

THE U.S. ASYLUM SYSTEM IN CRISIS

Charting a Way Forward



By Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff

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Executive Summary

The United States has a longstanding asylum tradition. Each year, the U.S. asylum system hears the claims of and offers protection to thousands of persecuted individuals. Until recently, the system was widely recognized as fair, timely, and well-managed—achieving efficiency while upholding access to humanitarian protection that is consistent with U.S. law and international standards.

This system is now facing a time of notable challenge. In recent years, a confluence of factors has led to a large and growing backlog of asylum cases, with many applicants waiting years for a decision. When asylum claims are not decided in a timely fashion, it harms those eligible for protection; it also undermines the integrity of the asylum regime by inviting misuse, with some claims filed solely to secure the right to remain in the country or to receive the work authorization granted to applicants whose case decisions are delayed.

When asylum claims are not decided in a timely fashion, it harms those eligible for protection; it also undermines the integrity of the asylum regime.

In the face of these breakdowns, the Trump administration has taken a series of actions to restrict and narrow access to asylum in the United States. These include a decision by Attorney General Jeff Sessions, known as *Matter of A-B-*, that largely eliminated gang and domestic violence as reasons to grant protection. Central American asylum seekers, whose claims are frequently based on these types of violence, are the most likely to feel the effects of this decision. The Trump administration has also introduced a “zero-tolerance” approach that aims to deter unauthorized migrants from crossing the southwest border by prosecuting all apprehended individuals, including first-time border crossers and adult asylum seekers, for illegal entry. For a time, this policy was applied to apprehended families by separating children from their parents, until public outcry and a federal court injunction led the administration to switch approaches and detain families together. This and similarly severe measures are unnecessarily harsh and have already proven both costly and unworkable.

There is another way forward. It is based on the principles of timeliness and fairness in providing protection, which will, in turn, discourage unfounded claims and deter opportunistic flows. This analysis and set of recommendations draw upon the experience of similar challenges that led to fundamental and successful reforms of the U.S. asylum system in the mid-1990s.¹

A. A System in Crisis

A foreign national may seek asylum in the United States either through an affirmative or a defensive process. Individuals already present in the country may apply for asylum affirmatively with the U.S. Citizenship and Immigration Services (USCIS), a component of the U.S. Department of Homeland Security (DHS). These cases are adjudicated by asylum officers who either grant the applicant asylum or refer unsuccessful applicants to the Executive Office for Immigration Review (EOIR), the entity within the U.S. Department of Justice that houses the immigration courts. Individuals in removal proceedings, whose cases are before immigration judges, may apply for asylum defensively, as a defense against their removal.

¹ Report coauthors Doris Meissner and T. Alexander Aleinikoff were, respectively, Commissioner and General Counsel of the U.S. Immigration and Naturalization Service (INS) during the mid-1990s when the asylum reforms described in this report were developed and implemented as one of the Commissioner’s key priorities. The insights gained from that experience were instrumental in helping to inform this report.



Asylum seekers who make a claim for protection at or near a U.S. border follow a third process because many are subject to expedited removal, a swift administrative form of deportation that does not allow for a hearing before an immigration judge.² Those placed in expedited removal who express a fear of return to their home country have a credible-fear interview with an asylum officer³ to determine whether the person has a “significant possibility” of establishing eligibility for asylum. Those who pass this credible-fear screening may apply for asylum defensively before an immigration judge.

The volume of asylum claims U.S. authorities receive has fluctuated considerably over the years, generally reflecting changing global circumstances. Beginning in 2010, and especially since 2014, affirmative applications, credible-fear claims, and backlogs—in both the immigration courts and the USCIS Asylum Division—have ballooned, bringing the asylum system to a crisis point. The number of affirmative asylum requests filed annually has increased from 28,000 in fiscal year (FY) 2010 to 143,000 in FY 2017, resulting in a backlog of 320,000 pending cases as of the end of June 2018. Credible-fear claims at the border have also risen, from 9,000 in FY 2010 to 79,000 in FY 2017. And in the immigration courts, defensive asylum requests are about 30 percent of the record 746,000 cases of all types pending.

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have ballooned, bringing the asylum system to a crisis point.*

Regional dynamics have played a particularly strong role in shaping these trends. The recent surge of mixed flows—some economic, some humanitarian—at the U.S.-Mexico border has been a pivotal factor. About a decade ago, approximately one in every 100 border crossers was an unaccompanied child or asylum seeker in search of humanitarian protection. Today, that share is more than one in three.

This change has been driven, in part, by extreme and ongoing insecurity in the Northern Triangle of Central America: El Salvador, Guatemala, and Honduras. In recent years, homicide rates in these countries have consistently been among the highest in the world, with violent hotspots in both urban and rural areas. At the same time, a growing number of individuals from a range of countries—currently led by Venezuela—have sought asylum from within the United States.

B. Recommendations to Restore Order and Build Resilience

Conditions are ripe for the Asylum Division to manage its resources more strategically, with the aim of ensuring that applicants eligible for protection can get it within six months, the statutory standard, while also deterring misuse. Between FY 2013 and 2018—after a period of flat funding—the number of asylum

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- 2 The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* authorizes the federal government to quickly remove foreign nationals from the United States without a hearing before an immigration judge if they have no entry documents or if they used counterfeit, altered, or otherwise fraudulent or improper documents. A separate statutory authority allowed the executive branch to expand its application by notice, but only to persons who had been present in the United States for less than two years and who entered without inspection. This expansion of authority was not used until 2002, when it was applied to individuals arriving by sea who were not admitted or paroled into the country. It was expanded more substantially in 2004 to apply to individuals not admitted or paroled, encountered within 100 miles of the southwest border, and unable to demonstrate that they had been present in the country for the 14-day period prior to apprehension.
- 3 Individuals taken into custody either at or near the border, or anywhere in the interior of the country, and who have previously been ordered removed, are placed into “reinstatement of removal” proceedings, another form of accelerated deportation during which individuals are to be removed without an immigration court hearing. Those who express fear of returning to their home country in this context are referred to USCIS for a similar screening interview, known as a reasonable-fear interview. If the asylum officer finds that the individual has a reasonable fear of persecution or torture in that country, the migrant may then seek withholding of removal or deferral of removal in immigration court under the Convention Against Torture.



officers nearly doubled from 272 to 520, with authorization to hire up to 687 total officers. Over the same period, the Asylum Division budget grew by more than 55 percent. Based on historical experience, these enhancements in staffing and resources should be sufficient for the task of deciding the current level of incoming cases.

The Trump administration, in January 2018, announced that USCIS would reprioritize its workload to first decide those cases most recently filed with its asylum offices. This draws on a core element of the mid-1990s asylum reforms—procedures known as “last in, first out” that proved successful in cutting the similarly high backlogs at that time.

This is a positive step that is beginning to show results and, managed properly, could make a significant impact on the backlogs and delays that have plagued the asylum system in recent years. Because it further disadvantages cases that have already been waiting for long periods, it should be treated as an emergency measure—not a new standard. Once incoming cases are being decided within six months, case receipts are likely to decrease, approval rates increase, and resource allocations can be gradually adjusted to adjudicate larger numbers of backlogged cases more quickly.

This report goes further, reviewing the U.S. asylum system more broadly and recommending additional policy and procedural adjustments that could revitalize it. It reflects a detailed examination of the data and metrics underpinning the asylum system; input from senior government officials, experts, and stakeholders at three Migration Policy Institute (MPI) roundtables; and analyses commissioned on critical topics.

These recommendations focus primarily on the affirmative system and can be achieved through administrative measures already available to decisionmakers. Such changes would represent important steps toward getting the affirmative system back onto a sound footing and enabling it to fulfill its mission going forward.

1. ***Refer credible-fear cases with positive findings to the Asylum Division first, not to the immigration courts.*** Currently, tens of thousands of cases in which asylum officers have found applicants to have credible fear are referred to immigration courts each year. Once in court, the cases must begin anew after waiting several years. Allowing cases with positive credible-fear findings to instead remain with the Asylum Division for the full asylum merits adjudication would capitalize on the investment of time and expertise the division has already made. It would also enable meritorious cases to be resolved more quickly, reducing the overall asylum system backlogs and using limited asylum officer and immigration judge resources more efficiently.
2. ***Streamline how high-risk cases move through the credible-fear process.*** DHS should use its discretion to directly refer individuals who fall into a high-risk category that has a high screen-in rate⁴ for a full determination under the adjusted process recommendation above. The cross-agency coordination required to accomplish this is best done by designating a senior official to be responsible for coordinating and monitoring credible-fear practices across the pertinent DHS components.
3. ***Identify and shift cancellation-of-removal cases to a separate process.*** Procedural changes must address the increasingly common practice of using the affirmative asylum system to initiate claims for cancellation of removal,⁵ a workload that is misplaced before the Asylum Division. While there is no ideal solution here, two options could ameliorate the situation: (1) establish

4 The screen-in rate refers to the share of individuals deemed to have a significant possibility of meeting asylum standards in a credible-fear interview.

5 Cancellation of removal is a discretionary form of relief available to unauthorized immigrants who have been present in the United States for ten years or more and can prove that their removal would impose hardship on a U.S.-citizen or permanent-resident family member. Because it can only be granted by an immigration judge to individuals in removal proceedings, and because there is no process for individuals to affirmatively apply for cancellation, immigrants seeking this relief often submit affirmative asylum applications to USCIS as a way to access the immigration courts.



a unit at USCIS to hear likely cancellation cases, or (2) end full merits adjudication for cases filed ten years after arrival in the United States, unless the case is found to meet one of a limited number of exceptions.

Over the longer term, there is considerably more that could and should be done to update the asylum system to meet present and future needs, especially where EOIR and the immigration courts are concerned. However, changes to how USCIS manages the affirmative caseload will promote efficiencies that have positive effects across the system and beyond. Such practices provide a foundation on which to build a border-enforcement and asylum-processing regime suited to the evolving challenges at the southwest border.

Policymakers must also recognize the key role regional security and protection needs play in the migration challenges the asylum system faces. Working with neighboring countries to address the underlying causes of displacement and establish more robust asylum and refugee-processing regimes in other countries, especially Mexico, is essential. Taken together, these changes require longer time horizons and sustained regional collaboration efforts. They are the only reliable course for building resilience and enabling the U.S. asylum system to address both its current, pressing challenges and better respond in future situations of influx.

I. Introduction

The United States has a longstanding tradition of providing asylum to those in need, with thousands of persecuted individuals seeking and being granted protection in the country each year. The asylum system has its roots in the *Refugee Act of 1980*, a pioneering piece of legislation that incorporated into U.S. domestic law the United States' international legal obligations under the 1967 Protocol Relating to the Status of Refugees. During the early 1990s, increased pressure on the system exposed weaknesses that led to significant backlogs, spurring fundamental reforms. The present system for adjudicating asylum claims dates from those mid-1990s reforms. It has been recognized domestically and around the world as a success and a strong model for other countries.

In recent years, a confluence of factors—including an increase in the number of asylum applications, as well as the expansion of expedited removal and credible-fear processes at the U.S.-Mexico border—has once again put staggering weight on the system. The heightened number of applications filed by nationals of countries in the Northern Triangle of Central America,⁶ in particular, has strained the system and challenged the ability of authorities to fulfill their other border-management responsibilities, as U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) resources have been assigned to processing vulnerable populations.

The result has been a large and growing backlog of cases. Wait-times for an initial review of the merits of an asylum claim now exceed two years, and can be as long as five, despite statutory requirements that applications be processed within 180 days. Failure to adjudicate claims within a reasonable period has a number of adverse effects: it makes asylum seekers more vulnerable by preventing those eligible for protection from gaining it, and it undermines the integrity of the asylum regime. Because asylum seekers are permitted to remain in the United States while their claims are decided—and, if a decision is not reached within 180 days, to be granted work authorization—long wait times can create incentives for individuals without qualifying claims to apply. Indeed, U.S. lawmakers established the 180-day requirement to prevent the asylum system from being used simply to gain employment authorization or forestall deportation. Such outcomes compromise both essential humanitarian protection and immigration enforcement missions.

⁶ These countries are El Salvador, Guatemala, and Honduras.



In the face of these breakdowns, the Trump administration has taken a series of actions to restrict and narrow the pathways to claim and gain asylum in the United States. They include issuing new legal guidance that largely eliminates domestic and gang violence as grounds for asylum; declaring a “zero-tolerance” policy under which adult asylum seekers are to be prosecuted as criminals for first-time illegal border crossings, necessitating separation of children from their parents when families arrived together; and turning away asylum claimants at legal crossing points, despite instructing asylum seekers to present claims only at ports of entry.

Such severe measures are unnecessarily harsh and have already proven both unworkable and counterproductive. Almost immediately, the widespread public outcry against separating young children from parents led the president to issue an executive order suspending family separation and calling instead for family detention, though the government does not have adequate capacity in facilities appropriate for families. The absence of lead time in the announcement of these zero-tolerance policies meant the implementing agencies had minimal time to plan and created chaos in border operations. Ensuing litigation has led federal courts to step in, resulting in tight judicial oversight and monitoring of these same actors as they reunify children with their families under the amended policies.

The U.S. asylum system urgently needs to be retooled to enable it to function effectively once again. However, instead of turning to severe and unworkable measures, history should be the guide. The system has been in crisis before, with even larger caseloads and more stubborn operational challenges, and it was revamped to work. Today’s task is to recognize that flows across the southwest border have changed in recent years from principally Mexican migrants seeking economic opportunity to more complex, mixed flows of predominantly Central Americans. Some are escaping poverty, others seek protection from violence.

The Trump administration has taken a series of actions to restrict and narrow the pathways to claim and gain asylum in the United States.

Border enforcement needs to adapt to more effectively respond to these dynamic flows. The goal for the asylum system in this new environment should be timely, fair processing of asylum claims. Deterrence then becomes inherent; long waits in multiyear backlogs are eliminated, thereby erasing perverse incentives to misuse the system. At the same time, vulnerable individuals in need of protection will receive case decisions quickly and face less uncertainty about their futures in the United States. Changes should ensure the prompt identification of cases, fair and efficient approval of meritorious claims, and denial of cases that do not warrant protection—all are essential dimensions of effective border-enforcement responses to mixed flows.

This report outlines first steps toward incorporating the core principles and obligations underlying the nation’s asylum and immigration systems into effective border enforcement and deterrence. It examines recently emerged challenges and recommends strategies to help the asylum system more effectively meet them. This study reflects an in-depth exploration by Migration Policy Institute (MPI) researchers of the data and metrics underpinning the asylum system; three private roundtables of senior government officials, experts, and stakeholders who provided advice and feedback on key research questions and policy ideas; and expert studies commissioned on critical topics identified during analysis of the data and in the roundtable discussions.

The report begins with an overview of the asylum system—its operations both at U.S. borders and in the interior—before tracing how backlogs have developed and examining the causes behind the recent



increase in asylum applications. The core recommendations it makes are for the affirmative asylum system, as many key adjustments can be accomplished through available administrative measures, primarily by the Department of Homeland Security (DHS), which is responsible for implementing critical aspects of U.S. asylum and border-management policy. These recommendations aim to make management of asylum workflows more strategic and effective, resolve cases in a timely fashion, deter abuses, and thereby provide protection to applicants who are eligible but risk becoming lost in a failing system.

Because regional dynamics are directly fueling the current stresses on the system, the report also recommends complementary actions to strengthen protection systems elsewhere in the region and address the underlying causes of forced displacement in Northern Triangle countries. Such actions would represent essential steps toward placing the asylum system once more on a sound footing, restoring public confidence in this key function of the nation's immigration system, and strengthening responses to today's border-enforcement demands.

II. The U.S. Asylum System and Its Prior Reforms

The volume of asylum claims in the United States has fluctuated considerably in recent decades, generally reflecting changing global circumstances, especially within North and Central America. In the 1970s, applications to the Immigration and Naturalization Service (INS), the predecessor agency to DHS that handled asylum claims at the time, totaled less than 5,000 a year.⁷ They spiked in 1981 in response to a mass exodus from Cuba and again in 1988 because of civil wars in Central America and repressive policies in China.⁸

The number of new asylum claims filed with INS reached an all-time high of 150,000 in 1995, adding to an existing record backlog of nearly 500,000 cases. This increase was driven in part by deteriorating human-rights conditions in Haiti and Central America. The urgency of managing this caseload effectively led to fundamental reforms in 1994 and 1995 that created the asylum system that exists today. Following the implementation of these reforms, application levels dropped dramatically and remained below 40,000 per year for much of the next decade and half, and approval rates rose.⁹

Core Principles of the 1990s Reforms

The breakdown of the asylum system that has occurred in more recent years is especially striking against the backdrop of the success of the mid-1990s reforms. At the time, as is the case today, a poorly performing and overwhelmed system invited misuse and a loss of public confidence in the government's ability to accomplish its dual missions of humanitarian protection and immigration enforcement. The resulting reforms redesigned and rebuilt the failing system into one that was widely recognized as fair, timely, properly resourced, and well managed.

The 1990s reforms rested on six basic principles:

- ***Serious backlogs and delays in asylum case processing represent a law enforcement vulnerability.*** Both humanitarian and law enforcement missions are served by a well-functioning asylum system.
- ***Timeliness is essential, both to provide protection to applicants with valid claims and to discourage frivolous claims and misuse of the system.*** Six months (180 days) is a reasonable period for the government to adjudicate cases. Work authorization—which can serve as an

7 Ruth Ellen Wasem, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy* (Washington, DC: Congressional Research Service, 2011), <https://fas.org/sgp/crs/homesec/R41753.pdf>.

8 Ibid.

9 Ibid.



incentive to file specious claims—should not be granted unless the government fails to meet the six-month processing norm.

- ***Asylum decisions are best made in a nonadversarial process.*** Interviews should be conducted by well-trained officers whose expertise and sole responsibilities are asylum adjudications. Thus, the U.S. Citizenship and Immigration Services (USCIS) Asylum Division, and not the immigration courts, is best suited to be the primary adjudicative body entrusted with making asylum case determinations.
- ***Asylum decision-making should draw on information about country conditions from all reliable sources, both governmental and nongovernmental.*** The asylum program should have the resources and research staff to provide the Asylum Division with up-to-date, comprehensive information about country conditions that have relevance to asylum case determinations. Robust quality-assurance procedures should be built into the case-processing model to ensure the integrity of the system and access to protection for individuals in need.
- ***Applicants should have a full opportunity to make their claim, with the aim of resolving a high percentage of cases at a single adjudication level.*** Appeal of asylum officer decisions can be made to immigration courts as a defense against removal for those whose claims are denied. Final negative decisions should result in removal.
- ***As an emergency measure, if backlogs become unmanageable or other breakdowns occur, affirmative cases should be processed on a “last in, first out” basis.*** Doing so enables officials to make timely decisions on fresh claims and restore discipline in the system going forward.

The system that operationalized these principles offers asylum applicants two pathways to make asylum claims. They may seek asylum in the United States through either affirmative or defensive processes, depending on the circumstances under which they file their claims.

III. Asylum Pathways and the Surge of Applications

Individuals already present in the United States and not in removal proceedings may apply for asylum “affirmatively” with USCIS. These cases are adjudicated by asylum officers who either grant the application or refer unsuccessful applicants to the Executive Office for Immigration Review (EOIR), the entity within the U.S. Department of Justice (DOJ) that houses the immigration courts. Applicants may then have their claims considered anew by an immigration judge.

Individuals who have been apprehended and placed in removal proceedings, and whose cases are thus already before EOIR, may apply for asylum “defensively” as a defense against being removed from the country. This pathway includes individuals referred to EOIR by USCIS because their affirmative applications were not granted.

Asylum seekers who make a claim for protection at or near the U.S. border today face a different, hybrid system that involves both USCIS and EOIR. This third path is the result of statutory changes made in 1996 that established expedited removal and credible-fear protection safeguards.¹⁰ Most migrants who are taken into custody at the border by CBP lack the proper documentation to enter the United States.

¹⁰ See *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA), Division C of Public Law 104–201, *U.S. Statutes at Large* 110 (1996): 3009, www.gpo.gov/fdsys/pkg/STATUTE-110/pdf/STATUTE-110-Pg3009.pdf.



As a result, a large share is detained and subject to expedited removal, a swift administrative form of deportation that does not allow for a hearing before an immigration judge.¹¹

Individuals who are placed in expedited removal and express a fear of return to their home country—either to CBP or to ICE—are to be referred for a credible-fear interview with a USCIS asylum officer.¹² The purpose of this interview is to determine whether the person has a “significant possibility” of establishing eligibility for asylum (refugee status) or protection in the United States under the Convention Against Torture. Those who pass this credible-fear screening are placed in formal immigration removal proceedings and given the opportunity to apply for asylum defensively before an immigration judge.

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fair and timely decisions on asylum cases, and in curtailing
nonmeritorious claims.*

Unaccompanied minors apprehended at the border, in recognition of the vulnerabilities of children and youth (under age 18) traveling without a parent or guardian, are not subject to expedited removal and are instead processed in accordance with special protective procedures established by the *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA).¹³ Thus, unaccompanied minors from countries other than Mexico or Canada are placed directly into immigration court proceedings following apprehension.¹⁴ However, their asylum claims are first adjudicated by USCIS asylum officers rather than immigration judges, so that they may avoid, to the greatest extent possible, the adversarial setting of courtrooms. If USCIS does not approve the application of an unaccompanied minor, the child may request asylum again before an immigration judge.

Under this system, the federal government succeeded for many years in delivering fair and timely decisions on asylum cases, and in curtailing nonmeritorious claims. It demonstrated the self-correcting

- 11 IIRIRA authorizes the federal government to quickly remove foreign nationals from the United States without a hearing before an immigration judge if they have no entry documents or if they used counterfeit, altered, or otherwise fraudulent or improper documents. See *ibid.* A separate statutory authority allowed the executive branch to expand its application by notice, but only to persons who had been present in the United States for less than two years and who had entered without inspection. This expansion of authority was not used until 2002, when it was applied to individuals arriving by sea who were not admitted or paroled into the country. See U.S. Department of Justice (DOJ), “Notice Designating Aliens Subject to Expedited Removal under §235(b)(1)(A)(iii) of the Immigration and Nationality Act,” *Federal Register* 67, no. 68923 (November 13, 2002): 68923–26, www.federalregister.gov/documents/2002/11/13/02-29038/notice-designating-aliens-subject-to-expedited-removal-under-section-235b1aiii-of-the-immigration. It was expanded more substantially in 2004 to apply to individuals not admitted or paroled, encountered within 100 miles of the Southwest border, and unable to demonstrate that they had been present in the country for the 14-day period prior to apprehension. See DHS, Bureau of Customs and Border Protection, “Designating Aliens for Expedited Removal,” *Federal Register* 69, no. 154 (August 11, 2004): 48877–81, www.gpo.gov/fdsys/pkg/FR-2004-08-11/pdf/04-18469.pdf.
- 12 Individuals taken into custody either at or near the border, or anywhere in the interior of the country, and who have previously been ordered removed, are placed into “reinstatement of removal” proceedings, another form of accelerated deportation during which individuals are to be removed without an immigration court hearing. Those who express fear of returning to their home country in this context are referred to USCIS for a similar screening interview, known as a reasonable-fear interview. If the asylum officer finds that the individual has a reasonable fear of persecution or torture, the migrant may then seek withholding of removal or deferral of removal in immigration court under the Convention Against Torture. See USCIS, “Questions & Answers: Reasonable Fear Screenings,” updated June 18, 2013, www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-reasonable-fear-screenings.
- 13 *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, Public Law 110-457, *U.S. Statutes at Large* 122 (2008): 5044, www.gpo.gov/fdsys/granule/STATUTE-122/STATUTE-122-Pg5044/content-detail.html.
- 14 Unaccompanied children from Mexico and Canada are first screened for asylum and trafficking concerns. If none are triggered, they are subject to voluntary return, which does not carry the penalty of a formal removal.



characteristics and dynamics of a healthy, effective system. New filings with INS decreased from their peak of 150,000 in fiscal year (FY) 1995 to 30,000 in FY 1999 (an 80 percent drop).¹⁵ At the same time, the approval rate for asylum cases increased from 15 percent in FY 1993 to 38 percent in FY 1999, indicating that a larger share of the applications filed were valid claims for protection.¹⁶

The backlog of pending affirmative asylum cases was reduced from 464,000 in FY 2003 to 55,000 by the end of FY 2006.¹⁷ By FY 2010, the number of pending cases stood at slightly more than 6,000. (A large share of the pre-reform backlog was ultimately resolved by provisions of the 1997 *Nicaraguan Adjustment and Central American Relief Act*, which eased the permanent-residence requirements for certain asylum seekers from El Salvador, Guatemala, and former Soviet-bloc countries.¹⁸) The number of credible-fear cases processed during this period also remained low, hovering around 5,000 per year from FY 2005 to FY 2009.¹⁹

However, in more recent years, incremental changes in the Asylum Division's policies and procedures, and pressures from changing migration flows, have hampered the ability of the Asylum Division to keep up. Beginning in 2010, and especially since 2014, affirmative applications, credible-fear claims, and backlogs—in both the immigration courts and the Asylum Division—have ballooned. New regional migration dynamics have been a pivotal factor in reshaping arrivals at the U.S.-Mexico border. About a decade ago, approximately one in every 100 border crossers was an unaccompanied child or potential refugee seeking humanitarian protection; today, that share is more than one in three.²⁰

Incentives to misuse the asylum system may also be reemerging. For example, over the past five years, the number of employment authorization documents (EADs) approved for individuals with pending asylum cases that have passed the 180-day mark increased from 55,000 in FY 2012 to 270,000 in FY 2016, and further to 278,000 in just the first six months of FY 2017.²¹ This high and growing level of EAD grants may suggest that, as processing times have grown, so too have incentives to file claims as a means of obtaining work authorization and protection from deportation, without a sound underlying claim to humanitarian protection.

A. Affirmative Asylum Caseload before USCIS

The number of affirmative asylum applications filed with USCIS has surged in recent years. As shown in Figure 1, USCIS received 143,000 cases in FY 2017, as compared to 28,000 in FY 2010 (a 402-percent increase). In the first three quarters of FY 2018, 74,000 applications were filed.²² These figures have

15 Wasem, *Asylum and "Credible Fear" Issues*, 3; INS, "Asylum Reform: Five Years Later Backlog Reduced and Number of Non-Meritorious Claims Drops" (news release, February 1, 2000), www.uscis.gov/sites/default/files/files/pressrelease/Asylum.pdf.

16 INS, "Asylum Reform: Five Years Later."

17 Ibid.; USCIS, *Backlog Elimination Plan* (Washington, DC: USCIS, 2004), www.aila.org/File/DownloadEmbeddedFile/44829.

18 USCIS, *Backlog Elimination Plan* (Washington, DC: USCIS, 2006), www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf.

19 Wasem, *Asylum and "Credible Fear" Issues*, 11.

20 Figures based on Migration Policy Institute (MPI) calculations of the share of unaccompanied child apprehensions, credible-fear case receipts, and reasonable-fear case receipts, out of total southwest border apprehensions. In FY 2017, there were 41,435 apprehensions of unaccompanied minors, 78,564 credible-fear case receipts, and 10,273 reasonable-fear case receipts out of a total 303,916 southwest border apprehensions.

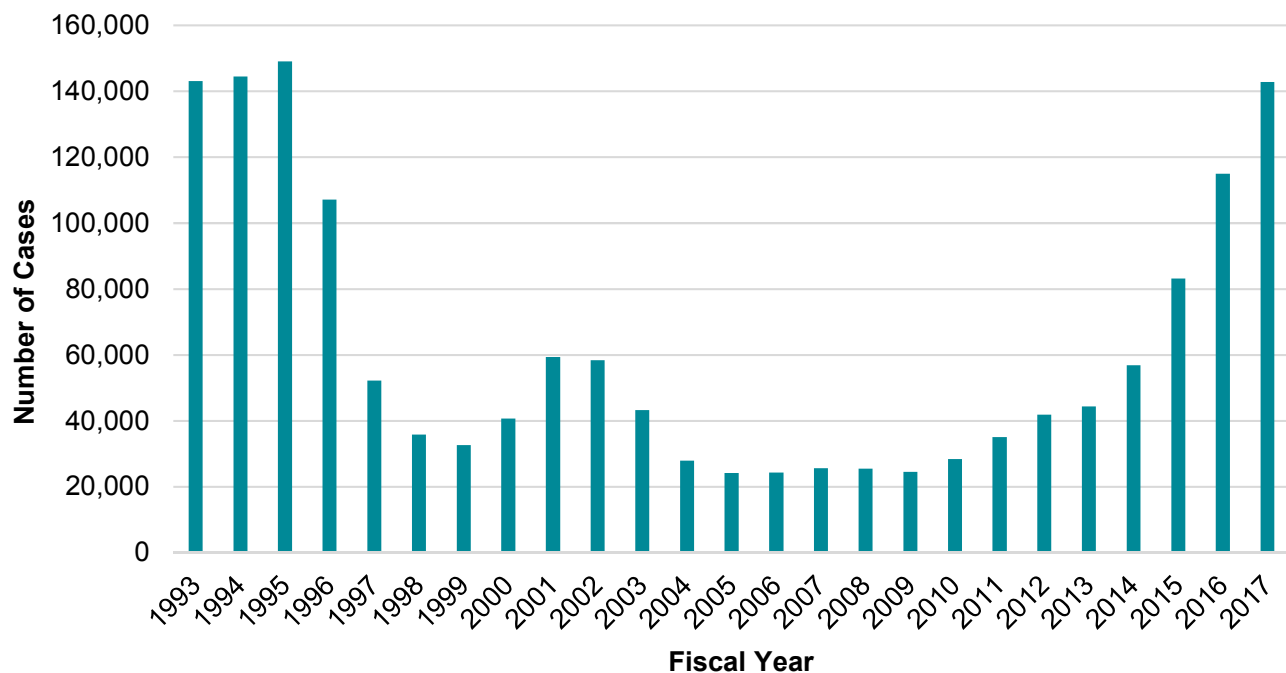
21 USCIS, "Number of Approved Employment Authorization Documents, by Classification and Statutory Eligibility October 1, 2012 - June 29, 2017" (dataset, USCIS, Washington, DC, accessed March 12, 2018), www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-statutory-eligibility.pdf.

22 This number reflects applications filed between October 2017 and June 2018. See USCIS, "Affirmative Asylum Statistics" (monthly datasets for October 2017 through December 2017, Asylum Division Quarterly Stakeholder Meeting, USCIS, January 24, 2018), www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-11; USCIS, "Affirmative Asylum Statistics" (monthly datasets for January 2018 through March 2018, Asylum Division Quarterly Stakeholder Meeting, USCIS, May 1, 2018), www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-12; USCIS, "Affirmative Asylum Statistics" (monthly datasets for April 2018 through June 2018, Asylum Division Quarterly Stakeholder Meeting, USCIS, August 7, 2018), www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-13.



almost reached the historic high experienced in 1995 and are due in part to the increase in the number of cases of unaccompanied children arriving at the border. In FY 2017, USCIS received 18,000 asylum cases involving unaccompanied children, compared to 700 in FY 2013.²³ In the first three quarters of FY 2018, 13,000 such cases were filed.²⁴

Figure 1. Affirmative Asylum Cases Filed with USCIS, FY 1993–2017



Sources: Data provided to the Migration Policy Institute (MPI) by the U.S. Citizenship and Immigration Services (USCIS) Asylum Division, received May 18, 2016; USCIS, “Affirmative Asylum Statistics” (datasets, Asylum Division Quarterly Stakeholder Meetings, October 2016 through September 2017), www.uscis.gov/outreach/notes-previous-engagements.

While China and Mexico had been the top countries of origin for those filing affirmative asylum cases for many years, they were superseded in FY 2017 by Venezuela, a trend that has continued in FY 2018 (see Table 1).²⁵ Since FY 2014, El Salvador and Guatemala have also been in the top five origin countries. Because affirmative applications must be filed by individuals already present in the United States, and because asylum applicants must file their claims within one year of entering the country, a majority of these applicants are likely new arrivals (some of whom entered without inspection, while others were admitted with a valid visa). However, this applicant population also includes some individuals who have been in the United States for longer periods of time, and who may seek permission to remain through a cancellation of removal (see Section III.A.2.).

23 USCIS, “Refugees, Asylum, and Parole System MPA and PRL Report: 10\01\16 – 9\30\17” (dataset, Asylum Division Quarterly Stakeholder Meeting, October 5, 2017), www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_MPAandPRLreportFY17.pdf.

24 USCIS, “Refugees, Asylum, and Parole System MPA and PRL Report: 10\01\17 – 06\30\18” (dataset, Asylum Division Quarterly Stakeholder Meeting, August 7, 2018), www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/MPAandPRLreportFY2018Q3.pdf.

25 In the first three quarters of FY 2018, 14,000 affirmative asylum applications were filed by nationals of Venezuela, compared to 5,000 from Guatemala, 5,000 from El Salvador, 4,000 from China, and 4,000 from Mexico. See USCIS, “Affirmative Asylum Statistics (October 2017 through June 2018).”

**Table 1. Affirmative Asylum Applications, by Applicants' Top Counties of Origin, FY 2010–17**

2010		2011		2012		2013	
Total	28,443	Total	35,066	Total	41,880	Total	44,446
China	10,633	China	12,884	China	14,411	China	11,820
Mexico	2,320	Mexico	4,042	Mexico	6,078	Mexico	5,664
Haiti	986	Guatemala	1,167	Egypt	1,867	Egypt	2,819
Ethiopia	927	Nepal	1,115	Guatemala	1,423	Guatemala	1,851
Nepal	909	Egypt	837	Nepal	1,405	Nepal	1,350
All other	12,668	All other	15,021	All other	16,696	All other	20,942
2014		2015		2016		2017	
Total	56,912	Total	83,251	Total	114,933	Total	142,818
China	11,838	China	13,924	China	16,483	Venezuela	27,634
Mexico	7,631	Mexico	8,855	Mexico	14,663	China	16,923
Guatemala	3,654	Guatemala	8,253	Venezuela	14,729	Guatemala	12,535
El Salvador	2,379	El Salvador	7,071	Guatemala	10,477	El Salvador	12,222
Venezuela	2,181	Venezuela	5,605	El Salvador	9,309	Mexico	12,101
All other	29,229	All other	39,543	All other	49,272	All other	61,403

Sources: Data provided to MPI by USCIS Asylum Division, received May 18, 2016. Data for FY 2017 are from USCIS, “Affirmative Asylum Statistics.”

I. The Impact of Credible-Fear Determinations

The workload of the USCIS Asylum Division has increased significantly since 2010, due largely to substantial increases in the number of credible-fear interview requests, a large share of which are made by nationals from El Salvador, Guatemala, Honduras, and Mexico arriving at the southwest border. Between FY 2010 and FY 2017, credible-fear case receipts rose from 9,000 to 79,000, peaking at 94,000 in FY 2016 (see Figure 2). Reasonable-fear claims rose from 2,000 in FY 2010 to a peak of 10,000 in FY 2017.²⁶ Case levels have remained high into FY 2018, with 73,000 credible-fear receipts and more than 8,000 reasonable-fear receipts in the first three quarters of the fiscal year.²⁷

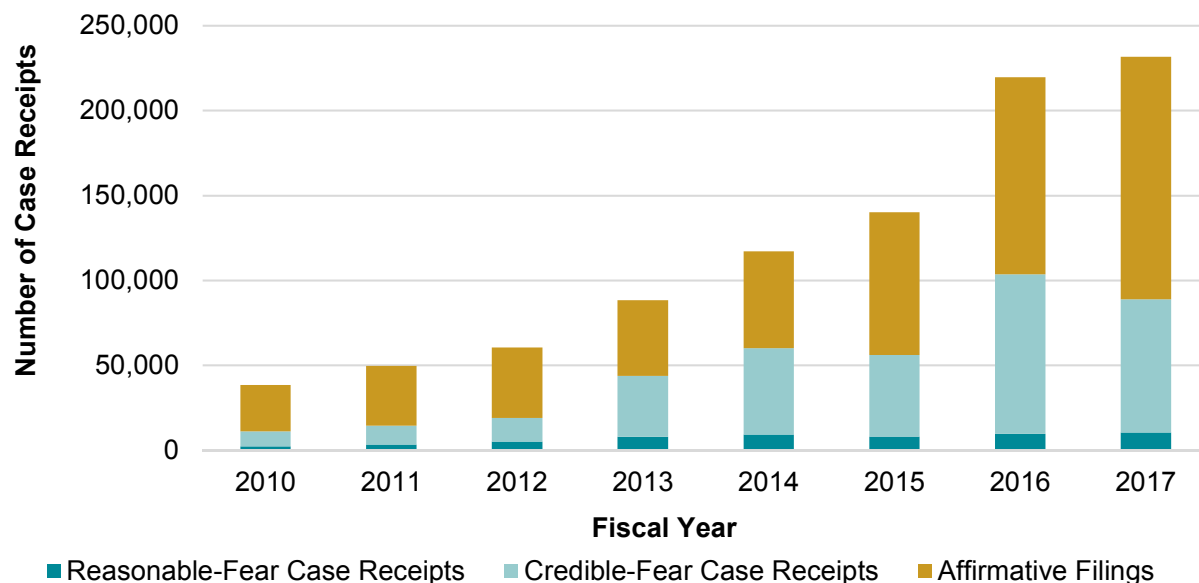
The dramatic increase in credible-fear case receipts, in particular, has reshaped the work of the Asylum Division. The rise of such cases meant that USCIS expected approximately 40 percent of its asylum officers to be occupied with conducting credible-fear screenings in 2017.²⁸ As a result, these asylum officers were not available to adjudicate affirmative cases. Thus, despite seeing its resources increase in recent years, the Asylum Division has devoted significantly less capacity to adjudicating affirmative asylum applications, even as these cases grew in number.

26 USCIS, “Credible Fear and Reasonable Fear Statistics and Nationality Reports” (datasets for multiple years, Asylum Division Quarterly Stakeholder Meeting, accessed March 12, 2018), www.uscis.gov/outreach/notes-previous-engagements.

27 Data are for October 2017 through June 2018. See USCIS, “Credible Fear and Reasonable Fear Statistics and Nationality Reports—FY 2018 Total Caseload” (dataset, Asylum Division Quarterly Stakeholder Meeting, August 7, 2018), www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/FY18CFandRFstats_2018_06_30.pdf.

28 USCIS, “Questions and Answers” (fact sheet, USCIS Asylum Division Quarterly Stakeholder Meeting, November 4, 2016), 11, www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumQuarterlyEngagementQA11042016.pdf.

Figure 2. USCIS Asylum Division Workload of Affirmative, Credible-Fear, and Reasonable-Fear Cases, FY 2010–17



Sources: Data provided to MPI by USCIS Asylum Division, received May 18, 2016; USCIS, “Affirmative Asylum Statistics.”

2. Cancellation of Removal Case Filings

Another factor that has contributed to the increase in affirmative asylum claims is related to a different form of relief from removal: cancellation of removal cases. Cancellation of removal is a discretionary form of relief available to certain individuals who do not have legal immigration status but who have been present in the United States for ten years or more. Such individuals may seek permission to continue to reside in the country if their removal would impose hardship on a U.S.-citizen or permanent-resident family member.

The link between this form of relief and affirmative asylum claims is a procedural one. Cancellation can only be granted by an immigration judge to individuals in removal proceedings. There is no process for individuals to affirmatively apply for cancellation. Over time, it has become apparent that individuals seeking cancellation of removal commonly submit affirmative asylum applications to USCIS as a way to access the immigration courts. Because the vast majority of these individuals do not have valid asylum claims, their applications are denied and they are referred to EOIR for removal proceedings, where they can make cancellation claims as a defense against removal. In the process, USCIS absorbs an additional, misplaced caseload that is not part of its mission and purpose.

The scale of the issue is significant. In FY 2016, 21,000 asylum applications were filed by noncitizens with a U.S. entry date ten or more years prior.²⁹ Though not a certainty, this is a strong indication that a person may be seeking cancellation of removal rather than asylum. An additional 1,600 applications listed entry dates that were eight or nine years prior to their filing for asylum,³⁰ suggesting that applicants recognize the ten-year requirement will have been met by the time the asylum application is denied and referred to immigration courts. According to USCIS, as many as 40,000 cases currently in the asylum backlog were filed more than ten years after the applicant’s date of arrival in the United States.³¹ Many of these claims are filed by Mexican nationals, implying that in addition to country conditions,

²⁹ Comments by USCIS Asylum Division staff, Asylum Division Quarterly Stakeholder Meeting, February 6, 2017.

³⁰ Ibid.

³¹ Comments by USCIS Asylum Division staff, Asylum Division Quarterly Stakeholder Meeting, August 7, 2018.



access to cancellation of removal may partially account for the increase in affirmative claims by this nationality, which has for many years been among the top five in the affirmative system caseload.³²

3. Other Factors

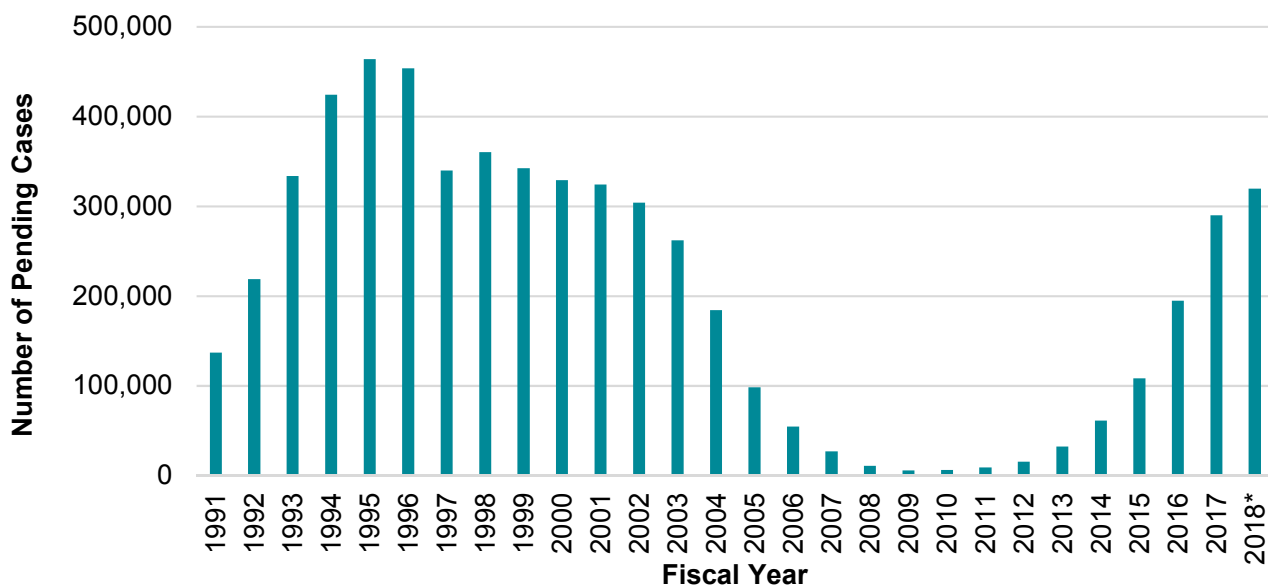
Additional developments have also had an impact on the ability of the Asylum Division to manage rising caseloads. These include:

- Asylum cases have become more complicated and time-consuming to decide, due in part to increasingly complex asylum case law, heightened security checks, and increased USCIS internal review processes.
- Mounting backlogs in the affirmative system are drawing follow-on mandamus litigation, whereby asylum applicants facing delays seek a court order directing USCIS to take action on their case. Responding to this litigation has created an additional workload for the Asylum Division.
- Budgets since the 2008 recession have precluded the Asylum Division and EOIR from receiving new resources until recently.

4. The Asylum Division's Caseload

Together, the trends and developments outlined above have resulted in a large and growing backlog of cases (see Figure 3). As of the end of June 2018, the backlog facing the Asylum Division stood at 320,000 cases.³³ With such a sizeable backlog, most affirmative asylum applicants have waited between two and five years for an interview.³⁴

Figure 3. Backlog of Affirmative Asylum Cases, FY 1991–2018*



* Data for FY 2018 show the year-to-date pending caseload as of June 2018.

Note: Backlogs reflect the pending cases at the end of each fiscal year.

Sources: Data provided to MPI by the USCIS Asylum Division, received May 18, 2016; USCIS, "Affirmative Asylum Statistics (September 2017);" USCIS, "Affirmative Asylum Statistics" (monthly dataset for June 2018, Asylum Division Quarterly Stakeholder Meeting, USCIS, August 7, 2010), www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-13.

³² Cancellation is a form of relief sought by Mexican nationals in particular. For example, more than 70 percent of filings by Mexican nationals in FY 2016 involved individuals listing a date of entry into the United States that is ten or more years before their asylum application filing date. Over the same period, Mexican nationals made up more than 45 percent of all individuals who filed for asylum ten or more years after their date of entry. Comments by USCIS Asylum Division personnel at MPI roundtable, *Strengthening the U.S. Asylum System*, Washington, DC, March 17, 2016.

³³ USCIS, "Affirmative Asylum Statistics (June 2018)."

³⁴ USCIS, "Affirmative Asylum Scheduling Bulletin," updated April 26, 2018.



This backlog and the resulting lengthy wait times are especially unfortunate given the strengths of the Asylum Division in implementing its mission. Its operations reflect management practices driven by a commitment to fairness and quality in what is arguably one of the most consequential, sensitive areas of decision-making in the immigration system.

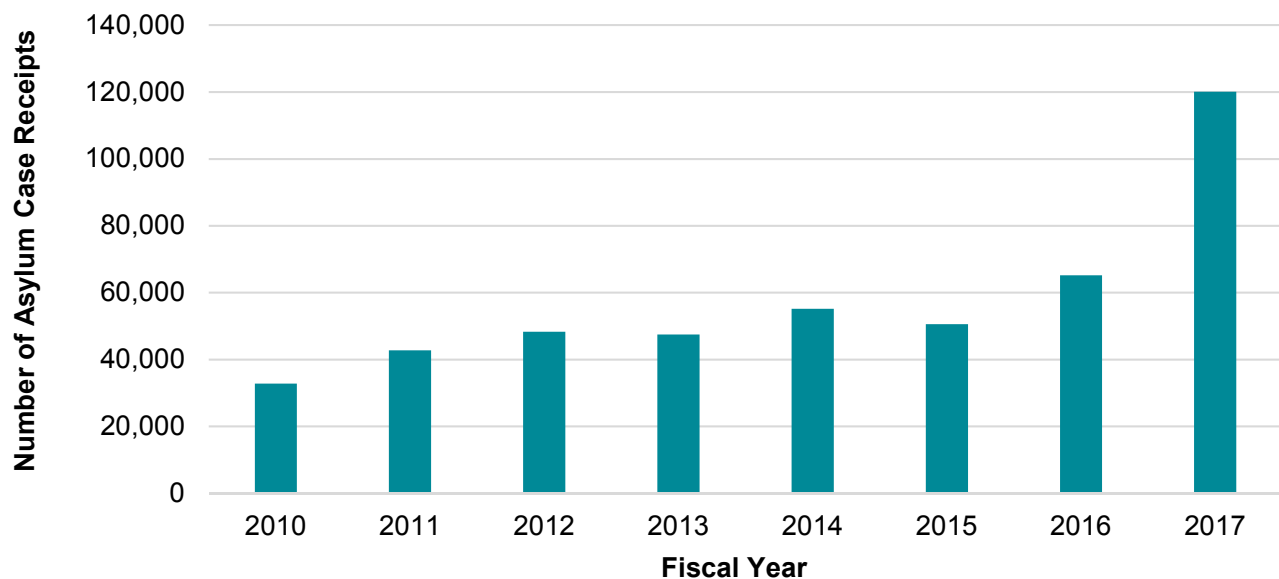
The Asylum Division has developed careful quality-assurance processes. Both credible-fear and affirmative case decision-making include supervisory review. Additional oversight and review functions are carried out at the headquarters level to ensure that particularly difficult cases receive the fullest consideration. Asylum officers receive weekly trainings to ensure that they are equipped to identify and analyze emerging trends and that decision-making is consistent. These processes have contributed in important ways to the respect the U.S. asylum system has earned among both domestic and international stakeholders.

The current backlog of affirmative asylum cases is approaching the levels seen prior to the reforms of the 1990s. As was the case two decades ago, the affirmative asylum system is once more in crisis. The Trump administration has attempted to reduce caseloads by walling off access to asylum pathways. Instead, the system needs to be rejuvenated to meet present needs and challenges, and to build resilience moving forward.

B. Defensive Asylum Caseload before EOIR

Defensive applications for asylum made before immigration judges have also been on the rise. Between FY 2010 and FY 2016, defensive asylum receipts rose from 33,000 to 65,000.³⁵ These cases rose further to 120,000 in FY 2017.³⁶

Figure 4. Defensive Asylum Case Receipts, FY 2010–17



Sources: Executive Office for Immigration Review (EOIR), *Statistics Yearbooks*, FY2014–FY2016 (Washington, DC: U.S. Department of Justice, multiple years), www.justice.gov/eoir/statistical-year-book; EOIR, “Defensive Asylum Applications” (dataset, U.S. Department of Justice, July 10, 2018), www.justice.gov/eoir/page/file/1061981/download.

35 Executive Office for Immigration Review (EOIR), “Asylum Statistics FY 2012 – 2016” (dataset, DOJ, Washington, DC, March 2017), www.justice.gov/eoir/file/asylum-statistics/download.

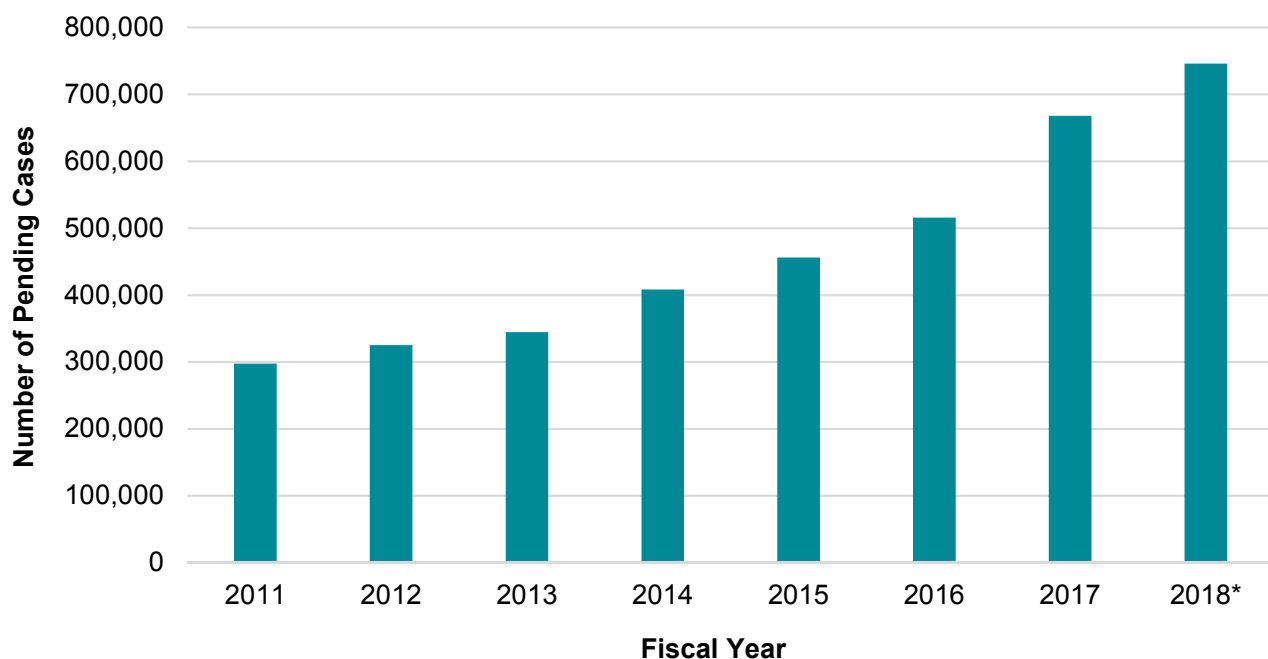
36 EOIR, “Defensive Asylum Applications” (dataset, DOJ, July 10, 2018), www.justice.gov/eoir/page/file/1061981/download.



The surge in claims filed at the southwest border by migrants from Northern Triangle countries is reflected in country-of-origin data for defensive claims. China dominated defensive claims for nearly a decade before Mexico replaced it from FY 2012 to FY 2014.³⁷ Then in FY 2015 and FY 2016, El Salvador topped the list, with Guatemala and Honduras rising to join it in the top five source countries for defensive claims.³⁸ Between FY 2014 and FY 2016, the number of defensive asylum claims filed by applicants from El Salvador rose from 7,000 to 18,000, while those from Guatemala and Honduras each rose from approximately 4,000 to 11,000.³⁹

Like affirmative asylum seekers, defensive applicants face lengthy wait-times for their cases to be heard. As of the end of July 2018, EOIR had a record backlog of 746,000 cases of all types, with defensive asylum cases among them (see Figure 5). This reflects the continued growth of the backlog in recent years.

Figure 5. Backlog of Cases Pending in Immigration Court, FY 2010–18*



* Data for FY 2018 show the year-to-date pending caseload through July 2018.

Note: Annual figures reflect the pending caseload at the close of each fiscal year.

Source: Transactional Records Access Clearinghouse (TRAC), “Immigration Court Backlog Tool,” updated July 2018, http://trac.syr.edu/phptools/immigration/court_backlog/.

Although asylum cases are not the cause of the backlog (they make up about 30 percent of cases in immigration court⁴⁰), they are nonetheless dramatically affected by it—some applicants must wait up to five years for a hearing.⁴¹ A recent increase in the number of immigration judges from 250 in 2016 to approximately 350 in 2018 has not slowed new growth in the backlog and is not expected to make

³⁷ EOIR, “Asylum Statistics FY 2012 – 2016.”

³⁸ In FY 2016, El Salvador was the top country of origin for defensive asylum requests, with 17,709 applications, followed by Mexico (12,831), Guatemala (11,354), Honduras (10,818), and India (1,840). See *ibid*.

³⁹ *Ibid*.

⁴⁰ This estimate is based on the share of asylum completions (grants, denials, administrative closures, and other closures) among total completions at EOIR in FY 2017 and in FY 2018 through June 30, 2018. See EOIR, “New Cases and Total Completions” (dataset, DOJ, July 7, 2018), www.justice.gov/eoir/page/file/1060841/download; EOIR, “Asylum Rates” (dataset, DOJ, July 7, 2018), www.justice.gov/eoir/page/file/1061526/download.

⁴¹ MPI analysis of EOIR statistics. For wait-time estimate, see Transactional Records Access Clearinghouse (TRAC), “Despite Hiring, Immigration Court Backlog and Wait Times Climb,” updated May 15, 2017, <http://trac.syr.edu/immigration/reports/468/>.



headway in eliminating it.⁴² The issues confronting the immigration court system in both its asylum and overall caseloads require broader reform measures and investments.

At the same time, the operations and policies of EOIR have a profound effect on the wider asylum system. Because EOIR is part of the Department of Justice, the attorney general has responsibility for its policies and practices. This includes the authority to review decisions and issue legal interpretations and precedent decisions for applying asylum law decided by the Board of Immigration Appeals (BIA). Such decisions and guidance apply to the work of both immigration courts and the USCIS Asylum Division, even though the latter is in another cabinet agency (DHS) and reports to a different cabinet head.

C. Recent Caseload Management Actions

In both the affirmative and defensive asylum systems, USCIS and EOIR have taken some steps to address their respective backlogs. As of August 2018, USCIS had increased the number of asylum officers from 272 in 2013 to 520; an additional 100 refugee corps officers⁴³ were being detailed to the Asylum Division to boost its capacity.⁴⁴ A large number of asylum and refugee officers have been assigned to handle the dramatic increase in credible-fear claims at the southwest border. The Asylum Division has also opened sub-offices in Boston, New Orleans, and Arlington, VA.⁴⁵ In recent years, EOIR has taken similar steps to increase its staff capacity by hiring additional immigration judges, as noted in the previous section.

USCIS announced that as of January 29, 2018, it would give priority to the applications most recently filed.

The Asylum Division has also developed systems for prioritizing how it schedules asylum interviews (the final step in the processing of an asylum case before a decision is made). Beginning in 2016, the first priority was individuals whose interviews had been rescheduled, followed by unaccompanied children, and then all other pending applications in the order they were received.⁴⁶ In practice, this meant that cases in the first two priority groups moved forward in the adjudication process in a matter of months, while the large majority of cases were added to and remained in a years-long backlog.

More recently, USCIS announced that as of January 29, 2018, it would give priority to the applications most recently filed with its asylum offices.⁴⁷ This represents a significant change and a return to the emergency measure introduced by the reforms of the mid-1990s. This is a promising step, if followed by additional systemic changes, as elaborated in the recommendations of this report. Likely as a result of this change, the backlog of pending cases did not grow in April, May, and June of 2018.⁴⁸

42 Ibid.; EOIR, “Office of the Chief Immigration Judge,” updated March 25, 2018, www.justice.gov/eoir/office-of-the-chief-immigration-judge-bios.

43 Refugee officers, part of the USCIS Refugee Affairs Division, adjudicate applications for refugee status overseas, in contrast to asylum officers who adjudicate cases within the United States. Refugee officers determine whether candidates meet refugee status criteria and review security checks before refugees are admitted to the United States.

44 Comments by USCIS Asylum Division staff, Asylum Division Quarterly Stakeholder Meeting, August 7, 2018; Comments by USCIS Asylum Division staff, Asylum Division Quarterly Stakeholder Meeting, February 6, 2018.

45 Ibid.

46 USCIS, *Affirmative Asylum Procedures Manual (AAPM)* (Washington, DC: USCIS Asylum Division, 2016), www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AAPM-2016.pdf.

47 USCIS, “USCIS to Take Action to Address Asylum Backlog” (press release, January 31, 2018), www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog.

48 USCIS, “Affirmative Asylum Statistics (April 2018 through June 2018).”



D. Other Asylum Policies Introduced by the Trump Administration

Citing the danger of being “invaded” by Central American migrants, the Trump administration has introduced several policies that are intended to change the asylum system and limit the ability of those seeking protection in the United States to succeed with their claims.⁴⁹ The policies aim to deter individuals who arrive at the southwest border from gaining access to asylum and have narrowed the grounds on which immigration judges and asylum officers can grant asylum in all reasonable-fear, credible-fear, asylum, and refugee adjudications.

Perhaps the most consequential of the administration’s actions concerns a narrowing of the grounds for asylum.

These measures include a “zero-tolerance” approach that involves prosecuting even first-time border crossers, without regard to whether they are seeking asylum, and detaining families pursuing asylum claims (a fallback from the earlier Trump administration policy of separating children from their parents, which became politically unsustainable in the face of widespread public criticism and then legally prohibited by a federal court injunction).⁵⁰ CBP also has limited capacity to receive asylum claims at ports of entry, despite instructing asylum seekers to only file claims at legal crossing points.⁵¹

Perhaps the most consequential of the administration’s actions concerns a narrowing of the grounds for asylum by largely eliminating gang and domestic violence as grounds for protection. U.S. law, in line with international humanitarian standards, allows asylum to be granted to individuals persecuted for reasons of race, religion, nationality, political opinion, or membership in a particular social group. Within this last category, the types of “social groups” considered valid grounds for asylum have evolved through case law. In a June 2018 decision known as *Matter of A-B-*, Attorney General Jeff Sessions vacated an earlier BIA decision in the case and overruled another related case, *Matter of A-R-C-G*.⁵² The decision states that the social group in question must exist independently of the harm asserted as a grounds for asylum, and that applications based on persecution by nongovernment actors must clearly demonstrate that the government either condoned the persecution or “demonstrated an inability to protect victims.”⁵³ Both cases spoke to domestic violence, however the attorney general has made it clear that his decision in *Matter of A-B-* is intended to apply to victims of other private crimes, such as gang violence, as well.

49 DOJ, “Attorney General Sessions Delivers Remarks to the Association of State Criminal Investigative Agencies 2018 Spring Conference” (prepared remarks, Scottsdale, AZ, May 7, 2018), www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-association-state-criminal-investigative.

50 Memorandum from Jeff Sessions, U.S. Attorney General, to federal prosecutors along the southwest border, *Zero-Tolerance for Offenses under 8 U.S.C. § 1325(a)*, April 6, 2018, www.justice.gov/opa/press-release/file/1049751/download; White House, “Executive Order 13841 of June 20, 2018: Affording Congress an Opportunity to Address Family Separation,” *Federal Register* 83, no. 122 (June 25, 2018): 29435–36, www.gpo.gov/fdsys/pkg/FR-2018-06-25/pdf/2018-13696.pdf; *Ms. L v. ICE*, No. 18cv0428 DMS (MDD) (order granting plaintiff’s motion for classwide preliminary injunction, U.S. District Court, Southern District of California, June 26, 2018), www.aclu.org/legal-document/ms-l-v-ice-order-granting-plaintiffs-motion-classwide-preliminary-injunction.

51 Robert Moore, “At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later,” *Washington Post*, June 13, 2018, www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html.

52 *Matter of A-B-, Respondent*, 27 I&N Dec. 316 (Attorney General, June 11, 2018), www.justice.gov/eoir/page/file/1070866/download.

53 *Ibid.*, 316.



While purportedly applying earlier precedent in overturning the *Matter of A-R-C-G* opinion, Sessions' decision makes clear that asylum adjudicators are now to more rigorously scrutinize claims alleging persecution by nonstate actors. The opinion expressly states that under its interpretation of U.S. asylum law, "[g]enerally, claims by aliens pertaining to domestic violence or gang violence by nongovernmental actors will not qualify for asylum."⁵⁴ Furthermore, even when an applicant is able to meet the exacting test announced by the attorney general, the opinion allows for the denial of applications if the individual would be able to avoid danger by relocating to another part of his or her country of origin.⁵⁵

Because most of asylum claims made by Central Americans at the southwest border are based on gender and/or gang violence in their home countries, it is likely that these applicants will see fewer credible-fear and asylum cases succeed going forward. The guidance for implementing the new policy was issued in July 2018.⁵⁶

IV. The Regional Context: Violence in Central America and Its Impact on the U.S. Asylum System

Addressing the current pressures on the asylum system requires close attention not only to legal and procedural issues in the United States, but also to the factors driving migration from the Northern Triangle to the United States and other asylum countries in the region. A close examination of these flows can also serve to improve understanding of how to address similar influxes to the United States in the future in a way that minimizes the demands they can impose on the asylum system over the medium to long term.

A. Violence in Home States

In FY 2017, 76 percent of individuals interviewed because they expressed a fear of returning to their home country when apprehended at the U.S. border were found to have credible fear.⁵⁷ This high rate of credible-fear findings, which has remained stable through the first three quarters of FY 2018,⁵⁸ indicates that extreme and ongoing insecurity in the region is sending many people north. It is not yet clear how the new policies outlined above might affect these rates.

In recent years, homicide rates in Northern Triangle countries have consistently been among the highest globally, with violent hotspots in both urban and rural areas.⁵⁹ For example, between 2011 and 2014, San Pedro Sula in Honduras was the most violent city of more than 300,000 people in the world, with a homicide rate of 171.2 deaths per 100,000 inhabitants in 2014.⁶⁰ That same year, San Salvador, El Salvador experienced one of the sharpest increases in homicide rate (jumping 37 percent to 61.21

⁵⁴ Ibid., 320.

⁵⁵ Ibid., 344.

⁵⁶ USCIS, "Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B" (policy memorandum 602-0162, USCIS, Washington, DC, July 11, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-18-PM-602-0162-USCIS-Memorandum-Matter-of-A-B.pdf.

⁵⁷ See USCIS, "Credible Fear and Reasonable Fear Statistics and Nationality Report—FY 2018 Total Caseload."

⁵⁸ Ibid.

⁵⁹ See UNHCR and Organization for American States (OAS), "Call to Action: Protection Needs in the Northern Triangle of Central America" (discussion paper, UNHCR and OAS, Geneva, August 2016), www.refworld.org/docid/57a8a8844.html; Geneva Declaration on Armed Violence and Development (GDAVD), "Chapter Two: Lethal Violence Update," in *Global Burden of Armed Violence 2015: Every Body Counts* (Geneva: GDAVD, 2015), www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch2_pp49-86.pdf.

⁶⁰ Consejo Ciudadano para la Seguridad Pública y la Justicia Penal, *For the Fourth Consecutive Year, San Pedro Sula Is the Most Violent City in the World* (N.p.: Consejo Ciudadano para la Seguridad Pública y la Justicia Penal, 2015), www.seguridadjusticiaypaz.org.mx/lib/Prensa/2015_01_20_seguridad_justicia_y_paz-50_most_violent_cities_2014.pdf.



homicides per 100,000 inhabitants).⁶¹ And while homicide rates in these cities have declined somewhat since then, they remain among the highest in the world.⁶² Victims are mainly young men, but El Salvador and Honduras also have some of the world's highest homicide rates for children and women.⁶³

Domestic, interfamilial, sexual, and gender-based violence are commonly cited by those who have fled the region.⁶⁴ There are also widespread reports of extortion, disappearances, forced recruitment into gangs, and trafficking of girls, boys, women, and members of the LGBT+ community for sexual exploitation.⁶⁵ Threats and violence in relation to natural resource extraction and land disputes are also common, particularly in areas with indigenous populations.⁶⁶ These violent conditions erode the rule of law, severely limit the ability of states to offer effective protection or redress to those targeted, and undermine traditional family-based support structures.

A principal cause of this violence can be traced back to the spread of powerful gangs. By most estimates, there are thousands of gang members in the region who generate income through extortion and the local drug trade.⁶⁷ These gangs are present throughout the Northern Triangle but are particularly concentrated in poor urban areas. These well-armed groups commonly target civilians, government officials, and security personnel as they fight for territorial control. Gang activity is also connected to well-resourced, sophisticated narcotics smuggling rings associated with the international drug trade.⁶⁸

These violent conditions erode the rule of law, severely limit the ability of states to offer effective protection or redress to those targeted, and undermine traditional family-based support structures.

Corruption is allegedly widespread among public officials and there have been reports of security forces involved in extrajudicial killings, undermining trust between victims and law enforcement.⁶⁹ At the same time, members of the police and security forces, and their families, have been targeted with violence in retaliation for increased law enforcement efforts.⁷⁰

⁶¹ Ibid.

⁶² In 2017, for example, San Pedro Sula, Honduras, had a homicide rate of 51.18 deaths per 100,000 inhabitants and San Salvador, El Salvador, a rate of 59.06. See Consejo Ciudadano para la Seguridad Pública y la Justicia Penal, "Las 50 Ciudades Más Violentas del Mundo 2017 + Metodología," updated March 2018, www.seguridadjusticiaypaz.org.mx/ranking-de-ciudades-2017.

⁶³ Save the Children, *Stolen Childhoods: End of Childhood Report 2017* (Fairfield, CT: Save the Children, 2017), https://campaigns.savethechildren.net/sites/campaigns.savethechildren.net/files/report/EndofChildhood_Report_2017_ENGLISH.pdf; GDAVD, "Chapter Three: Lethal Violence against Women and Girls," in *Global Burden of Armed Violence 2015: Every Body Counts* (Geneva: GDAVD, 2015), 97, 109, www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch3_pp87-120.pdf.

⁶⁴ UNHCR and OAS, "Call to Action: Protection Needs in the Northern Triangle of Central America."

⁶⁵ Rocio Cara Labrador and Danielle Renwick, "Central America's Violent Northern Triangle," Council on Foreign Relations, January 18, 2018, www.cfr.org/backgrounder/central-americas-violent-northern-triangle; U.S. Department of State, 2017 *Trafficking in Persons Report* (Washington, DC: U.S. Department of State, 2017), www.state.gov/j/tip/rls/tiprpt/2017/.

⁶⁶ UNHCR and OAS, "Call to Action: Protection Needs in the Northern Triangle of Central America."

⁶⁷ Ibid.

⁶⁸ See United Nations Office on Drugs and Crime (UNODC), *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment* (Vienna: UNODC, 2012), www.unodc.org/toc/en/reports/TOCTACentralAmerica-Caribbean.html; Stephen S. Dudley, "Drug Trafficking Organizations in Central America: Transportistas, Mexican Cartels, and Maras," in *Organized Crime in Central America: The Northern Triangle*, eds. Cynthia J. Arnson and Eric Olson (Washington, DC: Woodrow Wilson International Center for Scholars, 2011), www.wilsoncenter.org/sites/default/files/LAP_single_page.pdf.

⁶⁹ U.S. Department of State, *Country Reports on Human Rights Practices for 2016: Honduras* (Washington, DC: U.S. Department of State, 2016), www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265596#wrapper.

⁷⁰ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador* (Geneva: UNHCR, 2016), www.refworld.org/docid/56e706e94.html.



B. *Internal Displacement*

Many citizens of Northern Triangle countries who flee their homes seek safety elsewhere within their own countries. This violence-driven internal displacement is substantial. According to data from the Internal Displacement Monitoring Centre, as of the end of 2017, there were an estimated 296,000 internally displaced persons (IDPs) due to conflict in El Salvador, 242,000 in Guatemala, and 190,000 in Honduras.⁷¹

Once displaced, IDPs often experience a deterioration in living conditions and face more acute barriers to housing, work, and education compared to groups that have not been displaced.⁷² Many suffer from overcrowded housing conditions and health problems, while poor women and children who are displaced are at high risk of sexual and other forms of violence.⁷³ Internal displacement is thus often a preliminary step to leaving one's home country.⁷⁴

Once displaced, IDPs often experience a deterioration in living conditions and face more acute barriers to housing, work, and education.

C. *Countries of Asylum in the Region*

The United States has long been the primary destination for citizens of Northern Triangle countries seeking protection abroad. However, in recent years, other countries in the region have received increasing numbers of these asylum seekers. Mexico, Costa Rica, and Belize have seen particularly notable increases in the number of asylum applications filed by nationals of El Salvador, Guatemala, and Honduras (see Figure 6). Between 2012 and 2016, asylum applications filed in Mexico by nationals of Northern Triangle countries increased from approximately 500 to more than 8,000, while Belize saw an increase from 50 to 2,000, and Costa Rica from 200 to 2,000. In 2017, the number of applications in Mexico and Costa Rica continued to rise, though those in Belize dropped to about 400. Applications from nationals of Northern Triangle countries have also risen, though more modestly, in Nicaragua and Panama. Overall, asylum applications submitted in Mexico, Costa Rica, Belize, Panama, and Nicaragua by citizens of Northern Triangle countries increased by more than 1,300 percent during the 2012–17 period.⁷⁵

71 Internal Displacement Monitoring Centre, “2017 Internal Displacement Figures by Country,” updated December 31, 2017, www.internal-displacement.org/database/displacement-data.

72 Ibid.

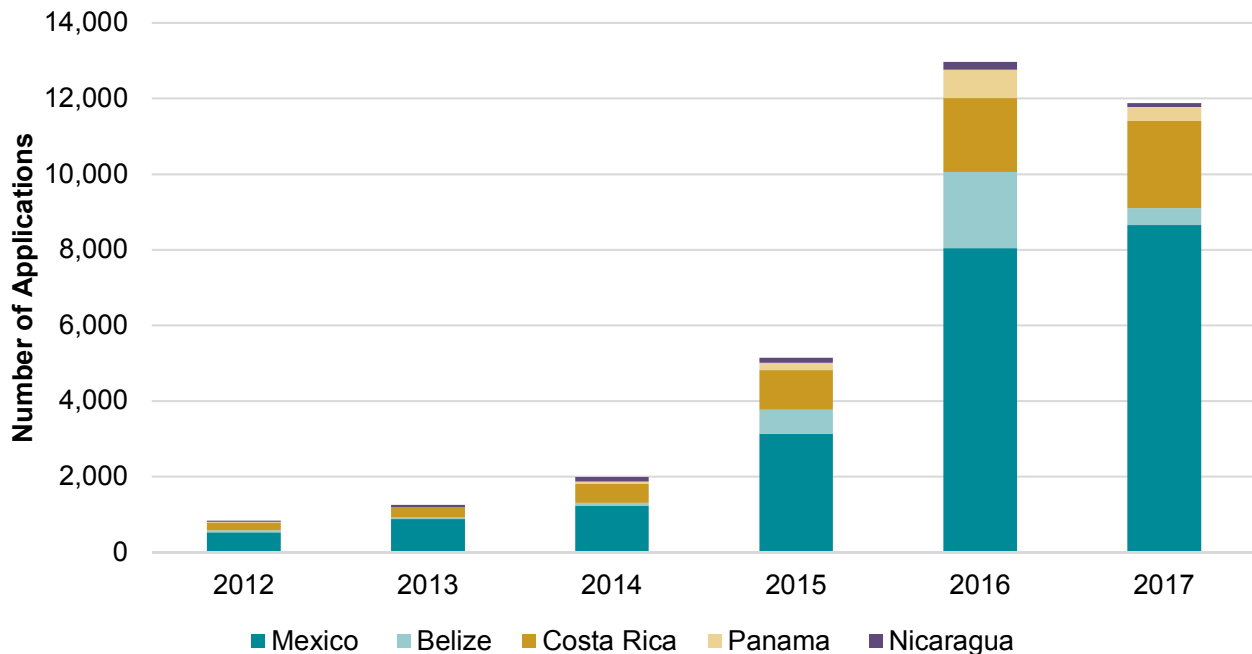
73 Inter-Agency Commission for the Protection of Persons Displaced by Violence, *Characterization of Internal Displacement in Honduras* (Tegucigalpa: Inter-Agency Commission for the Protection of Persons Displaced by Violence, 2015), https://sedis.gob.hn/sites/default/files/desplazamiento/Caract.Desplazam.Interno_ENG.pdf; Office of the United Nations High Commissioner for Human Rights, “Statement of the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons on Conclusion of His Official Visit to the Republic of Honduras, 23 to 27 November 2015” (news release, November 27, 2015), www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16812&LangID=E.

74 Office of the UN High Commissioner for Human Rights, “Statement of the UN Special Rapporteur.”

75 Ibid.



Figure 6. Asylum Applications Filed by Nationals of Northern Triangle Countries, by Receiving Country, 2012–17



Note: These figures represent the number of individuals who applied for asylum during each calendar year.

Source: MPI analysis of data from the United Nations High Commissioner for Refugees (UNHCR), “Population Statistics—Asylum-Seekers (Refugee-Status Determination),” accessed August 24, 2018, http://popstats.unhcr.org/en/asylum_seekers.

Still, persons fleeing Northern Triangle countries face significant challenges in accessing asylum. These include inadequate reception arrangements and detention conditions, lack of information about how to apply for asylum, and fear of detention or return as a consequence of filing a claim.⁷⁶ Certain groups of migrants—including women and girls, and unaccompanied and separated children—are at high risk for sexual assault and trafficking while in transit. The transnational reach of some gangs and organized criminal groups heightens the risk of persecution for these migrants and asylum seekers.⁷⁷

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The increase in claims filed by nationals of Northern Triangle countries must also be considered in the context of the broader, significant increases in asylum applications from *all* nationalities in Central America and Mexico. For example, applications filed by Haitians and Venezuelans in a number of

⁷⁶ Mesa de Sociedad Civil contra el Desplazamiento Forzado por Violencia y Crimen Organizado de El Salvador, *Informe sobre situación de desplazamiento forzado* (San Salvador: Mesa de Sociedad Civil contra el Desplazamiento Forzado por Violencia y Crimen Organizado de El Salvador, 2016), www.movilidadhumana.com/wp-content/uploads/2016/03/Informe-sobre-Situaci%C3%B3n-de-Desplazamiento-Forzado-en-El-Salvador.pdf.

⁷⁷ UNHCR, *Regional Response to the Northern Triangle of Central America Situation* (Geneva: UNHCR, 2016), <https://data2.unhcr.org/en/documents/download/53799>.



countries in the region have spiked in recent years.⁷⁸ And as in the United States, the increasing volume of claims these countries are receiving tests the capacity of their asylum systems to cope with unexpected influxes and signals the need to build greater resiliency to respond more nimbly to future flows.

D. Protection Concerns upon Return

A substantial number of migrants from Northern Triangle countries are apprehended each year in Mexico and the United States and returned to their countries of origin. In 2017, Mexico reported nearly 78,000 removals of migrants to countries in the Northern Triangle, while in FY 2017, the United States made 75,000 such removals.⁷⁹

Because many deported migrants fear returning to the neighborhoods in which they used to live, some instead become IDPs in other parts of their countries of origin.⁸⁰ Returnees have also been targeted by gang members, including near reception centers, and some have been killed.⁸¹ Others face a risk of kidnapping, with criminals demanding money that migrants presumably earned abroad.⁸² Because of such vulnerabilities, many returnees depart again, perpetuating a cycle of displacement.

E. Regional Responses

Actors in the region and in the United States have adopted several initiatives to address the protection needs of displaced persons. For example:

- In 2014, the governments of El Salvador, Guatemala, and Honduras adopted the Alliance for Prosperity in the Northern Triangle, a plan aimed at addressing the root causes of migration by boosting security and economic development in the region.⁸³ It does not, however, specifically address the protection needs of displaced persons. Since 2016, the first year of the initiative's implementation, the U.S. Congress has appropriated USD 1.4 billion for engagement in Central America, including through the Alliance for Prosperity.⁸⁴
- In 2014, to make dangerous travel less necessary for young people escaping violence, the U.S. government launched the Central American Minors (CAM) program, which allowed parents lawfully present in the United States to request a resettlement interview for their minor children

78 Jessica Bolter, "Top 10 of 2017 – Issue #10: In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses," *Migration Information Source*, December 7, 2017, www.migrationpolicy.org/article/top-10-2017-issue-10-latin-america-spike-migrant-arrivals-prompts-flurry-responses.

79 Data for Mexico are for calendar year 2017, while those for the United States are for its FY 2017 (October 1, 2016 to September 30, 2017). See U.S. Immigration and Customs Enforcement (ICE), *Fiscal Year 2017 ICE Enforcement and Removal Operations Report* (Washington, DC: ICE, 2017), www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf; Instituto Nacional de Migración (INM), *Boletín Estadístico 2017* (Mexico City: INM, 2017), www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletín_Estadístico_2017.

80 UNHCR, *Regional Response to the Northern Triangle of Central America Situation*. See also Guillermo Cantor and Tory Johnson, *Detained, Deceived, and Deported: Experiences of Recently Deported Central American Families* (Washington, DC: American Immigration Council, 2016), www.americanimmigrationcouncil.org/special-reports/deported-central-american-families.

81 UNHCR and OAS, "Call to Action: Protection Needs in the Northern Triangle of Central America."

82 Ibid.; Casa Alianza, *Niñas y niños migrantes: factores de expulsión y desafíos para su reinserción en Honduras* (Tegicigalpa: Casa Alianza, 2016), www.casa-alianza.org.hn/images/documentos/CAH.2016/02.Infor.Especiales/02.%20e_book_nias%20y%20nios%20migrantes.pdf.

83 Governments of El Salvador, Guatemala, and Honduras, *Plan of the Alliance for Prosperity in the Northern Triangle: A Road Map* (N.p.: Governments of El Salvador, Guatemala, and Honduras, 2014), https://cuellar.house.gov/uploadedfiles/plan_of_the_alliance_for_prosperity_in_the_northern_triangle_a_road_ma....pdf.

84 Congress appropriated \$750 million in FY 2016 and \$655 million in FY 2017 to fund the U.S. Strategy for Engagement in Central America. See *Consolidated Appropriations Act of 2016*, Public Law 114–113, *U.S. Statutes at Large* 129 (2015): 2241, www.gpo.gov/fdsys/pkg/PLAW-114publ113/pdf/PLAW-114publ113.pdf; *Consolidated Appropriations Act of 2017*, Public Law 115–31, *U.S. Statutes at Large* 131 (2017): 135, www.gpo.gov/fdsys/pkg/PLAW-115publ31/pdf/PLAW-115publ31.pdf.



in a Northern Triangle country.⁸⁵ Under CAM, children were assessed to determine if they met the definition of a refugee under U.S. law and were otherwise eligible for resettlement. Those who did not qualify as refugees were nonetheless eligible to be considered for parole into the United States to reunify with their families. The program was phased out by the Trump administration in 2017.⁸⁶ Overall, applications were filed for 13,000 children and youth under the CAM program. Approximately 1,500 minors were admitted to the United States as refugees and 1,400 under grants of parole; thousands of cases were still pending when the program was ended.⁸⁷

- In 2016, the United States announced an expansion of resettlement through the Protection Transfer Arrangement (PTA), a partnership between the government of Costa Rica, the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM). Under the agreement, the U.S. government agreed to prescreen refugee applicants in the Northern Triangle. Those most in need of immediate protection would then be transferred to Costa Rica, where they would undergo refugee processing before being resettled to the United States or another country.⁸⁸

This overview of conditions in Northern Triangle countries, regional asylum trends and challenges, and steps taken by governments in the region to address protection concerns points to the imperative of pairing measures to fix the U.S. asylum system with regional efforts to address the conditions spurring migration northward. Such efforts must focus on both the Northern Triangle, addressing the severe security challenges and development needs driving displacement, and on Mexico and other asylum countries in the region, building their capacity to receive, identify, adjudicate, and integrate asylum seekers into society.

V. Recommendations for Revitalizing the Asylum System

Regional migration dynamics, the recent arrival of sizeable mixed flows at the U.S. southwest border, and rising application numbers, have brought the U.S. asylum system to a crisis point. The Trump administration has responded with actions and policies intended to deter flows by severely restricting the pathways to asylum. Such policies are unnecessarily harsh and costly, and they are unlikely to substantially deter future unauthorized arrivals.

There is another path. It preserves asylum as a bedrock element of the U.S. immigration system, while also recognizing that a secure border and the deterrence of illegal crossings are legitimate and necessary attributes of an effective, credible immigration system. This alternate path is based on principles of timeliness and fairness in providing protection, which will, in turn, discourage unfounded claims and deter opportunistic flows. The implementation of new policy measures that chart this course will take time and require a broad, interagency effort involving both domestic and, ultimately, foreign policy actions that engage neighboring nations.

85 USCIS, “In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador, and Guatemala (Central American Minors – CAM),” updated November 15, 2017, www.uscis.gov/CAM.

86 U.S. Department of State, “Status of the Central American Minors Program” (press release, November 8, 2017), www.state.gov/r/pa/prs/ps/2017/11/275415.htm.

87 Mica Rosenberg, “U.S. Ends Program for Central American Minors Fleeing Violence,” Reuters, August 16, 2017, www.reuters.com/article/us-usa-immigration-minors/u-s-ends-program-for-central-american-minors-fleeing-violence-idUSKCN1AW20Z.

88 DHS, “U.S. Expands Initiatives to Address Central American Migration Challenges” (press release, July 26, 2016), www.dhs.gov/news/2016/07/26/us-expands-initiatives-address-central-american-migration-challenges.



The recommendations this report makes are directed at changes to the affirmative system as the opportune place to start. Such changes will build resilience and enable the asylum system to better handle its current caseload and respond to future influxes. These recommendations are grounded in data, the history of prior successful reform, the experience of senior government officials responsible for asylum policy and programs, and the analyses of nongovernmental experts and practitioners. Critically, they represent major improvements that can be achieved in the near term through administrative measures.

Getting the affirmative asylum system onto firm ground should jump-start a broader rethinking and major reforms in the defensive system and how the immigration courts handle their work. Timeliness and fairness must be hallmarks of the defensive system as well.

Southwest border enforcement practices and capabilities are a further dimension of the present challenge. Operations for processing migrants apprehended at the southwest border who may be seeking asylum are complex and span multiple DHS agencies. A new operational model should be established that is responsive to shifts in migrant flows arriving at the southwest border. Such a model should be based on “one DHS” principles to insure consistent policies and practices, as well as procedural efficiencies. Co-locating CBP, ICE, and Asylum Division staff and processes has been done on a pilot basis. Such models should be further developed to facilitate credible-fear and family case processing and decision-making that effectively integrate expedited-removal and credible-fear responsibilities.

Finally, the underlying causes and protection needs in the region must be more effectively addressed to reduce the strain on the asylum system by nationals of Northern Triangle countries. These changes require longer time horizons and sustained regional collaboration. Such efforts are ultimately the only reliable course for enabling the asylum system to both address its current, pressing challenges and better respond in future situations of influx.

A. Restoring Timeliness

The roadmap for restoring timeliness to the affirmative system should begin with using existing and new resources to regain control over the incoming and prospective caseload. The reprioritization of cases announced in January 2018 is a positive step toward doing just that.⁸⁹

This section proposes additional measures in a four-part recommendation designed to achieve the goal of a timely system. In so doing—as was demonstrated by the reforms of the 1990s—other self-correcting dynamics will follow that enable those who are eligible for asylum but lost in a failing system to access protection and deter the misuse that is an inevitable byproduct of backlogs and delay.

I. Build out the “Last-in, First-out” Processing Model for New Cases

In FY 1995, the affirmative asylum system had a backlog of 464,000 cases. The same year, 150,000 new claims were filed.⁹⁰ Introducing “last-in, first-out” procedures and dedicating sufficient new resources to enable timely processing—defined as six months—succeeded in producing quality decisions, a significant decrease in new claims, and a higher proportion of asylum grants because nonmeritorious claims had been deterred. Today, the affirmative case backlog has grown to 320,000 cases. The level of new applications is roughly the same: 143,000 in FY 2017.⁹¹ Credible-fear cases, of which there were 79,000 in FY 2017, represent an additional incoming caseload that the U.S. asylum system did not face in 1994–95.⁹²

Based on historical experience, recent resource enhancements and staffing should be sufficient to handle the current levels of incoming cases—including the credible-fear workload—if the resources are well

⁸⁹ USCIS, “Affirmative Asylum Interview Scheduling,” updated January 26, 2018, www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling.

⁹⁰ Data provided to MPI by the USCIS Asylum Division, received May 18, 2016.

⁹¹ Ibid.; USCIS, “Affirmative Asylum Statistics (September 2017).”

⁹² USCIS, “Credible Fear and Reasonable Fear Statistics and Nationality Report.”



allocated and managed. Between FY 2013–18, after a period of flat funding, the number of asylum officers nearly doubled from 272 to 520, with authorization to hire up to 687.⁹³ Over approximately the same period, the Asylum Division budget grew by more than 55 percent.⁹⁴ The period in which asylum officers had been detailed to assist with overseas refugee processing has ended, and significant cuts in refugee admissions have made it possible to detail refugee officers to asylum casework.⁹⁵ In addition, the spike in the number of southwest border credible-fear cases that required a disproportionate share of asylum officer resources has abated.

In short, current conditions are ripe for efforts to manage Asylum Division resources more strategically and efficiently to restore a six-month processing timeline for incoming and prospective affirmative cases. Indeed, there is evidence to suggest that the reprioritization of interview scheduling announced in January 2018 is showing results; the numbers of cases being decided is increasing, the number of new cases being filed is falling, and the growth of the backlog is 0 percent for the first time in more than two years.⁹⁶

Current conditions are ripe for efforts to manage Asylum Division resources more strategically and efficiently to restore a six-month processing timeline.

On a parallel track, the Asylum Division should continue processing its backlog of cases, but with a smaller share of resources and thus at a slower pace, although that pace could be accelerated by tapping retired asylum officers for a special surge effort. At the same time, because a last-in, first-out approach further disadvantages cases that have already been waiting for long periods, it should be treated as an emergency measure—not the new standard. A process should be established for designating especially critical cases in the backlog for review, such as individuals or families particularly at risk.

As incoming cases are decided within six months, case receipts are likely to decrease, approval rates increase, and resource allocations can be gradually adjusted to adjudicate larger numbers of backlogged cases more quickly. Should additional resources be required to ultimately eliminate the backlog and stay up-to-date on new cases, a renewed assessment and right-sizing can best be done once the system has successfully begun to process cases within six months.

While caseload and staffing numbers alone cannot account for other changes and complexities in asylum caseload management, this recent resource growth has been substantial and should allow the Asylum Division to again properly perform its mission. A reset aimed at reclaiming the six-month processing standard for new cases is the surest path to restoring the integrity and effectiveness of a system that is vital to both humanitarian and enforcement imperatives.

2. Refer Positive Credible-Fear Cases to the Asylum Division Rather than the Immigration Courts

Currently, tens of thousands of asylum cases with positive credible-fear findings are referred to the immigration courts each year. Under the legal guidance issued by the attorney general in June and July 2018, the number of cases that pass the credible-fear test can be expected to fall.

⁹³ Comments by USCIS Asylum Division staff, Asylum Division Quarterly Stakeholder Meeting, August 7, 2018.

⁹⁴ USCIS, “Questions and Answers.”

⁹⁵ Meredith Hoffman, “Trump Has Slowed Refugee Admissions to a Crawl,” *Politico Magazine*, February 26, 2018, www.politico.com/magazine/story/2018/02/26/refugee-resettlement-confusion-executive-orders-217038.

⁹⁶ USCIS, “Affirmative Asylum Statistics (April 2018 through June 2018).”



Nonetheless, these are cases in which asylum officers' expertise has already been applied, and there is a "significant possibility" that these claims, on fuller review, may be granted. Once referred to the courts, however, the cases must begin anew before an immigration judge in an adversarial proceeding, all after waiting several years to be heard. These procedures are needlessly duplicative, build in delays that weaken sound cases, and invite misuse of the asylum system, such as filing nonmeritorious claims to obtain work authorization or delay removal. This negative spiral further deepens backlogs and delays.

Instead, cases with positive credible-fear findings should remain with the Asylum Division for full asylum merits adjudication. Although doing this would add to the Asylum Division workload, much of the background information and other fact-finding will have already been done during the credible-fear stage. Thus, completing the full adjudication would allow the Asylum Division to capitalize on its existing time investment and resolve meritorious cases, thereby reducing the overall asylum system backlogs and using both limited asylum officer and immigration judge resources more efficiently.

These procedures are needlessly duplicative, build in delays that weaken sound cases, and invite misuse of the asylum system.

Enabling the Asylum Division to carry out merits adjudications for positive credible-fear cases would take a regulatory change. Persons requesting asylum at the border are currently either ordered removed (if found not to have credible fear) or issued a notice to appear and placed in removal proceedings before an immigration judge. But to some degree, the situation of these applicants is analogous to that of persons who affirmatively file for asylum inside the United States. Since those determined to have credible fear do not have visas or other documentation permitting them to enter the United States, they have no way to effect a lawful entry, and their assertion of an asylum claim upon apprehension may belie an intent to avoid inspection. Thus, there may be little to distinguish them from affirmative cases heard by asylum officers, and there is precedent for such a change in the procedures for deciding the cases of unaccompanied minors.

Additional advantages of this change include:

- ***Moving credible-fear cases out of immigration court would build on the well-established strengths of the Asylum Division.*** Its officers are responsible for asylum decisions alone, receive considerably more training on asylum matters than immigration judges, and can readily tap country conditions expertise. The Asylum Division also requires supervisory review of all cases, leading to greater consistency in decision-making.
- ***The nonadversarial model used by the Asylum Division is considerably less resource-intensive than immigration court proceedings.*** The latter requires two government attorneys (the immigration judge and the ICE assistant counsel), clerks, and other support staff. Nonadversarial proceedings also lend themselves to a fuller understanding of the strengths and weaknesses of an applicant's case.
- ***Applicants denied asylum by the Asylum Division would still be able to raise their claims in subsequent removal proceedings before an immigration judge.*** At the same time, having asylum officers hear and remove a significant percentage of cases from the swollen dockets of immigration judges would have the additional benefit of reducing the broader backlog of cases waiting to be heard in immigration court.⁹⁷

⁹⁷ For example, unaccompanied minors in expedited removal who pass the credible-fear screening are added to the immigration court's docket. After appearing before the court, their cases are transferred to the Asylum Division for adjudication. It would be a simple streamlining move to have cases involving unaccompanied children stay with the Asylum Division instead of taking up the immigration court's time with administrative matters.



3. Streamline Credible-Fear Screening

Overall, about 75 percent of individuals who raise humanitarian protection claims at the U.S. border and are given a credible-fear interview demonstrate a “significant possibility” of meeting the standards for asylum before an immigration judge. This screen-in rate, which has been even higher for certain high-risk groups,⁹⁸ may decline under the new legal guidance for asylum screening. Nonetheless, DHS expends valuable resources screening asylum cases, of which some are virtually certain to be advanced for full consideration of their merits.

Instead, DHS should use its discretion to refer individuals identified as fitting within a high-risk category with a high screen-in rate directly for a full determination—either to the immigration courts under current procedures or to the Asylum Division under the adjusted process recommended above. This change would reduce the credible-fear workload on asylum officers, allowing them to concentrate on less straightforward credible-fear cases and on the affirmative caseload.

To accomplish this, CBP, ICE, and the Asylum Division need to be in close communication and work cooperatively. In the past, such cross-agency coordination has best been accomplished by designating a senior official in the Office of the DHS Secretary or Deputy Secretary, or in the Office of Policy, to oversee and monitor credible-fear practices across the requisite DHS components.

4. Refer Likely Cancellation-of-Removal Cases to an Alternate Decision Process

Procedural changes must address the increasingly common practice of using the affirmative asylum system to initiate claims for cancellation of removal. Presumed cancellation cases represent a workload that is misplaced sitting before the Asylum Division and that detracts from the Asylum Division’s ability to carry out its mission effectively.

The burden of cancellation cases has been compounded by the Asylum Division practice of conducting full merits hearings on cases that have been filed past the one-year filing deadline. The reasoning appears to be this: Exceptions exist to the one-year bar, such as changed circumstances in the country of origin that may warrant a grant of asylum. Thus, a claim filed even ten years after arrival is not necessarily frivolous; it may qualify for an exception that would permit an asylum claim to go forward. Because an asylum officer must decide whether or not an exception is due, it has become standard to also hear the case on its merits as a way of maximizing efficiency should an exception ultimately be granted. Otherwise, the case would have to be heard twice: once to determine the exception and again to decide the asylum claim.

The problem with this practice is that there is only a small likelihood that a case filed ten years after arrival will succeed on both the exception and the asylum claim. Many claims made so long after arrival in the United States are filed simply to get into court to press a cancellation claim. At nearly 20 percent of the asylum case backlog, providing full asylum adjudications for such cases is undermining the ability of the Asylum Division to adjudicate other cases in a timely manner. Yet flat denial of all cases filed after ten years would not be consistent with the statutory recognition of the need for exceptions to the one-year filing limit.

The problem of cancellation cases is further compounded by the EOIR policy of not hearing and deciding cancellation cases once the annual statutory ceiling has been reached (i.e., when 4,000 such cases have been granted). This practice magnifies the backlog and creates incentives to file for cancellation, whether or not the applicant’s circumstances meet its requirements. In fact, a high percentage of cancellation cases are denied because Congress set a very high standard for the definition of hardship applicants must demonstrate.⁹⁹ Nevertheless, under current procedures, such cases will be in EOIR’s backlog for years before being heard.

⁹⁸ Data provided to MPI by the USCIS Asylum Division, received May 18, 2016.

⁹⁹ See, for example, EOIR, “Freedom of Information Act Request for Information Regarding the Stewart Immigration Court in Lumpkin, Georgia” (response to *Freedom of Information Act* request, EOIR, Washington, DC, March 24, 2015), www.aila.org/File/DownloadEmbeddedFile/64223.



Although the recommendations in this report are limited to changes that can be made in the affirmative asylum system administered by the USCIS Asylum Division, a logical extension of this in addressing cancellation cases would be for EOIR to provisionally approve or deny cancellation cases in the normal course of hearing its cases and carry over only those that are approved for a final grant when grants are again available each new fiscal year.

There is no ideal solution here—no easy method for screening meritorious late-filed asylum claims from claims filed for cancellation purposes only. However, USCIS has recently announced a pilot in which likely cancellation claimants will be permitted to waive an asylum interview and get a decision based on the written application they have submitted.¹⁰⁰ In addition, in June 2018, USCIS announced a policy change that allow the agency to issue a notice-to-appear in limited and extraordinary circumstances, when applicants/petitioners request one in writing to “seek lawful status or other relief in removal proceedings.”¹⁰¹ This change creates an alternate avenue for cancellation of removal cases but has not yet been implemented, pending issuance of operational guidance.

Two other options could ameliorate the situation in more significant ways:

- ***Establish a unit at USCIS to hear cancellation cases.*** Those found to merit relief could have it granted by USCIS; those denied would be referred to EOIR for a removal proceeding, where their cancellation claim could be reviewed again. Under existing statutory provisions, cancellation can only be granted by the immigration courts. But the proposed change could be made if: (1) the attorney general were to delegate authority to USCIS to grant cancellation relief, or (2) a USCIS adjudication were deemed to constitute a provisional grant of cancellation which could subsequently be approved by an immigration judge.
- ***End the current practice of providing a full merits adjudication for cases filed ten years (or close to ten years) after arrival.*** Cases filed after such long periods of time should be screened only for eligibility for an exception, and those that qualify should be adjudicated. Those that do not qualify should be immediately referred to EOIR for removal proceedings. The Asylum Division should implement this change both prospectively and through a review of its pending caseload.

Taken together, this four-part package of administrative measures would represent a fundamental retooling of the affirmative asylum system. Absent such an integrated, systemic approach, the asylum crisis will persist and continue to undermine vital humanitarian protection and immigration enforcement aims.

B. Mobilizing Regional Cooperation to Address Regional Challenges

The causes of flight, risks of transit, and protection needs of persons forcibly displaced call for a multipronged response among the countries and actors in the region. It is in the national interest of the United States to deepen engagement and leadership that reduces forced migration from and among neighboring countries. Yet the Trump administration’s broader policies and rhetoric, especially toward Mexico, clash with efforts to build the cooperation within the region that is essential for deepened engagement.

Continued U.S. support for regional efforts to address security challenges and build economic prosperity is vital. Equally important, the United States and other countries in the region must improve protection in countries of origin for those displaced by violence. U.S. partnerships—especially with Mexico and Costa Rica, but also with other countries of asylum in the region, such as Belize—should be expanded. Other

¹⁰⁰ Comments by USCIS Asylum Division staff, Asylum Division Quarterly Stakeholder Meeting, February 6, 2018.

¹⁰¹ USCIS, “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens” (policy memorandum 602-0050.1, USCIS, Washington, DC, June 28, 2018), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf.



responsibility-sharing partners such as Canada, Australia, and Brazil should be encouraged to provide resettlement alternatives, as well. Cooperation and collaboration should promote migration-management regimes that include reception, alternatives to detention, effective asylum adjudication systems within the region; potential processing and resettlement by the United States from within the region; and durable citizen-security and economic-development solutions.

VI. Conclusion

The United States has a longstanding tradition of providing humanitarian protection to those in need. Its asylum system has a proven track record of excellence and has been a model for countries around the world. However, a confluence of factors—triggered by a recent surge in mixed humanitarian and economic migrant flows from Central America at the southwest border—has generated a large and growing backlog of asylum cases, casting the system into crisis and imperiling applicants with valid claims. When asylum claims are not decided in a timely fashion, it prevents those eligible for protection from gaining it and undermines the integrity of the asylum regime by inviting misuse, an inevitable byproduct of backlogs and delay.

The United States needs to rescue and strengthen its asylum system, so that the processes in place to support its mission and purpose of providing protection are better aligned with migration challenges that have emerged in recent years and are likely to persist going forward. At present, the affirmative system is the most amenable to changes because key adjustments can be achieved through administrative measures already available to decisionmakers. The near-term goal should be to restore timeliness—the most effective way to deter misuse while advancing fair treatment of those applying for protection.

The United States needs to rescue and strengthen its asylum system, so that the processes in place to support its mission and purpose of providing protection are better aligned with migration challenges.

Addressing the pressures on the U.S. asylum system also demands longer-term actions that reduce the violent conditions driving the outflow of asylum seekers from the Northern Triangle to the United States and elsewhere in the region. Attention to the underlying causes and protection weaknesses in Northern Triangle countries is essential for efforts to ease the strains on the asylum system in the United States, as well as those in neighboring countries.

Taken together, such actions call for both near- and longer-term efforts that would once more place the U.S. asylum system on a sound footing without resorting to unduly harsh measures, help restore public confidence in this key function of the nation's immigration system, and meaningfully respond to today's southwest border flows and border enforcement challenges.



Works Cited

- Bolter, Jessica. 2017. Top 10 of 2017 – Issue #10: In Latin America, Spike in Migrant Arrivals Prompts Flurry of Responses. *Migration Information Source*, December 7, 2017. www.migrationpolicy.org/article/top-10-2017-issue-10-latin-america-spike-migrant-arrivals-prompts-flurry-responses.
- Cantor, Guillermo and Tory Johnson. 2016. *Detained, Deceived, and Deported: Experiences of Recently Deported Central American Families*. Washington, DC: American Immigration Council. www.americanimmigration-council.org/special-reports/deported-central-american-families.
- Casa Alianza. 2016. *Niñas y niños migrantes: factores de expulsión y desafíos para su reinserción en Honduras*. Tegicigalpa: Casa Alianza. www.casa-alianza.org.hn/images/documentos/CAH.2016/02.Infor.Especial/02.%20e_book_nias%20y%20nios%20migrantes.pdf.
- Consejo Ciudadano para la Seguridad Pública y la Justicia Penal. 2015. *For the Fourth Consecutive Year, San Pedro Sula Is the Most Violent City in the World*. N.p.: Consejo Ciudadano para la Seguridad Pública y la Justicia Penal. www.seguridadjusticiaypaz.org.mx/lib/Prensa/2015_01_20_seguridad_justicia_y_paz-50_most_violent_cities_2014.pdf.
- . 2018. Las 50 Ciudades Más Violentas del Mundo 2017 + Metodología. Updated March 2018. www.seguridadjusticiaypaz.org.mx/ranking-de-ciudades-2017.
- Consolidated Appropriations Act of 2016*. Public Law 114–113. *U.S. Statutes at Large* 129, 2015. www.gpo.gov/fdsys/pkg/PLAW-114publ113/pdf/PLAW-114publ113.pdf.
- Consolidated Appropriations Act of 2017*. Public Law 115–31. *U.S. Statutes at Large* 131, 2017. www.gpo.gov/fdsys/pkg/PLAW-115publ31/pdf/PLAW-115publ31.pdf.
- Dudley, Stephen S. 2011. Drug Trafficking Organizations in Central America: *Transportistas*, Mexican Cartels, and *Maras*. In *Organized Crime in Central America: The Northern Triangle*, eds. Cynthia J. Arnson and Eric L. Olson. Washington, DC: Woodrow Wilson International Center for Scholars. www.wilsoncenter.org/sites/default/files/LAP_single_page.pdf.
- Executive Office for Immigration Review (EOIR). 2015. Freedom of Information Act Request for Information Regarding the Stewart Immigration Court in Lumpkin, Georgia. Response to *Freedom of Information Act* request, EOIR, Washington, DC, March 24, 2015. www.aila.org/File/DownloadEmbeddedFile/64223.
- . 2018. Asylum Rates. Dataset, U.S. Department of Justice, July 7, 2018. www.justice.gov/eoir/page/file/1061526/download.
- . 2018. Asylum Statistics FY 2012 – 2016. Dataset, U.S. Department of Justice, March 2018. www.justice.gov/eoir/file/asylum-statistics/download.
- . 2018. Defensive Asylum Applications. Dataset, U.S. Department of Justice, July 10, 2018. www.justice.gov/eoir/page/file/1061981/download.
- . 2018. New Cases and Total Completions. Dataset, U.S. Department of Justice, July 7, 2018. www.justice.gov/eoir/page/file/1060841/download.
- . 2018. Office of the Chief Immigration Judge. Updated March 25, 2018. www.justice.gov/eoir/office-of-the-chief-immigration-judge-bios.
- . Multiple Years. *Statistics Yearbooks*, FY2014–FY2016. Washington, DC: U.S. Department of Justice. www.justice.gov/eoir/statistical-year-book.



- Geneva Declaration on Armed Violence and Development (GDAVD). 2015. Chapter Two: Lethal Violence Update. In *Global Burden of Armed Violence 2015: Every Body Counts*. Geneva: GDAVD. www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch2_pp49-86.pdf.
- . 2015. Chapter Three: Lethal Violence against Women and Girls. In *Global Burden of Armed Violence 2015: Every Body Counts*. Geneva: GDAVD. www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch3_pp87-120.pdf.
- Governments of El Salvador, Guatemala, and Honduras. 2014. *Plan of the Alliance for Prosperity in the Northern Triangle: A Road Map*. N.p.: Governments of El Salvador, Guatemala, and Honduras. https://cuellar.house.gov/uploadedfiles/plan_of_the_alliance_for_prosperity_in_the_northern_triangle_a_road_ma....pdf.
- Hoffman, Meredith. 2018. Trump Has Slowed Refugee Admissions to a Crawl. *Politico Magazine*, February 26, 2018. www.politico.com/magazine/story/2018/02/26/refugee-resettlement-confusion-executive-orders-217038.
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996*. Division C of Public Law 104–201. *U.S. Statutes at Large* 110, 1996. www.gpo.gov/fdsys/pkg/STATUTE-110/pdf/STATUTE-110-Pg3009.pdf.
- Immigration and Naturalization Service. 2000. Asylum Reform: Five Years Later Backlog Reduced and Number of Non-Meritorious Claims Drops. Press release, February 1, 2000. www.uscis.gov/sites/default/files/files/pressrelease/Asylum.pdf.
- Instituto Nacional de Migración (INM). 2017. *Boletín Estadístico 2017*. Mexico City: INM. www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletin_Estadistico_2017.
- Inter-Agency Commission for the Protection of Persons Displaced by Violence. 2015. *Characterization of Internal Displacement in Honduras*. Tegucigalpa, Inter-Agency Commission for the Protection of Persons Displaced by Violence. https://sedis.gob.hn/sites/default/files/desplazamiento/Caract.Desplazam.Interno_ENG.pdf.
- Internal Displacement Monitoring Centre (IDMC). 2017. 2017 Internal Displacement Figures by Country. Updated December 31, 2017. www.internal-displacement.org/database/displacement-data.
- Labrador, Rocio Cara and Danielle Renwick. 2018. Central America's Violent Northern Triangle. Council on Foreign Relations, January 18, 2018. www.cfr.org/backgrounder/central-americas-violent-northern-triangle.
- Matter of A-B-, Respondent*. 2018. 27 I&N Dec. 316. Attorney General, June 11, 2018. www.justice.gov/eoir/page/file/1070866/download.
- Mesa de Sociedad Civil contra el Desplazamiento Forzado por Violencia y Crimen Organizado de El Salvador. 2016. *Informe sobre situación de desplazamiento forzado*. San Salvador: Mesa de Sociedad Civil contra el Desplazamiento Forzado por Violencia y Crimen Organizado de El Salvador. www.movilidadhumana.com/wp-content/uploads/2016/03/Informe-sobre-Situaci%C3%B3n-de-Desplazamiento-Forzado-en-El-Salvador.pdf.
- Moore, Robert. 2018. At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later. *Washington Post*, June 13, 2018. www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html.
- Ms. L v. ICE*. 2018. No. 18cv0428 DMS (MDD). Order granting plaintiff's motion for classwide preliminary injunction, U.S. District Court, Southern District of California, June 26, 2018. www.aclu.org/legal-document/ms-l-v-ice-order-granting-plaintiffs-motion-classwide-preliminary-injunction.



- Office of the United Nations High Commissioner for Human Rights. 2015. Statement of the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons on Conclusion of His Official Visit to the Republic of Honduras, 23 to 27 November 2015. News release, November 27, 2015. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16812&LangID=E.
- Rosenberg, Mica. 2017. U.S. Ends Program for Central American Minors Fleeing Violence. Reuters, August 16, 2017. www.reuters.com/article/us-usa-immigration-minors/u-s-ends-program-for-central-american-minors-fleeing-violence-idUSKCN1AW2OZ.
- Save the Children. 2017. *Stolen Childhoods: End of Childhood Report 2017*. Fairfield, CT: Save the Children. https://campaigns.savethechildren.net/sites/campaigns.savethechildren.net/files/report/EndofChildhood_Report_2017_ENGLISH.pdf.
- Sessions, Jeff. 2018. Memorandum from U.S. Attorney General to federal prosecutors along the southwest border. *Zero-Tolerance for Offenses under 8 U.S.C. § 1325(a)*. April 6, 2018. www.justice.gov/opa/press-release/file/1049751/download.
- Transaction Records Access Clearinghouse (TRAC). 2017. Despite Hiring, Immigration Court Backlog and Wait Times Climb. Updated May 15, 2017. <http://trac.syr.edu/immigration/reports/468/>.
- . 2018. Immigration Court Backlog Tool. Updated June 2018. http://trac.syr.edu/phptools/immigration/court_backlog/.
- United Nations High Commissioner for Refugees (UNHCR). 2016. *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*. Geneva: UNHCR. www.refworld.org/docid/56e706e94.html.
- . 2016. Population Statistics—Asylum-Seekers (Refugee-Status Determination). Accessed March 12, 2018. http://popstats.unhcr.org/en/asylum_seekers.
- . 2016. *Regional Response to the Northern Triangle of Central America Situation*. Geneva: UNHCR. <https://data2.unhcr.org/en/documents/download/53799>.
- UNHCR and Organization for American States (OAS). 2016. Call to Action: Protection Needs in the Northern Triangle of Central America. Discussion paper, UNHCR and OAS, Geneva, August 2016. www.refworld.org/docid/57a8a8844.html.
- United Nations Office on Drugs and Crime (UNODC). 2012. *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*. Vienna: UNODC. www.unodc.org/toc/en/reports/TOCTACentralAmerica-Caribbean.html.
- U.S. Citizenship and Immigration Services (USCIS). 2004. *Backlog Elimination Plan*. Washington, DC: USCIS. www.aila.org/File/DownloadEmbeddedFile/44829.
- . 2006. *Backlog Elimination Plan*. Washington, DC: USCIS. www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf.
- . 2013. Questions & Answers: Reasonable Fear Screenings. Updated June 18, 2013. www.uscis.gov/humanitarian/refugees-asylum/asylum/questions-answers-reasonable-fear-screenings.
- . 2016. *Affirmative Asylum Procedures Manual (AAPM)*. Washington, DC: USCIS Asylum Division. www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AAPM-2016.pdf.



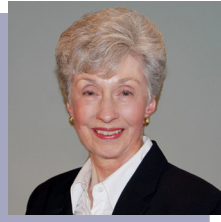
- . 2016. Questions and Answers. Fact sheet, USCIS Asylum Division Quarterly Stakeholder Meeting, November 4, 2016. www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsymylumQuarterlyEngagementQA11042016.pdf.
- . 2017. In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM). Updated November 15, 2017. www.uscis.gov/CAM.
- . 2017. Refugees, Asylum, and Parole System MPA and PRL Report: 10\01\16 – 9\30\17. Dataset, Asylum Division Quarterly Stakeholder Meeting, October 5, 2017. www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_MPAandPRLreportFY17.pdf.
- . 2018. Affirmative Asylum Interview Scheduling. Updated January 26, 2018. www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling.
- . 2018. Affirmative Asylum Scheduling Bulletin. Updated April 26, 2018.
- . 2018. Affirmative Asylum Statistics. Monthly datasets for October 2017 through December 2017, Asylum Division Quarterly Stakeholder Meeting, USCIS, January 24, 2018. www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-11.
- . 2018. Affirmative Asylum Statistics. Monthly datasets for January 2018 through March 2018, Asylum Division Quarterly Stakeholder Meeting, USCIS, May 1, 2018. www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-12.
- . 2018. Affirmative Asylum Statistics. Monthly datasets for April 2018 through June 2018, Asylum Division Quarterly Stakeholder Meeting, USCIS, August 7, 2018. www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-13.
- . 2018. Credible Fear and Reasonable Fear Statistics and Nationality Reports—FY 2018 Total Caseload. Dataset, Asylum Division Quarterly Stakeholder Meeting, August 7, 2018. www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/FY18CFandRFstats_2018_06_30.pdf.
- . 2018. Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B. Policy memorandum 602-0162, USCIS, Washington, DC, July 11, 2018. www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-18-PM-602-0162-USCIS-Memorandum-Matter-of-A-B.pdf.
- . 2018. Refugees, Asylum, and Parole System MPA and PRL Report: 10\01\17 – 06\30\18. Dataset, Asylum Division Quarterly Stakeholder Meeting, August 7, 2018. www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/MPAandPRLreportFY2018Q3.pdf.
- . 2018. Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens. Policy memorandum 602-0050.1, USCIS, Washington, DC, June 28, 2018. www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf.
- . 2018. USCIS to Take Action to Address Asylum Backlog. Press release, January 31, 2018. www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog.
- . Multiple Years. Affirmative Asylum Statistics. Datasets, Asylum Division Quarterly Stakeholder Meetings, October 2016 through September 2017. www.uscis.gov/outreach/notes-previous-engagements.
- . Multiple Years. Credible Fear and Reasonable Fear Statistics and Nationality Reports. Datasets for multiple years, Asylum Division Quarterly Stakeholder Meeting, accessed March 12, 2018. www.uscis.gov/outreach/notes-previous-engagements.



- . N.d. Number of Approved Employment Authorization Documents, by Classification and Statutory Eligibility October 1, 2012 - June 29, 2017. Dataset, USCIS, Washington, DC, accessed March 12, 2018. www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-statutory-eligibility.pdf.
- USCIS Ombudsman. 2017. *Annual Report to Congress June 2017*. Washington, DC: USCIS. www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202017_0.pdf.
- U.S. Department of Homeland Security. 2016. U.S. Expands Initiatives to Address Central American Migration Challenges. Press release, July 26, 2016. www.dhs.gov/news/2016/07/26/us-expands-initiatives-address-central-american-migration-challenges.
- U.S. Department of Homeland Security, Bureau of Customs and Border Protection. 2004. Designating Aliens for Expedited Removal. *Federal Register* 69 (154): 48877–81. www.gpo.gov/fdsys/pkg/FR-2004-08-11/pdf/04-18469.pdf.
- U.S. Department of Justice (DOJ). 2002. Notice Designating Aliens Subject to Expedited Removal Under §235(b)(1)(A)(iii) of the Immigration and Nationality Act. *Federal Register* 67 (68923): 68923–26. www.federal-register.gov/documents/2002/11/13/02-29038/notice-designating-aliens-subject-to-expedited-removal-under-section-235b1aiii-of-the-immigration
- . 2018. Attorney General Sessions Delivers Remarks to the Association of State Criminal Investigative Agencies 2018 Spring Conference. Prepared remarks, Scottsdale, AZ, May 7, 2018. www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-association-state-criminal-investigative.
- U.S. Department of State. 2016. *Country Reports on Human Rights Practices for 2016: Honduras*. Washington, DC: U.S. Department of State. www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&lid=265596#wrapper.
- . 2017. *2017 Trafficking in Persons Report*. Washington, DC: U.S. Department of State. www.state.gov/j/tip/rls/tiprpt/2017/.
- . 2017. Status of the Central American Minors Program. Press release, November 8, 2017. www.state.gov/r/pa/prs/ps/2017/11/275415.htm.
- U.S. Immigration and Customs Enforcement (ICE). 2017. *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*. Washington, DC: ICE. www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf.
- Wasem, Ruth Ellen. 2011. *Asylum and “Credible Fear” Issues in U.S. Immigration Policy*. Washington, DC: Congressional Research Service. <https://fas.org/sgp/crs/homesec/R41753.pdf>.
- White House. 2018. Executive Order 13841 of June 20, 2018: Affording Congress an Opportunity to Address Family Separation. *Federal Register* 83, no. 122 (June 25, 2018): 29435–36. www.gpo.gov/fdsys/pkg/FR-2018-06-25/pdf/2018-13696.pdf.
- William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. Public Law 110-457. *U.S. Statutes at Large* 122, 2008. www.gpo.gov/fdsys/granule/STATUTE-122/STATUTE-122-Pg5044/content-detail.html.



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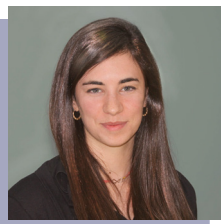
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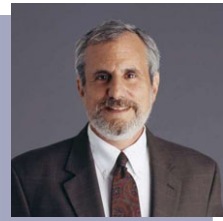
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The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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