

Frequently Asked Questions about Asylum and the Border

The United States has a long history of protecting people who flee political, religious or other persecution. Providing refuge is a cornerstone of American values. Through our asylum system, this country implements its commitment, under international treaties developed in the wake of World War II, to protect those who face persecution. The following are some frequently asked questions about asylum and the border:

What is asylum?

- United States law allows people who have been persecuted in their countries, or who fear persecution, to apply for protection in the United States in the form of asylum. An individual seeking asylum protection is sometimes referred to as an “asylum seeker.”
- An individual can request asylum from within the United States or at the border, whether between ports of entry or at a port of entry. The standards for a grant of asylum are rigorous under US immigration law and the process has become increasingly complex. Many legitimate refugees often have their asylum requests rejected initially in our system.

How does the United States government prevent abuse of the asylum system and protect national security?

- An extensive list of the measures in place is available in the Human Rights First [Backgrounder on Bars and Security Screening in the Asylum and Refugee Processes](#). In addition, perpetrators of fraud – including unscrupulous lawyers and notarios – can be prosecuted.

What happens to a person who arrives at the border and expresses a fear of return to their home country to a border officer?

An individual arriving at the border expressing a fear of return is subject to specific sections of immigration law.

- **Expedited removal.** Individuals who seek entry at the border but do not have valid documents allowing them to enter the country are generally summarily deported at the border and returned to their home countries without being put into immigration court removal proceedings. This is known as expedited removal, part of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

- **Credible Fear Process.** Individuals who express a fear of return, instead of being immediately deported, are mandatorily detained and should be referred for a credible fear screening, conducted by a Department of Homeland Security (DHS) - U.S. Citizenship and Immigration Services asylum officer.
 - During a credible fear interview, a USCIS asylum officer asks an individual questions about their fear of returning to their country. The legal threshold for the credible fear standard is a screening standard to distinguish those cases where there is no basis whatsoever for asylum from cases where there might be a potential claim.
 - If an individual does not pass the credible fear process (or a review within 24 hours to seven days by an immigration judge), they are summarily deported under expedited removal laws. If they do pass the screening interview, they are put into immigration court removal proceedings. Only then may they apply for asylum.

Do many people receive credible fear interviews?

- Only a small percentage of individuals who are placed into expedited removal express a fear of return, and there has been an increase in the number of individuals expressing a fear of return over the last years. At the same time, media reports and research have noted that there has been a sharp increase in violence in certain areas of Mexico and Central America in recent years.
- In some cases, an individual with a credible fear of return is not referred by officials for an interview, or does not pass the interview, and is instead returned to their home country and potential persecution. The bipartisan U.S. Commission on International Religious Freedom (USCIRF), in a 2005 report on expedited removal, documented deficiencies in the implementation of safeguards to protect refugees from mistaken return to persecution.

Are asylum seekers detained while waiting for a credible fear interview?

- Yes. An asylum seeker is initially detained in a holding facility by U.S. Customs and Border Protection (CBP).

- Individuals who express a fear of return at the border fall into a category of immigrants who are subject to “mandatory detention.” An individual expressing a fear of return is eventually transferred from CBP custody to Immigration and Customs Enforcement (ICE), the DHS branch responsible for enforcement and detention. Although immigration detention is a civil – not criminal – detention, detained immigrants, including asylum seekers, are held almost entirely in jails or facilities with jail-like detention.
- In reports in 2013, 2005, and 2007 the U.S. Commission for International Religious Freedom found that the facilities used by ICE are generally inappropriate for the detention of asylum seekers. Various international bodies, including the U.N. High Commissioner for Refugees, the Inter-American Human Rights Commission and the U.N. Special Rapporteur on the Human Rights of Migrants have all raised concerns about U.S. detention practices.
- Around 80% of detained immigrants in detention centers do not have a lawyer during their immigration proceedings.

Is a finding of credible fear different than a grant of asylum? If so, how?

- **Yes**, a finding of credible fear is not equivalent to a grant of asylum and means only that the individual has passed through the screening process and will be put into removal proceedings where he or she can apply for asylum. The asylum application process is separate from – and follows – the credible fear process. The standard to demonstrate eligibility for asylum is much higher, and the process much more complex, than the screening threshold for the credible fear interview which is part of the expedited removal process.

How long does it normally take to get a hearing date before an immigration judge?

- Individuals in immigration court removal proceedings often have to wait several years in many cases for their immigration court hearing dates due to extensive backlogs and a lack of resources and staffing at the immigration courts. A process that was envisioned to take place in a matter of weeks can now take years because there are not enough immigration judges and court staff to handle the caseload. While the backlog varies by immigration court, the national average to date for Fiscal Year 2013 is 556 days.

How can the immigration court backlog be addressed?

- To address the delays in the immigration courts, and to make sure that refugees seeking protection are not separated from their families and left in limbo for years, Congress and the Administration should sufficiently fund the immigration courts to create a more manageable caseload and reduce backlogs.

How long does an asylum seeker remain in immigration detention?

- The amount of time an asylum seeker may stay in immigration detention can vary. Once an individual is found to have a credible fear of return, the government may be able to assess some individuals for parole (see below) using a set of criteria for potential release from detention or placement into an alternative detention. Other asylum seekers may receive a bond hearing (and receive bonds too high to pay). Many will remain in detention for the duration of their case, often lasting many months or even years.

What does it mean to be paroled?

- After an “arriving” asylum seeker – those apprehended at the ports of entry – passes the credible fear screening process and is put into removal proceedings, he or she can be assessed for potential release on parole from detention. Parole authority is a longstanding part of the immigration system and is consistent with statute and Congressional intent in existing immigration laws. Current parole guidelines direct that in each assessment, the government verifies identity and determines that an individual does not pose a flight risk or danger to the community. If there is a need for additional supervision or monitoring to assure appearance at court hearings, ICE can utilize effective alternatives to detention (see below).

What are alternatives to detention? Are alternatives to detention successful in meeting the government’s needs?

- The government may utilize a range of alternatives to detention, similar to alternatives used in criminal justice systems, for immigrants in removal proceedings. Alternatives to detention include electronic monitoring, telephonic or in-person reporting requirements and other tools in order to support appearances in immigration court and removal proceedings. Alternatives, including community-based support programs, have been reported to be successful in achieving high rates of compliance.
- Whereas a detention bed costs \$164 per person per day, alternatives can cost as little as 70 cents to \$17. The Council on Foreign Relations’ Independent Task Force on U.S. Immigration Policy; the Heritage Foundation; the Pretrial Justice Institute; the Texas Public Policy Foundation (home to Right on Crime); the International Association of Chiefs of Police; and the National Conference of Chief Justices have endorsed alternatives as cost-saving.