



Fact Sheet: U.S. Asylum Process

Who is an asylum seeker?

A person seeking [protection](#) from persecution from inside the United States or at the border. An asylum seeker is an individual who [meets](#) the [international definition](#) of refugee – a person with well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, who has been forced to flee his or her country because of persecution, war or violence. In the U.S., asylum seekers apply for [protection](#) from inside the country or at a port of entry.

In contrast, a [refugee](#) is a person who applies for protection from outside of the U.S.

Who is an unaccompanied alien child (UAC)?

A minor child seeking asylum in the U.S. after arriving at a port of entry without a parent or guardian. UACs are children below the age of 18, who [enter](#) the U.S. without their parents or legal guardians. The Trump administration recently also has categorized those separated from their parents or legal guardians as UACs. After apprehension by immigration authorities, UACs [are placed](#) in temporary care of the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS), which [screens](#) them to determine whether they have been victims of trafficking and ensures timely appointment of legal pro bono counsel for as many of the children as possible.

When a parent or family member in the United States is available to take custody of a UAC and provide care, ORR [places](#) the minor with that family member. When a family member or other sponsor is not available, ORR places the UAC into a foster home. ORR is required to ensure that the actions and decisions related to care and custody of UACs are in the child's best interest.

How can an individual apply for asylum in the U.S.?

Either affirmatively or defensively. Depending on how the asylum seeker arrived in the U.S., he or she may apply for asylum either through the [affirmative asylum process or the defensive asylum process](#). Under both processes, asylum seekers must [indicate](#) a “well-founded fear” of persecution in their home countries during a credible fear interview with immigration authorities. Otherwise, they are ordered for removal.

- **Affirmative asylum process** – Under the affirmative asylum process, the asylum seeker has entered the U.S. with a valid visa and applies for asylum through U.S. Citizenship and Immigration Services (USCIS).

Applicants may utilize the affirmative asylum process only if they are not in removal proceedings. An USCIS officer decides whether the individual will be granted asylum in the U.S. If USCIS denies an asylum application in the affirmative asylum process after the

individual's visa has expired, he or she is referred for removal but can utilize the defensive asylum process to renew his or her request for asylum.

- **Defensive asylum process** – A person in the defensive asylum process requests asylum in [immigration court](#) while in removal proceedings or at port of entry without a valid visa. In the defensive asylum process, an immigration judge decides whether the applicant will be granted asylum or not.

Individuals seeking asylum at ports of entry are placed in expedited removal proceedings by Customs and Border Protection (CBP) and [referred](#) for a credible fear screening interview conducted by an asylum officer. The [credible fear interview](#) provides the applicant with the opportunity to explain how he or she has been persecuted or has a well-founded fear of persecution based on his or her race, religion, nationality, membership in a particular social group, or political opinion if returned to his or her country. Based on the interview, the officer then decides whether the applicant has a “significant possibility” of being eligible for asylum. If so, the officer refers such individual to immigration court in a defensive asylum application process. If not, the applicant is ordered removed and may seek review by an immigration judge in effort to appeal the negative decision.

How long does the asylum process take?

The length of the asylum process varies, but it typically takes between 6 months and several years. The length of asylum process may vary depending on whether the asylum seeker filed affirmatively or defensively and on the particular facts of his asylum claim.

Under the affirmative asylum process, the Immigration and Nationality Act (INA) [requires](#) USCIS to schedule the initial interview within 45 days after the application is filed and make a decision within 180 days after the application date.

Under the defensive asylum process, applicants must go through the immigration court system, which faces significant backlogs. As of July 2018, there were over [733,000 pending immigration cases](#) and the average wait time for an immigration hearing was [721 days](#). The backlog has been [worsening](#) over the past decade as the funding for immigration judges has [failed to keep pace](#) with an increasing case load.

Where do defensive asylum seekers wait for their immigration court hearing?

Most are detained. In May 2018, Attorney General Jeff Sessions [announced](#) a new “zero tolerance” policy ordering the U.S. Department of Justice (DOJ) in partnership with DHS to criminally prosecute all individuals crossing the U.S. border without authorization, taking as many cases “[as humanly possible](#)” until reaching a 100 percent prosecution rate. Under the new policy, asylum seekers entering between ports of entry face criminal prosecution.

Under prior administrations, immigration authorities regularly [released](#) migrants from custody while their cases were pending in the immigration court system. Those migrants were still required to check in with immigration authorities and attend hearings in immigration court. The Trump administration has modified these policies to [detain the overwhelming majority of asylum seekers](#) who have passed their credible fear interviews. A recent federal court decision requiring case-by-case determinations as to whether asylum seekers pose a flight risk or threat to public safety is likely to lead to more releases pending their hearings.

Does EOIR provide defensive asylum seekers with appointed immigration counsel?

No. Asylum seekers may hire their own counsel if they can afford to do so, but are [not provided](#) an attorney by the government, as criminal defendants are. Some attorneys [offer](#) pro bono services to asylum seekers and UACs in immigration proceedings.

Chances of obtaining asylum are statistically five times higher if the applicant has an attorney. In FY 2017, 90 percent of applicants without an attorney were denied, while [almost half](#) of those with representation were successful in receiving asylum.

How many people are granted asylum?

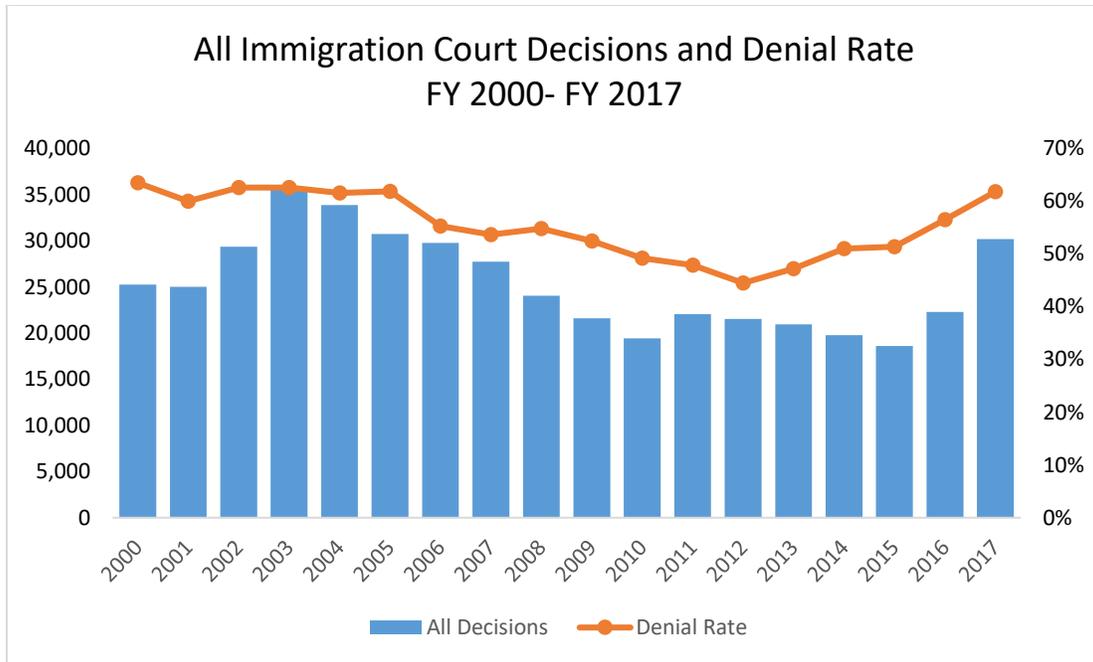
Nearly 20,500 individuals in FY 2016.

In fiscal year (FY) 2016, USCIS [approved](#) 11,729 affirmative asylum applications, representing slightly more than 10 percent out of the 115,399 affirmative asylum applications filed with the agency. This represented a 34-percent decline from the 17,787 affirmative asylum applications granted in FY 2015. The decrease [occurred](#) as the administration transferred a large number of USCIS asylum officers from the affirmative interview process to conduct credible and reasonable fear screening interviews. Even with increased overall staffing within the USCIS Asylum Division, the number of affirmative applications granted declined considerably and the number of applications climbed to a 12-year high of almost 200,000, as fewer asylum officers were assigned to review affirmative applications.

In FY 2016, 8,726 individuals were granted asylum defensively by an immigration judge or the Board of Immigration Appeals, an increase of 7 percent over the 8,246 defensive asylum grants in FY 2015.

In FY 2017, as instability in Central America's [Northern Triangle](#) showed few signs of ending, immigration judges [decided](#) over 30,000 asylum cases, a considerable increase over the roughly 22,300 asylum cases decided in FY 2016, and the most FY 2005.

However, the denial rate grew along with number of asylum cases, climbing to 61.8 percent in FY 2017, up from 56.5 percent in FY 2016. Five years earlier, the denial rate stood at 44.5 percent.



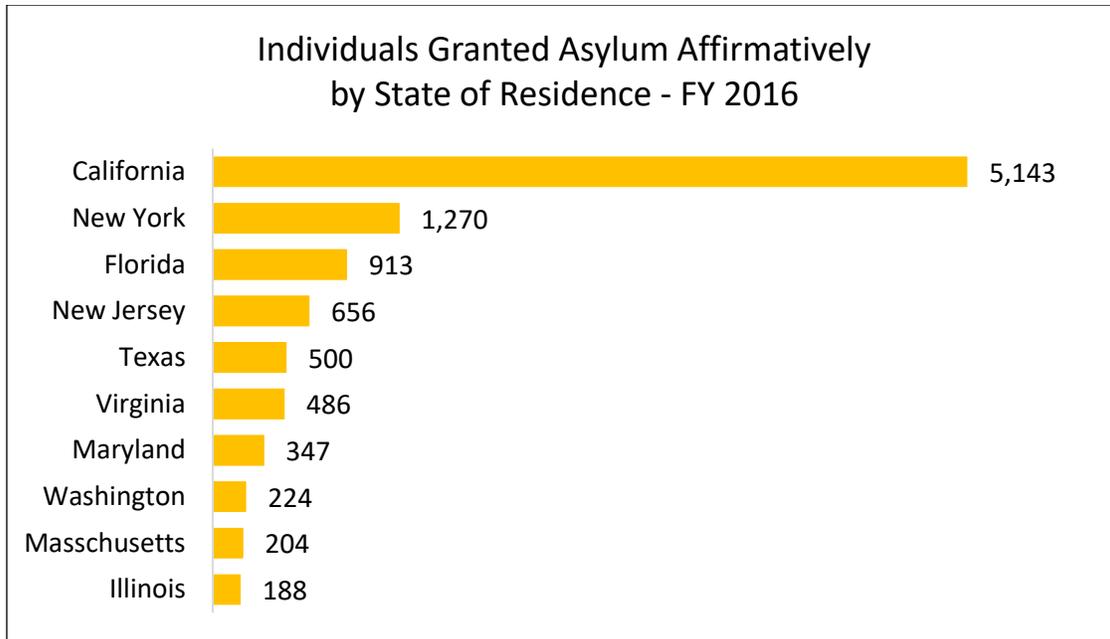
Source: <http://trac.syr.edu/immigration/reports/491/>

Where do asylees resettling in the U.S. come from?

Mostly from China followed by the Northern Triangle countries. Nearly [22 percent](#) individuals who were granted asylum affirmatively or defensively in FY 2016 came from China, followed by El Salvador (10.5 percent), Guatemala (9.5 percent), Honduras (7.4 percent) and Mexico (4.5 percent). While most applicants in defensive asylum proceedings were originally from China (37.9 percent) in FY 2016, the largest number of affirmative asylum seekers came from El Salvador (11.9 percent), China (11.7 percent) and Guatemala (11.2 percent).

Where do asylees live in the U.S.?

Throughout the United States, with the largest number in California. The largest number of individuals granted asylum in the affirmative process [lived](#) in California in FY2016 (43.8 percent), followed by New York (10.8%) and Florida (7.8 percent).



Source: https://www.dhs.gov/sites/default/files/publications/Refugees_Astylees_2016_0.pdf

Can asylees legally work in the United States?

Yes. Once granted asylum, the asylee is [authorized](#) to work in the U.S. and apply for a social security number. Asylum seekers are also eligible for work authorization if their case has been pending for more six months.

Can an asylee become an U.S. citizen?

Yes. One year after receiving asylum in the U.S., the asylee [may apply](#) for permanent residency, or a green card. To receive a green card, the asylum seeker [must](#) be physically present in the U.S. for at least one year after receiving the asylum and at the time of filing his or her green card application, continue to meet the definition of a refugee, continue to be admissible to the U.S. for permanent residence, and not be resettled in another foreign country. If approved, he or she must wait at least four years before applying for citizenship.