

## Asylum: Frequently Asked Questions

1. **What is asylum?**
2. **Who can apply for asylum?**
3. **Is there a deadline to apply for asylum?**
4. **How can someone apply for asylum?**
5. **What does a person have to prove to be granted asylum?**
6. **What happens if someone is denied asylum?**
7. **Are there any risks to applying for asylum?**
8. **How can asylum seekers find help with their cases?**
9. **What has President Biden's approach been on asylum?**
10. **What needs to be done to make the asylum system more fair and efficient?**

### 1. What is asylum?

Following the failure of many countries to allow entry to people trying to escape from the Holocaust and World War II, the international community adopted the 1951 United Nations Refugee Convention. This treaty, along with its companion 1967 Protocol, requires nations to ensure the rights and safety of individuals fleeing persecution, and has been ratified by nearly 150 countries. The United States has been part of this framework of international law since 1968.

To carry out its international obligations, the U.S. government provides asylum to individuals who have already experienced, or have a well-founded fear of, persecution in their countries of origin and who meet all the other requirements of the refugee definition under U.S. law. It's important to keep the United States' role in the global refugee protection system in perspective. Contrary to what some people may think, the United States does not bear a disproportionate burden of sheltering the world's refugees, either in absolute numbers or as a percentage of our total population. In fact, [nearly 85%](#) of all refugees are hosted in the developing world.

A person who has been granted asylum (also known as an "asylee") has the right to stay in the United States; to work; to be joined by their spouse or unmarried children who were under the age of 21 at the time of the asylum application; to obtain certain public benefits and assistance; and to become a lawful permanent resident and eventually a U.S. citizen.

There are certain other categories of U.S. law, including “withholding of removal,” protection under the Convention against Torture, and Temporary Protected Status, which prevent people from being returned to harm for at least a short time, but which do not lead to the same permanent status as asylum.

## **2. Who can apply for asylum?**

Anyone can apply for asylum if they are either at the U.S. border or currently inside the United States. Individuals have the right to seek asylum under both U.S. and international law whether they have travel documents or lawful status or not, and regardless of how they entered the United States. In contrast to the idea that people seeking asylum should “wait in line,” there is no visa which allows someone to travel to the U.S. to apply for asylum. Individuals who are outside the United States may seek “refugee resettlement,” which is a separate process from asylum, and is much more lengthy, limited, and difficult to obtain.

## **3. Is there a deadline to apply for asylum?**

Generally, a person must submit their asylum application within one year of their last arrival in the United States. This limitation is not found in international law nor do the overwhelming majority of other countries have such a deadline. Congress imposed the deadline in the 1990s as part of a series of draconian restrictions purporting to reduce “fraudulent” claims. However, there are many reasons why a genuine asylum seeker may not apply for asylum within one year, including language barriers, lack of legal assistance, trauma, and poverty. While U.S. asylum law provides some exceptions to the one-year filing deadline, the existence of the deadline is another factor that contributes to the asylum backlog by needlessly complicating adjudication of cases.

## **4. How can someone apply for asylum?**

Individuals in the United States who are not in removal (commonly known as deportation) proceedings may submit an asylum application with the Department of Homeland Security’s (DHS) U.S. Citizenship and Immigration Services (USCIS). These “affirmative asylum” applications are decided by specially trained asylum officers in a non-adversarial process. Generally, individuals in the United States who are in removal proceedings must submit an asylum application with a Department of Justice immigration court as a form of defense against removal. “Defensive asylum” applications are decided by immigration judges, with a DHS attorney acting as prosecutor. However, unaccompanied children may apply for asylum with USCIS even if they are in removal proceedings.

Individuals also have the right under both U.S. and international law to seek asylum at the border. Before removing someone from the United States, border officials are required to ask if they are afraid of returning to their country of origin and, if so, must refer them to an

asylum officer for screening (the “credible fear” interview). However, the previous administration implemented many new policies that severely restricted access to asylum at the border, some of which remain in effect today. These policies continue to deprive numerous people seeking protection of the right to apply for asylum and contribute to chaotic and dangerous conditions at the border since normal immigration processing procedures are not being used.

## **5. What does a person have to prove to be granted asylum?**

It is difficult to qualify for asylum, in part because the refugee definition does not encompass all forms of harm that people may have experienced or fear experiencing, and in part because U.S. law often interprets the refugee definition in an extremely restrictive way. Although asylum approval rates vary widely across the country, between fiscal year 2015 and 2020 overall asylum approval rates in immigration court (defensive claims) were [27.7 percent](#), and in asylum offices (affirmative claims) were [28 percent](#). Applicants forced into the “Remain in Mexico” program started under the previous administration were almost [uniformly](#) denied asylum, with approval rates close to 0.9 percent from March 2019 to January 2021.

To be eligible for asylum, people must have experienced or fear *persecution*, a rigorous concept that is not met by mere discrimination or even many types of human rights violations. Additionally, only persecution or fear of persecution that is on account of certain factors falls within the definition. These factors are race, religion, nationality, membership in a particular social group, or political opinion. While asylum is sometimes referred to as “political asylum,” claims can encompass a diverse range of harms, inflicted for a variety of reasons. These can include violence against women, children, LGBTQ+ people; people with disabilities; indigenous and ethnic groups; religious communities; informants and witnesses; human rights activists; environmental defenders; and political opponents. Persecutors can be either government officials or non-state actors including family, community members, or organized crime groups such as gangs and cartels, where the government is unable or unwilling to control such private actors. A successful application often requires submission of the applicant’s testimony as well as extensive documentary and/or expert evidence to support the claim.

To qualify for asylum, applicants must prove *each* of the following requirements:

- The applicant suffered harm in their country of origin, *or* the applicant’s fear of future harm is reasonable;
- The harm is severe enough to be considered “persecution;”
- There is a link between the harm and the applicant’s race, religion, nationality, political opinion, or membership in a “particular social group” (a group whose members share characteristics that they cannot change or should not have to change, such as gender, sexual orientation, family membership, relationship status, former occupation, or land ownership);

- The government is unable *or* unwilling to protect the applicant; and
- It is unsafe *or* unreasonable to expect the applicant to move to another part of their country of origin.

Even if an applicant fulfills all these requirements, there are several bars to asylum under U.S. law which go far beyond the grounds of ineligibility established in international law. With only certain exceptions, an applicant may be barred from asylum because they: missed their one-year filing deadline; were previously denied asylum; arrived in the United States through a U.S.-Canada land port of entry; received an offer of permanent lawful status in another country; were convicted of certain crimes within the United States; participated in persecution of other people; engaged in terrorist activities; or there is reason to believe they committed certain crimes outside the United States. While many of these bars may sound reasonable, they are generally defined extremely broadly so that, for example, a very minor non-violent misdemeanor in the United States can make a person ineligible for asylum. Similarly, a minimal amount of assistance such as providing a meal, even if coerced to do so, may be considered “material support” to terrorism, making the applicant ineligible. Although there are waivers or exceptions for some of these grounds of ineligibility, the extensive list of bars is another factor that makes asylum adjudication needlessly complicated and time-consuming.

## **6. What happens if someone is denied asylum?**

In affirmative cases, the asylum officer can deny asylum to an applicant if they have some other form of lawful status at the time of the decision. If the applicant lacks lawful status, the asylum officer must refer the applicant for removal proceedings in immigration court, where an immigration judge will decide the asylum application. If an immigration judge denies asylum, the applicant may still be eligible for two alternative forms of protection based on their fear of return to their country of origin: withholding of removal, and protection under the Convention Against Torture. The applicant can also appeal the immigration judge’s denial to the Department of Justice’s Board of Immigration Appeals (BIA). If the BIA upholds the asylum denial, the applicant can appeal the decision to a U.S. Court of Appeals. Notably, if an immigration judge grants asylum, the DHS prosecutor can also appeal to the BIA. But if the BIA overturns a denial or grants asylum, DHS cannot appeal further.

## **7. Are there any risks to applying for asylum?**

For people who are not already in immigration court proceedings, applying for asylum affirmatively with USCIS can be risky if they lack lawful status or will soon be out of status. On the one hand, if the asylum office does not grant asylum, the applicant will be placed in removal proceedings and face possible deportation. However, once in removal proceedings, the applicant can continue to pursue asylum before the immigration judge as a defense against removal. On the other hand, an individual could also face risks by *not*

filing for asylum; for example, the strength of their claim may diminish over time as evidence gets stale or country conditions change, and they may be barred for failure to file within one year. As with most aspects of our immigration system, it is complicated and consultation with a legal representative is advised.

## **8. How can asylum seekers find help with their cases?**

CGRS strongly recommends that people seeking asylum and other humanitarian protection consult with an attorney or accredited representative. For more information about available resources, [click here](#).

Asylum is a highly complicated and constantly evolving area of the law. Numerous studies confirm that individuals who have legal representation are much more likely to obtain asylum or other immigration relief. Yet, people seeking asylum do not have a right to government-appointed counsel though they do have the right to counsel at their own expense. Therefore, CGRS [provides mentorship to attorneys](#) and other legal professionals working with asylum seekers to help advance universal quality representation.

## **9. What has President Biden's approach been on asylum?**

[This administration inherited](#) an almost completely broken asylum system. With our southern border essentially shut down, large numbers of people are still waiting in danger and misery on the Mexican side. Long-accepted policies and practices were overthrown, and well-established legal standards turned on their heads. The federal workforce whose job it is to protect people seeking asylum and adjudicate their claims is severely damaged, with high attrition rates and low morale. During the previous administration, CGRS went to court frequently to [challenge unlawful changes to the asylum system](#).

The current administration started off in a promising manner, pausing harmful executive orders that had been rushed through in the waning days of the previous administration, and issuing new orders that pointed in a more positive direction. However, progress is stalled on many fronts. Even where the administration has attempted to resume or even improve some of the usual procedures, anti-immigrant politicians in some states have sued to stop them.

## **10. What needs to be done to improve the asylum system?**

CGRS is now fighting to [help the administration](#) resume, and improve, asylum processing. We serve as a resource to policymakers and lawmakers to ensure that the United States lives up to its legal and moral obligations to people seeking asylum. We work with partners in the United States through the [Welcome with Dignity campaign](#) and other coalitions. We have strong ties to human rights defenders throughout the region, including in El Salvador, Guatemala, Haiti, Honduras, and Mexico. We document country conditions as well as draw

attention to root causes forcing people to flee, including displacement linked to climate change. For more information on our human rights work and regional partnerships, [click here](#). We are painfully aware that Black, Brown and Indigenous asylum seekers are disproportionately affected by the failures of our asylum system, and we seek to center and uplift the voices of affected communities in our advocacy.