

An Overview of Asylum

Credit: CNS/Chad Muth

What is asylum?

Asylum is a form of humanitarian protection available under U.S. law. A person located in the U.S. may be granted asylum if they are unable or unwilling to return to his or her country of nationality because of past persecution or a well-founded fear of persecution on account of their: 1) race, 2) religion, 3) nationality, 4) political opinion, or 5) membership in a particular social group.¹

What is the difference between an asylee and refugee?

Both asylees and refugees must show they meet the same definition of being unable or unwilling to return to their country of nationality because of past persecution or a well-founded fear of persecution on account of their: 1) race, 2) religion, 3) nationality, 4) political opinions, or 5) membership in a particular social group. The main difference between an asylee and a refugee is largely the process through which an individual ultimately attains protection status. Refugees, for instance are granted protection when they are abroad before they enter the United States. An asylee applies for protection once they have entered the United States, as an [asylum seeker](#).²

Is asylum codified in U.S. law?

Yes, asylum is codified under Title 8 of the United States Code, Section 1158. The definition of asylum is based on international law which is based on the 1951 UN Convention Relating to the Status of Refugees. The U.S. signed onto the 1967 Protocol, which includes the Convention definition. Further, the definition was incorporated into U.S. law in the Refugee Act of 1980.³

Is there a "right way" to claim asylum at the border?

No. U.S. immigration laws state that individuals have the right to seek asylum regardless of whether they enter the country at an official port of entry (POE) or anywhere else along the U.S. border, such as in between the official POEs. And, while President Trump has issued a [Proclamation](#) that proposed limiting asylum to those

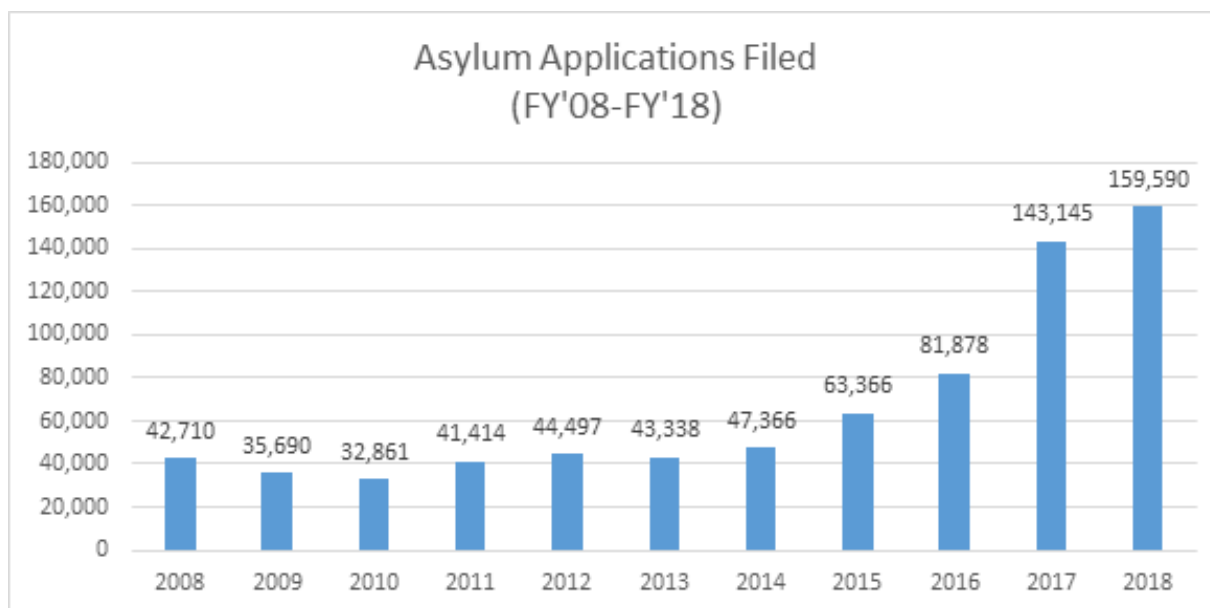
individuals coming to POEs,⁴ that action has been challenged in the federal courts.⁵ On November 19, 2018, a federal judge in San Francisco issued a [temporary restraining order](#)⁶ regarding the narrowing of the ability to access asylum and a preliminary injunction, or temporary pause, of the Proclamation was ordered on December 19, 2018.⁷

How do you apply for asylum?

Individuals can apply for asylum through either an “affirmative” or a “defensive” process. Individuals who are not in removal proceedings can petition for asylum affirmatively through United States Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS). Learn more about this process [here](#).⁸ “Defensive” asylum is the application process for individuals who arrive in the U.S. in an unauthorized manner, voice a fear of return or persecution and are issued a Notice to Appear (NTA) in immigration court where their case will be adjudicated by an immigration judge. Learn more about this process [here](#).⁹ Both forms of asylum are perfectly legal, discretionary, and apply the same standard.

Have the number of people that have been applying for asylum increased? Why?

Yes. The numbers of individuals seeking asylum, specifically from the Northern Triangle of Central America (El Salvador, Honduras, and Guatemala), has increased recently due to the pervasive violence that threatens the lives of citizens in the Northern Triangle, a lack of state protection from their respective governments, and from a lack of economic opportunity, food insecurity, and climate change. El Salvador, Honduras, and Guatemala have consistently [ranked](#) among the top 20 most dangerous countries in the world.¹⁰ For more information on the root causes of migration, please see the link to our backgrounder [here](#).¹¹



*Source: Executive Office of Immigration Review¹²

What is the approval rate for asylum applications?

In recent years, asylum denial rates have grown faster than asylum grant rates; 65% of decisions in Fiscal Year (FY) 2018 were denials, marking it the sixth year in a row of growing denial rates.¹³ Data has shown that legal representation gives asylum-seekers a much higher probability of succeeding in their asylum claims.¹⁴ Denial rates in FY 2018 made it clear that as it becomes increasingly more difficult for individuals to be granted asylum, it is imperative that they have access to adequate legal counsel.

What does the Church teach regarding asylum?

The Catholic Church recognizes the right of sovereign nations to control their borders, but also believes that those fleeing violence and persecution should be protected. In a recent statement, Bishop Joe S. Vásquez of Austin, Texas and Sean Callahan, President and CEO of Catholic Relief Services said, “[w]e steadfastly affirm a person’s right to seek asylum and find recent efforts to curtail and deter that right deeply troubling. We must look beyond our borders; families are escaping extreme violence and poverty at home and are fleeing for their lives.”¹⁵

What is the current wait time for asylum seekers to have their case adjudicated by a judge/Heard by a judge?

On average, immigration cases are pending for nearly 740 days.¹⁶ Currently, immigration courts are experiencing an overwhelming backlog in cases, with over 800,000 immigration cases pending.¹⁷ This number accounts for all forms of immigration cases, including asylum. Asylum seekers can wait anywhere from months to several years to have their asylum claim heard by an immigration judge. In some cases, a person may file their application and receive a date for a hearing or interview that is years away.¹⁸

Are asylum applicants entitled to a lawyer?

No, because immigration proceedings are civil and not criminal, there is no federally mandated right to counsel

The U.S. asylum-system is broken; how can we fix it?

- **Immigration courts should increase the number of judges and work to ensure due process for asylum seekers.** An increase in immigration judges would help to address the immigration court case backlog. In addition, efforts that would undermine asylum seeker's access to due process, such as the Migration Protection Protocol or "[Remain in Mexico](#)"¹⁹ policy, need to be firmly rejected as they make it more difficult for asylum seekers to adequately prepare for their cases and also find counsel to assist them.
- **Increase Access to Legal Information.** This includes access to Legal Orientation Program (LOP) and Know Your Rights presentations as well as centralized information about pro bono attorneys. This would help provide information to detained and released immigrants and ensure they know more about compliance requirements, making the system more efficient.
- **Ensure Legal Representation for Vulnerable Populations.** Data shows that immigrants with [legal representation](#) are more likely to apply for relief from deportation. Detained immigrants with counsel were almost eleven times more likely to seek relief such as asylum, and those who were never detained were five times more likely to seek relief.²⁰
- **Utilize Alternatives to Detention (ATDs) Rather than Keeping Asylum Seekers in Detention.** The government should increase utilization of proven ATDs, which are not only more humane but also more cost-effective than detention. Read our backgrounder on ATDs [here](#).²¹



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Endnotes

- 1 8 U.S.C. §1101(a)(42)(A).
- 2 *Asylum in the United States*, AMERICAN IMMIGRATION COUNCIL (May 14, 2018), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_in_the_united_states.pdf.
- 3 *Asylum Law and Procedure*, HUMAN RIGHTS FIRST, <https://www.humanrightsfirst.org/asylum/asylum-law-and-procedure> (last visited on May 15, 2019).
- 4 *Addressing Mass Migration Through the Southern Border of the United States*, 83 FR 57661 (Nov. 9, 2018).
- 5 Stacy Sullivan, *Federal Judge Blocks President Trump's Illegal Asylum Ban*, ACLU (Nov. 9, 2018), available at <https://www.aclu.org/blog/immigrants-rights/deportation-and-due-process/federal-judge-blocks-president-trumps-illegal?redirect=blog/immigrants-rights/deportation-and-due-process/president-trumps-proclamation-suspending-asylum>
- 6 *East Bay Sanctuary Covenant, et al., v. Donald J. Trump, et al.*, Case No. 3:18-cv-06810-JST Dkt. No. 43 (N.D. Cal. Nov. 19, 2018), available at https://www.aclu.org/sites/default/files/field_document/tro_granted_-_ebsc_v_trump_0.pdf
- 7 *East Bay Sanctuary Covenant, et al., v. Donald J. Trump, et al.*, Case No. 3:18-cv-06810-JST Dkt. No. 99 (N.D. Cal. Dec. 19, 2018), available at <https://www.courtlistener.com/docket/8160426/99/east-bay-sanctuary-covenant-v-trump/>.
- 8 *The Affirmative Asylum Process*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process>.
- 9 *Obtaining Asylum in the United States*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>.
- 10 Rocio Cara Labrador & Danielle Renwick, *Central America's Violent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (June 26, 2018), <https://www.cfr.org/background/central-americas-violent-northern-triangle>; see also *Travel and Tourism Competitiveness Report 2017*, WORLD ECONOMIC FORUM, <http://reports.weforum.org/travel-and-tourism-competitiveness-report-2017/ranking/#series=TTCL.A.02>.
- 11 *Root Causes of Migration*, Justice for Immigrants, available at <https://justiceforimmigrants.org/wp-content/uploads/2016/11/Root-Causes.pdf> (last visited on May 17, 2019).
- 12 *Executive Office of Immigration Review Adjudication Statistics Total Asylum Applications*, THE UNITED STATES DEP'T OF JUSTICE (Oct. 24, 2018), <https://www.justice.gov/eoir/page/file/1129081/download> (last visited on May 14, 2019).
- 13 *Asylum Decisions and Denials Jump in 2018*, TRAC IMMIGRATION (Nov. 29, 2018), <https://trac.syr.edu/immigration/reports/539/>.
- 14 *Asylum Representation Rates Have Fallen Amid Rising Denial Rates*, TRAC IMMIGRATION (Nov. 28, 2019), <https://trac.syr.edu/immigration/reports/491/>.
- 15 *USCCB Migration Chairman and CRS President Issue Statement Supporting Texas-Mexico Border Bishops' Statement on Recent U.S. Government Asylum Policy*, JUSTICE FOR IMMIGRANTS (Mar. 13, 2019), available at <https://justiceforimmigrants.org/statements/usccb-migration-chairman-and-crs-president-issue-statement-supporting-texas-mexico-border-bishops-statement-on-recent-u-s-government-asylum-policy/>.
- 16 *Immigration Court Backlog Tool*, TRAC IMMIGRATION, https://trac.syr.edu/phptools/immigration/court_backlog/ (last visited on May 16, 2019).
- 17 *Growth in the Immigration Court Backlog Continues in FY 2019*, TRAC IMMIGRATION (Dec. 18, 2018, <https://trac.syr.edu/immigration/reports/542/>.
- 18 American Immigration Council *supra* note 2.
- 19 *Frequently Asked Questions: "Remain in Mexico" Policy*, Justice for Immigrants, available at https://justiceforimmigrants.org/wp-content/uploads/2019/02/Remain-in-Mexico_en.pdf (last visited on May 17, 2019).
- 20 *Access to Counsel in Immigration Court*, AMERICAN IMMIGRATION COUNCIL (Sept. 28, 2016), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.
- 21 U.S. Conference of Catholic Bishops/Migration and Refugee Services, et. al, *The Real Alternatives to Detention*, available at <https://justiceforimmigrants.org/wp-content/uploads/2017/07/The-Real-Alternatives-to-Detention-FINAL-06.27.17.pdf> (last visited on May 28, 2019).