

U.S. House of Representatives Committee on the Judiciary
Hearing on “Asylum Abuse: Is it Overwhelming our Borders?”
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Chairman Goodlatte, Ranking Member Conyers, and members of the Committee, I am honored to be testifying before you today on behalf of the Congressional Research Service. As a backdrop, the testimony provides an overview of current policy and a brief summary of its legislative history. To address the question – is asylum abuse overwhelming our borders? – I will present an analysis of asylum trends over time.

Basic Principles

The United States has long held to the principle that it will not return a foreign national to a country where his or her life or freedom would be threatened. This principle is embodied in several provisions of the Immigration and Nationality Act (INA), most notably in provisions defining refugees and asylees. To be eligible for asylum, aliens seeking asylum must demonstrate a well-founded fear that if returned home, they will be persecuted based upon one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion.¹ Aliens granted asylum generally are not subject to removal from the United States and may be authorized to work in the United States and to travel outside the United States. Aliens granted asylum eventually may adjust to lawful permanent resident (LPR) status, and eventually apply for U.S. citizenship. (For a fuller discussion, also see “Legislative History,” below.)

While potential refugees are selected for admission through a process wholly outside the United States, an applicant for asylum begins the process either already in the United States or at a U.S. port of entry.² Depending on the circumstances, three different avenues exist for aliens to seek asylum: “affirmative applications,” “defensive applications,” and applications based on a “credible fear” claim during expedited removal. The affirmative and defensive applications follow different procedural paths, but draw on the same legal standards. Applicants seeking asylum through credible fear interviews must meet a lower threshold initially, but ultimately also meet the same legal standard. In all three processes, the burden of proof is on the asylum seeker to establish that he or she meets the refugee definition specified in the INA.

¹ INA §208; 8 U.S.C. §1158.

² The overseas counterpart to asylum processing is refugee processing. For a full discussion of refugee admissions, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

All foreign nationals seeking asylum are subject to multiple background checks in the terrorist, immigration, and law enforcement databases. Those who enter the country legally on nonimmigrant visas are screened by the consular officers at the Department of State when they apply for a visa, and all foreign nationals are inspected by Customs and Border Protection (CBP) officers at ports of entry.³ Those who enter the country illegally are screened by the U.S. Border Patrol or the Immigration and Customs Enforcement (ICE) agents when they are apprehended.⁴ When aliens formally request asylum, they are fingerprinted and are subject to a full background check by the Department of Homeland Security (DHS) and Federal Bureau of Investigation (FBI) databases.⁵

Overview of Current Policy

Foreign nationals present in the United States may apply for asylum with the United States Citizenship and Immigration Services Bureau (USCIS) in DHS after arrival into the country, or may seek asylum before the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) during removal proceedings.⁶ Aliens apprehended along the border or arriving at a U.S. port who lack proper immigration documents or who engage in fraud or misrepresentation are placed in expedited removal; however, if they express a fear of persecution, they receive a "credible fear" hearing with an USCIS asylum officer and—if found credible—are referred to an EOIR immigration judge for a hearing.⁷

Affirmative Applications

An asylum seeker who is in the United States and not involved in any removal proceedings may apply for asylum by filing an I-589 asylum application form with the USCIS. The USCIS asylum officers make their determinations regarding the affirmative applications based upon the application form, the information received during the interview, and other potential information related to the specific case (e.g., information about country conditions). If the asylum officer approves the application and the alien passes the identification and background checks, then the alien is granted asylum status. The asylum officer does not technically deny asylum claims; rather, the asylum applications of aliens who are not granted asylum by the asylum officer are referred to EOIR immigration judges for formal proceedings.

Defensive Applications

Defensive applications for asylum are raised when an alien is in removal proceedings and asserts a claim for asylum as a defense to his/her removal. EOIR's immigration judges and the Board of Immigration Appeals (BIA), entities in DOJ separate from the USCIS, have exclusive control over such claims and are

³ For more information and analysis of alien screening and background checks, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of Aliens*, by Michael John Garcia and Ruth Ellen Wasem; and CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

⁴ CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Marc R. Rosenblum.

⁵ For more information, see U.S. Citizenship and Immigration Services, *Affirmative Asylum Procedures Manual*, February 2003, pp. 93-144.

⁶ CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem.

⁷ Distinct from asylum law and policy, aliens claiming relief from removal due to torture may be treated separately under regulations implementing the United Nations Convention Against Torture. For a full legal analysis of this convention, see CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, by Michael John Garcia.

under the authority of the Attorney General. Generally, the alien raises the issue of asylum during the beginning of the removal process. The matter is then litigated in immigration court, using formal procedures such as the presentation of evidence and direct and cross examination. If the alien fails to raise the issue at the beginning of the process, the claim for asylum may be raised only after a successful motion to reopen is filed with the court. The immigration judge's ultimate decision regarding both the applicant/alien's removal and asylum application is appealable to the BIA.

Expedited Removal

Under the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208), DHS immigration officers must summarily exclude a foreign national arriving without proper documentation, unless the alien expresses a fear of persecution if repatriated.⁸ Absent a stated fear, the Customs and Border Protection officer is allowed to exclude aliens without proper documentation from the United States without placing them in removal proceedings.⁹ This procedure is known as expedited removal.¹⁰ According to DHS immigration policy and procedures, CBP inspectors, as well as other DHS immigration officers, are required to ask each individual who may be subject to expedited removal the following series of "protection questions" to identify anyone who is afraid of return to their home country:

- Why did you leave your home country or country of last residence?
- Do you have any fear or concern about being returned to your home country or being removed from the United States?
- Would you be harmed if you were returned to your home country or country of last residence?
- Do you have any questions or is there anything else you would like to add?

If the foreign national expresses a fear of return, the alien is supposed to be detained by Immigration and Customs Enforcement (ICE) and interviewed by a USCIS asylum officer. The asylum officer then makes the "credible fear" determination of the alien's claim (also see "Standards for Asylum"). Those found to have a "credible fear" are referred to an EOIR immigration judge, which places the asylum seeker on the defensive path to asylum. If the USCIS asylum officer finds that an alien does not have a credible fear, the alien may request that an EOIR immigration judge review that finding.¹¹

⁸ CBP inspectors at ports of entry, U.S. Border Patrol agents, and Immigration and Customs Enforcement (ICE) officers may place foreign nationals in expedited removal if the INA §235(b)(1)(A) applies in that situation. Foreign nationals arriving at a port of entry who have **valid** immigration documents may request asylum upon entry and are permitted to use the affirmative asylum process.

⁹ Executive Office for Immigration Review, *Asylum and Withholding of Removal Relief*, U.S. Department of Justice, Fact Sheet, January 15, 2009, <http://www.justice.gov/eoir/press/09/AsylumWithholdingCATProtections.pdf>.

¹⁰ CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

¹¹ The immigration judge's credible fear review must be done within 24 hours whenever possible, but no later than seven days after the initial determination by an asylum officer, and is limited strictly to whether an alien has a credible fear of persecution or torture. Executive Office for Immigration Review, *Asylum and Withholding of Removal Relief*, U.S. Department of Justice, Fact Sheet, January 15, 2009.

Standards for Asylum

Because “fear” is a subjective state-of-mind, assessing the merits of an asylum case rests in large part on the credibility of the claim and the likelihood that persecution would occur if the alien is returned home. Two concepts—“credible fear” and “well-founded fear”—are fundamental to establishing the standards for asylum. The matter of “mixed motives” for persecuting the alien is also an important concept.

Credible Fear

The INA states that “the term *credible fear of persecution* means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under §208.”¹² Integral to expedited removal, the credible fear concept also functions as a pre-screening standard that is broader—and the burden of proof easier to meet—than the well-founded fear of persecution standard required to obtain asylum.

Well-Founded Fear

The standards for “well-founded fear” have evolved over the years and been guided significantly by judicial decisions, included a notable U.S. Supreme Court case.¹³ The regulations specify that an asylum seeker has a well-founded fear of persecution if:

- (A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;
- (B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and
- (C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.¹⁴

The regulations also state that an asylum seeker “does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant’s country....”¹⁵

In evaluating whether the asylum seeker has sustained the burden of proving that he or she has a well-founded fear of persecution, the regulations state that the asylum officer or immigration judge shall not require the alien to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:

- (A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly

¹² INA §235(b)(1)(B)(v); 8 U.S.C. §1225.

¹³ *INS v. Cardoza-Fonseca*, 480 U.S. 421 (No. 85-782, Mar. 9, 1987).

¹⁴ 8 C.F.R. §208.13(b)(2).

¹⁵ *Ibid.*

situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.¹⁶

Mixed Motives

The intent of the persecutor is also subjective and may stem from multiple motives. The courts have ruled that the persecution may have more than one motive, and so long as one motive is one of the statutorily enumerated grounds, the requirements have been satisfied.¹⁷ A 1997 BIA decision concluded “an applicant for asylum need not show conclusively why persecution occurred in the past or is likely to occur in the future, [but must] produce evidence from which it is reasonable to believe that the harm was motivated, at least in part, by an actual or imputed protected ground.”¹⁸ Generally, the asylum seeker must demonstrate in mixed motive cases that—even though his/her persecutors were motivated for a non-cognizable reason (e.g., the police’s desire to obtain information regarding terrorist activities in the Sikh cases)—the persecutors were also motivated by the asylum seeker’s race, religion, nationality, social group, or political opinion.¹⁹ The REAL ID Act established that the asylum seeker’s race, religion, nationality, social group, or political opinion must be one of the central motives for the persecution.

Legislative History

In 1968, the United States became party to the 1967 United Nations Protocol Relating to the Status of Refugees (hereafter referred to as the U.N. Refugee Protocol), agreeing to the international legal principle of *nonrefoulement*. *Nonrefoulement* means that an alien will not be returned to a country where his life or freedom would be threatened, and it is embodied in several provisions of U.S. immigration law.²⁰ The U.N. Refugee Protocol does not require that a signatory accept refugees, but it does ensure that signatory nations afford certain rights and protections to aliens who meet the definition of refugee. At the time the United States signed the U.N. Refugee Protocol, Congress and the Administration determined that there was no need to amend the INA, assuming that the provisions to withhold deportation—then §243(h) of the INA—would be adequate.²¹ In 1974, the former Immigration and Naturalization Service (INS) issued its first asylum regulations as part of 8 C.F.R. §108.²² Prior to the passage of the Refugee Act of 1980, there was no direct mechanism in the INA for aliens granted asylum to become legal permanent residents (LPRs).

¹⁶ 8 C.F.R. §208.13(b)(2).

¹⁷ *Harpinder Singh v. Ilchert*, 63 F.3d 1501 (9th Cir. 1995).

¹⁸ *Matter of T-M-B-*, 21 I. & N. Dec. 775, 777 (B.I.A. 1997).

¹⁹ *Harpinder Singh v. Ilchert*, 63 F.3d 1501 (9th Cir. 1995).

²⁰ §208 of INA (8 U.S.C. §1158); §241(b)(3) of INA (8 U.S.C. §1231); and §101(a) of INA (8 U.S.C. §1101(a)(42)).

²¹ Now known as withholding of removal, it prohibits an alien’s removal to the country where his or her life or freedom would be threatened, but it allows removal to a third country where his or her life or freedom would not be threatened. The law states that aliens must establish that it is more likely than not that their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the proposed country of removal. INA §241(b)(3).

²² CFR 8, §108.

Refugee Act of 1980

The Refugee Act of 1980 codified the U.N. Refugee Protocol's definition of a refugee in the INA, included provisions for asylum (§208 of INA), and instructed the Attorney General to establish uniform procedures for the treatment of asylum claims of aliens within the United States. Under the INA, a refugee is defined as an alien "displaced abroad who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."²³ The law defined asylees as aliens in the United States or at a port of entry who meet the definition of a refugee. For the first time, the Refugee Act added statutory provisions to INA that enabled those granted refugee and asylee status to become LPRs after certain general requirements were met.²⁴

The 1980 law specified that up to 5,000 of the refugee admissions numbers, which are set annually by Presidential Determination in consultation with Congress, could be used by the Attorney General to give LPR status to aliens who had received asylum (and their spouses and children), and who have been physically present in the United States for one year after receiving asylum, continue to meet the definition of a refugee, are not firmly resettled in another country, and are otherwise admissible as immigrants. It appears that Congress and the Administration assumed at the time that the 5,000 ceiling would be more than adequate.²⁵

Immigration Act of 1990

By 1986, the number of aliens receiving asylum annually was growing, and a backlog in obtaining LPR status developed due to the 5,000 ceiling. Compounding the frustration with the backlog was the worry of many asylees from Eastern Europe—as a result of the improved political and human rights conditions in their native countries—that they no longer would qualify as refugees under the law. Meanwhile, the number of aliens filing asylum claims surpassed 100,000 in 1989.

The Immigration Act of 1990 sought, among other major immigration reforms, to address the backlogs in asylee adjustments to LPR status. Foremost, it doubled the annual limit from 5,000 to 10,000 LPR adjustments. It also allowed those asylees who had filed for LPR adjustments before June 1, 1990, to do so outside of the numerical limits, effectively clearing out the existing backlog. The Immigration Act of 1990 further granted LPR status to those asylees who had qualified for LPR status as of November 29, 1990, but were unable to obtain it because of the prior numerical limits and improved country conditions. The crumbling of communism in Eastern Europe and the Arias Peace talks in Central America gave optimism to many that the number of asylum seekers would lessen in the future.²⁶

²³ §101(a)(42) of INA; 8 U.S.C. §1101.

²⁴ For a full discussion of U.S. refugee admissions and policy, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

²⁵ Later that same year, the Mariel boatlift brought approximately 125,000 Cubans and 30,000 Haitians to U.S. shores, and most of these asylum seekers ultimately became LPRs through special laws enacted for Cubans and Haitians.

²⁶ In Feb. 1987, the Presidents of El Salvador, Honduras, and Guatemala signed a 10-point peace plan for Central America that was first offered by Costa Rican President Oscar Arias. Nicaragua joined the peace process later that same year.

1996 Revisions to Asylum Policy

Prior to 1996, aliens arriving at a port of entry to the United States without proper immigration documents were eligible for a hearing before an immigration judge to determine whether the aliens were admissible. Aliens lacking proper documents could request asylum in the United States at that time. If the alien received an unfavorable decision from the immigration judge, he or she also could seek administrative and judicial review of the case.

Critics of this policy argued that illegal aliens were arriving without proper documents, filing frivolous asylum claims, and obtaining work authorizations while their asylum cases stalled in lengthy backlogs. In the late 1980s and early 1990s, the mass exodus of thousands of asylum seekers from Central America, Cuba, and Haiti prompted further concerns that the then-current policy was unwieldy and prone to abuses because it provided for multiple levels of hearings, reviews, and appeals. The 1993 bombing of the World Trade Center heightened fears that international terrorists might enter the United States with false documents, file bogus asylum claims, and disappear into the population.

Supporters of the then-current system asserted that the regulatory reforms begun by the first Bush Administration and expanded by the Clinton Administration had already corrected the bureaucratic problems that had plagued the asylum process. They emphasized that the United States was a signatory to the UN Refugee Protocol and that INA codified the internationally-held legal principle of *nonrefoulement* (i.e., that an alien would not be forced to return to a country where his life or freedom would be threatened). They also pointed out that aliens considered to be terrorists were already excluded by law from entering the United States. Proponents argued that aliens fleeing the most dangerous situations were likely to escape with fraudulent documents to hide their identity, and maintained therefore that even aliens lacking proper documents should be entitled to a full hearing and judicial review to determine if they might be admissible.

The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208) made substantial changes to the asylum process: establishing expedited removal proceedings; codifying many regulatory changes; adding time limits on filing claims; and limiting judicial review in certain circumstances, but it did not alter the numerical limits on asylee adjustments.

- **Expedited Removal.** Among the significant modifications of the INA made by the IIRIRA are the provisions that created the expedited removal policy.²⁷ The goal of these provisions was to target the perceived abuses of the asylum process by restricting the hearing, review, and appeal process for aliens at the port of entry. As a result, if an immigration officer determines that an alien arriving without proper documentation does not intend to apply for asylum or does not fear persecution, the immigration officer can deny admission and order the alien summarily removed from the United States. The amendments to INA made by IIRIRA provide very limited circumstances for administrative and judicial review of those aliens who are summarily excluded (including those who are deemed not to have a “credible fear” as discussed above).²⁸
- **Mandatory Detention.** Foreign nationals arriving without proper documents who express to the immigration officer a fear of being returned home must be kept in

²⁷ The IIRIRA provisions amended §235 of INA.

²⁸ For a full discussion, see CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

detention while their “credible fear” cases are pending.²⁹ If an asylum officer determines that an alien does not have a “credible fear” of persecution, the alien is removed. If the asylum seeker meets the “credible fear” threshold, they may be released on their own recognizance while an immigration judge considers the case.

- **Deadlines.** Another important change IIRIRA made to the asylum process is the requirement that all applicants must file their asylum applications within one year of their arrival to the United States.³⁰ Aliens may be exempted from this time requirement if they can show that changed conditions materially affect their eligibility for asylum, or they can present extraordinary circumstances concerning the delay in their application filing.³¹
- **Safe Third Country.** IIRIRA amended INA to bar asylum to those aliens who can be returned to a “safe-third country.” This provision was aimed at aliens who travel through countries that are signatories to the U.N. Refugee Protocol (or otherwise provide relief from deportation for refugees) to request asylum in the United States. In order to return a potential applicant to a safe-third country, the United States must have an existing agreement with that country.³²
- **Employment Authorization.** IIRIRA codified many regulatory revisions of the asylum process that the former George H.W. Bush and William J. Clinton Administrations made. Most notably, aliens are statutorily prohibited from immediately receiving work authorization at the same time as the filing of their asylum application. Now the asylum applicant is required to wait 150 days after the USCIS receives his/her complete asylum application before applying for work authorization.³³ The USCIS then has 30 days to grant or deny the request.
- **Coercive Family Planning.** IIRIRA also added a provision that enabled refugees or asylees to request asylum on the basis of persecution resulting from resistance to coercive population control policies, but the number of aliens eligible to receive asylum under this provision was limited to 1,000 each year.³⁴
- **Other Limitations.** An additional restriction on the filing of asylum applications includes a bar against those who have been denied asylum in the past, unless changed circumstances materially affect their eligibility.³⁵ The reforms also established serious consequences for aliens who file frivolous asylum applications. For example, the Attorney General was given the authority to permanently bar an alien from receiving any

²⁹ For background and analysis on detention policy under the Immigration and Nationality Act, see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin.

³⁰ INA §208(a)(2)(B).

³¹ See 8 C.F.R. §208.4(a)(4) and (5).

³² INA §208(a)(2)(A) and (C). The first agreement was signed with Canada in 2002.

³³ 8 C.F.R. §208.7.

³⁴ This coercive family planning provision was added by §601. It states:

For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

³⁵ INA §208(a)(2)(A) and (C).

benefits under the INA if he determines that they have knowingly filed a frivolous asylum application.³⁶

The Real ID Act

During the 109th Congress, several asylum provisions that were considered but dropped during the debate on the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) were included in the REAL ID Act of 2005 (P.L. 109-13, Division B).³⁷ Among the REAL ID Act's most significant revisions to the INA's asylum provisions were that it:

- established expressed standards of proof for asylum seekers, including that the applicant's race, religion, nationality, social group, or political opinion was or will be **one of the central motives** for his or her persecution;
- required that the asylum seeker provide evidence which corroborates otherwise credible testimony, such evidence must be provided, **unless the applicant cannot reasonably obtain the evidence**; and
- eliminated the 10,000 numerical limit on asylee adjustments and the 1,000 cap on asylum based on persecution resulting from coercive population control policies.³⁸

Statistical Analysis of Asylum Trends

An analysis of the trends in requests for asylum and the patterns by sending countries may shed light on the question of whether asylum abuse is overwhelming our borders. Requests for asylum – both USCIS affirmative and EOIR defensive – have dropped since the mid-1990s, as **Figure 1** depicts.³⁹ There was an uptick in the early 2000s, but the decreasing trend overall continued until 2009. There has been a slight increase since 2010, but the numbers have not yet reached the levels of the early 2000s. EOIR cases include unapproved asylum cases that USCIS has referred to them as well as the credible fear claims made during expedited removal, so these data are not additive.

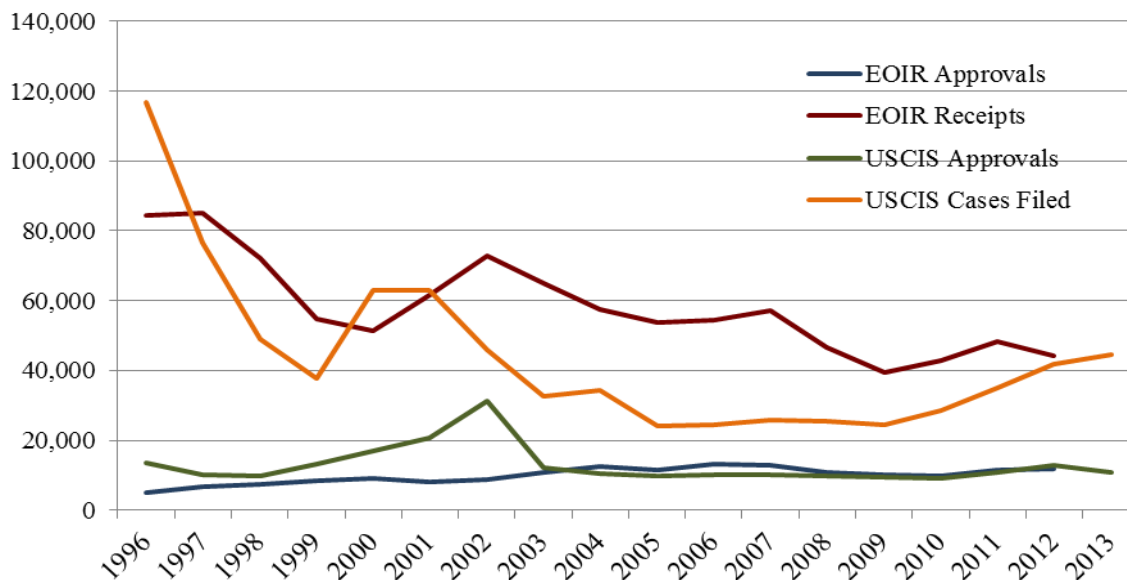
³⁶ INA §208(d)(6).

³⁷ CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

³⁸ U.S. House of Representatives, *Conference Report on H.R. 1268*, H.Rept. 109-72, May 3, 2005.

³⁹ It remains difficult to assess the extent to which the IIRIRA revisions to asylum policy affected this decline.

Figure 1. Asylum Requests and Approvals
FY1996-FY2013



Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System and of data from the EOIR Office of Planning, Analysis and Technology.

Note: There are FY2013 data for USCIS, but not for EOIR.

As **Figure 1** also presents, the number of asylum cases approved has remained rather steady since FY1996, with the notable exception of an increase of USCIS affirmative approvals in FY2001 and FY2002. In those years, the number of affirmative cases approved exceeded 20,000 and reached 20,651 in FY2000 and 31,202 in FY2001. Otherwise, the number of affirmative cases approved by USCIS is comparable in size to the number of defensive case approved by EOIR.

Top Countries

Country conditions lie at the core of the principle that the United States will not return a foreign national to a country where his life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. As discussed more fully above, individualized persecution or persecution resulting from group identity may form the basis of the asylum claim. In the individualized instance, if the asylum seeker demonstrates that there is a reasonable possibility of suffering such persecution as an individual if he or she were to return to that country; and he or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear; then the fear of persecution is deemed reasonable. In the group identity instance, if the asylum seeker establishes that there is a pattern or practice in his or her home country of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and establishes his or her own inclusion in, and identification with such group of persons; then the fear of persecution is deemed reasonable.⁴⁰

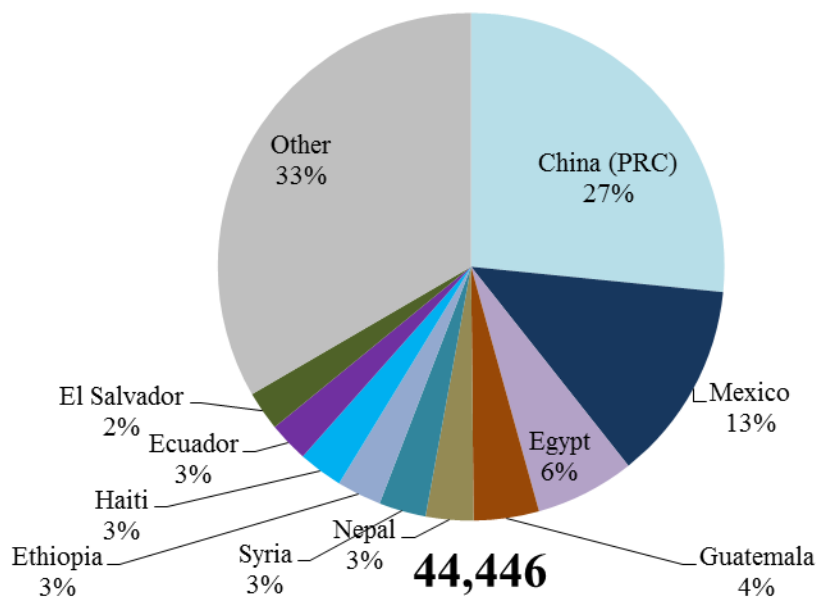
⁴⁰ 8 C.F.R. §208.13(b)(2).

For many years, most foreign nationals who sought asylum in the United States were from the Western Hemisphere, notably Central America and the Caribbean. From October 1981 through March 1991, for example, Salvadoran and Nicaraguan asylum applicants totaled over 252,000 and made up half of all foreign nationals who applied for asylum with the INS.⁴¹ In FY1995, more than three-fourths of asylum cases filed annually came from the Western Hemisphere.⁴²

In FY1999, the People's Republic of China (PRC) moved to the top of the source countries for asylum claims. As the overall number of asylum seekers fell in the late 1990s, the shrinking numbers from Central America contributed to the decline. Simultaneously, the number of asylum seekers from the PRC began rising and reached 10,522 affirmative cases in FY2002. The PRC remained the leading source country throughout the 2000s.

As **Figure 2** shows, the PRC was the top source country in FY2013, making up 27% of all 44,446 affirmative asylum requests. Mexico followed with 13%. The defensive asylum cases filed with EOIR exhibited a very similar pattern in FY2012 (FY2013 data are not available.). The PRC leads with 25% and Mexico follows with 21%, as **Figure 3** shows.

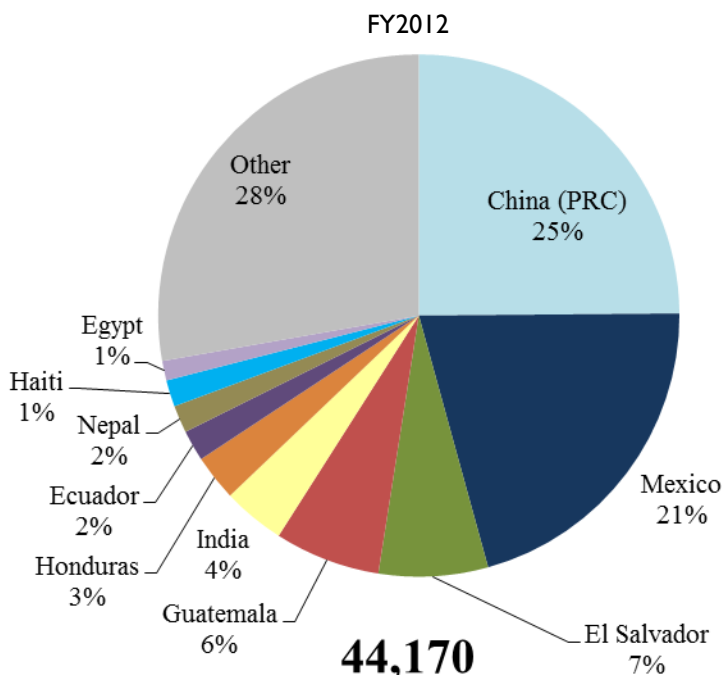
Figure 2. Affirmative Asylum Requests for Top Ten Countries
FY2013



Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole.

⁴¹ CRS Report 93-233, *Asylum Seekers: Haitians In Comparative Context*, by Ruth Ellen Wasem, (Archived, available on request).

⁴² CRS Report 94-314, *Asylum Facts And Issues*, by Ruth Ellen Wasem, (Archived, available on request).

Figure 3. Defensive Asylum Requests for Top Ten Countries

Source: CRS presentation of data from the EOIR Office of Planning, Analysis and Technology.

Note: EOIR cases include unapproved asylum cases that USCIS has referred to them as well as the credible fear claims made during expedited removal.

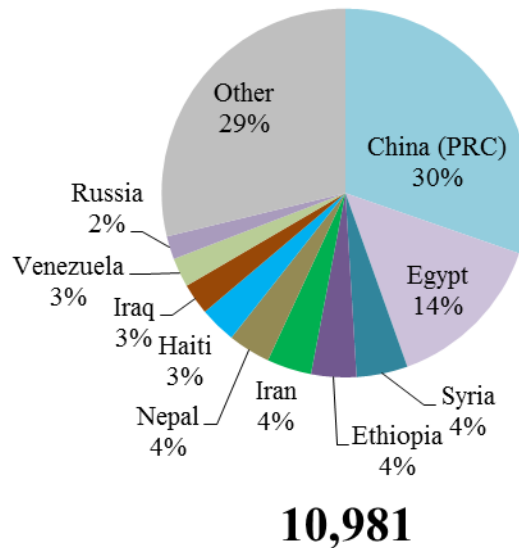
Six of the top ten source countries for defensive asylum seekers and five of the top ten source countries for affirmative asylum seekers were from the Western Hemisphere. Middle Eastern and South Asian nations also appear among the top countries. Nepal and Egypt were in the top ten of affirmative cases, and India and Egypt were among the top ten of defensive cases.

Given the sheer number of asylum seekers from the PRC, it is not particularly surprising that the PRC led in the number of asylum cases approved by USCIS and EOIR (**Figure 4 and 5**). Moreover, abuse of human rights in the PRC has been a principal area of concern in the United States for many years.⁴³ Arguably, PRC asylum seekers were also benefiting from the provision enabling aliens to claim asylum on the basis of persecution resulting from resistance to coercive population control policies, given the well-known population control policies of the PRC.

Notably, Western Hemisphere countries make up a smaller proportion of the asylum cases approved by either EOIR or USCIS than their portion of claimants.

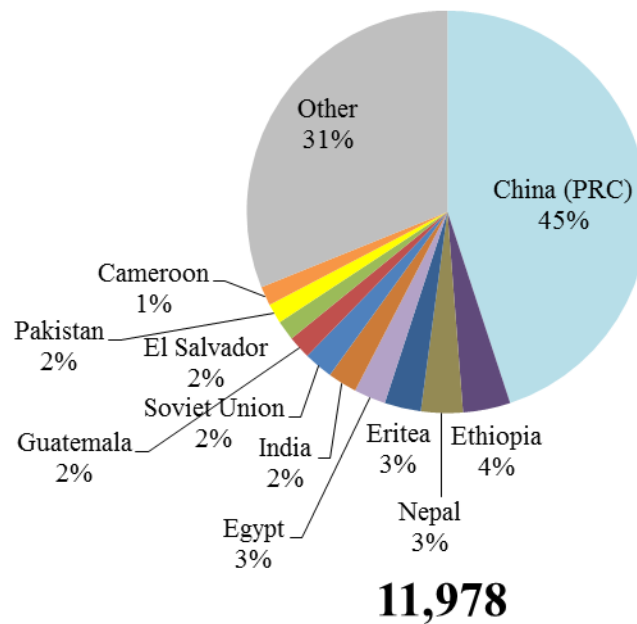
⁴³ CRS Report RL34729, *Human Rights in China: Trends and Policy Implications*, by Thomas Lum and Hannah Fischer.

Figure 4. Affirmative Asylum Cases Approved for Top Ten Countries
FY2013



Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System.

Figure 5. Defensive Asylum Cases Approved for Top Ten Countries
FY2012



Source: CRS presentation of data from the EOIR Office of Planning, Analysis and Technology.

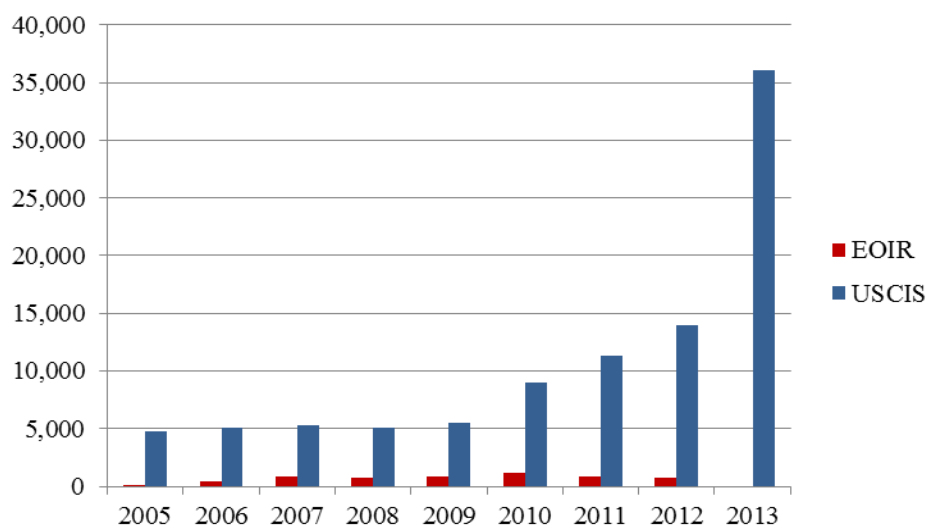
Credible Fear Trends

As evident in **Figure 6**, “credible fear” claims have been much smaller in overall numbers than the affirmative and defensive asylum caseloads.⁴⁴ As stated above, those that USCIS determines have a “credible fear” are referred to an EOIR immigration judge for a full hearing on their asylum claim. Foreign nationals whom the asylum officer find not to have a credible fear of persecution may request a review by an immigration judge.⁴⁵ These later requests are depicted as the EOIR credible fear review cases in **Figure 6**, which are only available through FY2012. The EOIR data presented in **Figure 6** are those requesting a review after USCIS deemed them not to have a credible fear.

As **Figure 6** indicates, FY2013 has seen a surge in credible fear claims made during expedited removal. The credible fear data were only available for FY2005 forward, so it is not possible to analyze longer term trends. In FY2013, the number reached 36,026, more than doubling from 13,931 in FY2012. This trend warrants further analysis.

As **Figure 7** reveals, a handful of countries were leading this increase: El Salvador, Guatemala, Honduras, and to a lesser extent Mexico, India, and Ecuador. All but India are Western Hemisphere nations. El Salvador, Guatemala, and Honduras have histories of sending significant numbers of asylum seekers to the United States in the past. Unfortunately, country-specific data on expedited removal prior to FY2010 was not available at this time.

Figure 6. Credible Fear Claims during Expedited Removal
FY2005-FY2013



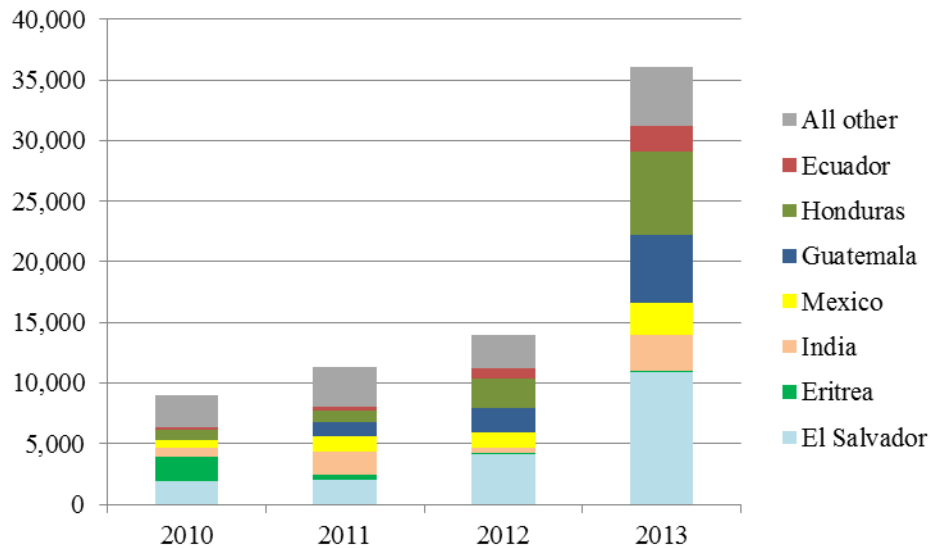
Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System and of data from the EOIR Office of Planning, Analysis and Technology.

Notes: There are FY2013 data for USCIS, but not for EOIR. EOIR data presented are those requesting a review after USCIS deemed them not to have a credible fear.

⁴⁴ Those credible fear claims approved by USCIS become defensive asylum requests in the EOIR data and are not differentiated from other defensive asylum requests in the EOIR data.

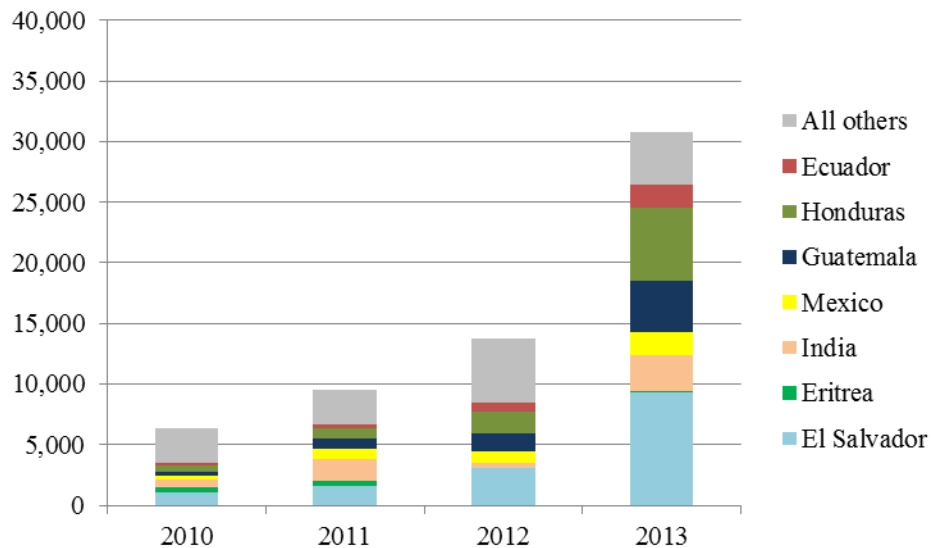
⁴⁵ If the judge determines there is “credible fear,” the judge will vacate the DHS order of expedited removal, and the alien will be placed in removal proceedings.

**Figure 7. Countries with at least 1,000 Credible Fear Requests
FY2010-FY2013**



Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System.

**Figure 8. Number of Cases with Credible Fear Found for Countries with at least 1,000
Credible Fear Requests, FY201-FY2013**



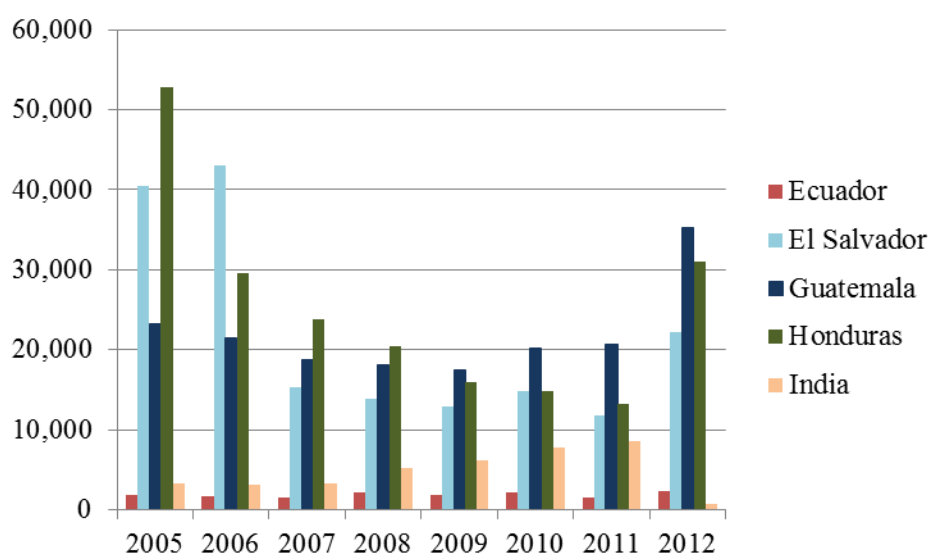
Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System.

The trend in cases where credible fear has been found, depicted in **Figure 8**, was comparable to those in **Figure 7**. The overall percentage of credible-fear found was 73% in FY2010, 82% in FY2011, 80% in

FY2012, and 85% in FY2013.⁴⁶ Thus, the percent of cases in which fear was found has not increased as fast as the sheer number of people claiming a credible fear.

Figure 9 presents the apprehensions between ports and exclusions at ports for El Salvador, Guatemala, Honduras, India, and Ecuador to explore whether the increased credible fear claims are a function of increased inflows from these countries.⁴⁷ Exclusions at ports of entry were not available for FY2012, so that year's data is understated. As **Figure 9** indicates, apprehensions and exclusions from the five countries depicted in the figure all have increase substantially since 2009 (i.e., during the period in which credible fear claims have increased), though Honduran and Salvadoran levels remain below those observed in 2005. (Note that while the majority of people from the Western Hemisphere depicted in **Figure 9** were apprehended between ports of entry, most Indians were excluded at ports of entry, so it is likely that the FY2012 missing data has a particular impact on the Indian case.) The larger apprehensions in FY2005-FY2006 were associated with many fewer credible fear claims overall than the post-FY2010 increase in apprehensions. This change in credible fear requests suggests that the latest increase may represent a different pattern in migration.

Figure 9. Apprehensions between Ports and Exclusions at Ports for Selected Countries
FY2005-FY2012



Source: CRS presentation of unpublished data from CBP Office of Legislative Affairs.

Note: FY2012 data do not include exclusions at ports of entry.

In conclusion, an increase in asylum or credible fear claims in and of itself does not signify an increase in the abuse of the asylum process any more than a reduction in asylum or credible fear claims signifies a reduction in the abuse of the asylum process. Arguably, the surge of asylum cases in the early 1990s strained the institutions charged with preserving the integrity of the asylum process and controlling the

⁴⁶ CRS calculations based upon data provided by USCIS Refugees, Asylum and Parole System.

⁴⁷ Mexico was excluded because the number of Mexican apprehensions would dominate the scale on the vertical axis. Eritrea was excluded because the total number of Eritreans apprehended and excluded for FY 2005-FY2012 was too small to depict.

border. It prompted the Administration and Congress to revise the law to adjust for these pressures. While the current levels of asylum and credible fear claims do not yet approach those of two decades ago, the question for today is whether they have risen to a level that might strain the system designed to both protect refugees and control our borders.