

Grant Rates Plummet as Trump Administration Dismantles U.S. Asylum System, Blocks and Deports Refugees

On June 10, 2020, the Trump Administration proposed an expansive, new regulation that, if implemented, would eviscerate asylum protections for the vast majority of people seeking refugee protection in the United States. This illegal policy is the latest effort by the Trump Administration to dismantle the asylum system and trample on U.S. refugee laws—including the 1980 Refugee Act—passed by Congress to uphold U.S. legal commitments under the post-World War II Refugee Convention and its Protocol.

At the same time, the administration has sought to delegitimize and vilify asylum seekers. Upon taking office, President Trump repeated false assertions that asylum seekers “get a free pass into [the United States] by lodging meritless claims” and repeatedly expressed xenophobic animosity against refugees and immigrants. The President described Central Americans seeking protection at the southern U.S. border as an “invasion”—a racist trope long used against Chinese and other immigrants—equated immigrants to a “snake,” and questioned why individuals from Haiti, El Salvador, and some African countries, which the President reportedly described as “shithole[s],” come to the United States.

While urging Congress to gut laws that protect refugees seeking asylum, the administration has proceeded to rig the asylum process through a barrage of illegal policy changes, agency regulations, and unilateral Attorney General rulings that render many refugees ineligible for asylum or effectively block them from this life-saving protection. As a result of these violations of long-standing legal precedents and refugee laws adopted by Congress, U.S. immigration judges and asylum officers are increasingly denying asylum to people seeking refugee protection and preventing others from even submitting asylum applications by increasingly ruling against asylum seekers in preliminary screening interviews. The refugees impacted include families, children, and adults from Cameroon, Cuba, the Democratic Republic of Congo (DRC), El Salvador, Eritrea, Guatemala, Honduras, and Venezuela.

As this fact sheet demonstrates, the Trump Administration’s nativist assault on the asylum system stifles access to legal counsel, delivers asylum seekers to dangers so dire that many abandon their cases, undermines due process and impartial adjudication, and deports refugees with valid asylum claims to the countries they fled. The administration’s policies have, as detailed below, led to many increases in denial rates including:

- ☑ **Asylum grant rates in immigration court for fiscal year (FY) 2020 have fallen sharply by nearly 37 percent** since FY 2016 to just 27 percent. The current grant rate is 40 percent lower than the average during the Barack Obama and George W. Bush administrations.
- ☑ Asylum grant rates for Central Americans have plummeted in the wake of Attorney General rulings targeting survivors of domestic violence and persecuted families. **The current average immigration court asylum grant rate of 13.3 percent for Guatemalan, Honduran and Salvadoran asylum seekers** (since August 2019) **is 50 percent lower than FY 2016.**
- ☑ Hundreds of refugees are being denied asylum due to the Trump Administration’s ban on asylum seekers who transit through other countries, including **steep falls in asylum grant rates by 45 percent for Cameroonians, 32 percent for Cubans, nearly 30 percent for Venezuelans, 17 percent for Eritreans, and 12 percent for Congolese (DRC)** since December 2019.

- ☑ The vast majority of asylum seeker stranded by the Department of Homeland Security (DHS) in Mexico under the so-called Migrant Protection Protocols (MPP) are being denied refugee protections. **Only 4.1 percent of asylum seekers and migrants in attendance at their MPP hearings were granted relief. Individuals in attendance at their MPP hearings with an attorney were ten times more likely to receive protection but only 9.3 percent were represented.**
- ☑ Following implementation of the administration's third-country transit asylum ban, fast track deportation programs to block access to legal counsel, and other policies to reduce the number of asylum seekers who pass preliminary asylum screenings, **the percentage of asylum seekers found to have a credible fear of persecution in FY 2020 has dropped to 37 percent—a 50 percent decline from FY 2019**—the lowest level in two decades. Customs and Border Protection (CBP) enforcement officers used by the administration to conduct some screenings are determining that asylum seekers meet the fear standard at a rate **20 percent lower** than in interviews conducted by trained asylum officers.
- ☑ Administration policies are exacerbating the backlog of cases before the immigration courts (now at 1.4 million) and asylum office (more than 340,000 at the end of FY 2019) forcing thousands of asylum seekers to wait years in limbo, separated from family stranded in dangerous and difficult circumstances. **Cubans, Nicaraguans, and Venezuelans make up the fastest growing segment of the immigration court backlog.**

Administration Unilaterally Narrows Asylum Eligibility

While pushing the false claim that only 20 percent of asylum applications were meritorious, Trump administration officials took steps to unilaterally rewrite decades of asylum legal precedent and evade U.S. immigration law to dramatically reduce the asylum grant rate,¹ essentially turning their false claims into reality.

- During the first quarter of FY 2020, less than 27 percent of asylum requests were granted in immigration court – **a 36.6 percent decline from FY 2016** and a grant rate 40 percent lower than the average during the Obama and George W. Bush administrations, according Department of Justice (DOJ) data. While the total number of individuals granted asylum in the immigration courts has risen in recent years due to increased adjudications, the number of individuals denied asylum has also grown substantially.
- As of FY 2019, the last period with available data, **the asylum grant rate before United States Citizenship and Immigration Services' (USCIS) asylum offices had fallen by 28.8 percent from FY 2016** to just 30.7 percent, according to USCIS data.²
- Administration policies to push down asylum grants have particularly affected Central American refugees, as discussed below, who were increasingly winning asylum. Their asylum grant rates were however lower than other nationalities despite brutally high levels of violence due to narrow interpretations of asylum case law impacting people targeted for persecution by deadly gangs that exercise territorial control, before President Trump took office.
- Asylum grant rates for asylum seekers from other countries including Cameroon, Cuba, the Democratic Republic of Congo (DRC), Eritrea, and Venezuela have also begun to sharply decline under the administration's continued attempts to rig the asylum process, as detailed below.

¹ Immigration court asylum grant rates are calculated by dividing the number of applications granted by the total number of applications granted and denied.

² USCIS has not released data for FY 2020 and discontinued quarterly stakeholder meetings when this information was previously released.

In the wake of a [much-criticized](#) Centers for Disease Control and Prevention COVID-19 [ban](#), asylum protections at the border have been effectively [eliminated](#) since March 20, 2020. The Trump Administration is now expelling asylum seekers and refusing to process those waiting at ports of entry. Government data received by [CBS News](#), but not publicly released by DHS, indicates that by the end of May 2020 only four people subject to immediate expulsion under the CDC order were permitted to stay in the United States and request asylum. Of the 21,000 expelled under the order in March and April 2020, 99.99 percent were denied even an opportunity to apply for refugee protection. It is unclear how this new expulsions order may affect asylum grant rates.

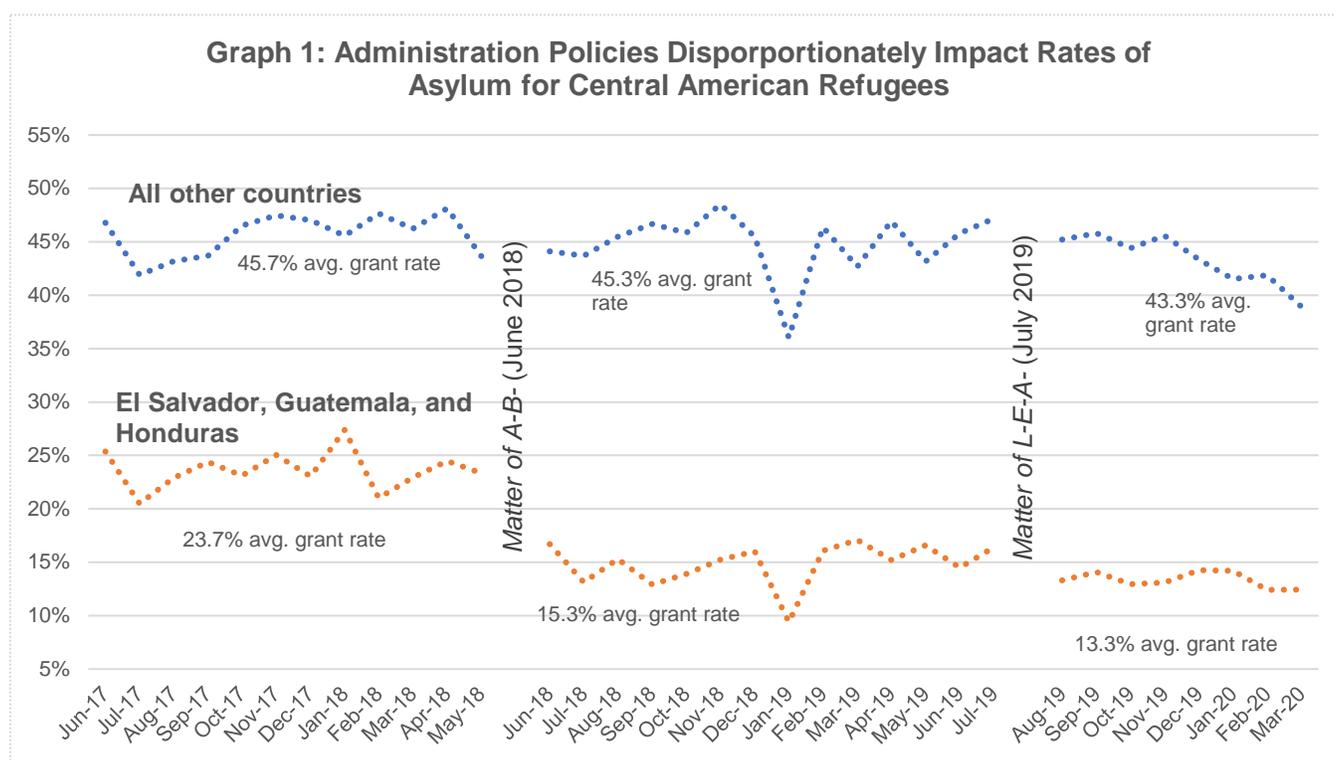
Sharp decline in asylum grants after Attorney General ruling targeting survivors of domestic violence

Prior to the current administration, the percentage of Salvadoran, Guatemalan, and Honduran asylum seekers granted protection in the United States had risen from 13.6 percent in FY 2010 to 26.7 percent in FY 2016, according to government data analyzed by the [Asylum Decisions tool](#) from Syracuse University's Transactional Records Access Clearinghouse (TRAC).³ This rise was consistent with an upsurge in the power and brutality of the gangs that exercise control over territory throughout those countries as well as extremely high rights of gender-based violence, as documented by the [United Nations](#), the [Council on Foreign Relations](#), [Amnesty International](#), and others.

In June 2018, then Attorney General Sessions issued [Matter of A-B-](#), a decision he self-certified for review, that attempted to rewrite years of asylum law and legal precedent to block domestic violence survivors and other survivors of persecution by non-state actors from asylum eligibility. A subsequent [policy memorandum](#) from USCIS based on [Matter of A-B-](#) stated in sweeping language that claims based on domestic or gang-related violence would not establish a basis for asylum, refugee status, or a credible fear of persecution. As [TRAC reported](#), the Attorney General's ruling in [Matter of A-B-](#) caused the grant rate for asylum approvals to drop.

Federal courts have rejected the Attorney General's reasoning in [Matter of A-B-](#). In March 2020, the U.S. Court of Appeals for the [First Circuit](#) overturned the denial of asylum to a survivor of domestic violence and found that women are a protected group under U.S. asylum law. In May 2020, a decision from the [Sixth Circuit](#) agreed with the December 2018 [ruling](#) of a D.C. federal district court judge that concluded that [Matter of A-B-](#) is "arbitrary, capricious, and contrary to law." That district court also ruled that using [Matter of A-B-](#) to issue blanket denials of asylum claims based on domestic and gang-related violence at the credible fear stage is illegal. As a result, DHS and DOJ issued [guidance](#) directing asylum officers and immigration judges reviewing credible fear interviews to evaluate each claim "on its own merits."

³ As of June 3, 2020, [TRAC](#) has stopped updating its Asylum Decisions tool following the release of April 2020 data by EOIR that was "too unreliable to be meaningful or to warrant publication" and has warned that "any statistics EOIR has recently published on this topic may be equally suspect." TRAC has issued [repeated warnings](#) to EOIR about the significant problems with the data it releases to the public.



Source: [TRAC](#), Asylum Decisions⁴

Prior to these rulings and in circuits where *Matter of A-B-* remains good law, **the administration likely denied thousands of asylum claims based on this faulty decision.** As Graph 1 demonstrates, the impact of *Matter of A-B-* falls disproportionately on asylum claimants from Central America:

- Asylum grant rates for El Salvador, Guatemala, and Honduras fell by more than 35 percent from an average of 23.7 percent in the year preceding the ruling (June 2017 to May 2018) to an average of 15.3 percent (June 2018 to July 2019).
- Asylum seekers from all other countries saw only a very slight change in grant rates during this time: from 45.7 percent to 45.3 percent across the same periods – a 0.4-point change.

Grant rates for Central American refugees fall further following Attorney General's ruling limiting asylum protections for persecuted families

In late July 2019, Attorney General William Barr issued a decision in *Matter of L-E-A-*, another case self-certified by the Attorney General for review. In the ruling, the Attorney General attempts to limit the availability of asylum to individuals persecuted based on their relationship to a family member – a decision at odds with decades of asylum federal court precedents that recognize family-based claims as “[prototypical](#)” and “[quintessential](#).” While *Matter of L-E-A-* did not impose country-specific restrictions on asylum, its impacts also fall heavily on asylum claimants from Central America—where UNHCR has recognized that powerful gangs in [El Salvador](#), [Guatemala](#), and [Honduras](#) frequently target family members to punish enemies and project control over communities and

⁴ The sudden decline in grant rates in January 2019 is the result of a partial U.S. government [shutdown](#), which closed non-detained immigration courts from late December 2018 to late January 2019, and reflects the much lower asylum grant rate for asylum seekers before immigration courts for detention centers, which remained open.

territory. **Following *Matter of L-E-A-*, asylum grant rates for these Central American countries again declined from an average of 15.3 percent to 13.3 percent**, as Graph 1 shows. Grant rates for other countries did not begin to fall sharply until December 2019 when immigration courts began to deny asylum claims due to the Trump Administration's third-country transit asylum ban.

Grant rates plummet for Cameroonian, Congolese (DRC), Cuban, Eritrean, Venezuelan and other asylum seekers after third-country transit asylum ban takes effect

On July 16, 2019, DHS and DOJ issued a [regulation](#) that effectively bans asylum for the vast majority of refugees seeking protection at the southern U.S. border. It bars individuals, including unaccompanied children, with well-founded fears of persecution from asylum if they transited through a third country en route to the United States with very limited exceptions. As a result, refugees from Cameroon, Cuba, the Democratic Republic of Congo, Eritrea, Venezuela as well as El Salvador, Guatemala, and Honduras and other countries are being denied asylum in the United States.

This [third-country transit asylum ban](#) attempts to evade the [law](#) established by Congress that makes clear that merely passing through another country to reach the United States is not a basis to deny asylum. While the ban was preliminarily enjoined during [litigation](#), in September 2019, the Supreme Court [stayed](#) that order. In November 2019, a federal court [enjoined](#) the government from applying the transit asylum ban to individuals who attempted to seek asylum at a port of entry prior to July 16, 2019, but were subjected to the so-called practice of "metering" in which U.S. border officers turn away asylum seekers at ports of entry forcing them to wait often for months before being permitted to request asylum. A temporary stay of the court's order entered by the Ninth Circuit was [lifted](#) in early March 2020.

Implementation of the third-country transit asylum bar has been followed by:

- A sudden decline in overall asylum grant rates for non-Central Americans (from 45.1 percent in the year preceding its implementation to 41.5 percent since December 2019, according to [TRAC](#) data) since this transit ban went into effect indicates that **more than 500 non-Central American refugees denied asylum in just four months likely due to the transit asylum ban.**
- As Table 1 shows, **immigration court asylum grant rates declined by 45 percent for Cameroonian asylum applicants, 32 percent for Cubans, nearly 30 percent for Venezuelans, 17 percent for Eritreans, and 12 percent for Congolese (DRC)** since December 2019, compared to the year before the third-country transit asylum ban began to affect their claims, according to [TRAC](#) data. Some nationals

	Dec. 2018 – Nov. 2019	Dec. 2019 ⁵ – Mar. 2020	Percent change
Cameroon	80.6%	44.0%	- 45.4%
Cuba	44.4%	30.0%	- 32.4%
DRC	52.6%	46.2%	- 12.2%
El Salvador	17.5%	16.6%	- 4.9%
Eritrea	68.1%	56.6%	- 17.0%
Guatemala	13.9%	12.8%	- 7.7%
Honduras	12.2%	10.6%	-12.9%
Venezuela	66.7%	46.8%	- 29.9%

Source: [TRAC](#), Asylum Decisions

⁵ Although the transit asylum ban went into effect in September 2019, Human Rights First assessed its impact from December 2019 due to a lag in adjudication of affected cases. Based on Human Rights First's representation of and research on detained asylum seekers and those under the Migrant Protection Protocols (MPP), immigration courts hearing those cases began to issue decisions affected by the transit asylum ban around November 2019 and in larger numbers by December 2019. Because cases in non-detained immigration courts took, for instance, [532](#) days on average to complete in FY 2019, few non-detained cases subject to the bar have been adjudicated on the merits.

of these countries seek asylum at the southern border, as visas are not issued to asylum seekers that would enable them to fly directly to the United States.

MPP's Farcical "Protection" of Asylum Seekers

Since January 2019, the Trump Administration's Remain in Mexico policy, or so-called Migrant Protection Protocol, has sent nearly 65,000 asylum seekers and migrants from Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Venezuela and other countries to Mexico, effectively cutting them off from attorneys to assist them in their immigration cases and requests for humanitarian protection and delivering them to mortal dangers.

- For asylum seekers and migrants in MPP who appear in U.S. immigration court for their hearings, only 4.1 percent have been granted asylum or other inferior forms of humanitarian protection, according to TRAC data – far lower than the 27 percent asylum grant rate for individuals appearing during regular immigration court proceedings.
- For Central American asylum seekers the chances of being granted some form of protection are vanishingly miniscule – as Table 2 demonstrates, **just 0.3 percent of Guatemalan, 0.5 percent of Honduran, and 0.9 percent of Salvadoran asylum seekers who appeared for completed MPP cases (i.e. not *in absentia* decisions) were granted asylum, withholding of removal or protection under the Convention against Torture.**
- **Rates of deportation relief for Nicaraguans (12.3 percent), Cubans (22.0 percent), and Venezuelans (33.6 percent) are far below already limited protection rates during normal immigration court asylum proceedings that have also fallen due to the transit ban, as noted above.**

	Cuba	El Salvador	Guatemala	Honduras	Nicaragua	Venezuela
Number granted relief from deportation	243	12	9	17	29	187
Percentage granted (in-person decision)	22.0%	0.9%	0.3%	0.5%	12.3%	33.6%

Source: TRAC, Details on MPP (latest data available through March 2020)

These extraordinarily low MPP relief rates are, in part, the result of the extreme dangers and abysmal conditions asylum seekers returned to Mexico face there.

Many have abandoned their requests for

protection, and some have likely been "disappeared" due to the targeting of asylum seekers for kidnapping, rape, torture, and murder while they remain in and/or travel through border regions of Mexico to attend U.S. immigration court. **Human Rights First has tracked at least 1,114 public reports of violent attacks against individuals in MPP**, but these incidents are likely just the tip of the iceberg, as the vast majority of returned individuals have not spoken with journalists or human rights monitors. Some asylum seekers in MPP have been ordered removed *in absentia* because they were kidnapped at the time of their hearing. Of the 32,000 individuals under MPP with *in absentia* removal orders many are asylum seekers forced to give up their cases due to these extreme dangers.

For the families and individuals who attempt to present asylum claims in U.S. immigration court, the already difficult task of filling out applications, securing vital evidence, and preparing testimony with an attorney are even more difficult for the many asylum seekers in MPP who are living in shelters and cramped migrant hotels, sleeping in tent encampments, or living on the streets and are without the means to buy enough food or pay for adequate medical care.

Protection Screening Pass Rates Plummet as Trump Administration Rigs Screenings to Increase Denials

For asylum seekers whom DHS places in expedited removal, the credible fear process determines whether an individual will even be able to apply for asylum and have an asylum hearing before an immigration judge, or is instead summarily deported. But Trump Administration officials have repeatedly complained about the rate at which USCIS asylum officers determine that asylum seekers meet the credible fear of persecution legal standard. White House senior advisor Stephen Miller reportedly demanded that USCIS tighten, *i.e.* lower, the pass rate.

Through the third-country transit asylum ban and fast-track “asylum review” programs that hold asylum seekers in substandard CBP border cells that effectively block them from legal representation, and by deploying CBP border enforcement officers to conduct some fear interviews, the administration is achieving its goal to block asylum seekers at the credible fear stage and deport them to the countries they have fled without letting them apply for asylum or have an asylum hearing. **In FY 2020, positive credible fear determinations dropped sharply by 50 percent from the preceding year to just 37 percent**, according to USCIS data – a significant departure from credible fear rates during the Obama and George W. Bush administrations, when they averaged 78 percent.⁶

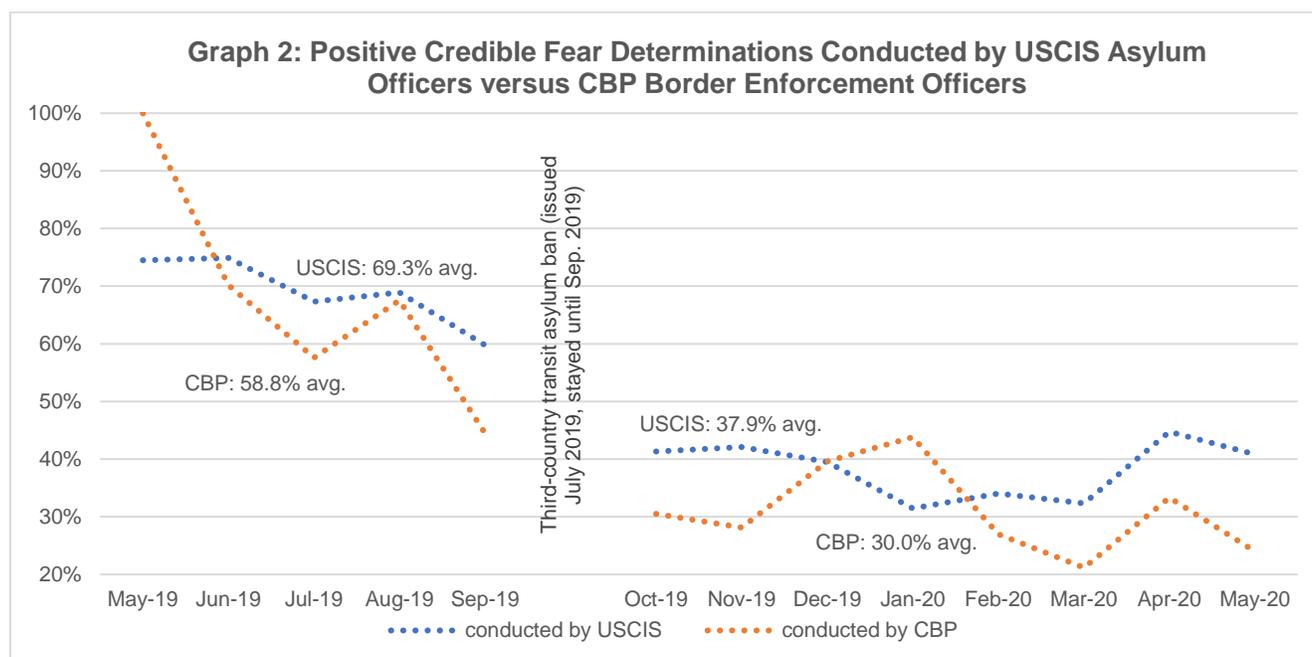
While the credible fear standard was enacted in law by Congress, the Trump Administration has implemented multiple overlapping policies to dramatically elevate the credible fear standard and lower the pass rate.

- In July 2019, DHS and DOJ issued the third-country transit asylum ban, which in addition to denying asylum to refugees who have passed through other countries en route to seek protection in the United States, improperly changes and effectively raises the credible fear standard set by Congress. As a result, asylum officers are entering negative credible fear determinations for individuals subject to the bar.
- In late 2019, the administration also began to place Central American asylum seekers subject to the transit ban in the so-called **Prompt Asylum Claim Review (PACR)** and Mexican asylum-seeking families in the **Humanitarian Asylum Review Process (HARP)**, blocking them from legal representation and subjecting them to horrible conditions. These fast-track deportation programs jail asylum seekers in CBP holding cells at the border during the credible fear process, where families and adults frequently report being provided insufficient or inedible food and water, lack of basic sanitation, and inability to sleep, because of overcrowding, lack of adequate bedding, cold, and lights that are kept on all night. Attorneys are prohibited from visiting clients in person and legal services organizations are not permitted to give legal orientations there. Individuals in these programs are reportedly provided only 30 minutes to an hour to attempt to contact a lawyer or family members before their interview.
- The administration also secretly altered training and guidance materials for officers conducting fear interviews to tighten the screening standard, reassigned the head of the asylum office, John Lafferty, who the administration blamed for failing to reduce fear screening passage rates, and attempted to use *Matter of A-B-* to issue blanket denials in preliminary screenings for survivors of domestic violence and other asylum claims.

Positive credible fear rates dropped precipitously by 45 percent from an average of 67.5 percent (May to September 2019) **to 36.9 percent** (October 2019 to May 2020) **after the Supreme Court lifted the stay on the third-country transit asylum ban in September 2019** and as the Administration began to use PACR and HARP to limit access to counsel, according to USCIS data. As of late February 2020, nearly 4,000 families and adults had been placed in PACR and HARP, according to testimony by Acting CBP Commissioner Mark Morgan.

⁶ See U.S. Commission on International Religious Freedom (2001–03); USCIS (2004–13, 2014, 2015, 2016, 2017, 2018, 2019, 2020).

In addition, since May 2019, the administration has deputized CBP border enforcement officers to conduct some fear interviews. Thus far in FY 2020, **CBP officers have found asylum seekers established a credible fear in just 30 percent of cases – 20 percent lower than the already reduced positive credible fear rate for interviews conducted by USCIS officers**, as Graph 2 indicates. Allowing CBP officers, who are not suited to carrying out sensitive, legally complex, non-adversarial screenings of often traumatized asylum seekers, undermines the safeguards intended to protect refugees.



Source: USCIS, [Semi-Monthly Credible Fear and Reasonable Fear Receipts and Decisions](#)

Without Legal Representation Asylum Seekers Less Likely to Be Granted Protection

TRAC data demonstrates that **when asylum seekers had access to legal representation in FY 2020, they were three times more likely to win asylum than those appearing in immigration court without an attorney**. At the same time, **the overall percentage of asylum seekers able to find a lawyer fell by 11 percent** – from a high of 87.1 percent in November 2018 to 77.5 percent in March 2020. In FY 2020, only 31.7 percent of asylum seekers from Cuba were represented by counsel during their immigration court proceedings.

For asylum seekers and migrants in MPP, the difference in grants of relief from deportation (asylum, withholding of removal and CAT protection) is stark.

- For MPP cases completed in person **only 2.2 percent of individuals who went to court without a lawyer were granted some form of relief from deportation compared to 23.3 percent of those with an attorney**, according to TRAC data. In other words, the chances of being granted some form of humanitarian protection were **ten times greater** with legal representation for those in MPP whose cases did not end with an *absentia* order.
- But representation rates for asylum seekers and migrants subjected to MPP are striking low - **only 9.3 percent of asylum seekers and migrants returned to Mexico under MPP whose cases ended with an in-person decision had a legal representative** registered with the immigration court, as of March

2020 – a rate 88 percent lower than the overall representation level for asylum seekers who received immigration court decisions in March 2020.

Attempts to Roll Back Protections for Unaccompanied Asylum-Seeking Children

The Trump Administration has also been attempting to erode the special protections created by Congress under the [Trafficking Victims Protection Reauthorization Act of 2008](#) (TVPRA) to ensure that unaccompanied children have a fair opportunity to present a request for asylum. In May 2019, USCIS announced a new [policy](#) that would limit the jurisdiction of the asylum office over the cases of unaccompanied asylum-seeking children—in violation of the TVPRA—and require those cases to be filed directly with immigration court where traumatized children struggle to present claims for relief during adversarial court hearings, often without legal representation. In September 2019, a district court granted a temporary [restraining order](#) against the policy and ordered the government to retract any previously-taken adverse decisions. **Unaccompanied children are half as likely to receive relief from deportation in immigration court compared to applications for asylum considered by USCIS asylum officers.** In the first half of FY 2020, only 20.7 percent of unaccompanied children were granted relief in cases decided on the merits in immigration court, according to EOIR [data](#), while 41.3 percent of unaccompanied children in FY 2019 were granted asylum after non-adversarial interviews with asylum officers.

Asylum Grant Rates Often Depend on the Judge Assigned to the Case

While immigration cases are randomly assigned, the judge an asylum seeker draws can have a major [impact](#) on the outcome of the case – in what has been termed [refugee roulette](#). Some immigration judges deny asylum at extremely high rates – granting only one or two percent of the applications before them. In FY 2019, some immigration judges at the Atlanta, Georgia and Jena, Louisiana immigration courts denied 100 percent of the hundreds of asylum claims they decided, according to [TRAC](#). A judge at the Oakdale immigration court has granted asylum only one out of more than 200 asylum cases before her between FY 2015 and FY 2019.

In April 2017, then-Attorney General Sessions made [changes](#) to the procedures to select new immigration judges that make the hiring process more [susceptible](#) to politicization. In February 2019, Attorney General Barr [altered](#) the hiring procedures for members of the Board of Immigration Appeals, the administrative body that hears appeals from immigration court, to eliminate safeguards previously adopted to protect against politicized hiring. Under the revised hiring plan, [eight of nine](#) new appellate judges are prior immigration judges with some of the highest asylum denial rates in the nation.

DOJ’s Push to Rush Proceedings Threatens to Further Erode Due Process and Asylum Seekers’ Chances of Receiving Protection

The Executive Office for Immigration Review (EOIR), the office within DOJ with authority over the immigration courts, has implemented or attempted to implement a series of policies to expedite immigration court proceedings in a manner that threatens the due process rights of immigrants and asylum seekers and which may diminish their chances of receiving protection. For instance, EOIR has imposed so-called “performance metrics” on immigration judges, including, for the first time, a case completion [quota](#), that erodes judicial independence, incentivizes judges to deny continuances to asylum seekers and immigrants, and hinders the right to be represented by counsel and to receive due process. The head of the immigration judges’ union decried the quota as “an

unprecedented act which compromises the integrity of the court.” In August 2018, then Attorney General Sessions also limited the discretion immigration judges have to grant continuances in another self-certified decision in *Matter of L-A-B-R*. EOIR’s elimination in July 2019 of in-person interpretation during preliminary hearings in order to speed adjudications and reduce costs also threatens the ability of asylum seekers, particularly the many without attorneys, to understand their obligations during removal proceedings. In June 2020, the DOJ Office of Inspector General found that EOIR’s budget shortfalls with respect to interpreter costs were the result of a failure by EOIR leadership to communicate with its budget staff and to request sufficient appropriations.

Growing Wait Times as Administration Policies Exacerbate Backlogs

Not only are refugees increasingly denied asylum due to Trump Administration policies, but asylum seekers also wait longer and longer periods for hearings and interviews. Administration policies are exacerbating backlogs in the immigration courts and asylum offices leaving asylum seekers often waiting for years to resolve their requests for protection and separating them from family members left stranded in difficult or danger circumstances.

Shifting administration policy priorities and attempts to limit discretion of immigration judges and USCIS officers have contributed to an already substantial backlog in immigration court, as the Marshall Project has noted:

- In 2017, the administration dispatched immigration judges to southern border courts to speed deportations, but these dockets had few cases to adjudicate while those in non-prioritized courts went unheard.
- In addition, the Attorney General Session’s self-certified decision in *Matter of Castro-Tum* severely limiting a docket management tool that allowed immigration judges to administratively close cases, including those pending for adjudication before USCIS or awaiting visa availability, added more than 300,000 additional cases to the immigration courts’ ballooning caseload.
- A new USCIS policy that eliminated discretion of USCIS officers to determine whether to refer an undocumented individual denied immigration relief administered by the agency to immigration court also contributed to the backlog.

By the middle of FY 2020, there were more than 1.4 million cases in U.S. immigration court awaiting adjudication, including the additional 300,000 added as a result of the Attorney General’s ruling, according to EOIR data. Around one third of pending cases were for asylum seekers, as of September 2019. TRAC reports that **Cubans, Nicaraguans, and Venezuelans are now the fastest growing segment of the backlog.**

The asylum office backlog has also continued to expand under the Trump Administration.

- Through FY 2019, the backlog grew as the administration diverted USCIS asylum officers from adjudicating asylum applications to conduct fear screenings as part of the administration’s efforts to block asylum seekers at the southern U.S. border, including through MPP, PACR, HARP, and transfers of asylum seekers to Guatemala.
- Asylum officers have resigned in protest of these policies, including MPP, that the asylum officers’ union has described as putting their members at risk of participating in “widespread violation of international treaty and domestic legal obligations.” As of May 2019, approximately 27 percent of the 763 asylum officer positions were unfilled, according to USCIS.
- In January 2018, USCIS instituted a policy known as “last in, first out” (“LIFO”) under which asylum seekers who most recently submitted applications are scheduled ahead of applicants in the backlog. The LIFO policy leaves thousands of asylum seekers—some waiting since 2015—in limbo while they wait for

interviews, including thousands of Venezuelans who have made up the largest proportion of applicants to USCIS since September 2016.

As of September 2019, **more than 340,000 asylum cases were pending before USCIS asylum offices nationwide**. As the percentage of asylum applicants granted asylum by USCIS has fallen, **the percentage of cases referred to immigration court rose by 21.5 percent between FY 2016 and FY 2019**, further crowding already overburdened immigration court dockets. The current extent of the asylum office backlog is unknown because, as of May 2019, USCIS no longer releases quarterly asylum office data to the public. The potential furlough in July 2020 of thousands of USCIS employees due to agency mismanagement of its budget could reportedly result in a complete halt in asylum processing further exacerbating the backlog.