

New York American Inn of Court

May 22, 2019

# ***Is that Really the Law?***

Asylum, H1B Visas

and Other Immigration Updates, 2019

6:30 Welcome and Introduction

6:35 Asylum 2019

6:50 How Did We Get Here? : A Bit of History

7:20 H1B Visas and other Updates

7:50 Audience Discussion and Predictions



Free Bonus  
Border Wall

# Your Presenters

**Michael Almonte** joined Fragomen, Del Rey, Bernsen, & Loewy LLP as an Associate in 2008 after spending a year as an immigration law clerk with the U.S. Court of Appeals for the Second Circuit. Michael represents multinational corporate clients in a variety of industries on all aspects of U.S. immigration, including permanent residence, nonimmigrant visas and citizenship. From August 2010 until September 2011, Michael served as the Fragomen Fellow at the New York City Bar Justice Center, a rotating fellowship the firm established to enhance the pro bono immigration services provided at the City Bar Justice Center. In this position, Michael coordinated the Immigrant Outreach Program, where he developed and directed various pro bono immigrant outreach initiatives including organizing free immigration legal clinics throughout New York City and leading a new project aimed at providing pro bono representation to immigrants in detention facilities.

**Steven Cummings** is an attorney in the Office of Financial Innovation (OFI), a division of the New York State Department of Financial Services (DFS). Mr. Cummings is team lead for virtual currency applications, where he focuses primary on New York's virtual currency and cybersecurity regulations. Steven is IAPP-certified in both U.S. and European privacy law.

Steven Cummings received a J.D. from Albany Law School in 2017. While at Albany Law School, Mr. Cummings served on the editorial board of the Albany Law Review, as a legal research assistant for Albany Law School Professor Patrick Connors, and as a law clerk for the Wagoner Firm PLLC.

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**Paul J. Mahoney** is an Assistant Deputy Attorney General in the Office of the New York State Attorney General and, as deputy chief of the New York Medicaid Fraud Control Unit, supervises over 50 prosecutors and litigation attorneys and 250 other investigative and analytics staffers combatting criminal and civil fraud and abuse by healthcare providers in the \$60 billion-per-year New York healthcare program. Paul was previously Chief of the Civil Enforcement Division of the Medicaid Fraud Control Unit. He has been twice awarded the *Louis J. Lefkowitz Memorial Award* for outstanding performance by an assistant attorney general. In recent years, Paul has worked extensively on legislation and other initiatives supporting New York's response to the opioid crisis.

From 1997 to 2004, Paul Mahoney served as an Assistant District Attorney, later Senior Investigative Counsel, in the Frauds Bureau of New York County District Attorney Robert M. Morgenthau. His major prosecutions included a seven-month trial of a securities firm and its principals, several other major securities fraud investigations, and numerous prosecutions of banking, accounting, and financial frauds.

Before joining the Manhattan DA, Paul was an associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City with extensive experience in securities litigation, advertising and unfair trade practices, and products liability, and was recognized for *pro bono* work by the Legal Aid Society. Paul J. Mahoney is a graduate of Cornell Law School and Williams College.

**Michael D. Patrick** Michael has practiced law for 40 years, with the last 38 involving immigration. He was a senior partner in the New York office of Fragomen Worldwide for 26 years until his retirement in 2016 (1990-2016), a founding partner of Campbell, Patrick & Chin (1986-1990), and before that a Special Assistant U.S. Attorney, SDNY, and Chief of the Immigration Unit under then-U.S. Attorney Rudolph W. Giuliani (1981-1986). Michael began his legal career as an Assistant Corporation Counsel for the NYC Law Department, and as a member of its Special Trials Unit, Torts Division (1978-1981). Michael served as NYC Chapter Chair of the American Immigration Lawyers Association (1990-1991), Co-Chair of the Immigration Section of the Federal Bar Association (1992-1993), and as a founding member of Chief Circuit Judge Robert Katzmann's Immigration Representation Study Group (2008-present).

Michael, who graduated from Syracuse University (BA, cum laude, 1975) and Hofstra (JD, 1978), has been listed in Best Lawyers, Super Lawyers, and Who's Who in Corporate Immigration for multiple years. He has been a member of the American Inn of Court, NY Chapter, since 2012. <https://www.linkedin.com/in/michael-patrick-90b5461/>

## Tsui Yee

<https://www.yeeimmigration.com/>



Tsui Yee has been practicing immigration law since 1999, handling a wide variety of immigration matters, including family- and employment-based applications for permanent residence, nonimmigrant work visas, defense in removal (deportation) proceedings, naturalization applications, and applications for various waivers of removability.

In 2016 Tsui Yee was named a Super Lawyer in the field of immigration law, a designation that is bestowed on less than 5% of attorneys. She was also named one of the Outstanding 50 Asian Americans in Business by the Asian American Business Development Corporation in 2016. In 2012 Ms. Yee was the recipient of the Dena Coye Outstanding Woman Entrepreneurship Award from the National Minority Business Council, Inc.

Ms. Yee has presented and spoken at numerous continuing legal education seminars regarding various aspects of immigration and nationality law as well as law firm practice management. She formerly served as co-chair of the Immigration and Nationality Law Committee of the Asian American Bar Association of New York and co-chair of the Solo and Small Firm Practice Committee of the New York County Lawyers Association. She is also a member of the American Immigration Lawyers Association and the Asian American Bar Association of New York.

Ms. Yee graduated from the University of California at Los Angeles School of Law in 1998 and received her Bachelor of Arts degree in Political Science from Tufts University in 1993. She is admitted to practice law in the State of New York; the Second Circuit Court of Appeals; and the U.S. District Courts for the Southern and Eastern Districts of New York.

Prior to forming Law offices of Tsui H. Yee P.C in 2017, Ms. Yee was a founding partner of the Guerrero Yee LLP and Yee & Durkin, LLP immigration law firms. A proud native New Yorker, Ms. Yee was born in Manhattan and raised in Little Italy.

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## Links to Recent Discussions of Asylum and Immigration Issues, 2019

### NYT Changes in Asylum law:

[https://www.nytimes.com/2019/04/29/us/politics/trump-asylum.html?smid=fb-nytimes&smtyp=cur&fbclid=IwAR3h8A2rZIK\\_2hmwGE7WzPxxiUj6I21s78SOpCrFK1ETNx\\_auX2KU5F30TU](https://www.nytimes.com/2019/04/29/us/politics/trump-asylum.html?smid=fb-nytimes&smtyp=cur&fbclid=IwAR3h8A2rZIK_2hmwGE7WzPxxiUj6I21s78SOpCrFK1ETNx_auX2KU5F30TU)

### American Immigration Council Primer (also attached)

<https://www.americanimmigrationcouncil.org/research/asylum-united-states>

### WNYC regarding the recent higher asylum denial rates in immigration courts -

<https://www.wnyc.org/story/why-its-harder-win-asylum-even-new-york/>

**USCIS' announcement** on January 31, 2018 to no longer process asylum cases on a FIFO (first in first out) basis, instead returning to a "last in, first out" interview schedule which "will allow USCIS to identify frivolous, fraudulent or otherwise non-meritorious asylum claims earlier and place those individuals into removal proceedings."

<https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog>

**Recent study by TRAC at Syracuse University**, reporting immigration judges' asylum approval and denial rates: <https://trac.syr.edu/phptools/immigration/asylum/>

### Fellowship Opportunities for Law Students and New Attorneys:

Immigrant Justice Corps (IJC) is the country's first fellowship program dedicated to meeting the need for high-quality legal assistance for immigrants

[Immigrant Justice Corps](http://justicecorps.org) justicecorps.org



## Asylum in the United States

Each year, thousands of noncitizens arriving at our border or already in the United States apply for asylum, or protection from persecution. Asylum seekers must navigate a difficult and complex process that can involve multiple government agencies. Those granted asylum have the opportunity to apply to live in the United States permanently, receive certain benefits, and be reunited with their family members. This fact sheet provides an overview of the asylum system in the United States, including how asylum is defined, eligibility requirements, and the application process.

### What Is Asylum?

Asylum is a protection granted to foreign nationals already in the United States or at the border who meet the international law definition of a “refugee.” The [United Nations 1951 Convention](#) and [1967 Protocol](#) define a refugee as a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.”<sup>1</sup> Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980.<sup>2</sup>

As a signatory to the 1967 Protocol, and through U.S. immigration law, the United States has legal obligations to provide protection to those who qualify as refugees. The Refugee Act established two paths to obtain refugee status—either from abroad as a resettled refugee or in the United States as an asylum seeker.<sup>3</sup>

### What Are the Benefits of Asylum?

An asylee—or a person granted asylum—is protected from being returned to his or her home country, is authorized to work in the United States, may apply for a Social Security card, may request permission to travel overseas, and can petition to bring family members to the United States.<sup>4</sup> Asylees may also be eligible certain benefits, such as Medicaid or Refugee Medical Assistance.<sup>5</sup>

After one year, an asylee may apply for lawful permanent resident status (i.e., a green card).<sup>6</sup> Once the individual becomes a permanent resident, he or she must wait four years to apply for citizenship.<sup>7</sup>

## What Is the Asylum Application Process?

There are two primary ways in which a person may apply for asylum in the United States: the **affirmative** process and the **defensive** process. Asylum seekers who arrive at a U.S. port of entry or enter the United States without inspection generally must apply through the defensive asylum process. Both processes require the asylum seeker to be physically present in the United States.

- **Affirmative Asylum:** A person who is not in removal proceedings may affirmatively apply for asylum through U.S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS). If the USCIS asylum officer does not grant the asylum application and the applicant does not have a lawful immigration status, he or she is referred to the immigration court for removal proceedings, where he or she may renew the request for asylum through the defensive process and appear before an immigration judge.<sup>8</sup>
- **Defensive Asylum:** A person who is in removal proceedings may apply for asylum defensively by filing the application with an immigration judge at the Executive Office for Immigration Review (EOIR) in the Department of Justice. In other words, asylum is applied for “as a defense against removal from the U.S.”<sup>9</sup> Unlike the criminal court system, EOIR does not provide appointed counsel for individuals in immigration court, even if they are unable to retain an attorney on their own.<sup>10</sup>

With or without counsel, an asylum seeker has the burden of proving that he or she meets the definition of a refugee. Asylum seekers often provide substantial evidence throughout the affirmative and defensive processes demonstrating either past persecution or that they have a “well-founded fear” of future persecution in their home country.<sup>11</sup> However, the individual’s own testimony is usually critical to his or her asylum determination.

Certain factors bar individuals from asylum. With limited exceptions, individuals who fail to apply for asylum within one year of entering the United States will be barred from receiving asylum. Similarly, applicants who are found to pose a danger to the United States are barred from asylum.<sup>12</sup>

## Is There a Deadline for Asylum Applications?

An individual generally must apply for asylum within one year of arriving in the United States.<sup>13</sup> Whether DHS is obligated to notify asylum seekers of this deadline is the subject of pending litigation. A [class-action lawsuit](#) has challenged the government’s failure to provide asylum seekers adequate notice of the one-year deadline and a uniform procedure for filing timely applications.<sup>14</sup>

Asylum seekers in the affirmative and defensive processes face many obstacles to meeting the one-year deadline. Some [individuals face traumatic repercussions](#) from their time in detention or journeying to the United States and may never know that a deadline exists. Even those who are aware of the deadline encounter systemic barriers, such as lengthy backlogs, that can make it impossible to file their application in a timely manner. In many cases, [missing the one-year deadline](#) is the sole reason the government denies an asylum application.<sup>15</sup>

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

Noncitizens who are encountered by, or present themselves to, a U.S. official at a port of entry or near the border are subject to **expedited removal**, an accelerated process which authorizes DHS to perform rapid deportations of certain individuals.<sup>16</sup>

To ensure that the United States does not violate international and domestic laws by returning individuals to countries where their life or liberty may be at risk, the **credible fear** and **reasonable fear** screening processes are available to asylum seekers in expedited removal processes.

### Credible Fear

Individuals who are placed in expedited removal proceedings and who tell a Customs and Border Protection (CBP) official that they fear persecution, torture, or returning to their country or that they wish to apply for asylum should be referred for a credible fear screening interview conducted by an asylum officer.<sup>17</sup>

If the asylum officer determines that the asylum seeker has a credible fear of persecution or torture, it means that the person has proven that he or she has a “significant possibility” of establishing eligibility for asylum or other protection under the Convention Against Torture.<sup>18</sup> The individual will then be referred to immigration court to proceed with the defensive asylum application process.

If the asylum officer determines the person does **not** have a credible fear, the individual is ordered removed. Before deportation, the individual may appeal the negative credible fear decision by pursuing a truncated review process before an immigration judge.<sup>19</sup> If the immigration judge overturns a negative credible fear finding, the individual is placed in further removal proceedings through which the individual can seek protection from removal.<sup>20</sup> If the immigration judge upholds the negative finding by the asylum officer, the individual will be removed from the United States.<sup>21</sup>

- In Fiscal Year (FY) 2017, USCIS found 60,566 individuals to have credible fear.<sup>22</sup> These individuals, many of whom were detained during this screening process, will be afforded an opportunity to apply for asylum defensively and establish that they meet the refugee definition.
- The number of credible fear cases has skyrocketed since the procedure was implemented—in FY 2009, USCIS completed 5,523 cases. Case completions reached an all-time high in FY 2016 at 92,071 and decreased to 79,977 in FY 2017.<sup>23</sup>

### Reasonable Fear

Individuals who re-enter the United States unlawfully after a prior deportation order and noncitizens convicted of certain crimes are subject to a different expedited removal process called **reinstatement of removal**.<sup>24</sup> To protect asylum seekers from summary removal before their asylum claim is heard, those in reinstatement of removal proceedings who express a fear of returning to their country are afforded a “reasonable fear” interview with an asylum officer.<sup>25</sup>



To demonstrate a reasonable fear, the individual must show that there is a “reasonable possibility” that he or she will be tortured in the country of removal or persecuted on the basis of race, religion, nationality, political opinion, or membership in a particular social group.<sup>26</sup> While both credible and reasonable fear determinations evaluate the likelihood of an individual’s persecution or torture if deported, the reasonable fear standard is higher.

If the asylum officer finds that the person has a reasonable fear of persecution or torture, he or she will be referred to immigration court. The person has the opportunity to prove to an immigration judge that he or she is eligible for “withholding of removal” or “deferral of removal”—protection from future persecution or torture.<sup>27</sup> While withholding of removal is similar to asylum, some of the requirements are more difficult to meet and the relief it provides is narrower. Significantly, and unlike asylum, it does not provide a pathway to lawful permanent residence.

If the asylum officer determines the person does **not** have a reasonable fear of future persecution or torture, the individual may appeal the negative decision to an immigration judge. If the judge upholds the asylum officer’s negative determination, the individual is turned over to immigration enforcement officers for removal.<sup>28</sup> However, if the immigration judge overturns the asylum officer’s negative finding, the individual is placed in removal proceedings through which the individual can pursue protection from removal.<sup>29</sup>

- In FY 2017, [USCIS found 3,018 individuals](#) to have reasonable fear.<sup>30</sup>

## **How Long Does the Asylum Process Take?**

Overall, the asylum process can take years to conclude. In some cases, a person may file his or her application and receive a hearing or interview date years in the future.

- As of March 2018, there were more than 318,000 affirmative [asylum applications pending with USCIS](#). The government does not estimate the time it will take to schedule an initial interview for these asylum applicants, though historically the delay could reach four years for such asylum seekers.<sup>31</sup>
- The [backlog in U.S. immigration courts](#) reached an all-time high in March 2018 with more than 690,000 open deportation cases.<sup>32</sup> On average, these [cases had been pending](#) for 718 days and remained unresolved.<sup>33</sup>
- Individuals with an immigration court case who were ultimately granted relief—such as asylum—by March 2018 waited more than 1,000 days on average for that outcome. New Jersey and California had the longest wait times, averaging 1,300 [days until relief was granted](#) in the immigration case.<sup>34</sup>

Asylum seekers, and any family members waiting to join them, are left in limbo while their case is pending. The backlogs and delays can cause prolonged separation of refugee families, leave family members abroad in dangerous situations, and make it more difficult to retain pro bono counsel for the duration of the asylum seeker’s case.<sup>35</sup>

Although asylum seekers may apply for work authorization after their case has been pending for 150 days, the uncertainty of their future impedes employment, education, and trauma recovery opportunities.<sup>36</sup>

## What Happens to Asylum Seekers While Their Application Is Processed?

Asylum seekers include some of the most vulnerable members of society—children, single mothers, victims of domestic violence or torture, and other individuals who have suffered persecution and trauma. Some of these individuals may live in the United States while their application is processed, yet the government has detained others—including children and families—for some or all of this time.

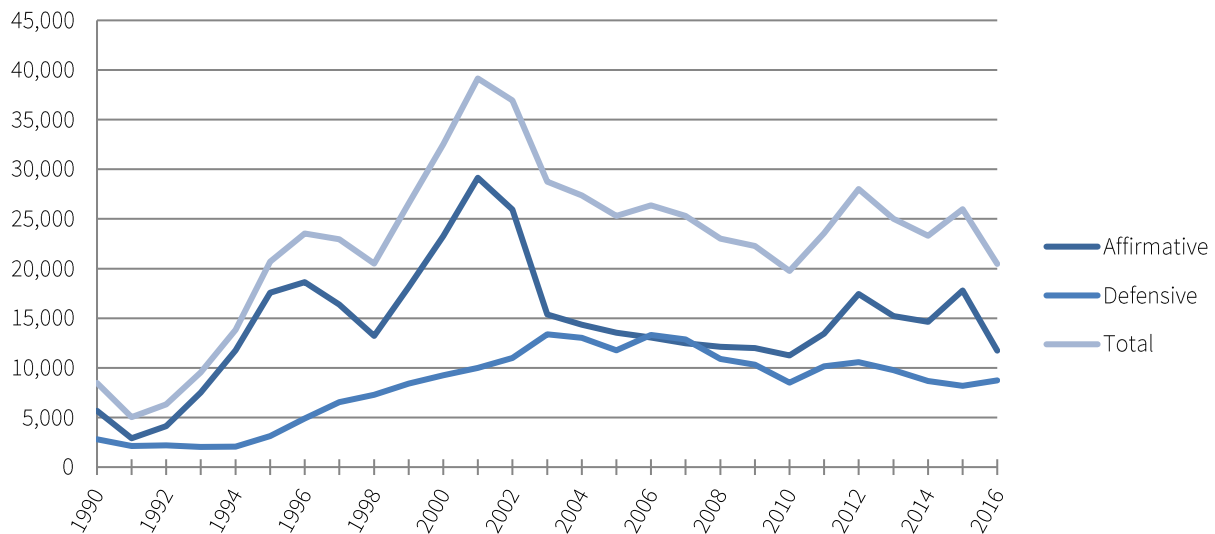
While U.S. law provides arriving asylum seekers the right to be in the United States while their claim for protection is pending, the government has argued that it has the right to detain such individuals.<sup>37</sup> Some courts have rejected this interpretation and held that asylum seekers meeting certain criteria have a [right to a hearing over their detention](#) if they have been held for at least six months.<sup>38</sup> Several lawsuits have challenged the practice of detaining asylum applicants, including class-action suits that document the prolonged detention—sometimes lasting years—of individuals with credible fear awaiting adjudication of their claim for asylum.<sup>39</sup>

Detention exacerbates the challenges asylum seekers already face and can negatively impact a person’s asylum application. Children and [families who are detained](#) suffer mental and physical health problems, including depression, post-traumatic stress disorder, and frequent infections.<sup>40</sup> Studies have found that detained individuals in removal proceedings are nearly five times [less likely to secure legal counsel](#) than those not in detention.<sup>41</sup> This disparity can significantly affect an individual's case, as [those with representation are more likely to apply for protection](#) in the first place and successfully obtain the relief sought.<sup>42</sup>

## How Many People Are Granted Asylum?

In FY 2016, the most recent year with available data, 20,455 individuals were granted asylum: 11,729 affirmatively and 8,726 defensively (Figure 1). Total annual asylum grants averaged 23,669 between FY 2007 and FY 2016.<sup>43</sup>

Figure 1: Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2016

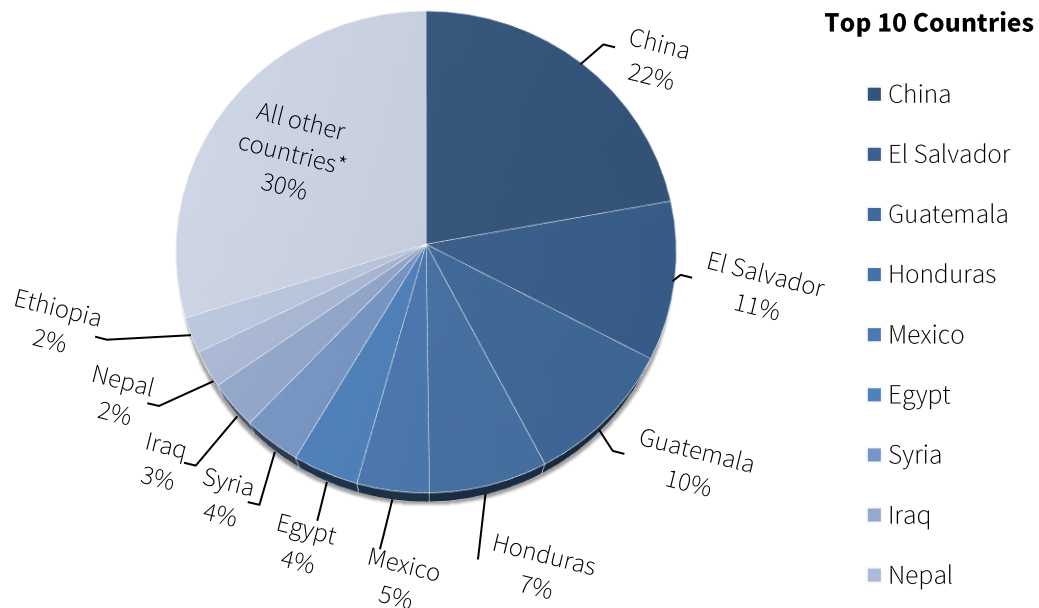


Source: Office of Immigration Statistics, Table 16 in *2016 Yearbook of Immigration Statistics* (Washington, DC: U.S. Dept of Homeland Sec., 2018), <https://www.dhs.gov/immigration-statistics/yearbook/2016/table16>.

The countries of nationality for individuals granted asylum have largely remained the same in this 10-year period (FY 2007-2016), with nationals of China and Egypt making up significant shares of asylees.<sup>44</sup> Other individuals granted asylum in that time period included nationals of Guatemala, Haiti, Venezuela, Iraq, Ethiopia, Iran, Colombia, and Russia.<sup>45</sup>

In FY 2016, Chinese and Salvadoran nationals represented the greatest shares of asylees (accounting for 21.9 and 10.5 percent, respectively, of all individuals granted asylum in FY 2016).<sup>46</sup> Nationals of China, El Salvador, Guatemala, and Honduras combined accounted for half (49.4 percent) of the 20,455 individuals granted asylum—either affirmatively or defensively—in FY 2016 (Figure 2). A total of 98 nationalities were represented among all individuals granted asylum in FY 2016.<sup>47</sup>

Figure 2: Total Asylum Grants by Country of Nationality, Fiscal Year 2016



\* Includes the Palestinian Territory and countries with less than 10 individuals granted asylum in FY 2016.

Source: American Immigration Council analysis of government data. Office of Immigration Statistics, Tables 17 and 19 in *2016 Yearbook of Immigration Statistics* (Washington, DC: U.S. Dep't of Homeland Sec., 2018), <https://www.dhs.gov/immigration-statistics/yearbook/2016>.

## Endnotes

1. U.N. General Assembly (U.N.G.A.), *Convention Relating to the Status of Refugees*, § 1(A)(2), U.N. Treaty Series (Vol. 189), at 137 (July 28, 1951), available at <http://www.refworld.org/docid/3be01b964.html>; U.N.G.A., *Protocol Relating to the Status of Refugees*, U.N. Treaty Series (Vol. 606), at 267, (January 31, 1967), available at <http://www.refworld.org/docid/3be01b964.html>.
2. 8 U.S.C. § 1101(a)(42).
3. 8 U.S.C. §§ 1157-1158. This fact sheet does not describe the law or process for gaining refugee status abroad.
4. *Id.* §§ 1158(b)(3), (c); 8 C.F.R. § 208.21.
5. 8 U.S.C. § 1522(c). For case examples, see Lindsay Harris, “From Surviving to Thriving? An Investigation of Asylee Integration in the United States,” *N.Y.U. Review of Law & Social Change* 40, no. 29 (2016): Appendix A, <https://socialchangenyu.com/from-surviving-to-thriving-an-investigation-of-asylee-integration-in-the-united-states/>.
6. 8 U.S.C. § 1159(b).
7. *Id.* §§ 1159(b), 1427(a)(1); 8 C.F.R. § 209.2(f).
8. 8 C.F.R. §§ 208.2, 208.13-14.
9. *Id.*
10. See 8 U.S.C. § 1229a(b)(4)(A); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990).
11. 8 U.S.C. §§ 1158(b)(1), 1101(a)(42)(A).
12. *Id.* § 1158(a)(2), (b)(2). In some cases, an individual may be eligible to apply for a more limited form of protection.
13. *Id.* § 1158(a)(2)(B).
14. *Mendez Rojas v. Johnson*, 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018). For updated information, see American Immigration Council, Dobrin and Han PC, and the Northwest Immigrant Rights Project, “Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications: Frequently Asked Questions,” April 13, 2018, [https://www.americanimmigrationcouncil.org/sites/default/files/mendez\\_rojas\\_v\\_johnson\\_faq.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf).
15. See, e.g., Royce B. Murray and Kathryn Shepherd, *The Perils of Expedited Removal: How Fast-Track Deportations Jeopardize Asylum Seekers* (Washington, DC: American Immigration Council, 2016), <https://www.americanimmigrationcouncil.org/research/expedited-removal-asylum-seekers>; National Immigrant Justice Center, et al., *The One-Year Asylum Deadline and the BIA: No Protection, No Process* (Chicago, IL, 2010), 6, <https://www.immigrantjustice.org/research-items/report-one-year-asylum-deadline-and-bia-no-protection-no-process>.
16. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (1996).
17. See 8 U.S.C. § 1225(b)(1)(A)(III).
18. *Id.* at (b)(1)(B); for credible fear determination procedure see 8 C.F.R. § 208.30(e)-(f). For protections under the Convention Against Torture see 8 C.F.R. §§ 208.16(c), 208.17(a)-(b).
19. 8 C.F.R. § 208.30(g); 8 U.S.C. § 1225(b)(1)(B)(iii)(III).
20. 8 C.F.R. § 1208.30(g)(2)(iv)(B)-(C). Following the immigration judge’s finding of positive credible fear and thus commencing removal proceedings, an individual may apply for asylum and request withholding of removal, which may be approved whether or not asylum is granted. 8 C.F.R. § 208.16(a-b) [“The applicant for withholding of removal has the burden of establishing that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion.”]; 8 C.F.R. §§ 208.16(c), 208.17(a) [the burden is on an individual applying for withholding of removal under the Convention Against Torture to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” If protection is granted, it will be in the form of withholding of removal or deferral of removal].
21. 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A).
22. U.S. Citizenship and Immigration Services Asylum Division, “Credible Fear Workload Report Summary: FY 2017 Total Caseload,” Nov. 3, 2017, [www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED\\_FY17\\_CFandRFStatsThru09302017.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_FY17_CFandRFStatsThru09302017.pdf).
23. USCIS Asylum Division, “Credible Fear Workload Report: Summary,” April 25, 2018, [https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED\\_CredibleFearWorkloadReport.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_CredibleFearWorkloadReport.pdf).
24. 8 U.S.C. § 1231(a)(5).
25. 8 C.F.R. § 1208.31.
26. *Id.* § 1208.31(c).
27. 8 C.F.R. §§ 208.16-17, 1208.31(e).

28. 8 C.F.R. §§ 1208.31(f)-(g), 1208.16.
29. *Id.*
30. USCIS Asylum Division, “Reasonable Fear Workload Report Summary: FY 2017 Total Caseload,” Nov. 3, 2017, [www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED\\_FY17\\_CFandRFstatsThru09302017.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_FY17_CFandRFstatsThru09302017.pdf).
31. USCIS Asylum Division, “Affirmative Asylum Statistics: March 2018,” last updated May 2, 2018, [https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED\\_AsylumOfficeWorkloadMarch2018.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/PED_AsylumOfficeWorkloadMarch2018.pdf); Asylum and Refugee Committee, “Practice Pointer: AILA Frequently Asked Questions (FAQs) on Changes to the Asylum Office Affirmative Scheduling System,” AILA Doc. No. 18020233, Feb. 2, 2018, <http://www.aila.org/infonet/aila-provides-faqs-on-changes-to-the-asylum-office>.
32. Transactional Records Access Clearinghouse at Syracuse University [TRAC Immigration], “Backlog of Pending Cases in Immigration Courts as of March 2018,” accessed May 7, 2018, [http://trac.syr.edu/phptools/immigration/court\\_backlog/apprep\\_backlog.php](http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php).
33. TRAC Immigration, “Immigration Court Backlog Tool: Pending Cases and Length of Wait by Nationality, State, Court, and Hearing Location,” accessed May 7, 2018, [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/).
34. TRAC Immigration, “Immigration Court Processing Time by Outcome,” accessed May 7, 2018, [http://trac.syr.edu/phptools/immigration/court\\_backlog/court\\_proctime\\_outcome.php](http://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php); see also Human Rights First, “In the Balance: Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems,” April 19, 2016, 1-2, <http://www.humanrightsfirst.org/resource/balance-backlogs-delay-protection-us-asylum-and-immigration-court-systems>.
35. See, e.g., Human Rights First, *Tilted Justice: Backlogs Grow While Fairness Shrinks in U.S. Immigration Courts* (Washington, DC, Oct. 2017), <https://www.humanrightsfirst.org/sites/default/files/hrf-tilted-justice-final%5B1%5D.pdf>; Leigh Barrick, *Divided by Detention: Asylum-Seeking Families’ Experiences of Separation* (Washington, DC: American Immigration Council, Aug. 2016), <http://www.americanimmigrationcouncil.org/research/divided-by-detention-asylum-seeking-families-experience-of-separation>.
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37. 8 U.S.C. §§ 1225(b), 1226(a), (c). See also *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018).
38. See, e.g., Joint Status Report, *Rodriguez v. Marin*, No. CV 07-3239, at \*2 (C.D. Cal. Mar. 5, 2018) (ECF No. 478); *Zadvydus v. Davis*, 533 U.S. 678 at 720-21 (2001); *Diouf v. Napolitano* (Diouf II), 634 F.3d 1081 (9th Cir. 2011); *Casas-Castrillon v. Dep’t of Homeland Security*, 535 F.3d 942 (9th Cir. 2008). For further discussion of related case law see American Civil Liberties Union, “Practice Advisory: Prolonged Detention Challenges After *Jennings v. Rodriguez*,” March 21, 2018, [https://www.aclu.org/sites/default/files/field\\_document/2018\\_03\\_21\\_jennings\\_v\\_rodriguez\\_practice\\_advisory.pdf](https://www.aclu.org/sites/default/files/field_document/2018_03_21_jennings_v_rodriguez_practice_advisory.pdf).
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44. *Ibid.* Calculated with data from Tables 16, 17d, and 19d, available at <https://www.dhs.gov/immigration-statistics/yearbook/2016>.
45. *Ibid.*
46. *Ibid.*
47. *Ibid.*