diverts substantial asylum office staffing, resources, and time to screen a population that will overwhelmingly be entitled to apply for asylum.

The Numbers

The number of cases pending before the nation's eight asylum offices has ballooned from 32,560 in 2013 to some 194,986 in September 2016.⁵ This growth is largely due to an increase in the number of credible fear and reasonable fear interviews—which are part of the expedited removal and reinstatement of removal procedures that have been increasingly employed by DHS over the years—along with an increase in affirmative asylum applications.

The number of new affirmative asylum applications grew from 44,446 in 2013 to nearly 57,000 in FY 2014 and 83,254 in 2015, which, according to the U.N. Refugee Agency (UNHCR), is part of a global trend that reflects the increase in displaced people fleeing persecution, war, and deteriorating security.⁶ The Asylum Division received more than 115,000 affirmative asylum applications in FY 2016.⁷

Asylum officers also conduct protection screening interviews—known as credible fear and reasonable fear interviews—with individuals in expedited removal and reinstatement of removal proceedings, respectively, who have expressed a fear of persecution or torture. Over the past four years, the Obama Administration has increased its use of expedited removal and reinstatement of removal, and in 2014 DHS began to subject Central American families seeking protection along the southern border to expedited removal. These summary removal processes, there has been a sharp increase in the number of credible fear and reasonable fear referrals received by the Asylum Division, creating further strain.

In a four-year span, credible fear and reasonable fear requests increased dramatically.

During FY 2012, USCIS adjudicated:

- 13,880 credible fear requests and
- 5,053 reasonable fear requests.⁸

By FY 2016 the numbers had risen to:

- 92,990 credible fear screenings and
- 9,446 reasonable fear screenings.⁹

Wait Times Increase

The growing backlog has led to delays in asylum adjudications across the country. As of September 2016, the asylum office in Los Angeles, California was scheduling interviews for asylum applications filed in August of 2011—over five years ago. All of the eight asylum offices across the country are scheduling interviews for applications filed over two years ago.¹⁰ For example, the asylum office in Miami scheduled interviews in September 2016 for individuals who had applied for asylum in May 2013. Therefore, all asylum officers are processing cases at a rate slower than the 180-day statutory period for full initial adjudication of an asylum claim and far beyond the requirement that an initial interview be scheduled within 45 days.¹¹

As of September 2016, the Los Angeles asylum office was interviewing asylum seekers who filed in August of 2011.

Over the past seventeen months, since USCIS began posting information related to the backlog in an online bulletin, asylum offices in Houston, Los Angeles, Miami, and Newark have made no progress in adjudicating affirmative asylum claims. For example, between April 2015 and September 2016 the asylum office in Houston continued to schedule interviews with applicants who had filed in April or May 2014. This means no progress is being made in addressing the growing number of pending cases stuck in the backlog.

Impact of Delays on Refugees Seeking Asylum

Long wait times have harmful effects on asylum seekers and their families. Delays prolong the separation of refugee families—by years—leaving the children and spouses of some refugees stranded in difficult and dangerous situations abroad. Human Rights First, along with its pro bono attorneys, sees this hardship firsthand. For example, Human Rights First has several Syrian refugee clients who have children stranded in unsafe or precarious locations in Syria. Mental health experts also warn that the extended anxiety of the unknown hinders

In the past 17 months, asylum offices in Newark, Houston, Los Angeles, and Miami have made little or no progress in lessening the backlog of affirmative asylum claims.

asylum seekers' ability to recover from past trauma. And, limited access to employment and educational opportunities impede asylum seekers' ability to move forward and rebuild their lives during their time in legal limbo.

The backlog also negatively impacts asylum seekers' ability to secure quality pro bono counsel. A survey of 24 pro bono coordinators at major law firms conducted by Human Rights First in February 2016 found that over 60 percent of pro bono professionals see recent delays at the asylum office as a negative factor in their firm's ability to take an affirmative asylum cases pro bono.

Delays at the Asylum Division Can Undermine the Integrity of the System

Delays in adjudication of affirmative asylum applications by the Asylum Division can undermine the integrity of the U.S. immigration system. Experts Russell Wheeler and Lenni Benson, retained by the Administrative Conference of the United States, have described this impact on the system, pointing out that "delay becomes a goal for some with no legitimate claims to legal status..."¹²

In the 1990s, the asylum system was under-resourced and under-staffed. An increase in asylum applications was sparked by a wave of brutal civil wars and human rights abuses in Central America, leading to a multi-year backlog. Some people sought to exploit the system and others were told by unscrupulous lawyers that they could sign a paper and remain in the United States for years with work authorization. To end the abuse of the backlogged system, the former Immigration and Naturalization Service took steps including increased staffing to ensure timely adjudication. The result was a system that conducted asylum interviews within the first few months after an application was filed, and promptly referred those who were not granted asylum into

immigration court deportation (now removal) proceedings.¹³

Although excessive delays can undermine the integrity of systems it is important to note that national security checks are initiated by the USCIS Service Center at the time an application is filed. Each applicant's information is entered into the Refugee, Asylum, and Parole System, automatically initiating background, identity, and security checks, including scheduling fingerprinting and biometrics enrollment.¹⁴ Therefore, national security remains protected while applicants wait in the backlog.

Asylum Office Staffing Levels

At the beginning of FY 2016, the Asylum Division had funding to grow its corps of asylum officers to 533.¹⁵ The Asylum Division successfully hired over 90 percent of funded positions in FY 2016 growing the corps of asylum officers to 440 officers on staff (this is a significant increase from the 203 officers on staff in 2013). However, the Asylum Division lost some 70 officers to refugee resettlement details in 2016, meaning that even if fully staffed at 533 officers, only 463 would be available to adjudicate affirmative asylum applications and handle fear requests.

Asylum seekers in regions covered by asylum offices in Miami, Arlington, Chicago, Newark, Los Angeles, and Houston, have been waiting over two years for an initial interview.

Additional funding is required to grow the asylum corps to a size—800 officers—sufficient to eliminate the backlog and adjudicate all applications in a timely manner.

At FY 2016 rates, some 272 asylum officers will be required to solely adjudicate credible fear and reasonable fear requests.¹⁶ Even if fully staffed at 533 asylum officers, the remaining 261 officers can only complete some 85,000 affirmative asylum interviews per year. With newly filed affirmative asylum applications topping 100,000 per year, the backlog will continue to grow at a rate of around 20,000 cases per year.

With 800 officers on board by FY 2019, the division would eliminate the backlog by FY 2022. Under this scenario the Asylum Division could adjudicate all new incoming asylum applications within 60 days of receipt after eliminating the backlog.¹⁷ Normal attrition rates would allow the Asylum Division to level off at a sustainable staffing level, after the backlog is eliminated. ■

Endnotes

¹ UNHCR, "Global Trends: Forced Displacement in 2015," June 2016.

² Human Rights First, "The U.S. Immigration Court: A Ballooning Backlog that Requires Action," March 2016.

³ 8 U.S.C. § 1158(d)(5)(A)(ii)(iii) (Statute requires that, absent exceptional circumstances the initial interview or hearing on an asylum application shall commence no later than 45 days after the date of the application. Statute also requires final administrative adjudication of the asylum application, not including administrative appeals, no later than 180 from the date the application is filed.); USCIS, Affirmative Asylum Procedures Manual (AAPM), Asylum Division, November 2013, (The Asylum Division established its own timeliness goal of 60 days for full adjudication of asylum applications, in line with timeliness goals of asylum reform. Internal systems establish a "60-day referral clock" from the time a complete application is received.).

⁴ UNHCR, "UNHCR warns of looming refugee crisis as women flee Central America and Mexico," October 28, 2015, (In connection with the release of Women on the Run, UNHCR stated: "The dramatic refugee crises we are witnessing in the world today are not confined to the Middle East or Africa," Guterres said. "We are seeing another refugee situation unfolding in the Americas. This report is an early warning to raise awareness of the challenges refugee women face and a call to action to respond regionally to a looming refugee crisis."); UNHCR, "U.S. announcement on Central America refugees highlights seriousness of situation, UNHCR," January 14, 2016, (In connection with the U.S. announcement of refugee processing in the region, UNHCR stated: "The U.S. initiative to resettle Central American refugees is a welcome step to help address the growing refugee crisis." The UN refugee agency reiterated its serious concern for the welfare of large numbers of people who continue to flee deadly violence in El Salvador, Guatemala and Honduras – the Northern Triangle of Central America.).

⁵ USCIS Asylum Division, Asylum Office Workload, September 2016, available at https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_AffirmativeAsylumStatisticsSeptember2016.pdf.

⁶ UNHCR, "Worldwide displacement hits all-time high as war and persecution increase," news release, June 18, 2015, available at <http://www.unhcr.org/558193896.html>.

⁷ Human Rights First meeting with Asylum Division senior leadership, November 4, 2016 (notes on file with Human Rights First).

⁸ USCIS Asylum Division, Affirmative Application Filed Report, April 11, 2014, available at

<http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/AdditionalStatisticRequestedApril2014AsylumStakeholderEngagement.pdf>; See also, United States Citizenship and Immigration Services (USCIS), Credible Fear and Reasonable Fear Workload Report Summary – FY 09-14, October 28, 2014.

⁹ See USCIS Credible Fear and Reasonable Fear Workload Report Summaries, FY 2016, available at https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_CredibleFearReasonableFearStatisticsNationalityReport.pdf.

¹⁰ USCIS, Affirmative Asylum Scheduling Bulletin, (In April 2015, USCIS began publishing a monthly bulletin to report on the progress of scheduling interviews for affirmative asylum applications. For each asylum office the bulletin reports in which month and year the individuals currently being scheduled for interviews applied.).

¹¹ See supra note 3.

¹² Russell Wheeler and Lenni Benson, "Immigration courts would benefit with more staff," Houston Chronicle, November 14, 2013.

¹³ U.S. Department of Justice, "Asylum Reform: Five Years Later—Backlog Reduced and Number of Non-Meritorious Claims Drops," press release, February 1, 2000, available at <http://www.uscis.gov/sites/default/files/files/pressrelease/Asylum.pdf>.

¹⁴ See Human Rights First, "Vetting, Security and Fraud Screening in Asylum Process," November 2015; See also GAO Report, "Asylum: Additional Actions Needed to Assess and Address Fraud Risks, December 2015," page 14, (confirming the initiation of security checks by the USCIS Servicing Center upon filing of the affirmative asylum application).

¹⁵ Citizenship and Immigration Services Ombudsman, "Annual Report 2015," June 29, 2015, page 61; Asylum Division Quarterly Stakeholder Meeting, December 11, 2015 (notes on file).

¹⁶ Based on information provided by senior Asylum Division leadership, Human Rights First's projection assumes a case completion rate of 353 credible fear interviews per officer per year and a case completion rate of 200 reasonable fear interviews per officer per year.

¹⁷ Calculated in March 2016 based on projected affirmative applications and credible/reasonable interviews for the remainder of FY 2016. Actual affirmative application and credible/reasonable fear rates slightly exceeded projections, indicated that at least 800 asylum officers are required to adequately address the backlog.