



## Asylum in the United States

Each year, thousands of people 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 can apply to live in the United States permanently and gain a path to citizenship and can also apply for their spouse and children to join them in the United States. 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 arriving 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>

### How Does Asylum Help People Fleeing Persecution?

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 for certain government programs, 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.

1. **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>
2. **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. 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>9</sup>

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 application processes require the asylum seeker to be physically present in the United States.

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>10</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>11</sup>

## Is There a Deadline for Asylum Applications?

An individual generally must apply for asylum within one year of their most recent arrival in the United States.<sup>12</sup> In 2018, a federal district court found that DHS is obligated to notify asylum seekers of this deadline in a [class-action lawsuit](#) that 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>13</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>14</sup>

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

From 2004 through 2019, DHS subjected almost all noncitizens who were encountered by, or presented themselves to, a U.S. official at a port of entry or near the border to **expedited removal**, an accelerated process which authorizes DHS to perform rapid removal of certain individuals.<sup>15</sup>

To help 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. Importantly, while the process described below is how asylum seekers should be processed under law, at times CBP officers do not properly follow this process. Additionally, CBP officers sometimes subject asylum seekers to various new policies created by the Trump administration in 2019 and 2020 which are described in greater detail below.

### 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>16</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>17</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 removal, the individual may appeal the negative credible fear decision by pursuing a truncated review process before an immigration judge.<sup>18</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, including asylum.<sup>19</sup> If the immigration judge upholds the negative finding by the asylum officer, the individual will be removed from the United States.<sup>20</sup>

- In Fiscal Year (FY) 2019, USCIS found 75,252 individuals to have credible fear.<sup>21</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 2019 at 102,204.<sup>22</sup>

## Reasonable Fear

Individuals who re-enter the United States unlawfully after a prior removal order and noncitizens convicted of certain crimes are subject to a different expedited removal process called **reinstatement of removal**.<sup>23</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>24</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>25</sup> While both credible and reasonable fear determinations evaluate the likelihood of an individual’s persecution or torture if removed, 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>26</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 or citizenship.

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>27</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>28</sup>

- In FY 2019, [USCIS found 3,306 individuals](#) to have reasonable fear.<sup>29</sup>

## Changes to the Asylum Process at the Border during the Trump administration

In April 2018, the Trump administration issued guidance formalizing a prior policy of turning away asylum seekers at the U.S. border. Under “metering,” asylum seekers are told to wait in Mexico, usually placing their names on a list, until CBP officers determine that a given port of entry has capacity to process them.<sup>30</sup> Through metering, asylum seekers are prevented from accessing the asylum process when they arrive at the U.S. border. Then, in January 2019, DHS began implementing a series of new programs that have significantly altered the traditional credible and reasonable fear processes once an asylum seeker finally is able to access those processes.

The first of these programs, known as the **Migrant Protection Protocols (MPP)**, forces asylum seekers to be sent back to Mexico, where they are required to wait for the date of their immigration court hearings held at four different U.S. locations across the border. Individuals put through MPP do not go through the credible fear

or reasonable fear screening process, but instead are put directly into court proceedings which allows U.S. officials to send them back to Mexico to await their subsequent court hearings.<sup>31</sup> Although MPP was struck down by the Ninth Circuit as a violation of law, the decision was put on hold by the Supreme Court and remains in the appeals process.<sup>32</sup> Through April 2020, over 65,000 people had been put into MPP.<sup>33</sup>

In July 2019, DHS issued a new rule banning asylum for all individuals who transited through a third country before arriving in the United States without having applied for asylum in that country.<sup>34</sup> Under that rule, almost every person who arrived at the U.S.-Mexico border for the first time after July 16, 2019, is ineligible for asylum, unless they had been subject to metering prior to that date.<sup>35</sup> Those who are subject to the rule are screened at the border under the heightened “reasonable fear” standard and may still seek withholding of removal or protection under the Convention Against Torture.<sup>36</sup> This rule was also struck down by the Ninth Circuit, and that decision was also put on hold by the Supreme Court and remains in the appeals process.<sup>37</sup>

In November 2019, DHS began implementing an “Asylum Cooperative Agreement” with Guatemala.<sup>38</sup> Under this kind of agreement, which also is known as a “Safe Third Country” agreement, individuals seeking asylum in the United States are instead sent to a third country and required to seek asylum there.<sup>39</sup> Individuals subject to these agreements may not seek asylum or any other protection, including withholding of removal, in the United States. A similar agreement with Honduras went into effect in May 2020.<sup>40</sup> The legality of these agreements is currently under challenge.<sup>41</sup>

## Changes to the Asylum Process due to COVID-19

In March 2020, in response to the COVID-19 (coronavirus) pandemic, the Centers for Disease Control issued an order suspending the “introduction” of persons who have been in “Coronavirus Impacted Areas.”<sup>42</sup> Citing this authority, the Border Patrol began “expelling” individuals who arrive at the U.S.-Mexico border without giving them the opportunity to seek asylum, even if they express a fear of persecution.<sup>43</sup> Through April 2020, CBP reported that it had expelled nearly 21,000 people as a result of this new policy.<sup>44</sup> As of the time of publication, the order had been extended indefinitely.<sup>45</sup>

Additionally, in response to the pandemic, all MPP hearings at the border were suspended through at least June 22, 2020, and the asylum cooperative agreements were put on hold.<sup>46</sup> As a result, the asylum process has been completely blocked for people who arrive at the U.S.-Mexico border during COVID-19, with the exception of some few individuals who cannot be “expelled” for logistical reasons.

## 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 or pass a credible or reasonable fear screening and receive a hearing or interview date years in the future.

- As of September 2019, there were 339,836 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.<sup>47</sup>

- The [backlog in U.S. immigration courts](#) reached an all-time high in April 2020, with over 1.17 million open removal cases.<sup>48</sup> On average, these [cases had been pending](#) for 734 days and remained unresolved.<sup>49</sup>
- Individuals with an immigration court case who were ultimately granted relief—such as asylum—by February 2020 waited more than 930 days on average for that outcome. Illinois and Virginia had the longest wait times, averaging 1,300 [days until relief was granted](#) in the immigration case.<sup>50</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 who are able to commit to legal services for an extended period of time for the duration of the asylum seeker's case.<sup>51</sup>

Although asylum seekers may apply for work authorization after their case has been pending for 150 days (or longer in some circumstances),<sup>52</sup> the uncertainty of their future impedes employment, education, and trauma recovery opportunities.<sup>53</sup>

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

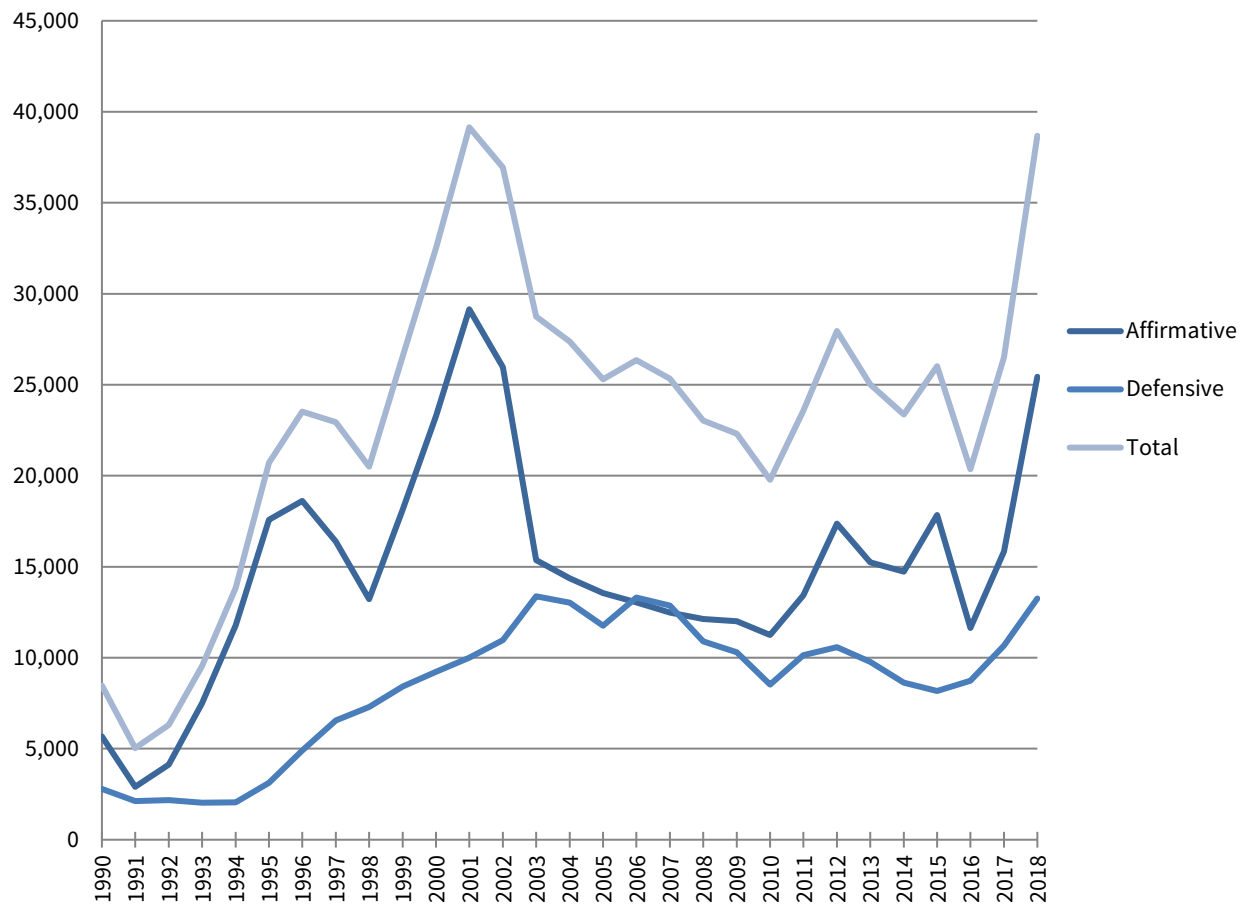
Asylum seekers include some of the most vulnerable members of society—children, single mothers, victims of domestic violence or torture, and other individuals who have suffered persecution and trauma. While U.S. law provides arriving asylum seekers the right to remain in the United States while their claim for protection is pending, the government has argued that it has the right to detain such individuals, rather than release them into the community.<sup>54</sup> Some courts have rejected this interpretation and held that asylum seekers meeting certain criteria have a [right to a bond hearings](#).<sup>55</sup> Advocates have challenged the practice of detaining asylum applicants without providing a meaningful opportunity to seek parole, 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>56</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>57</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>58</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>59</sup>

## How Many People Are Granted Asylum?

In FY 2018, the most recent year with available data, 38,687 [individuals were granted asylum](#): 25,439 affirmatively and 13,248 defensively (Figure 1). Total annual asylum grants averaged 25,161 between FY 2007 and FY 2018.<sup>60</sup>

Figure 1: Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2018

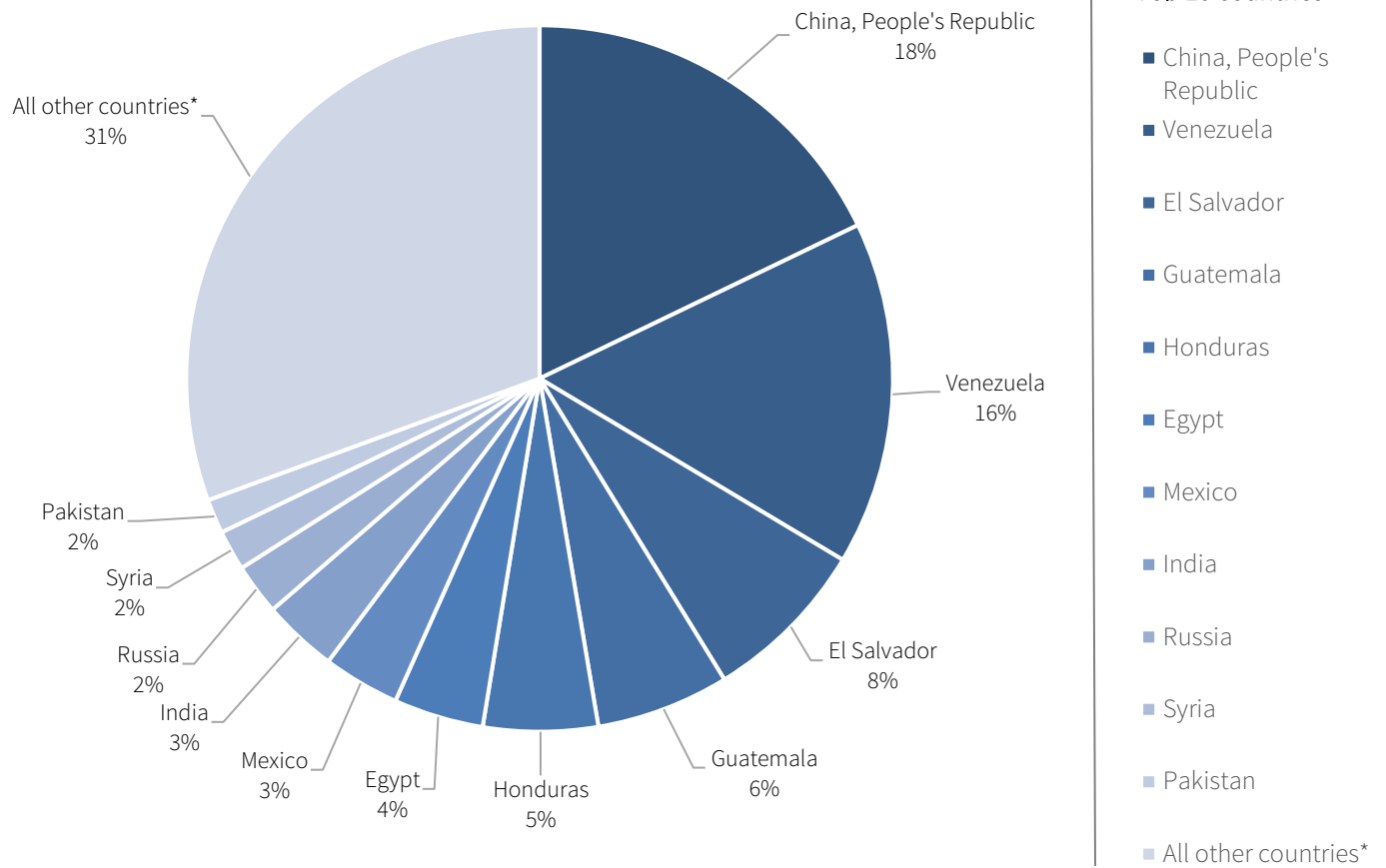


Source: Office of Immigration Statistics, Table 16 in *2016 Yearbook of Immigration Statistics* (Washington, DC: U.S. Department of Homeland Security, 2018), <https://www.dhs.gov/immigration-statistics/yearbook/2018/table16>.

The countries of nationality for individuals granted asylum have largely remained the same in this 10-year period (FY 2007-2018), with nationals of China and Egypt making up significant shares of asylees.<sup>61</sup> Other individuals granted asylum in that time period included nationals of Guatemala, Haiti, Venezuela, Iraq, Ethiopia, Iran, Colombia, and Russia.<sup>62</sup>

In FY 2018, Chinese and Venezuelan nationals represented the greatest shares of asylees (accounting for 17.8 and 15.7 percent, respectively, of all individuals granted asylum in FY 2018).<sup>63</sup> Nationals of China, Venezuela, El Salvador, Guatemala, and Honduras combined accounted for half (52.6 percent) of the 38,687 individuals granted asylum—either affirmatively or defensively—in FY 2018 (Figure 2). More than 110 nationalities were represented among all individuals granted asylum in FY 2018.<sup>64</sup>

Figure 2: Total Asylum Grants by Country of Nationality, Fiscal Year 2018



\* Includes the Palestinian Territory and countries with less than 10 individuals granted asylum in FY 2018.

**Source:** American Immigration Council analysis of government data. Office of Immigration Statistics, Tables 17 and 19 in *2018 Yearbook of Immigration Statistics* (Washington, DC: U.S. Department of Homeland Security, 2018).



## Endnotes

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17. *Ibid.* 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).
18. 8 C.F.R. § 208.30(g); 8 U.S.C. § 1225(b)(1)(B)(iii)(III).
19. 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].
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  55. *Padilla v. Immig. and Cust. Enf’t*, 953 F.3d 1134 (9th Cir. 2020); American Immigration Council, “Challenging Credible Fear Interview and Bond Hearing Delays,” <https://www.americanimmigrationcouncil.org/litigation/challenging-credible-fear-interview-and-bond-hearing-delays>.
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  61. Ibid. Calculated with data from Tables 16, 17d, and 19d, available at <https://www.dhs.gov/immigration-statistics/yearbook/2018>.
  62. Ibid.
  63. Ibid.
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