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The Faltering US Refugee Protection System: Legal and Policy Responses to Refugees, Asylum Seekers, and Others in Need of Protection

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Executive Summary

While generous in many respects, the US refugee protection system — defined to include refugees, asylum seekers, and similar populations — has become less robust over the last two decades. The US Refugee Admissions Program (USRAP), a mainstay of this system, faces significant challenges. Security reviews have left refugees in dangerous conditions for lengthy periods and prevented the entry of persons who do not pose security risks. The government entities and nongovernmental organizations (NGOs) that comprise USRAP often coordinate poorly with one another, and US policymakers have not come to terms with the tension between USRAP's goals of protecting the most vulnerable and of refugee integration. The diverse needs of new refugee populations have underscored limitations in the standard approaches to resettlement. Local communities have increasingly voiced concerns — exacerbated by the economic downturn — about their capacity to integrate new populations.

The Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) does not track long-term indicators of refugee self-reliance, integration, or well-being. Refugee employment rates fell during the recession, and refugee families struggled to sustain themselves with subsistence-level benefits.

Asylum filings and grants have decreased since 2001. The one-year filing deadline, a heightened burden of proof, new corroboration requirements, and a more exclusive definition of social group membership have prevented large numbers of *bona fide* asylum seekers from prevailing in and even making their claims. Terrorism-related grounds of inadmissibility have led to the exclusion of thousands of refugees and denials and delays in hundreds of asylum cases, including in cases of persons who opposed brutal dictatorships and were forced to support terrorist groups. The availability of legal counsel, detention, and the judge assigned to a removal case often influence case outcomes more than the strength of the underlying claim.

The US system of refugee protection rests on the ability of persons fleeing persecution to access US territory. However, post-9/11 immigration-related security measures, combined with US interdiction policies, prevent unknown numbers of would-be asylum seekers each year from reaching the United States. The “expedited removal” process has expanded since 1996 to cover noncitizens (with insufficient or no documents) who arrive at US ports of entry, cross US land borders, and enter by sea. Access by independent observers to the initial inspection phase of this process has been very limited. However, a comprehensive review of this program found that it summarily removed a high percentage of potential asylum seekers.

The United States has limited legal tools to admit and offer temporary protection to persons who do not meet the strict refugee standard. It can “parole” noncitizens into the nation, but only on a case-by-case basis for urgent humanitarian reasons or to provide a significant public benefit. It can extend temporary protected status to residents of a foreign state in which there is an armed conflict, natural disaster, or other extraordinary conditions that temporarily prevent them from returning. It can also exercise its discretion not to remove noncitizens in certain cases. Finally, it can provide temporary visas — leading to lawful permanent resident status in some cases — to certain survivors of severe human trafficking.

Protection of noncitizens at risk of persecution and violence remains a core goal of US immigration policy. Yet over the last 20 years, particularly since the 9/11 terrorist attacks, security and enforcement concerns have driven immigration policy development, and protection policies have not kept pace. This report examines US legal and policy responses to those seeking protection in the United States and addresses the barriers, gaps, and opportunities that exist in the refugee protection regime. It argues that the US refugee protection system needs significant policy attention and revitalization.



I. Introduction

Since 1975, the United States has admitted nearly 3 million refugees.¹ After a sharp decline following the terrorist attacks of September 11, 2001, US refugee admissions have rebounded to nearly 75,000 per year. The United States also grants political asylum to more than 20,000 persons each year, extends temporary protected status (TPS) to tens of thousands of foreign nationals who would face refugee-like conditions at home, and offers protection to survivors of human trafficking. It has historically used its immigration parole authority to admit large numbers of persons for humanitarian reasons. Between World War II and the creation of the US refugee resettlement program in 1980, Congress passed legislation that led to lawful permanent resident (LPR) status for more than 2 million refugees, asylum seekers, and others in need of protection.

The US system of refugee protection has diverse goals. It must prevent terrorist and criminal infiltration, while enabling those fleeing persecution to reach protection. It must admit vulnerable refugees and promote their successful integration. It must detect fraud, but ensure that *bona fide* asylum seekers can apply for and, if eligible, secure asylum. It must weigh numerous requests for temporary protection from vulnerable groups and individuals, despite the limited legal categories available to allow such persons to enter and remain. The system must both meet its enforcement responsibilities *and* its legal imperatives (described below) to protect refugees and similar groups.²

Legal Standards

In 1968, the United States ratified the 1967 United Nations Protocol relating to the Status of Refugees and, by extension, became bound by the 1951 United Nations Protocol relating to the Status of Refugees, and its right of “non-refoulement.”³ Non-refoulement, as set forth in the 1951 Convention, provides that contracting states shall not “expel or return” a refugee to territories “where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁴ Although the United States had long admitted refugees, the *Refugee Act of 1980* enshrined these obligations into US law and created the formal US refugee resettlement program, which resettles refugees from overseas and provides benefits and assistance to refugees, persons granted political asylum (asylees), certain special immigrant visa recipients, and others.⁵

The main difference between refugees and asylum seekers is their location. Refugee determinations take place outside the United States and asylum claims are considered within the country, but the same standard governs both determinations.⁶ Under US law, political asylum can be granted at the discretion of the US Attorney General or the Secretary of Homeland Security to migrants who have a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁷

1 US Department of State (DOS), “Refugee Resettlement in the United States: Fact Sheet,” (Washington, DC: DOS Bureau of Population, Refugees, and Migration [PRM], 2010), www.state.gov/g/prm/rls/147254.htm.

2 This report does not cover US international initiatives, including overseas humanitarian assistance.

3 Convention relating to the Status of Refugees, July 28, 1951, 189 United Nations Treaty Series (UNTS) 150, www.eisil.org/index.php?sid=492188715&id=232&t=link_details&cat=205; Protocol relating to the Status of Refugees, January 31, 1967, 606 UNTS 267; 19 United States Treaty (UST) 6223. www.eisil.org/index.php?sid=947915273&id=233&t=link_details&cat=205.

4 UN Refugee Convention of 1951, Section 33(1).

5 *The Refugee Act of 1980*, Public Law No. 96-212, 94 Stat. 102 (March 17, 1980), US Statutes at Large 94 (1980): 103.

6 The United Nations High Commissioner for Refugees (UNHCR) awards legal refugee status abroad. UNHCR or a US embassy can refer legal refugees to the US Refugee Resettlement Program. US Citizenship and Immigration Service (USCIS) approves refugee applications for resettlement in the United States.

7 *Immigration and Nationality Act* (INA) section 101(a)(42); INA section 208(b).



The legal definition of “refugee” excludes many categories of persons at risk of persecution and violence, and does not correspond to the more expansive public understanding of this term. Under US law, a refugee must live outside his or her country of nationality or, in special circumstances, within his or her country of origin.⁸ In addition, a refugee must be at risk on account of an enumerated ground and cannot have persecuted others.⁹ Among other requirements, a political asylum seeker must establish that he or she meets the refugee definition (either based on past persecution or a well-founded fear of future persecution), did not firmly resettle in a third country, could not have avoided persecution by relocating within his or her country, did not persecute others or commit certain crimes, and is not a security risk.¹⁰ In addition, several grounds of inadmissibility apply to refugees and asylees.¹¹

Withholding of removal, a related form of protection, corresponds to the international right to non-refoulement. Withholding applicants face a higher standard of proof: they must show it is “more likely than not” that, if returned to a specific country, they would face persecution due to race, religion, nationality, membership in a social group, or political opinion.¹² Unlike political asylum, withholding does not lead to LPR status, provide “derivative” status to family members, or permit return following travel outside the United States. In addition, withholding beneficiaries can be returned to third countries, or to the country from which removal was initially withheld based on changed conditions. On the other hand, a withholding claim cannot be denied in the discretion of an immigration judge, or if the applicant failed to apply within a year of entry or had been “firmly resettled” in a third country prior to entering the United States. Withholding is not available to persons who have persecuted others, committed a “particularly serious crime” or a serious nonpolitical crime before arriving in the United States, or who represent a security risk.¹³

Under the UN Convention Against Torture¹⁴ (ratified by the United States in 1994), withholding can also be granted to a person who establishes that it is more likely than not he or she would be tortured in the proposed country of removal.¹⁵ A person eligible for protection under the Torture Convention, but who is otherwise barred from receiving withholding, can nonetheless be granted deferral of removal. This status does not necessarily lead to release from custody and can be terminated (as can withholding of removal) if removal becomes possible.¹⁶

Other legal forms of protection, particularly TPS and “parole,” will be discussed at greater length below.

II. The US Refugee Resettlement Program

In each year since 1994, the United States has resettled more refugees than all other member states of the Organization for Economic Cooperation and Development (OECD) combined.¹⁷ In fiscal year (FY) 2009, the US Department of State’s (DOS) Bureau of Population, Refugees, and Migration (PRM) and the US Department of Health and Human Services’ (HHS) Office of Refugee Resettlement (ORR) resettled nearly

8 INA section 101(a)(42).

9 Ibid.

10 INA section 208(b)(1)(B)(i); INA section 208(b)(2)(A); 8 CFR section 208.13(b)(2)(ii).

11 INA section 207(c)(3).

12 INA section 241(b)(3)(A).

13 INA section 241(b)(3)(B).

14 United Nations Convention Against Torture, opened for signature February 4, 1985, 1465 UNTS 85. Article 3 (1) of the Torture Convention provides that no state party “shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

15 8 CFR section 208.16 (c) (2).

16 8 CFR section 208.17 (a) and (b).

17 Chad C. Haddal, *Refugee and Asylum-Seeker Inflows in the United States and Other OECD Member States* (Washington, DC: Congressional Research Service, 2009): 8-9, www.policyarchive.org/handle/10207/bitstreams/19793.pdf.



75,000 refugees, down from 94,000 in 2000.¹⁸ President Barack Obama set admissions ceilings in FY 2010 and FY 2011 of 80,000 refugees.¹⁹

Although the United States administers the world's largest formal resettlement program, it is not one of the world's leading refugee *host* countries. In 2008, the number of forcibly displaced persons worldwide stood at 42 million: 15.2 million refugees, 26 million internally displaced persons, and 826,000 whose asylum claims had not been adjudicated.²⁰ By the end of 2008, developing countries hosted 80 percent of the world's refugees, with Pakistan (1.78 million), Syria (1.1 million), and Iran (1 million) hosting the largest number of refugees.²¹ More than 82 percent of the "populations of concern" defined by the UN High Commissioner for Refugees (UNHCR) — which include refugees, asylum seekers, internally displaced persons, the stateless, and others — reside in Asia, Africa, Latin America, and the Caribbean.²²

US humanitarian and refugee programs have received early attention in the 112th Congress. On February 19, 2011, the House of Representatives passed a FY 2011 appropriations bill that would have cut global refugee assistance by 45 percent. While the Senate voted against this measure, the budget crisis may have significant consequences for the US refugee program in FY 2012 and beyond.

A US Refugee Admission Priorities

Each year, the president, in consultation with Congress, sets an overall refugee admissions ceiling and allocates admission numbers by region and unallocated reserve. In FY 2011, the United States established three priority levels for admission. Priority one (P-1) refugees are referred by UNHCR, a US embassy, or a designated nongovernmental organization (NGO).²³ They can come from any country, and often are in imminent danger or have other compelling claims. Priority two (P-2) consists of persons in groups (including religious minorities, political dissidents, and employees of the US government and contractors in Iraq) identified as being of "special humanitarian concern" by the DOS Bureau of Population, Refugees and Migration (PRM), in consultation with UNHCR, Department of Homeland Security (DHS)/US Citizenship and Immigration Services (USCIS), and NGOs.²⁴

Priority three (P-3) includes family members of refugees resettled from designated nations (for instance, 95 percent of the P-3 admissions between 2003 and 2008 came from Africa).²⁵ In early 2008, PRM suspended P-3 family reunification processing from select countries (Kenya, Ethiopia, and Uganda), and by October 2008 the United States had stopped accepting new applications due to DNA testing that

18 US Department of Health and Human Services (HHS) Administration for Children and Families, *Fiscal Year 2009 Refugee Arrivals*, www.acf.hhs.gov/programs/orr/data/fy2009RA.htm.

19 DOS, Department of Homeland Security (DHS), HHS, *Proposed Refugee Admissions for Fiscal Year 2011: Report to the Congress*: 6, www.state.gov/documents/organization/148671.pdf.

20 UNHCR, *Statistical Yearbook 2008* (Geneva: UNHCR, 2009): 23, www.unhcr.org/4bcc5bb79.html.

21 *Ibid.*, 25, 27, 30. In fiscal year (FY) 2008, by country of origin, the largest worldwide refugee populations came from Afghanistan (2.8 million), Iraq (1.9 million), Somalia (561,000), Sudan (419,000), Colombia (374,000), and the Democratic Republic of the Congo (DRC) (368,000). In 2008, Colombia had the highest number of internally displaced persons (2.6 million), with large numbers of internally displaced Iraqis, DRC citizens, Somalis, and Kenyans.

22 Haddal, *Refugee and Asylum-Seeker Inflows in the United States and Other OECD Member States*: 7.

23 DOS, DHS, HHS, *Proposed Refugee Admissions for Fiscal Year 2011*: 7-9.

24 *Ibid.*, 11-13. In FY 2011, these include religious groups in the former Soviet Union; human-rights activists, former political prisoners, and members of other persecuted groups in Cuba; Iraqis associated with the United States; Burmese ethnic minorities in refugee camps along the Thai/Burma border and in Malaysia; Bhutanese in Nepal; Iranian religious minorities, Eritreans in Shimelba, and certain Darfuri in Chad.

25 Jill Esbenshade, *An Assessment of DNA Testing for African Refugees* (Washington, DC: Immigration Policy Center, 2010): 5, 11, www.immigrationpolicy.org/sites/default/files/docs/Esbenshade_-_DNA_Testing_102110.pdf. The DNA testing did not seek to establish family ties between the US anchor family member and the primary applicant for admission overseas. Rather, it tested the relationship between the overseas applicants and derivative relatives on their applications. The test counted all relationships in a family unit as fraudulent if even one member did not attend the interview, refused to be tested, or "failed" the test.



revealed high rates of program fraud.²⁶ The P-3 program will start again in the near future, although applicants will reportedly be required to submit DNA evidence of family relationships at their own expense and will be reimbursed only if a relationship is confirmed and the refugee interview is successful.

B. Program Administration and Security Screening

The US Refugee Admissions Program (USRAP) involves multiple arms of the federal government, states, localities, and NGOs. PRM contracts with overseas processing entities (OPEs) to screen persons referred to the program, and to prepare their cases for consideration by USCIS. OPEs collect biographic information that includes name, aliases, date of birth, family tree, the date and place from where the refugee departed, education, and the basis of the persecution claim. This information supports USCIS's subsequent review of the refugee claim. OPEs also collect information to assist resettlement agencies in placement decisions, including information on medical conditions, languages spoken, and job history. OPEs enter this data into DOS's Worldwide Refugee Admissions Processing System (WRAPS).

USCIS reviews applications, coordinates background checks (which FBI, the Central Intelligence Agency [CIA], and DOS conduct), interviews applicants, and determines admissibility, eligibility for the program, and whether the applicant meets the refugee definition. DOS runs refugee names, aliases, places of birth, nationalities, and other data through its Consular Lookout and Support System (CLASS) name-check system. In addition, certain refugees receive Security Advisory Opinion (SAO) reviews based on classified criteria (including nationality, gender, and age) that, according to DOS officials, has not changed since shortly after 9/11. SAO screening also covers persons in unclassified categories that have been established by DOS's Bureau of Consular Affairs based on US foreign policy interests and security concerns.

SAO delays have been an issue of particular concern to stakeholders in the refugee resettlement process. The SAO review consists of running the applicant's name and other data through multiple intelligence and law enforcement databases. While most cases clear within 45 to 60 days, it can take months to receive responses from the relevant agencies in particular cases. More significant delays result when the name of an intending refugee resembles or is identical to the name of a person in a government database. When a "hit" occurs, DOS or another federal agency must determine that the intending refugee is not the person in the database. This labor-intensive process can take anywhere from six months to more than one year. As a result, many intending refugees and their families languish in dangerous situations for extended periods.²⁷ In 2009, the US Government Accountability Office (GAO) reported that 53 percent of Iraqi refugees approved for resettlement who had not left for the United States were awaiting SAO clearance.²⁸

The SAO review severely affects persons with common names who are from countries (such as Somalia) that have a poor system of birth records. In addition, a "hit" in one case can delay the admission of family members and others who are linked or cross-referenced to the applicant. The SAO Review Board, an interagency coordinating committee run by DHS, has been considering whether other checks might be less burdensome and equally effective as SAO checks. Iraqi refugees do not have to receive SAO clearance prior to the USCIS refugee interview; all others subject to SAO procedures must be pre-cleared.²⁹

In the past, refugee interviews were conducted by USCIS staff detailed from other programs and from the agency's overseas district offices. In 2005, USCIS created a corps of officers dedicated exclusively to

26 Many advocates argue that refugee-producing nations view the concept of family more expansively than the US refugee program does.

27 Human Rights First, *Living in Limbo: Iraqi Refugees and US Resettlement* (New York: Human Rights First, 2010): 21-26, www.humanrightsfirst.org/wp-content/uploads/Living-in-Limbo-final.pdf.

28 US Government Accountability Office (GAO), *Iraqi Refugee Assistance: Improvements Needed in Measuring Progress, Assessing Needs, Tracking Funds, and Developing an International Strategic Plan* (Washington, DC: GAO, 2009): 33, www.gao.gov/new.items/d09120.pdf.

29 After being fingerprinted, refugees are also biometrically screened against DHS's United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system, as well as the FBI's Integrated Automated Fingerprint Identification System (IAFIS).



this work. Like the Asylum Corps, which reviews “affirmative” asylum claims,³⁰ the Refugee Corps brings special expertise to a complex process and legal regime. The corps also accommodates a heavy volume of work: in FY 2009, it interviewed 110,000 persons and approved 74,659 cases for admission.³¹ Its staffing level of roughly 90 persons can sustain admissions levels in the 75,000 to 80,000 range.

The International Organization of Migration (IOM) arranges and PRM supports refugee travel to the United States through a loan program. PRM also funds nonprofit refugee resettlement agencies to provide “reception and placement” services for refugees in their first 30 to 90 days in the United States.³²

ORR coordinates the provision of benefits and services to refugees in the United States.³³ As discussed below, it partners with states, national voluntary agencies (VOLAGs), and local community and faith-based groups to provide services as diverse as job preparation, training, and placement; English language instruction; assistance in employment recertification; and day care.³⁴

C. Program Challenges

The US refugee program has brought immeasurable benefits to refugees, their families, and receiving communities. Part of the program’s genius has been its ability to build wide-ranging support from refugees, their sponsors, participating agencies, political supporters, and volunteers. In addition, US and international officials view the program as an effective foreign policy tool which — when coupled with public works and humanitarian assistance projects for host communities — can leverage more generous treatment of refugees abroad.³⁵ As detailed below, however, the program faces significant challenges.

I. Growing Diversity of the US Refugee Population

More than three-quarters of US refugees since 1975 have come from Southeast Asia (primarily from Vietnam) and the former Soviet Union.³⁶ Large numbers have also arrived from Cuba and the former Yugoslavia.³⁷ In recent years, USRAP has switched its focus from large-scale populations of special interest to the United States, to smaller numbers of refugees from more diverse locales in an effort to resettle the most vulnerable populations. In FY 2009, the United States admitted refugees of more than 60 nationalities (including 23 African nationalities) who were processed in 65 countries.³⁸ Even Iraqi refugees, clear candidates for large-scale admissions, have been admitted in relatively modest numbers.³⁹

30 Asylum seekers who are *not* in removal (deportation) proceedings can come forward “affirmatively” and have their applications considered in a nonadversarial interview with a USCIS asylum officer.

31 DHS Office of the Citizenship and Immigration Services Ombudsman (CIS), *Emergent or Denied Refugee Applications: Expediting Cases, Articulating Reasons for Denial, And Issuing Guidance for Requests for Consideration* (Washington, DC: CIS Ombudsman, 2010), www.dhs.gov/xlibrary/assets/cisomb_recommendation_43_adjudication_refugee_status.pdf.

32 These services cover basic needs such as food, clothing, housing, cultural orientation, and referrals.

33 45 CFR sections 400.62 and 401.2. “Refugee” benefits and services are also provided to persons granted political asylum in the United States, Cuban and Haitian entrants, Haitian asylum applicants (who have not been ordered removed), certified victims of human trafficking, and others.

34 HHS Office of Refugee Resettlement, (ORR), “State Refugee Coordinators,” www.acf.hhs.gov/programs/orr/partners/state_coordina.htm.

35 Speech by Eric P. Schwartz, Assistant Secretary of State for Population, Refugees, and Migration (PRM), “Advancing Protection in the 21st Century: Reflections on the 30th Anniversary of the US Refugee Act,” March 16, 2010 at Georgetown University Law Center, Washington, DC, www.state.gov/g/prm/rls/rmks/2010/138425.htm; Presentation by T. Alexander Aleinikoff, Deputy UN High Commissioner for Refugees, Migration Policy Institute (MPI) Leadership Vision Series, June 9, 2010.

36 HHS, “Office of Refugee Resettlement Fact Sheet.”

37 HHS ORR, *Report to Congress: FY 2007: A1*, www.acf.hhs.gov/programs/orr/data/ORR_2007_report.pdf.

38 DOS, DHS, HHS, *Proposed Refugee Admissions for Fiscal Year 2010, Report to Congress*: ii, 24; Testimony of Kelly Ryan, Deputy Assistant Secretary of State for PRM, before the Senate Special Committee on Aging, *Hearing on Health and Welfare Needs of Elderly Refugees and Asylees*, 110th Cong., 1st sess., December 5, 2007, <http://aging.senate.gov/events/hr184kr.pdf>.

39 Daniel C. Martin, *Refugees and Asylees: 2010* (Washington, DC: DHS, Office of Immigration Statistics, 2011): 2-3, www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2010.pdf; HHS, “ORR Refugee Arrival Data” (last updated



In FY 2009, 18,838 Iraqi refugees arrived in the United States, reflecting a dramatic jump from a low of 65 in FY 2004.⁴⁰

While laudable in many ways, this shift in priorities has raised processing costs. It also risks making the resettlement program less coherent to legislators and the public. Unlike many groups of resettled refugees today, past populations fled circumstances that were well-known to the American public, including Soviet bloc repression and the aftermath of the Vietnam War.

This trend has also highlighted the different ways that PRM and ORR view the program. PRM concentrates on “resettling the most vulnerable and on bringing in diverse groups of refugees.”⁴¹ In contrast, ORR seeks to promote the “self-sufficiency and integration” of refugees and other eligible persons, primarily through employment, within the shortest possible period of time.⁴² Yet the most vulnerable refugees often face the greatest difficulties in integrating into host communities, particularly in the current economic climate. In addition, refugees from nations without large expatriate communities in the United States place a particular onus on resettlement agencies to develop creative and supportive placement options.

2 Refugee Self-Sufficiency and Integration

ORR administers three refugee assistance programs and its voluntary “Matching Grant” program. It developed its program models over time in response to local conditions and state preferences. Each program seeks to promote employment and supports additional services, including cultural orientation, health care, civic engagement, and diverse social services. The US refugee resettlement program admits qualifying refugees for humanitarian reasons: employability is not a determining factor. However, early self-sufficiency through employment represents a core program goal. ORR does not track indicia of “long-term economic stability and prosperity.”⁴³

The diversity of recent refugee populations has led to criticism of what has been somewhat inaccurately characterized as a “one-size-fits-all approach” to refugee services and benefits.⁴⁴ By this critique, Bhutanese or Somali Bantu refugees need more and different services than Iraqi professionals who may not want to take entry-level jobs and who hope to resume their former professions. Some local resettlement agencies have, in fact, effectively combined resources and provide more comprehensive services. However, most agencies rely on a case management model based on early employment, rather than a social work model that assesses individual refugees and pursues tailored plans to promote their long-term integration. In short, the refugee program — with some variances — provides the same basic services and measures success in much the same way for all refugees, even for refugees who will never be self-sufficient.⁴⁵ A recent report sponsored by Senator Richard Lugar (R-IN) to the US Senate Foreign Relations Committee recommended discarding the standard approach(es) to resettlement, arguing:

May 17, 2011), www.acf.hhs.gov/programs/orr/data/refugee_arrival_data.htm. Of the 73,293 refugee arrivals in FY 2010, 18,016 came from Iraq, 16,693 from Burma, 12,363 from Bhutan, 4,884 from Somalia, 4,818 from Cuba, 3,543 from Iran, 3,174 from the Democratic Republic of the Congo, and 2,570 from Eritrea. The Iraqis admitted in each year between 2003-06 numbered in the double and triple digits.

40 Ibid.; ORR, “Fiscal Year 2004 Refugee Arrivals,” (Washington, DC: ORR, 2004) www.acf.hhs.gov/programs/orr/data/fy2004RA.htm.

41 Kate Brick, Amy Cushing-Savvi, Samia Elshafie, Alan Krill, Megan McGlynn Scanlon, and Marianne Stone, *Refugee Resettlement in the United States: An Examination of Challenges and Proposed Solutions* (New York: Columbia University School of International and Public Affairs, 2010): 7, www.sipa.columbia.edu/academics/workshops/documents/IRCCapstoneworkshopSIPAcopy.pdf.

42 DOS, DHS, HHS, *Proposed Refugee Admissions for Fiscal Year 2010, Report to Congress*: 7-13. www.state.gov/documents/organization/129393.pdf.

43 Brick et al., *Refugee Resettlement in the United States*: 9.

44 Ibid., 11.

45 Refugee Council USA, “The US Refugee Admission and Resettlement Program at a Crossroads: Recommendations by Refugee Council USA,” accessed February 21, 2011, www.rcusa.org/uploads/pdfs/Final%20RCUSA%20USRP%20Reform.pdf. The Refugee Council USA proposes a “long term case management program for highly vulnerable refugee with special needs.”



Some refugee populations currently arriving in the United States have languished in refugee camps for nearly a decade or more. They are reported to have a much greater need for prolonged government support if they are to become conversant, employed and self-sufficient. Some are illiterate in their native language, these refugees have limited formal education, suffer from serious health or psychological conditions and lack the basic skills required to compete in an increasingly strained job market.⁴⁶

Most refugees receive ORR-funded refugee cash assistance (RCA) and medical assistance (RMA) for up to eight months after arrival. To qualify, a refugee must meet the income and resource eligibility requirements for federally funded cash or medical assistance programs, but not be eligible for federal assistance programs such as Temporary Assistance for Needy Families (TANF) or Medicaid. ORR-funded employment services (refugee social services, and targeted and discretionary grants) are provided to refugees receiving TANF, RCA, and those not receiving any federal cash assistance through their states.⁴⁷ Wyoming is the only state that does not offer an ORR-funded assistance program.

The Government Performance and Results Act of 1993, updated by the Government Performance and Results Act Modernization Act of 2010, requires federal agencies to produce annual performance plans and reports tied to their goals and objectives.⁴⁸ ORR uses several metrics to track the success and outcomes of its employment programs for refugees in the United States up to 60 months (see Table 1):

- refugees who “entered employment” (either full- or part-time work) within the fiscal year;
- percentage of its total caseload (not limited to refugee arrivals during the year, but covering all those receiving refugee employment services) that entered employment during the fiscal year;
- refugee cash assistance terminations (those who lose eligibility due to sufficient income) and termination rates (percentage of total federal cash assistance terminations of TANF and RCA recipients who entered employment);
- refugee cash assistance reductions (typically due to part-time employment) and reduction rates;
- average hourly wage for full-time employment;
- refugees employed within the year who were still employed 90 days (after placement in employment), and 90-day retention rate; and,
- health benefits for full-time workers employed within the first six months of employment (whether or not the refugee chooses to accept health coverage) and the health-benefit rate for refugees employed full-time.

Table 1 suggests that the recession and continued high unemployment postrecession has limited the ability of refugees to secure work, with refugee employment rates falling from 54 percent to 40 percent between FY 2006 and FY 2009, but with their 90-day retention rate decreasing less dramatically. In addition, a growing number of employed refugees reportedly found only part-time or temporary jobs.⁴⁹

46 Report to members of the US Senate Committee on Foreign Relations, *Abandoned Upon Arrival: Implications for Refugees and Local Communities Burdened by a US Resettlement System That is Not Working*, 111th Cong., 2d sess., July 21, 2010, <http://lugar.senate.gov/issues/foreign/refugee/report.pdf>.

47 The ORR-funded state programs include: Publicly administered refugee assistance programs that are typically modeled on Temporary Assistance for Needy Families (TANF) programs; the Wilson/Fish program that focuses on integrating refugee benefits and services, and allows states to administer refugee assistance programs through local resettlement agencies; and the public-private partnership programs that allow states to partner with local resettlement agencies in providing cash assistance.

48 *Government Performance and Results Act Modernization Act of 2010*, Public Law 111-352, US Statutes at Large 124 (2010): 3865.

49 GAO, *Refugee Assistance: Little is Known about the Effectiveness of Different Approaches for Improving Refugees' Employment Outcomes* (Washington, DC: GAO, 2011): 22, www.gao.gov/new.items/d11369.pdf.



This data covers persons receiving ORR-funded employment services administered through the states, not those in the Matching Grant program (discussed below), which is administered by resettlement agencies.

Table 1. Summary of Six-Year Refugee Self-Sufficiency Data: Employment, Benefits and Assistance, and Wages, 2004-09

	2004	2005	2006	2007	2008	2009
Caseload	74,559	71,241	67,893	68,999	76,032	91,957
Employment						
Entered Employment	37,462	35,765	36,670	36,805	36,894	36,856
Entered Employment Rate	50%	54%	54%	53%	49%	40%
90-Day Employment Retentions	27,773	28,183	27,514	27,601	26,013	25,670
90-Day Retention Rate	74%	74%	72%	73%	76%	69%
Assistance/Benefits						
Cash-Assistance Terminations	10,043	10,517	12,063	10,978	8,235	10,240
Cash-Assistance Termination Rate	27%	56%	62%	60%	44%	52%
Cash-Assistance Reductions	2,470	2,178	2,198	1,847	1,984	2,284
Cash-Assistance Reduction Rate	7%	12%	11%	10%	11%	12%
Health Benefits Available for Full-Time Employed	18,104	18,892	18,999	19,522	19,942	17,660
Health Benefits Rate	56%	64%	62%	63%	63%	61%
Wages						
Average Hourly Wage for Full-Time Employment	\$8.07	\$8.04	\$8.24	\$8.29	\$8.82	\$9.02

Notes: Reported data includes outcomes for all refugee populations served through ORR-funded services for employment (refugee social services, targeted and discretionary grants) by states. In particular, it includes outcomes for state-administered, public-private partnership and Wilson/Fish programs. It does not include outcomes for some refugee populations in which employment services were funded by TANF funds.

Source: Government Performance and Results Act and Annual Outcome Goal Plan provided by ORR.

ORR's Matching Grant program seeks to help refugees achieve self-sufficiency within 120 to 180 days without accessing public cash assistance. The program depends on cash and in-kind contributions of \$1,100 (or more) per refugee from the receiving community, which ORR matches up to \$2,200. Local resettlement agencies draw on community and, in some cases, national resources to meet ORR matching requirements. In FY 2009, 31 percent of resettled refugees participated in this program.⁵⁰

The program measures economic self-sufficiency by comparing refugee incomes with actual living expenses. It also tracks the percentage of "employable" refugees who attain employment after 120 days, and those (employable and others) who are self-sufficient (defined as not dependent on any cash assistance due to employment earnings) after 120 and 180 days.⁵¹ Between FY 2007 and FY 2009, the percentage of employable program participants who entered employment after 120 days fell from 64 percent to 47 percent and the percentage of refugees not dependent on cash assistance due to earnings

50 Ibid., 7; International Rescue Committee (IRC), *Iraqi Refugees in the United States: In Dire Straits* (New York: IRC, 2009): 7, www.theirc.org/sites/default/files/resource-file/irc_report_iraqcommission.pdf.

51 GAO, *Refugee Assistance*: 24-5. The ORR Matching Grant program shares only three performance measures with the three state-administered refugee programs, and the programs collect information at different junctures in the resettlement process.



from employment after 120 days fell from 69 percent to 52 percent.⁵²

The recession diminished immigrant employment prospects overall, particularly for the less skilled and less formally educated, the young, and recent labor market entrants.⁵³ However, even well-credentialed refugees have experienced high rates of unemployment.⁵⁴ Refugees have a mean 16.8 years of education and 37 percent have higher degrees, but they suffer the greatest “occupational downgrading” of any immigrant group.⁵⁵

In early 2010, the Obama administration doubled the PRM reception and placement grant to \$1,800 per refugee, which must be used during the first 90 days of a refugee’s arrival in the United States. Actual rates of ORR-funded refugee cash and medical assistance vary by state, but they average below \$600 per month for a family of four and, in some states, can be half that amount.⁵⁶ By way of context, the median weekly earnings of individual full-time workers in 2009 were \$739,⁵⁷ and the 2010 federal poverty level for a family of four is the equivalent to \$424 per week.⁵⁸

3. Program Coordination

USRAP has been beset by poor coordination and operational anomalies. Overseas screening and adjudication agencies do not share sufficient information with domestic resettlement entities. OPEs provide refugee arrival projections to PRM on a quarterly basis, but ORR reportedly does not receive this information.⁵⁹ Nor is information collected by UNHCR, IOM, and USCIS abroad on individual refugees consistently recorded or reliably shared with resettlement agencies.⁶⁰ Although the need for medical care should be a central consideration in placement, resettlement agencies must often make placement decisions *before* they receive refugee medical records.⁶¹ In addition, the USCIS overseas refugee interview and pre-travel refugee medical examinations seek to determine the admissibility of refugees, not their health or other resettlement needs.⁶²

Resettlement agencies (many affiliated with VOLAGs) meet with state and local officials on a quarterly basis regarding the opportunities and services available to refugees in local communities and the ability of these communities to accommodate new arrivals. They also consult with the state refugee coordinator on placement plans for each local site. PRM provides ORR and states with proposed VOLAG placement plans. If a state opposes the plan, PRM will not approve it.⁶³

52 HHS Administration for Children and Families, *FY 2012 Online Performance Appendix*: 88, www.acf.hhs.gov/programs/olab/budget/2012/op_finalreport_2012.pdf.

53 Demetrios Papademetriou and Aaron Terrazas, *Immigrants and the Current Economic Crisis: Research Evidence, Policy Changes, and Implications* (Washington, DC: MPI, 2009): 14, www.migrationpolicy.org/pubs/lmi_recessionjan09.pdf.

54 IRC, *Iraqi Refugees in the United States: In Dire Straits* (New York: IRC, 2009): 6-9, www.theirc.org/sites/default/files/resource-file/irc_report_iraqcommission.pdf.

55 Jeanne Batalova and Michael Fix, *Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States* (Washington, DC: MPI, 2008), www.migrationpolicy.org/pubs/BrainWasteOct08.pdf.

56 IRC, *Iraqi Refugees in the United States: In Dire Straits*: 6-9.

57 Bureau of Labor Statistics (BLS), “Household Data Annual Averages” Median weekly earnings of full-time wage and salary workers by detailed occupation and sex table, accessed May 23, 2011, www.bls.gov/cps/cpsaat39.pdf.

58 Centers for Medicare and Medicaid Services, “2010 Poverty Guidelines” table, accessed May 23, 2011, www.cms.gov/MedicaidEligibility/downloads/POV10Combo.pdf.

59 Human Rights Action and The Human Rights Institute at Georgetown University Law Center, *Refugee Crisis in America: Iraqis and their Resettlement Experience* (Washington, DC, Human Rights Action, 2009): 33, www.law.georgetown.edu/news/releases/documents/RefugeeCrisisinAmerica_000.pdf.

60 *Ibid.*, 36.

61 *Ibid.*, 38.

62 In FY 2010, DOS reverted to sending biographic information *after* the medical examination. However, resettlement agencies report that serious conditions are missed and mental health issues are often not diagnosed.

63 According to refugee volunteer agencies, states occasionally oppose placement plans that local resettlement agencies had previously presented to them.



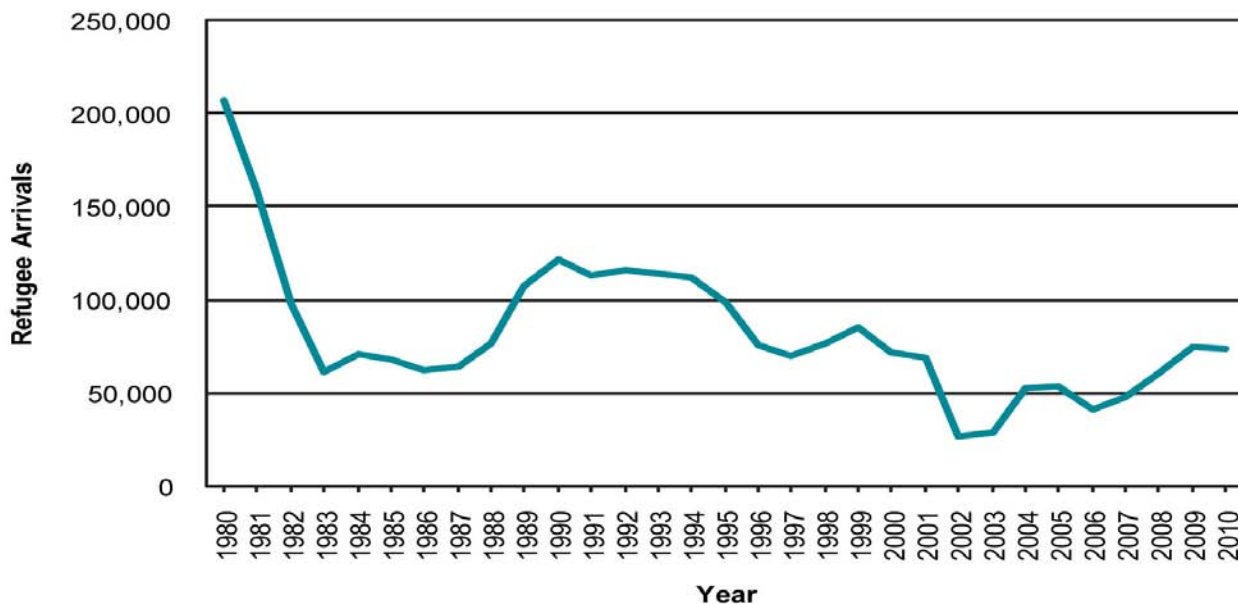
USRAP operates as a federal program, but depends on local partners and support for its success. It must achieve its overall humanitarian goals while taking into account local capacity and political considerations. In fact, localities have increasingly raised concerns over the number of refugees resettled in their communities.⁶⁴ In addition, federal funding to states for refugee social services and targeted assistance grants turns on past resettlement levels, not on projected admission levels, and resettlement funds typically do not follow refugees who migrate to different locations.⁶⁵ These practices strain the integration capacity of localities that are experiencing large increases in refugee arrivals or significant secondary migration.

The program's internal communication and capacity problems undermine its core self-sufficiency and integration goals. They also create inefficiencies and redundancies, and risk diminishing program support by important stakeholders.

4. Immigration-Related Security Measures

Following the 9/11 attacks, DHS initiated a comprehensive review of the refugee program in response to legitimate concerns over terrorist exploitation of the refugee and asylum programs.⁶⁶ The review brought the refugee program to a standstill. In FY 2002 and 2003, the United States admitted the fewest refugees in the program's history.⁶⁷ Admissions numbers have rebounded (see Figure 1) in recent years.⁶⁸

Figure 1. Refugee Arrivals, FY 1980-2010



Source: Department of Homeland Security (DHS) Office of Immigration Statistics, *2010 Yearbook of Immigration Statistics*, Table 13, www.dhs.gov/files/statistics/publications/YrBk10RA.shtm.

⁶⁴ Report to the Members of the Senate Committee on Foreign Relations, *Abandoned Upon Arrival*.

⁶⁵ Human Rights Action et. al., *Refugee Crisis in America*: 33-6.

⁶⁶ Robert S. Leiken, *Bearers of Global Jihad?: Immigration and National Security after 9/11* (Washington, DC: The Nixon Center, 2004): 25; Center for Migration Studies, *Immigration Policy, Law Enforcement and National Security* (Staten Island, NY: Center for Migration Studies, 2003): 22; Donald Kerwin, "The Use and Misuse of 'National Security' Rationale in Crafting U.S. Refugee and Immigration Policies," *International Journal of Refugee Protection*, 17 (2005): 749-63, 756-60.

⁶⁷ DHS, *2009 Yearbook of Immigration Statistics*, Table 13.

⁶⁸ DHS Office of Immigration Statistics, *Refugees and Asylees: 2009*.



Post-9/11 legislation — particularly the *USA PATRIOT Act of 2001* and the *REAL ID Act of 2005* — significantly expanded the grounds of inadmissibility based on “terrorist activity.”⁶⁹ Under current law, an individual is inadmissible if he or she committed “an act that the actor knows, or reasonably should know, affords material support” to a terrorist organization or terrorist activity.⁷⁰ The *Immigration and Nationality Act* (INA) defines a terrorist activity as one “which is unlawful under the laws of the place where it is committed” or that would be unlawful under federal or state law ... which involves violent acts, including the use of a “firearm or other weapon or dangerous device ... with the intent to endanger ... one or more individuals or to cause substantial damage to property.”⁷¹ Human Rights First has criticized DHS and the Department of Justice (DOJ) for interpreting this language to cover “virtually any use of armed force by a nonstate actor, directed at anyone or anything, for any purpose other than personal enrichment.”⁷²

The term “terrorist organization” includes “Tier III” groups that have not been formally designated as such by DOS or DHS.⁷³ Tier III groups consist of “two or more individuals, whether organized or not” who engage in “terrorist activity.”⁷⁴ This category has been extended to groups that opposed Saddam Hussein’s regime, the Soviet invasion of Afghanistan in the 1980s, the genocidal regime in Sudan, the military junta in Burma, Robert Mugabe’s kleptocracy in Zimbabwe, and other repressive regimes.⁷⁵

The last two administrations have attempted to mitigate the reach of this provision.⁷⁶ In 2008, an interagency working group consisting of DHS, DOS, and DOJ was impaneled to consider waivers in cases involving Tier III groups.⁷⁷ According to officials, the working group is reviewing (delayed) cases involving more than 300 groups.

INA also defines “material support” expansively, to include providing “a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or

69 *The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, Public Law 107-56, US Statutes at Large 115 (2001): 272; *The REAL ID Act of 2005*, Public Law 109-13, US Statutes at Large 119 (2005): 231.

70 INA section 212(a)(3)(B).

71 INA section 212(a)(3)(B)(iii).

72 Human Rights First, *Denial and Delay: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States* (New York: Human Rights First, 2009): 19-20, www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-DenialandDelay-FULL-111009-web.pdf.

73 INA section 212(a)(3)(B)(vi)

74 INA section 212(a)(3)(B)(vi)

75 Human Rights First, *Denial and Delay*: 26.

76 72 Fed. Reg. 9954 (March 6, 2007); 72 Fed. Reg. 9958 (March 6, 2007); 72 Fed. Reg. 26138 (May 8, 2007); USCIS, “Secretaries Napolitano and Clinton Exercise Authority Under the Immigration and Nationality Act (INA) to Exempt Individuals Affiliated with Certain Iraqi Groups from Certain Inadmissibility Provisions” (fact sheet, October 19, 2009). In 2007, Homeland Security Secretary Michael Chertoff exercised his discretion under former INA section 212(d)(3)(B)(i) to exempt from the terrorism-related inadmissibility grounds persons who provided material support to the following groups: the Karen National Union/National Liberation Army; Chin National Front/Chin National Army; Chin National League for Democracy; Kayan New Land Party; Arakan Liberation Party; Tibetan Mustangs; Cuban Alzados; Karenni National Progressive Party; Revolutionary Armed Forces of Colombia (FARC) under duress; and the National Liberation Army of Colombia under duress. Secretary of State Condoleezza Rice and Chertoff exempted individuals from the Vietnamese Montagnard group Front Unifié de Lutte des Races Opprimées prior to December 31, 1992, and from Hmong groups or individuals prior to December 31, 2004. On September 21, 2009, Homeland Security Secretary Janet Napolitano and Secretary of State Hillary Clinton exempted certain members of the Iraqi National Congress (INC), the Kurdistan Democratic Party (KDP), and the Patriotic Union of Kurdistan (PUK).

77 *The Consolidated Appropriations Act of 2008* allowed the Secretaries of State and Homeland Security, in consultation with each other and with the US Attorney General, to waive the “material support” grounds of inadmissibility to Tier III terrorist organizations, provided that the organization had not engaged in terrorist activity against the United States or another democratic country and had not “purposefully engaged in a pattern or practice of terrorist activity ... directed at civilians.” The act also provided that several groups that had been administratively exempted in 2007 were not “terrorist organizations” at all.



training.”⁷⁸ The material support bar applies to both refugees seeking admission and asylum seekers. As currently applied, the law does not turn on intent, level of support, or the type of regime opposed. As a result, it has been used to deny political asylum to victims of terrorist extortion in Nepal, and to women raped and enslaved by militias in Liberia.⁷⁹

As it stands, the terrorism-related grounds of inadmissibility have led to the exclusion of thousands of refugees, and delays and denials in the cases of hundreds of asylum seekers (and asylees) who opposed repressive governments or who supported terrorist groups under duress. It has also brought to a standstill refugee and asylee petitions for family members. By the end of May 2010, USCIS reported that 7,258 cases were on hold on these grounds, including 5,411 adjustment of status applications.⁸⁰

5. Adjustment to LPR Status

Refugees must file to adjust to LPR status “at the end of” the one-year period following their admission.⁸¹ In practice, this rule has been interpreted to require refugees to *begin* to file for adjustment a year following their admission. The relevant regulation stipulates that refugees must file a year “after” entry.⁸² However, in some cases, refugees with criminal convictions who have not adjusted status *within* one year of their admission have been arrested and detained for this reason.⁸³ Exacerbating matters, resettlement agencies report that a large number of refugees have not applied to adjust status due to concerns related to the expansive interpretation of the terrorism-related grounds of inadmissibility (discussed previously).

This begs the question of how soon after the one-year period refugees must seek LPR status.⁸⁴ In May 2010, an internal US Immigration and Customs Enforcement (ICE) memorandum clarified that refugees can be placed in removal proceedings only if there is *prima facie* evidence that they are removable for a reason other than failure to adjust to LPR status.⁸⁵

III. The US Asylum Program

Migrants must reach US territory or already be present to request political asylum. Yet interdiction programs and post-9/11 immigration-related security measures have made it steadily more difficult to gain access to the United States. In addition, persons without proper documents who arrive at a US port of entry or who enter without inspection are subject to expedited removal. Combined, these measures have deterred and excluded would-be asylum seekers from seeking protection in the United States. In addition, policy changes over the past decade have tightened asylum eligibility criteria.

⁷⁸ INA section 212(a)(3)(B)(iv)(VI).

⁷⁹ Human Rights First, *How to Repair the US Asylum System: Blueprint for the Next Administration* (New York: Human Rights First, 2008): 9.

⁸⁰ USCIS, Statistics Provided for Meeting of Non-Governmental Organization (NGO) Working Group on Terrorism-Related Inadmissibility Grounds (TRIG), May 31, 2010, (on file with author).

⁸¹ INA section 209(a)(1).

⁸² 8 CFR section 209.1(a)(1).

⁸³ Human Rights Watch, *Jailing Refugees: Arbitrary Detention of Refugees in the US Who Fail to Adjust to Permanent Resident Status* (New York: Human Rights Watch, 2009), www.hrw.org/en/reports/2009/12/29/jailing-refugees-0.

⁸⁴ It also raises the question of why refugees should not be admitted as legal permanent residents (LPRs) or granted LPR status upon entry.

⁸⁵ Memorandum from James Chaparro, Director, Immigration and Customs Enforcement (ICE) Office of Detention and Removal Operations, to Field Office Directors, “Detention of Refugees Admitted Under INA Section 207 Who Have Failed to Adjust to Lawful Permanent Resident Status,” May 10, 2010.

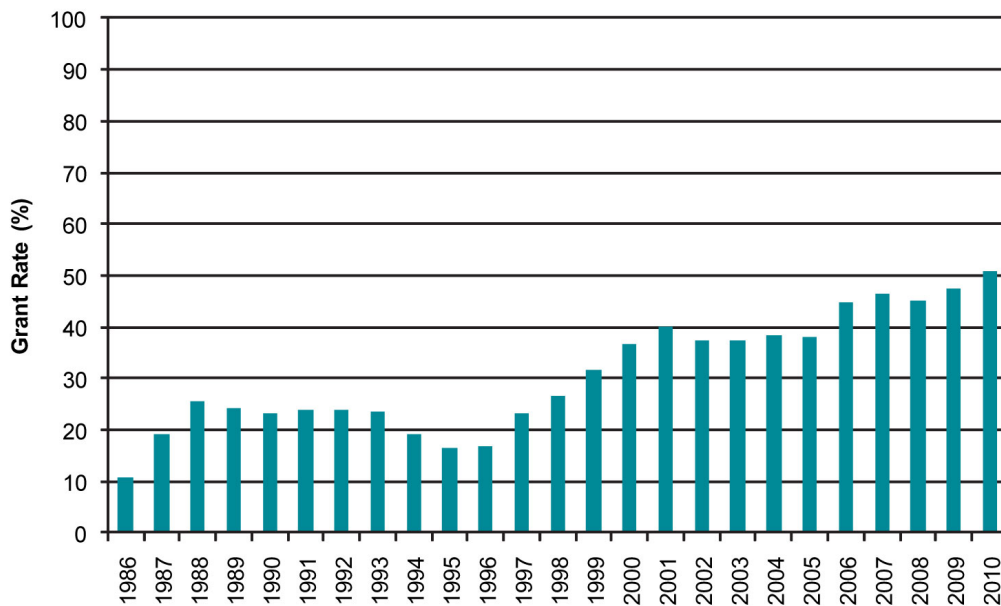


A. Affirmative and Defensive Asylum Claims

Political asylum cases are considered in two fora. Asylum seekers who are *not* in removal (deportation) proceedings can come forward “affirmatively” and have their applications considered in a nonadversarial interview with a USCIS asylum officer. If denied, they are typically placed in removal proceeding.⁸⁶ Applicants in removal proceedings can seek political asylum “defensively” in adversarial, trial-like hearings before an immigration judge within DOJ’s Executive Office for Immigration Review (EOIR).⁸⁷

Delays in the adjudication of asylum cases — which now run to three years in some immigration courts — unsettle *bona fide* asylum seekers and often present a significant risk to their family members who remain abroad.⁸⁸ However, asylum grant rates in immigration court have risen since the mid-1990s, and have fluctuated between 45 percent and 51 percent over the last five years (see Figure 2).⁸⁹

Figure 2. Asylum Grant Rates in Immigration Courts, FY 1986-2010



Source: Transactional Records Access Clearinghouse, Syracuse University, “Asylum Decisions in Immigration Courts,” <http://trac.syr.edu/immigration/reports/240/include/asylumtime.html>; US Department of Justice, Executive Office for Immigration Review (EOIR), *FY 2010 Statistical Yearbook* (Falls Church, VA: EOIR Office of Planning, Analysis, and Technology, 2011), www.justice.gov/eoir/statspub/fy10syb.pdf.

Withholding of removal claims, which are considered after an individual has been denied asylum, have been granted at lower rates, between 13 percent and 16 percent from FY 2006-10.⁹⁰ As stated, withholding and deferral of removal can also be granted on the basis of likelihood of torture. In FY 2010, immigrant courts adjudicated 24,754 Torture Convention cases, granting withholding in 395 cases and deferral of removal in 94 cases, and denying protection in 9,082 cases.⁹¹

86 Persons whose affirmative asylum claims have been rejected, but who are otherwise in legal status, are not placed in removal proceedings.

87 Unaccompanied minors can seek political asylum in nonadversarial interviews.

88 Testimony of Karen Grisez, Chair of the American Bar Association Commission on Immigration, before the US Senate Judiciary Committee, *Improving Efficiency and Ensuring Justice in the Immigration Court System*, 112th Cong., 1st sess., May 18, 2011, <http://judiciary.senate.gov/pdf/5-18-11%20Grisez%20Testimony.pdf>; Donald M. Kerwin, Doris Meissner, and Margie McHugh, *Executive Action on Immigration: Six Ways to Make the System Work Better* (Washington, DC: Migration Policy Institute, March 2011): 19-22, www.migrationpolicy.org/pubs/administrativefixes.pdf.

89 US Department of Justice (DOJ) Executive Office for Immigration Review (EOIR), *FY 2010 Statistical Yearbook* (Falls Church, VA: EOIR, 2011): K1, www.justice.gov/eoir/statspub/fy10syb.pdf.

90 *Ibid.*, K4.

91 *Ibid.*, M1.

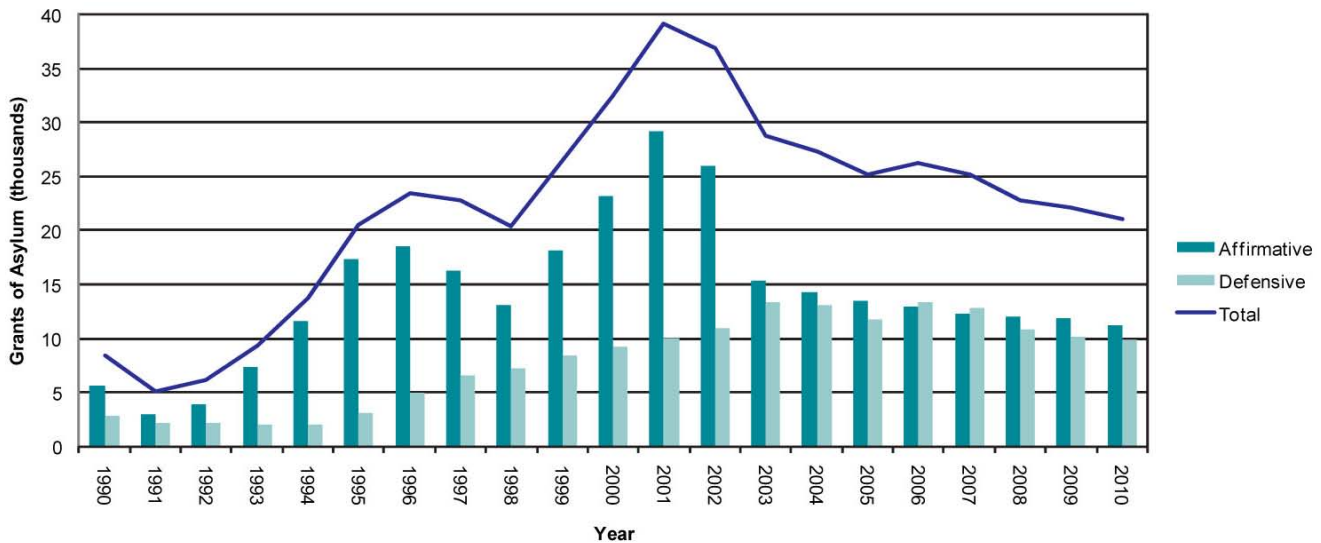


B. Decreased Filings and Grants

In each of the last five years, the United States has considered more political asylum claims than any other industrialized nation.⁹² USCIS does not consistently report on affirmative asylum filings. However, asylum claims received in the immigration court system fell by more than one-half between FY 2002 (74,634) and FY 2010 (32,961).⁹³ This decline is not unique to the United States: applications to the 27 European Union Member States more than halved between FY 2002-06, before rising again modestly.⁹⁴

Not surprisingly, US asylum grants — both affirmative and defensive — have also fallen since 2001 (see Figure 3). Between FY 2002-10, total affirmative and defensive asylum grants decreased from 36,923 to 21,113.⁹⁵ Over the same period, affirmative asylum grants fell from 25,946 to 11,244.⁹⁶

Figure 3. Number of Persons Granted Asylum, FY 1990-2010



Source: US Department of Homeland Security Office of Immigration Statistics, *Yearbook of Immigration Statistics: 2010, Refugees and Asylees*, Table 16, <http://www.dhs.gov/files/statistics/publications/YrBk10RA.shtm>.

C. Barriers to Reaching US Territory to Seek Asylum

I. Post-9/11 Security Measures

Asylum seekers must rely on the same channels of legal and illegal entry as other migrants. Yet post-9/11 immigration-related security measures and a more general push to crack down on illegal immigration have made it more difficult for legitimate asylum seekers to reach US territory. More intensive border enforcement may account for the fact, for example, that 35 percent of all affirmative asylum applicants since April 1998 illegally crossed the border, compared to 59 percent in the preceding 2½ years.⁹⁷ In

92 UNHCR, *Asylum Levels and Trends in Industrialized Countries 2010* (Geneva: UNHCR, 2011): 7, www.unhcr.org/4d8c5b109.html.

93 EOIR, *FY 2005 Statistical Yearbook* (Falls Church, VA: EOIR, 2006): 12, www.justice.gov/eoir/statspub/fy05syb.pdf; EOIR, *FY 2010 Statistical Year Book* (Falls Church, VA: EOIR, 2011): 11, www.justice.gov/eoir/statspub/fy10syb.pdf.

94 European Commission, "Asylum Statistics," http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics.

95 DHS Office of Immigration Statistics, *2010 Yearbook of Immigration Statistics Table 16*, www.dhs.gov/files/statistics/publications/YrBk10RA.shtm; Martin, *Refugees and Asylees: 2010*: 5.

96 Ibid.

97 Philip G. Schrag, Andrew I Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach, "Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum," *William and Mary Law Review*. 52, no 3 (2010): 651-804, 681,



recent years, the United States has:

- tightened its visa issuance process by requiring most applicants for nonimmigrant (temporary) visas to submit to an in-person consular interview;
- required persons from countries who can travel to the United States without a visa to obtain pre-travel authorization from US Customs and Border Protection (CBP);
- expanded the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT), which collects digital photographs and ten fingerprint scans from foreign travelers, and screens visa applicants, temporary visitors, and LPRs against criminal and terrorist databases;
- instituted passenger targeting, automatically using passenger information to detect risks under through the CBP National Targeting Center;
- enhanced the integrity, design, and security of US passports;
- promoted passport security standards internationally, leading to greater use of machine-readable, biometrically enhanced e-passports;
- invested in increased border infrastructure and security;
- broadened the terrorism-related grounds of inadmissibility; and,
- entered agreements to share diverse law enforcement and intelligence information with different individual nations and configurations of nations.⁹⁸

The deterrent effect of recent security measures on persons who would otherwise seek protection in the United States is difficult to assess. However, dramatic declines in asylum filings since the 9/11 terrorist attacks may, in part, be attributable to these measures. Persons fleeing persecution often cannot secure government documents and many have traditionally used false or stolen documents to travel. Others have obtained temporary visas from the United States with no intention of returning home. Post-9/11 immigration-related security measures have made it more difficult to access these “illegal” pathways, and new vehicles to reach the United States legally have not arisen in their stead.

2 Expedited Removal

Under the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (IIRIRA),⁹⁹ asylum seekers who reach a US border without proper documents face expedited removal and mandatory detention.¹⁰⁰ This process can operate as a disincentive to pursuing an asylum claim.¹⁰¹

Under the expedited removal process, migrants must express a fear of persecution or request political asylum to an immigration officer, or they face immediate removal. If they pass this initial screening, they receive interview by a USCIS asylum officer to determine whether they have a “credible fear” of persecution.¹⁰² If so, they are placed in removal proceedings and can seek asylum before an immigration judge. The US Commission on International Religious Freedom, one of the few groups afforded access to the initial inspection phase of this process, found that in one of every six cases in which migrants

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1684231.

98 Susan Ginsburg, *Securing Human Mobility in the Age of Risk: New Challenges for Travel, Migration, and Borders* (Washington, DC: MPI, 2010): 129, 194-95, 205, 221, 246, 285, and 342.

99 *The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996*, Public Law No. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996). US Statutes at Large 110 (1996): 3009.

100 INA section 235(b)(1).

101 Catholic Legal Immigration Network, Inc. (CLINIC), *The Needless Detention of Immigrants in the United States* (Washington, DC: CLINIC, 2000): 6-7, <http://cliniclegal.org/sites/default/files/atrisk4.pdf>.

102 INA section 235(b)(1)(B)(iii)(IV).



expressed a fear of return they did not receive “credible fear” interviews and were summarily removed in contravention of the law.¹⁰³

The expedited removal process has been significantly expanded in recent years. When first implemented by the US Immigration and Naturalization Service (INS), it covered noncitizens arriving at ports of entry. Subsequently, it has been extended to noncitizens entering by sea, arrested within 100 miles of a US border, and arrested along the entire US border, including coastal borders.¹⁰⁴ More than 100,000 migrants have been removed through this procedure in each of the past four years, with nearly 1 million removed since the program’s inception in 1997 (see Table 2).

Table 2. Expedited Removals, FY 1997-2009

Year	Expedited Removals	As Percent of All Removals
1997	23,242	20
1998	76,078	44
1999	89,129	49
2000	85,784	46
2001	69,730	39
2002	34,500	23
2003	43,248	23
2004	41,752	21
2005	72,911	35
2006	110,147	40
2007	106,200	33
2008	113,500	32
2009	106,600	27

Source: DHS, Office of Immigration Statistics (OIS), “Immigration Enforcement Actions” (2004-2009), www.dhs.gov/files/statistics/publications/yearbook.shtm; DHS, *Yearbook of Immigration Statistics* (Washington, DC: DHS, OIS, 2001 and 2003), www.dhs.gov/files/statistics/publications/archive.shtm.

Finally, in addition to the expansion of expedited removal, the US Coast Guard interdicts migrants attempting to reach the United States by sea. This practice (which is discussed in detail in Appendix A) primarily affects Haitian migrants seeking to enter the country.

¹⁰³ US Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal, Volume II* (Washington, DC: US Commission on International Religious Freedom, 2005): 20-3, www.uscirf.gov/images/stories/pdf/asylum_seekers/evalCredibleFear.pdf.

¹⁰⁴ 67 FR 68,924-5 (Nov. 13, 2002); 69 FR 48,877-81 (Aug. 11, 2004); US Customs and Border Protection (CBP), *2006: A Year of Accomplishment*, www.cbp.gov/xp/cgov/about/accomplish/previous_year/accomp_yr06.xml.



D. Barriers to Establishing Asylum Eligibility

I. One-Year Asylum Filing Deadline

IIRIRA added the requirement that asylum seekers file their claims within one year of entry.¹⁰⁵ The INA provides exceptions to this restriction based on “changed circumstances” giving rise to an asylum claim, and delays in filing caused by “extraordinary circumstances.”¹⁰⁶ A team of legal scholars recently completed an exhaustive study on the effect of the one-year filing requirement in affirmative asylum cases, which found that more than 30 percent failed to file within that allotted time.¹⁰⁷ The study, by scholars from Georgetown University Law Center and Temple University’s Beasley School of Law, analyzed a DHS database of all asylum cases filed between October 1, 1996, and June 8, 2009. A particular focus was on the 11-year period beginning on April, 16, 1998, when the one-year filing requirement went into effect.

Of the 303,601 asylum cases filed during the 11-year period, 92,622 — or 31 percent — failed to meet the one-year filing deadline.¹⁰⁸ These figures did not account for persons who were dissuaded from applying because they had missed the deadline and, thus, understated the impact of this provision. Of the cases filed after one year, USCIS rejected 54,141 (18 percent of all cases filed) because the applicant: (1) could not prove that he or she had filed within one year; (2) did not qualify for an exception; or (3) was eligible for an exception but failed to file “within a reasonable period of time in light of the exception.”¹⁰⁹ Similarly, a recently released report by Human Rights First found that applicants failed to file within one year in more than 100,000 affirmative asylum cases (27 percent of the total) between 1998 and 2009 and that asylum officers rejected 53,400 of these cases, referring most of them to removal proceedings.¹¹⁰

The legal study suggests that post-9/11 security concerns influenced the application of asylum standards. In fact, DHS asylum officers informed the authors that they had been advised to apply the one-year filing deadline more stringently in FY 2002.¹¹¹ The authors found that:

- Rejections based on the one-year filing deadline increased in FY 2001 and have remained above FY 1998 to 2000 levels since that time.
- The overall grant rate in affirmative asylum cases fell beginning in FY 2001 and has since remained lower than FY 1999 and 2000 rates.
- Rejection rates of cases that had not been filed within one year jumped dramatically in FY 2001 and have remained higher than the 1999 to 2000 levels in the interim.¹¹²

The study concluded that asylum seekers who failed to file within one year, but who qualified for an exception, ultimately received asylum at the same rate (49 percent) — and, thus, were as substantively deserving of asylum — as applicants who met the filing requirement.¹¹³ It estimated that 15,792 asylum claims, impacting 21,635 individuals (including dependents), would have been granted during the 11-year period if the deadline had not been in place.¹¹⁴

The immigration court system (where asylum claims in these cases must be made) does not report

105 INA section 208(a)(2)(B).

106 INA section 208(a)(2)(D).

107 Schrag et. al, “Rejecting Refugees,” 682, 688.

108 Ibid.

109 Ibid., 716-17.

110 Human Rights First, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency* (New York: Human Rights First, 2010): 7, www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf.

111 Schrag et. al, “Rejecting Refugees,” 717-18.

112 Ibid., 716-17, 720.

113 Ibid., 745-46.

114 Ibid., 753-54.



denials based on this ground.¹¹⁵ Thus, similar data on defensive claims are not available. However, the GAO has determined that meeting the one-year filing requirement increases the likelihood of prevailing in an asylum case in immigration court by 40 percent (if the case is first considered affirmatively) or 30 percent in purely defensive claims.¹¹⁶ In addition, a study of administratively appealed asylum cases in January of 2005, 2006, 2007, and 2008 found that one in five had missed the one-year filing deadline.¹¹⁷

Advocates have recently linked problems in meeting the filing deadline with immigration case backlogs.¹¹⁸ A typical case involves an asylum seeker in the expedited removal process. After an asylum officer determines that the applicant has a “credible fear” of persecution, the case is referred to removal proceedings. In some cases, however, the master calendar hearing (at which the applicant can first “file” for or formally request asylum) is not scheduled until one year after the applicant’s entry or admission. In such cases, asylum seekers — through no fault of their own — cannot meet the one-year filing requirement.

According to USCIS, 71 percent of affirmative Mexican asylum applicants between FY 1998 and FY 2010 did not file for asylum within one year. A full 65 percent of all Mexican asylum applicants have been referred to removal proceedings or denied at the affirmative stage for this reason. Denial rates have remained high despite the manifestly “changed circumstances” in Mexico since drug-related violence began to escalate in 2006 (see Box 1).

IIRIRA also codified regulatory restrictions that require asylum seekers to wait for 150 days to apply for work authorization, and that allow USCIS an additional 30 days to act on the application.¹¹⁹ The inability of asylum seekers to support themselves makes it more difficult for them to secure legal representation, and may lead some to abandon their claims.

2. Legal Representation

Most US removal proceedings suffer from a fundamental deficiency: immigrants cannot effectively represent themselves in these complex proceedings, but most cannot afford legal counsel. The rates of legal representation in removal proceedings ranged from 35 percent to 43 percent between FY 2006-10.¹²⁰ Detained immigrants secure legal representation at far lower rates, only 15 percent in recent years.¹²¹

A comprehensive report on the US immigration court system published in 2007 concluded that “whether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case.”¹²² Other studies have shown that represented asylum seekers prevail in their cases at rates four to

115 Ibid., 768-69. “Rejecting Refugees” recommended that the immigration court system and Board of Immigration Appeals (BIA) keep statistics on one-year deadline cases.

116 GAO, *US Asylum System: Significant Variation Existed in Asylum Outcomes across Immigration Courts and Judges* GAO-08-940 (Washington, DC: GAO, 2008): 30, www.gao.gov/new.items/d08940.pdf.

117 National Immigrant Justice Center (NIJC), Human Rights First, Penn State Law’s Center for Immigrant Rights, *The One-Year Asylum Deadline and the BIA: An Analysis of Board of Immigration Appeals Decision 2005-2008*, (2010): 6-7, www.humanrightsfirst.org/wp-content/uploads/pdf/1YD-report-FULL.pdf. The authors concluded that this figure understated the percentage of asylum seekers affected by the one-year deadline.

118 Transactional Records Access Clearinghouse (TRAC), *Immigration Case Backlog Still Growing in FY 2011* (Syracuse, NY: TRAC, 2011), <http://trac.syr.edu/immigration/reports/246/>. By the end of December 2010, the number of pending removal cases had reached a record 267,752. These cases had been pending an average of 467 days.

119 8 CFR section 208.7(a)(1).

120 Ibid., G1.

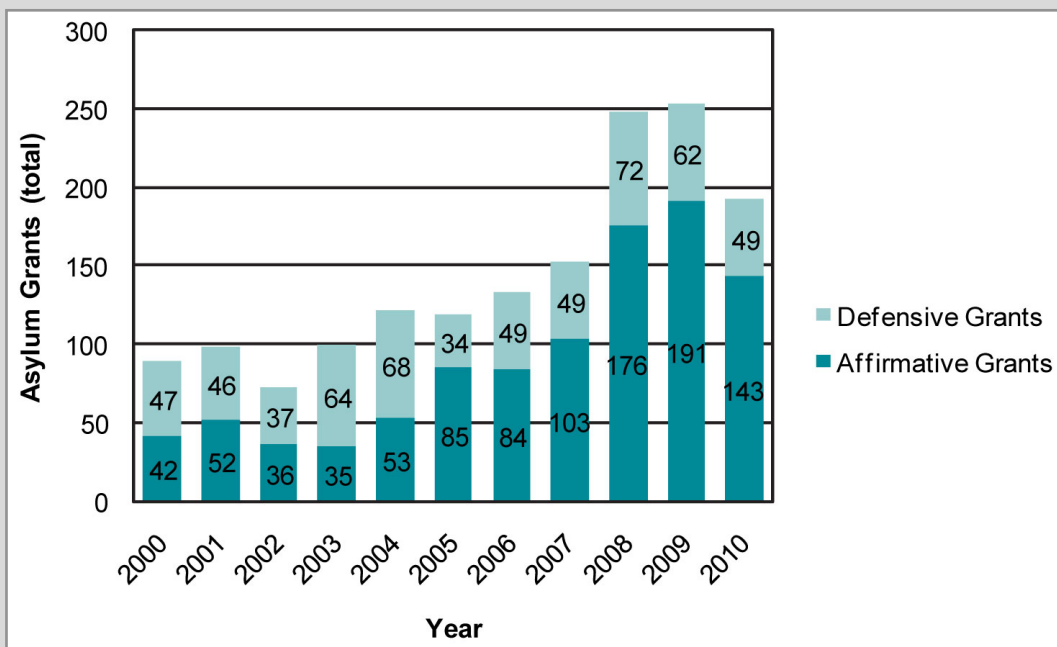
121 Presentation by Juan Osuna, Acting Director of EOIR, at MPI event, “Steps to Fix the US Immigration System: What Can the Administration Do?” March 14, 2011, <http://events.powerstream.net/002/00592/20110314MPI/#powershow>.

122 Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Phillip G. Schrag, “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Rev.* 60, no. 2 (2007): 295-412, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=983946.

Box 1. Mexican Asylum Seekers

The upsurge in drug-related violence in Mexico since late 2006 has intensified interest in Mexican political asylum claims. While some Mexican asylum seekers do not meet the narrow standard for political asylum, many others belong to social groups — such as journalists who report on cartel and military abuses, police officers who denounce criminal collusion by fellow officers, business people who have been kidnapped and extorted, and certain groups of migrants — that have suffered persecution at the hands of organizations that the government has proven unable to control.¹²³ Yet very few Mexican asylum claims have been approved in recent years (see Figure 4).

Figure 4. Mexicans Granted Asylum, FY 2000-10



Note: Total asylum grants are comprised of affirmative and defensive asylum grants.

Source: DHS, Office of Immigration Statistics, *2010 Yearbook of Immigration Statistics*, Table 17 and 19,

www.dhs.gov/files/statistics/publications/YrBk10RA.shtm; DHS OIS, *2009 Yearbook of Immigration Statistics*, Table 17 and 19, www.dhs.gov/files/statistics/publications/YrBk09RA.shtm.

In addition, defensive claims have been approved at low rates. Between FY 2007-10, US immigration courts received 13,173 Mexican asylum cases, granting asylum in 236 of them and denying it in 1,410.¹²⁴ The fact that large numbers of Mexican asylum claims were abandoned (1,452) and withdrawn (7,176) during the same period may be attributable in part to low approval rates and the detention of applicants.¹²⁵

123 Daniel González, "More fleeing cartels in Mexico, seeking asylum in US," *The Arizona Republic*, January 24, 2010, www.azcentral.com/news/articles/2010/01/24/20100124asylum0124.html.

124 EOIR, *FY 2010 Statistical Yearbook*.

125 Ibid.



six times higher than those without representation.¹²⁶

Moreover, asylum seekers in detention obtain relief at lower rates, and abandon their claims at higher rates, than nondetained immigrants.¹²⁷ A recent survey by the National Immigrant Justice Center (NIJC) found that more than 25 percent of detainees were housed in facilities served by one nonprofit attorney or less per 500 detainees; 10 percent did not have access to any nonprofit attorneys; and 78 percent were detained in facilities that prohibited lawyers from scheduling private calls with their clients.¹²⁸

Noncitizens in removal proceedings enjoy a right to representation, but “at no expense to the Government.”¹²⁹ The US Court of Appeals for the Fifth Circuit has recognized that due process might necessitate government-funded counsel in the right set of circumstances.¹³⁰ The American Bar Association (ABA) has called for appointed counsel for unaccompanied minors, and mentally ill and disabled persons.¹³¹ A pending class action lawsuit in the Central District of California argues that the government must provide counsel to indigent, mentally disabled detainees facing removal.¹³² A federal judge in that case ordered the government to appoint a “qualified representative” to represent two men who suffer from severe mental illness. However, courts have been reluctant to find a right to government-funded counsel in particular cases.

3. Establishing the Persecutor’s Motivation, Corroborating Claims, and Addressing Membership in a Particular Social Group

As a result of the *REAL ID Act of 2005*, asylum applicants must establish that race, religion, nationality, social group membership, or political opinion “was and will be at least one central reason” for their persecution.¹³³ In addition, immigration judges can now require asylum seekers to produce corroborating evidence of “otherwise credible testimony,” unless the applicant can show she or he does not have or cannot reasonably obtain such evidence.¹³⁴ Survivors of persecution cannot always establish the persecutor’s motive, corroborate threats, or even prove past persecution: persecutors often succeed in hiding what they do and why they do it. In such cases, a heightened burden of proof makes it far more difficult to sustain an asylum claim.

In 2008, the Board of Immigration Appeals (BIA) tightened the definition for “membership in a particular social group.” BIA had previously defined a “social group” as one whose members “share a common, immutable characteristic” that they “either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”¹³⁵ In 2007, BIA attempted to add greater specificity to this definition by requiring, *inter alia*, that the “shared” characteristics defining a social group have a sufficient degree of “social visibility.”¹³⁶ Often, however, members of persecuted groups seek to avoid persecution by maintaining a low profile.¹³⁷ A social visibility requirement presents a significant

126 Andrew Schoenholtz and Jonathan Jacobs, “The State of Asylum Representation: Ideas for Change,” *Georgetown Immigration Law Journal* 16, no. 4 (2002): 739-72.

127 US Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal, Volume II*: 197-98, 412-13.

128 *Ibid.*; National Immigrant Justice Center (NIJC), *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court* (Chicago: NIJC, 2010): 4-5, www.immigrantjustice.org/policy-resources/isolatedindetention/intro.html. NIJC surveyed: (1) 150 immigrant detention centers, housing 31,355 of the 32,000 immigrants in detention per night; (2) charitable legal service providers for detainees; and (3) 25,489 detainees in 67 facilities regarding phone access.

129 INA section 292.

130 *Aguilera-Enriquez v. INS*, 516 F.2d 565, 568 (5th Cir. 1975), cert denied 423 US 1050 (1976).

131 American Bar Association (ABA), *Ensuring Fairness and Due Process in Immigration Proceedings* (Chicago: ABA, 2010): 2-3, www.abanet.org/poladv/transition/2008dec_immigration.pdf.

132 *Franco-Gonzalez v. Holder*, No-10—C-02211 DMG (DTB) (C.D. Cal. filed August 2, 2010).

133 INA section 208(b)(1)(B)(i).

134 INA section 208(b)(1)(B)(ii).

135 *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).

136 *In re A-M-E & J-G-U-, Respondents*, 24 I & N Dec. 69, 74 (BIA, 2007).

137 *Gatimi v. Holder*, 578 F.3d 611, 615 (7th Circuit, 2009) (“Women who have not yet undergone female genital mutilation in



barrier to prevailing in such cases.

4. The Safe Third-Country Agreement

The *US-Canada Safe Third Country Asylum Agreement* requires asylum seekers who arrive at a land port of entry to seek protection in the first country (of the two) that they reach.¹³⁸ Thus, an asylum seeker from Colombia who stops in Atlanta on his or her way to Toronto can be returned by Canadian officials to the United States. The agreement affects larger numbers of asylum seekers bound for Canada than for the United States, because travel routes more commonly pass through the United States to Canada, than vice versa.¹³⁹

The agreement establishes exceptions for: (1) applicants with at least one family member in the receiving country who has been accepted as a refugee or has lawful status (other than as a visitor), or has a pending refugee claim and is over 18 years of age; (2) unaccompanied minors; and (3) persons who arrived in the receiving country with a validly issued visa or other valid admission document (other than a transit visa), or who did not have a visa because none was required to enter.¹⁴⁰ In addition, either nation may adjudicate a refugee claim if it determines that the public interest requires it, and an asylum seeker cannot be removed to a third country until his or her claim has been considered by one of the two nations.

Early monitoring reports on the impact of the agreement suggested increased levels of illegal migration to Canada by both asylum seekers and their “anchor relatives” who entered before them.¹⁴¹ Since the agreement does not apply to persons who enter the country illegally, it may have created an incentive for illegal migration. Other groups have expressed concern over US asylum policies and practices, and over migrants who would formerly have opted to seek asylum under more generous Canadian standards, including those with gender-based claims.¹⁴²

5. Disparities in Approval Rates among Immigration Judges

The immigration judge assigned to an asylum case can be decisive to its outcome. In 2008, GAO released an analysis of the asylum decisions of 196 immigration judges between October 1, 2004 and April 30, 2007. During this period, the judges adjudicated more than three-fourths of all US asylum court cases that had first been considered affirmatively and 90 percent of all purely defensive claims. GAO found pronounced disparities in approval rates even within the same immigration courts. Grant rates, for example, ranged from between 19 percent to 61 percent in Arlington (VA), between 8 percent and 55 percent in Boston, between 2 percent and 72 percent in Miami, and between 3 percent and 93 percent in New York City.¹⁴³ Disparities remained high, even controlling for variables such as nationality, legal representation, filing within a year of entry, and detention.¹⁴⁴

While disparities have diminished in recent years, they still remain pronounced. In New York courts, which handle roughly one-fourth of US political asylum cases, for example, the difference in asylum denial

tribes that practice it do not look different from anyone else. A homosexual in a homophobic society will pass as heterosexual. If you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to avoid being socially visible ...”)

138 *US-Canada Safe Third Country Agreement*, August 30, 2002, www.cic.gc.ca/english/department/laws-policy/safe-third.asp.

139 UNHCR, *Monitoring Report: Canada-United States “Safe Third Country” Agreement: 29 December 2004 – 28 December 2005* (Geneva: UNHCR, 2006), www.unhcr.org/455b2cca4.html.

140 8 CFR 208.30(e)(6)(iii).

141 Harvard Law Student Advocates for Human Rights et. al, *Bordering on Failure: The US-Canada Safe Third Country Agreement Fifteen Months After Implementation* (Cambridge, MA: Harvard Law School, 2006): 22, Z www.law.harvard.edu/programs/hrp/clinic/documents/Harvard_STCA_Report.pdf.

142 Canadian Council for Refugees, *Less Safe Than Ever: Challenging the designation of the US as a safe third country for refugees* (Montreal: Canadian Council for Refugees, 2006), <http://ccrweb.ca/Lesssafe.pdf>. TRAC, “Latest Data from Immigration Courts Show Decline in Asylum Disparity,” (Syracuse, NY: TRAC, 2009), <http://trac.syr.edu/immigration/reports/209/>.

143 GAO, *US Asylum System*: 33-4.

144 Ibid.



rates between the most and the least generous judges was 81 percent between FY 2004-06, and fell to 62 percent between FY 2007-09.¹⁴⁵

IV. Temporary Protection in the United States and Admission for Humanitarian Reasons

A. Temporary Protection

US law offers two primary vehicles for noncitizens who do not meet the refugee definition, but who could face violence or hardship if returned home: (1) temporary protected status; and (2) an exercise of administrative discretion not to remove the person in question. It also offers a nonimmigrant (temporary) visa, which can lead to LPR status, to survivors of human trafficking who assist law enforcement in investigating and prosecuting traffickers.

The Attorney General can extend TPS to residents of a foreign state in which there is an armed conflict, a natural disaster, or other extraordinary and temporary conditions that prevent them from returning.¹⁴⁶ As the name indicates, TPS provides temporary legal status and work authorization for fixed periods — running from six to 18 months — with the possibility of extensions beyond the initial period if the conditions that led to the designation persist.¹⁴⁷ Extensions have been granted frequently since the program's inception. Of current TPS recipients, select El Salvadorans have been designated as TPS-eligible since March 9, 2001; Hondurans and Nicaraguans since January 5, 1999; Somalis since September 4, 2001; Sudanese since October 7, 2004; and Haitians since January 21, 2010.¹⁴⁸ Congress cannot extend LPR status to TPS beneficiaries without a supermajority vote of the Senate.¹⁴⁹

The executive branch can also exercise its discretion not to place persons in removal proceedings or to remove them if they would face violence, persecution, or extreme privation if returned to their home countries. In 2000, for example, INS issued a memorandum directing officers “to exercise discretion in a judicious manner at all stages of the enforcement process.”¹⁵⁰ The memorandum recognized that INS officers did not have the resources to investigate or prosecute all immigration violations and needed to determine the most effective way to enforce the law. It directed officers to assess the relative interests at stake in a particular case and stipulated that they could “decline to prosecute a legally sufficient immigration case if the federal immigration enforcement interest that would be served by prosecution is

145 TRAC, “Latest Data from Immigration Courts Show Decline in Asylum Disparity,” (Syracuse, NY: TRAC, 2009), <http://trac.syr.edu/immigration/reports/209/>.

146 INA section 244(b)(1).

147 INA section 244(b)(1). Because Temporary Protected Status (TPS) requires presence on a set date, spouses and children of TPS beneficiaries who entered the country after the initial TPS designation do not become eligible in subsequent designations.

148 Even prior to the January 12, 2010, earthquake, Haiti was the poorest nation in the Western Hemisphere, with more than 50 percent of its people living in abject poverty. In 2008, it was hit by Hurricanes Gustav and Ike, and by Tropical Storms Fay and Hanna. These storms killed 800 people, destroyed more than 100,000 homes, left 35,000 to 40,000 people homeless, led to economic losses equaling 15 percent of Haiti's GDP, flooded entire cities, and triggered food and water shortages. Despite these conditions, the United States did not grant TPS for Haitians until January 21, 2010, in the aftermath of the devastating earthquake. DHS recently announced that TPS for Haitians would be extended for an additional 18 months, and that the cut-off date for continuous presence in the United States would be moved forward from January 12, 2010 to January 12, 2011. An estimated 48,000 Haitians reside in the United States with TPS status. DHS, “Secretary Napolitano Announces the Extension of Temporary Protected Status for Haiti Beneficiaries,” (press release, May 17, 2011), www.dhs.gov/ynews/releases/pr_1305643820292.shtm.

149 INA section 244(h).

150 Memorandum from Doris Meissner, Commissioner, Immigration and Naturalization Service (INS), to Regional Directors, District Directors, Chief Patrol Agents, Regional and District Counsel, HQOPP 50/4 (November 17, 2000).



not substantial.”¹⁵¹

Deferred enforced departure (DED), a form of prosecutorial discretion, has been used to enjoin the removal of certain categories of immigrants who fear return based on changed conditions. For example, President George H.W. Bush extended DED to Chinese students who were in the United States on or after June 5, 1989, following the repression at Tiananmen Square.¹⁵² President Bill Clinton also granted DED to Haitians who would soon become eligible for LPR status under the *Haitian Refugee and Immigration Fairness Act of 1998* (HRIFA).¹⁵³

Deferred action, like DED, involves an executive decision “to give some cases lower priority.”¹⁵⁴ It reflects a decision not to place a noncitizen in removal proceedings or to try to remove them in the short term. It can also entail employment authorization.¹⁵⁵

Deferred action can be provided to noncitizens who are too young, too old, or have serious disabilities; who have close family ties in the United States; who have committed minor infractions that prevent permanent residency; or who cannot be removed. It can also be granted based on the need by a law enforcement agency for the person to remain.¹⁵⁶

The *Victims of Trafficking and Violence Protection Act of 2000* created the “T” nonimmigrant visa for survivors of severe forms of human trafficking who assist law enforcement in investigating and prosecuting human traffickers.¹⁵⁷ The law set a ceiling of 5,000 visas per year for principal beneficiaries, not counting visas granted derivatively to spouses, sons, daughters, or parents. This ceiling has never been reached: fewer than 1,200 T visas were issued to victims of trafficking and an additional 925 to their family members between FY 2005-09.¹⁵⁸

- After three years of continuous presence, a T visa holder can adjust to LPR status if he or she has been a person of good moral character during this period, ahas “complied with any reasonable request” to assist in the investigation or prosecution of trafficking;
- would suffer “extreme hardship involving unusual and severe harm upon removal”; or,
- was younger than 18 years old when trafficked.¹⁵⁹

INA likewise caps at 5,000 (exclusive of family members) the number of adjustments that can take place under this provision.¹⁶⁰

B. Parole (Temporary Protection for Those Admitted from Abroad)

While the executive branch enjoys some flexibility in how it provides temporary protection to persons in the United States, it lacks similar flexibility when it comes to admitting persons in refugee-like situations from abroad. “Parole,” a term of art in immigration law which does not connote criminal conduct, is the

151 Noncitizens subject to a favorable exercise of prosecutorial discretion may or may not receive a formal status.

152 Executive Order 12711 (April 11, 1990).

153 Public Law 105-277, US Statutes at Large 112 (1998): 2681.

154 8 CFR section 274a.12 (14).

155 Ibid.

156 Memorandum from Prakash Khatri, CIS Ombudsman, to Dr. Emilio T. Gonzalez, Director of USCIS, “Recommendation from the CIS Ombudsman to the Director, USCIS” (April 6, 2007),

www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf.

157 *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106-386, US Statutes at Large 114 (2000): 1464.

158 USCIS, “National Stakeholder January (2010) Meeting,” www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=74adc3531a176210VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVC M100000082ca60aRCRD.

159 INA Section 245(l)(1).

160 INA Section 245(l)(4).



sole legal vehicle for admitting persons in refugee-like and other compelling situations who do not meet the narrow refugee definition.

Under the law, parole can be granted by DHS “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”¹⁶¹ However, an individual refugee cannot be paroled unless there are “compelling reasons in the public interest” to admit him or her as a parolee, rather than as a refugee.¹⁶² Less commonly, “parole in place” can be granted to persons residing in the United States who do not have legal status. The principal grounds for humanitarian parole requests are medical treatment, family reunification, and “emergent” reasons such as visiting a dying family member or attending a funeral.¹⁶³ The USCIS Humanitarian Assistance Branch granted parole in 2,133 (or 24 percent) of the cases it considered between 2002-07.¹⁶⁴

Prior to the *Refugee Act of 1980*, the United States used the parole authority to admit large groups of refugees, including 640,000 Cubans following the communist revolution, 360,000 Indochinese following the fall of Saigon, 32,000 Hungarians following the Soviet invasion in 1956, and 30,000 Soviet Jews and other religious minorities.¹⁶⁵ In 1991 and 1992, the United States paroled roughly 11,000 Haitian boat people from Guantánamo Naval Base in Cuba, allowing them to seek political asylum. In the aftermath of the devastating earthquake that struck Haiti on January 12, 2010, DHS agreed to parole children legally confirmed to be orphans and eligible for intercompany adoption, and those eligible for adoption who an American intended to adopt.¹⁶⁶

V. Population-Specific Legislation to Provide LPR Status to Asylum Seekers and Refugee-Like Populations

In addition to the protection vehicles and procedures discussed, Congress has regularly passed legislation to allow discrete groups of refugees, asylum seekers, and similar populations to adjust to LPR status. This practice was commonplace prior to the US refugee resettlement program’s establishment in 1980. Between 1946 and 2009, more than 2 million persons adjusted status on the basis of pre-1980 legislation of this kind (see Table 3). Most of these programs have now come to an end, although significant numbers of Cubans still arrive under the Cuban Adjustment Act of 1966 (CAA).¹⁶⁷

161 INA section 212(d)(5)(A).

162 INA section 212(d)(5)(B).

163 Ibid., 41-2.

164 GAO, *Immigration Benefits: Internal Controls for Adjudicating Humanitarian Parole Cases Are Generally Effective, but Some Can Be Strengthened* GAO-08-282 (Washington, DC: GAO, 2008): 12, www.gao.gov/new.items/d08282.pdf.

165 US Commission on Immigration Reform, *Refugee and Humanitarian Admissions: Appendices* (Washington, DC: US Commission on Immigration Reform: 1997), 215.

166 DHS, “Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans” (news release, January 18, 2010), www.dhs.gov/ynews/releases/pr_1263861907258.shtm.

167 *Cuban Adjustment Act of 1966*, Public Law 89-732, US Statutes at Large 80 (1966): 1161.

**Table 3. Refugees and Asylees Granted LPR Status by Enactment (From the Presidential Directive of 1945 and ending prior to the Refugee Act of 1980)**

Enactment	1946-1950*	1951-1960	1961-1970	1971-1980	1981-1990	1991-2000	2001-2009*	Total
Presidential Directive of 1945	40,324	X	X	X	X	X	X	40,324
Displaced Persons Act of 1948	173,023	236,669	4	X	X	X	X	409,696
Orphan Act of 1953	X	466	X	X	X	X	X	466
Refugee Relief Act of 1953	X	188,993	28	D	D	X	X	189,021
Refugee-Escapee Act of 1957	X	24,263	5,199	X	X	X	X	29,462
Hungarian Refugee Act of 1958	X	30,491	258	D	D	X	3	30,752
Azores & Netherlands Refugee Act of 1958	X	10,057	12,156	X	X	X	X	22,213
Refugee Relatives Act of 1959	X	1,432	388	X	X	X	X	1,820
Fair Share Refugee Act of 1960	X	X	19,714	D	3	D	X	19,717
Refugee Conditional Entrants Act of 1965	X	X	39,149	102,625	329	X	X	142,103
Cuban Adjustment Act of 1966	X	X	135,947	252,119	105,898	116,604	222,020	832,588
Indochinese Refugee Act of 1977	X	X	X	137,309	37,752	D	81	175,142
Refugee Parolee Act of 1978	X	X	X	46,058	92,971	265	X	139,294
Total	213,347	492,371	212,843	538,111	236,953	116,869	222,104	2,032,598

Source: Adapted version of “Table 20. Refugees and Asylees Granted Lawful Permanent Resident Status by Enactment: Fiscal Years 1946 to 2004,” in *2004 Yearbook of Immigration Statistics* (Washington, DC: DHS OIS, 2004); DHS OIS, *Yearbook of Immigration Statistics* (Washington, DC: DHS OIS, years 2005 to 2009).

In the 1990s, Congress extended LPR status to several refugee, asylee, and refugee-like groups. In 1990, for example, it allowed certain nationals to adjust to LPR status from the former Soviet Union, Vietnam, Laos, and Cambodia who were paroled into the country after being denied refugee status in the late 1980s and early 1990s.¹⁶⁸ In 1992, Congress passed legislation to legalize People’s Republic of China (PRC) nationals who had received DED following the repression at Tiananmen Square.¹⁶⁹ More than 53,000 persons secured LPR status through this law.

As US policy toward Cuba demonstrates, the United States has proven very resourceful in using its laws to protect nationals fleeing repressive regimes that it opposes. The CAA allows Cubans — and their accompanying spouses and children — who have been admitted or paroled, and have been physically present in the United States for at least one year, to adjust to LPR status. Although not treated as refugees, the CAA reflected a presumption that Cubans fleeing the Castro regime were *de facto* refugees.¹⁷⁰ Between 1962 and 1979, the United States paroled hundreds of thousands of Cubans into the country.¹⁷¹ It allowed roughly 125,000 Cubans who came as part of the Mariel boatlift to enter between April and September of 1980, most of whom adjusted status under the CAA beginning in 1984. Between 1960 and 2009, the United States granted LPR status to more than 1 million Cubans.¹⁷²

Since 1995, the United States has repatriated interdicted Cubans who do not express a fear of return.¹⁷³

168 *Foreign Operations, Export Financing, and Related Programs Appropriations Act*, 1990, Public Law 101-167, section 599D, US Statutes at Large 103 (1989): 1219, 1261-63; 8 CFR §245.7(b)(2).

169 *Chinese Student Protection Act of 1992*, Public Law 102-404, US Statutes at Large 106 (1992): 1969.

170 Ruth Ellen Wassem, *Cuban Migration to the United States: Policy and Trends* (Washington, DC: Congressional Research Service, 2009): 2, www.fas.org/sgp/crs/row/R40566.pdf.

171 *Ibid.*, 1.

172 DHS, *Yearbook of Immigration Statistics: 2009*, Table 2.

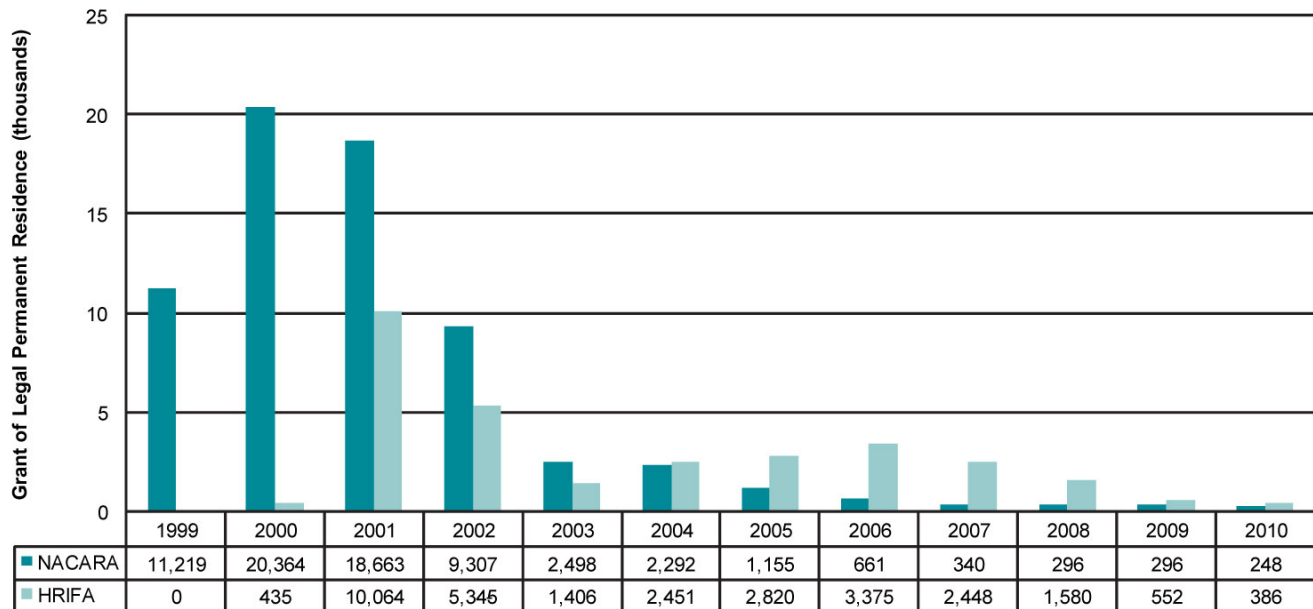
173 Wassem, *Cuban Migration to the United States: 2-5*. In 1994, the United States and Cuba entered a migration agreement which provided that Cubans intercepted at sea would no longer be brought to the United States, but would be offered safe haven; that the United States would admit no less than 20,000 Cuban immigrants each year, not including the immediate relatives of US citizens; and that Cuba would cooperate with the voluntary return of Cubans intercepted at sea. In May 1995, the United States agreed to parole most of the Cubans at Guantánamo Naval Base into the United States, and Cuba agreed to credit these admissions toward the 20,000 legal permanent resident (LPR) admissions floor per year. In addition, the United States began



However, DHS/CBP officers who encounter Cuban migrants without proper documents at a port of entry or at the border generally parole them into the United States, which allows them to adjust status under the CAA in a year.¹⁷⁴

Two other population-specific programs from this era continue to benefit small numbers of persons: the *Nicaraguan and Central American Relief Act* (NACARA) of 1997 and HRIFA, which was enacted in 1998 (see Figure 5). NACARA covers El Salvadoran, Guatemalan, and Soviet bloc asylum seekers, as well as certain Nicaraguan and Cuban nationals. HRIFA applies to Haitian asylum seekers who were paroled into the United States in 1991 and 1992, and to unaccompanied minors.

Figure 5. Persons Obtaining LPR Status through NACARA and HRIFA, FY 1999- 2010



Note: HRIFA figure not available for FY 1999.

Source: DHS OIS, *2010 Yearbook of Immigration Statistics*, Table 6, www.dhs.gov/files/statistics/publications/LPR10.shtm; DHS OIS, *Yearbook of Immigration Statistics 2007*, Table 6, www.dhs.gov/files/statistics/publications/LPR07.shtm.

In recent years, Congress has extended special immigrant visas to Iraqi nationals who worked for the United States or for US contractors in Iraq for at least one year after March 20, 2003, to Iraqi and Afghani translators who worked for the US military, and to the spouses and minor children of both groups.¹⁷⁵ These groups receive refugee resettlement assistance and benefits.

repatriating intercepted Cubans directly to Cuba. Intercepted Cubans who express a fear of persecution receive a refugee screening and can be resettled in a third country. In practice, however, this rarely occurs: between May 1995 and July 2002, roughly 170 Cubans were resettled in 11 different countries.

¹⁷⁴ Ibid., 13.

¹⁷⁵ The *Consolidated Appropriations Act, 2008*, Public Law 110-161, US Statutes at Large 121 (2007): 1844; The *Defense Authorization Act for FY 2008*, Public Law 110-181, US Statutes at Large 122 (2008): 3.



VI. Conclusion

The US refugee protection system needs high-level policy attention. The US Refugee Admissions Program's goals need to be sharpened and better aligned, and its programs better coordinated and evaluated. The Obama administration and Congress should explore new legal and policy options for ensuring that interdiction, expedited removal, and immigration-related security programs do not prevent bona fide asylum seekers from reaching territorial protection. They should also ensure that procedural barriers do not operate as a disincentive to seeking asylum or lead to denials in meritorious cases.

Finally, they should explore alternative means of providing temporary protection to those who do not meet the narrow refugee definition. The United States needs to revisit its commitment to the well-being of refugees and others in need of protection, as well as to the communities that receive them.

For more on the Improving US and EU Immigration Systems Project, please visit:
www.migrationpolicy.org/immigrationsystems



Appendix

Migrant Interdiction and US Policy toward Haitian Migrants

US immigration policies toward Haiti have not been unrelievedly restrictionist. Between 1980 and 2009, the United States extended LPR status to slightly more than 500,000 Haitians, compared to roughly 560,000 Cubans.¹⁷⁶ However, US interdiction policies have been driven by fears of large-scale migration from Haiti and to a lesser extent from Cuba, making the Caribbean the “epicenter” of these policies.¹⁷⁷ Roughly one-half of the migrants interdicted by the United States since 1982 — about 117,000 in total — have been Haitians (see Table A-1).

US policy shifts have mostly come in response to surges in migration from Haiti, and have sought to curtail and deter departures.¹⁷⁸ In response to relatively large-scale migration in 1980 and 1981, President Ronald Reagan entered an agreement with Haiti on September 23, 1981, to interdict and to repatriate Haitians.¹⁷⁹ In return, Haiti’s Duvalier regime agreed not to punish its repatriated nationals.

Under the ensuing Executive Order, the United States vowed that it would not return Haitians who it determined to be refugees.¹⁸⁰ However, the resulting shipboard “screening” process placed the onus on intercepted migrants to express their fear of return to Haiti to US government officials who typically did not speak their language. Between 1981 and 1990, the Coast Guard intercepted roughly 22,000 Haitians, but fewer than 30 were determined to have a “credible fear” of persecution and were, thus, permitted to seek asylum in the United States.¹⁸¹ Haitian boat people who avoided interdiction and reached the United States faced detention as part of a coordinated policy to deter Haitians from attempting to enter.¹⁸²

On September 30, 1991, the Haitian military toppled the democratically elected government of Jean-Bertrand Aristide.¹⁸³ This period witnessed the brutal repression of Aristide supporters. In FY 1992, which began on October 1, 1991, the United States intercepted 37,618 Haitian migrants.¹⁸⁴ It transported most of them to Guantánamo Naval Base in Cuba for screening to determine if they had a “credible fear” of return.¹⁸⁵ Nearly 11,000 Haitians who met this standard were brought to the United States to seek political asylum.¹⁸⁶ However, on May 24, 1992, President George H. W. Bush terminated this procedure, issuing an Executive Order that directed the Coast Guard to intercept all Haitians at sea and return them to Haiti.¹⁸⁷ The order stipulated that the Attorney General, “in his unreviewable discretion,” could decide that a person who was a refugee would not be “returned without his consent.” By implication, other refugees could be — and were — returned without their consent.

176 DHS, *Yearbook of Immigration Statistics: 2009*, “Table 2, Persons Obtaining Legal Permanent Resident Status by Region and Selected Country of Last Residence: Fiscal Years 1820 to 2009” (Washington, DC: DHS), www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/table02.xl.

177 Joanne van Selm and Betsy Cooper, *The New ‘Boat People’: Ensuring Safety and Determining Status* (Washington, DC: MPI, 2006): 78, www.migrationpolicy.org/pubs/Boat_People_Report.pdf.

178 Migrant interdiction policies have also sought to prevent Haitians from taking perilous journeys on unseaworthy boats.

179 Stephen H. Legomsky, “The USA and the Caribbean Interdiction Program,” *International Journal of Refugee Law* 18 (2006): 677, 679.

180 Executive Order 12324, 46 Fed. Reg. 48109-10 (September 29, 1981).

181 US Commission on Immigration Reform, *Refugee and Humanitarian Admissions: Appendices*: 51.

182 Donald Kerwin, *Migrants, Borders, and National Security: US Immigration Policy Since September 11, 2001* (Staten Island, NY: Center for Migration Studies, 2002): 35.

183 For a short period after Jean-Bertrand Aristide’s ouster, the United States suspended its repatriation policy. It resumed interdiction and repatriation in mid-November 1991.

184 US Coast Guard, “Alien Migrant Interdiction,” statistics as of August 11, 2010, www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp.

185 US Commission on Immigration Reform, *Refugee and Humanitarian Admissions: Appendices*: 52-4. Between 1992 and 1995, the United States also conducted refugee processing within Haiti.

186 *Ibid.*, 216-17.

187 Executive Order No. 12807, 57 Fed. Reg. 23133 (May 24, 1992).

**Table A-1. US Coast Guard Migrant Interdictions from 1982 to May 2, 2011**

Fiscal Year	Haitian	Dominican	PRC	Cuban	Mexican	Other	Ecuadorean	Total
1982	171	0	0	0	0	0	0	171
1983	511	6	0	44	0	5	0	566
1984	1581	181	0	7	2	37	0	1808
1985	3721	113	12	51	0	177	0	4074
1986	3422	189	11	28	1	74	0	3725
1987	2866	40	0	46	1	38	0	2991
1988	4262	254	0	60	11	13	0	4600
1989	4902	664	5	257	30	5	0	5863
1990	871	1426	0	443	1	95	0	2836
1991	2065	1007	138	1722	0	58	0	4990
1992	37618	588	181	2066	0	174	0	40627
1993	4270	873	2511	2882	0	48	0	10584
1994	25302	232	291	38560	0	58	0	64443
1995	909	3388	509	525	0	36	0	5367
1996	2295	6273	61	411	0	38	2	9080
1997	288	1200	240	421	0	45	0	2194
1998	1369	1097	212	903	30	37	0	3648
1999	1039	583	1092	1619	171	24	298	4826
2000	1113	499	261	1000	49	44	1244	4210
2001	1391	659	53	777	17	31	1020	3948
2002	1486	177	80	666	32	55	1608	4104
2003	2013	1748	15	1555	0	34	703	6068
2004	3229	5014	68	1225	86	88	1189	10899
2005	1850	3612	32	2712	55	45	1149	9455
2006	1198	3011	31	2810	52	91	693	7886
2007	1610	1469	73	2868	26	167	125	6338
2008	1582	688	1	2199	47	65	220	4802
2009	1782	727	35	799	77	41	6	3467
2010	1,377	140	0	422	61	88	0	2088
2011	667	105	0	388	66	15	0	1241

Source: US Coast Guard, "Alien Migrant Interdiction," www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp.



In 1993, the US Supreme Court ruled on whether the interdiction and repatriation policy comported with Article 33 of the UN Convention relating to the Status of Refugees and INA's "withholding of removal" standard, which provided that the Attorney General could not "deport or return" an alien whose "life or freedom would be threatened" on an enumerated ground. In *Sale v. Haitian Centers Council*, the court held that the legal prohibition on "return" to a country where a person's life or freedom would be threatened did not apply extra-territorially to persons interdicted on the high seas.¹⁸⁸ In effect, this case turned non-refoulement for those interdicted in international waters into a humanitarian principle, rather than a legal obligation for the United States.

UNHCR's Executive Committee (EXCOM) sharply disagreed, characterizing the decision as "a setback to modern international refugee law."¹⁸⁹ In a subsequent note, EXCOM concluded that the "principle of non-refoulement does not imply any territorial restriction" and that "the international refugee regime would be rendered ineffective" if states failed to adhere to this obligation.¹⁹⁰

In 1994, the United States provided safe haven to interdicted Haitians at Guantánamo and explored regional refugee screening and resettlement options.¹⁹¹ However, since the 1992 Executive Order, interdicted Haitians have mostly been subject to what has been characterized as the "shout test." If able to express a fear of return, they have been permitted to speak to a "protection screening officer" and to receive a shipboard screening, initially by the US Coast Guard and currently by USCIS.¹⁹² Haitians determined to have "credible fear" are generally transferred to Guantánamo Naval Base for an interview by USCIS and for possible referral to DOS for resettlement to a third country.¹⁹³ They are not permitted to seek asylum in the United States. Very few Haitians have been able to avail themselves of third-country resettlement.

Protection officers do not advise interdicted Haitians of their right to request political asylum. Rather, they seek to "create an environment in which people who are fearful of return are able to come forward."¹⁹⁴ By contrast, the United States screens all interdicted Cubans and "may require" prescreening of migrants coming directly from the PRC.¹⁹⁵

Over the last decade, the United States has admitted fewer than 200 Haitian refugees; it admitted *no* Haitian refugees between 2006 and 2008.¹⁹⁶ By contrast, Haitian asylum claims have been among those

188 113 S. Ct. 2549, 125 L. (92-344), 509 US 155 (1993)

189 Stephen H. Legomsky, "The USA and the Caribbean Interdiction Program," citing "U.N. High Commissioner for Refugees Responds to US Supreme Court Decision in *Sale v. Haitian Centers Council*" 32 ILM 1215 (1993).

190 UNHCR Executive Committee, "Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach," Doc. EC/50/SC/CRP.17 (June 9, 2000), para 23, www.unhcr.org/4963237411.html.

191 US Commission on Immigration Reform, *Refugee and Humanitarian Admissions: Appendices*: 53-4; Ruth Ellen Wassem, *US Immigration Policy on Haitian Migrants* (Washington, DC: Congressional Research Service, 2010): 3-5, <http://fas.org/sgp/crs/row/RS21349.pdf>. On May 8, 1994, President Bill Clinton announced that intercepted Haitians would no longer be directly returned, and the administration intensified negotiations for regional refugee processing and resettlement. On June 15, 1994, refugee processing began on a US Navy hospital ship docked in Kingston, Jamaica. This procedure resulted in refugee grants to 596 interdicted Haitians, but it lasted only three weeks. The Clinton administration thereafter suspended refugee processing in light of large-scale departures from Haiti. It then offered safe haven at Guantánamo until the base filled to capacity, holding 21,600 intercepted migrants. Following the return of once-deposed Haitian President Jean-Bertrand Aristide in September 1994, the United States repatriated virtually all of the Haitians at Guantánamo.

192 Stephen Legomsky, "The USA and the Caribbean Interdiction Program," 686.

193 US Coast Guard, "Alien Migrant Interdiction," accessed June 21, 2010, www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/currentstats.asp.

194 Statement of Eric Schwartz, Assistant Secretary of State for Population, Refugees and Migration, 7th Annual Immigration Law and Policy Conference, Georgetown University School of Law, June 25, 2010, www.law.georgetown.edu/webcast/eventDetail.cfm?eventID=1149.

195 Information provided to MPI by Commander Stephen Leslie, US Coast Guard (August 12, 2010, on file with author).

196 DHS, *Yearbook of Immigration Statistics: 2009*, Table 14.



granted in the largest numbers.¹⁹⁷ Yet the standards for and the conditions that give rise to refugee and asylum claims are identical.

Despite deteriorating conditions in Haiti, recent years have witnessed a continuation of these policies. In the aftermath of the 9/11 terrorist attacks, the United States invoked “national security” concerns to support the interdiction, repatriation, and detention of Haitian boat people, arguing that without these measures the US Coast Guard would be diverted from its anti-terror duties by large-scale flows of boat people.¹⁹⁸ After the 2010 Haitian earthquake, the Obama administration announced that it would continue to intercept and repatriate Haitians fleeing by boat, and would detain those who reached the United States.¹⁹⁹ On January 20, 2011, DHS resumed deportations to Haiti. One of the 27 Haitians in the first group of deportees reportedly died of cholera within a week of his return.²⁰⁰

197 EOIR, *FY 2010 Statistical Yearbook*: J2.

198 *In re D-J*, 23 I. & N. Dec. 572, 576-579 (2003).

199 Spencer Hsu, “Officials Try to Prevent Haitian Earthquake Refugees from Coming to US,” *Washington Post*, January 18, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/01/17/AR2010011701893.html.

200 Letter to President Barack Obama from American Jewish World Service, American Refugee Committee, Church World Service, Jesuit Refugee Service/USA, Oxfam America, Refugees International, US Committee for Refugees, and World Relief, February 17, 2011.



Works Cited

- Aleinikoff, T. Alexander. 2010. Presentation by the United Nations Deputy High Commissioner for Refugees at the Migration Policy Institute (MPI), Washington, DC, June 9, 2010.
- American Bar Association (ABA). 2008. *Ensuring Fairness and Due Process in Immigration Proceedings*. Chicago: ABA. www.americanbar.org/content/dam/aba/migrated/poladv/priorities/immigration/2008dec_immigration.authcheckdam.pdf.
- American Jewish World Service, American Refugee Committee, Church World Service, Jesuit Refugee Service/USA, Oxfam America, Refugees International, US Committee for Refugees, and World Relief. 2011. Letter to President Barack Obama. February 17, 2011.
- Batalova, Jeanne and Michael Fix. 2008. *Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States*. Washington, DC: MPI. www.migrationpolicy.org/pubs/BrainWasteOct08.pdf.
- Brick, Kate, Amy Cushing-Savvi, Samia Elshafie, Alan Krill, Megan McGlynn Scanlon, and Marianne Stone. 2010. *Refugee Resettlement in the United States: An Examination of Challenges and Proposed Solutions*. New York: Columbia University School of International and Public Affairs. www.sipa.columbia.edu/academics/workshops/documents/IRCCapstoneworkshopSIPAcopy.pdf.
- Bureau of Labor Statistics. 2010. Household Data Annual Averages. www.bls.gov/cps/cpsaat39.pdf.
- Catholic Legal Immigration Network, Inc (CLINIC). 2000. *The Needless Detention of Immigrants in the United States*. Washington, DC: CLINIC. <http://cliniclegal.org/sites/default/files/atrisk4.pdf>.
- Center for Migration Studies. 2003. *Immigration Policy, Law Enforcement and National Security*. Staten Island, NY: Center for Migration Studies.
- Centers for Medicare and Medicaid Services. 2010 Poverty Guidelines. www.cms.gov/MedicaidEligibility/downloads/POV10Combo.pdf.
- Chinese Student Protection Act. 1992. Public Law 102-404, *US Statutes at Large* 106: 1969.
- Citizenship and Immigration Canada. 2002. Final Text of the Safe Third Country Agreement. Last modified December 5, 2002. www.cic.gc.ca/english/department/laws-policy/safe-third.asp.
- Citizenship and Immigration Services (CIS) Ombudsman. 2007. Recommendation from the CIS Ombudsman to the Director, USCIS. Memorandum from Prakash Khatri, CIS Ombudsman, to Dr. Emilio T. Gonzalez, Director of US Citizenship and Immigration Services (USCIS), April 6, 2007. www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf.
- Cuban Adjustment Act of 1966. Public Law 89-732, *US Statutes at Large* 80: 1161.
- Esbenshade, Jill. 2010. *An Assessment of DNA Testing for African Refugees*. Washington, DC: Immigration Policy Center. www.immigrationpolicy.org/special-reports/assessment-dna-testing-african-refugees.
- European Commission. 2010. Eurostat. Asylum Statistics. Last modified January 2011. http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics.
- Foreign Operations, Export Financing and Related Programs Appropriations Act. 1990. Public Law 101-167, Section 599D, *US Statutes at Large* 103 (1989): 1219, 1261-63.
- Ginsburg, Susan. 2010. *Securing Human Mobility in the Age of Risk: New Challenges for Travel, Migration, and Borders*. Washington, DC: MPI.
- González, Daniel. 2010. More fleeing cartels in Mexico, seeking asylum in US. *Arizona Republic*, January 24, 2010. www.azcentral.com/news/articles/2010/01/24/20100124asylum0124.html.
- Haddal, Chad C. 2009. *Refugee and Asylum-Seeker Inflows in the United States and Other OECD Member States*. Washington, DC: Congressional Research Service. www.policyarchive.org/handle/10207/bitstreams/19793.pdf.
- Harvard Law Student Advocates for Human Rights, the International Human Rights Clinic, Human Rights Program, Harvard Immigration and Refugee Clinical Program. 2006. *Bordering on Failure: The US-Canada Safe Third*



- Country Agreement Fifteen Months After Implementation*. Cambridge, MA: Harvard Law School. www.law.harvard.edu/programs/hrp/clinic/documents/Harvard_STCA_Report.pdf.
- Hsu, Spencer. 2010. Officials Try to Prevent Haitian Earthquake Refugees from Coming to US. *The Washington Post*, January 18, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/01/17/AR2010011701893.html.
- Human Rights Action and The Human Rights Institute at Georgetown University Law Center. 2009. *Refugee Crisis in America: Iraqis and their Resettlement Experience*. Washington, DC: Human Rights Action. www.law.georgetown.edu/news/releases/documents/RefugeeCrisisinAmerica_000.pdf.
- Human Rights First. 2008. *How to Repair the US Asylum System: Blueprint for the Next Administration*. New York: Human Rights First. www.humanrightsfirst.org/pdf/081204-ASY-asylum-blueprint.pdf.
- _____. 2009. *Denial and Delay: The Impact of the Immigration Law's 'Terrorism Bars' on Asylum Seekers and Refugees in the United States*. New York: Human Rights First. www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-DenialandDelay-FULL-111009-web.pdf.
- _____. 2010. *Living in Limbo: Iraqi Refugees and US Resettlement*. New York: Human Rights First. www.humanrightsfirst.org/wp-content/uploads/Living-in-Limbo-final.pdf.
- _____. 2010. *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*. New York: Human Rights First. www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf.
- Human Rights Watch. 2009. *Jailing Refugees: Arbitrary Detention of Refugees in the US Who Fail to Adjust to Permanent Resident Status*. New York: Human Rights Watch. www.hrw.org/en/reports/2009/12/29/jailing-refugees-0.
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996*. Public Law 104-208, *US Statutes at Large* 110 (1996): 3009-546.
- International Rescue Committee (IRC). 2009. *Iraqi Refugees in the United States: In Dire Straits*. New York: IRC. www.theirc.org/sites/default/files/resource-file/irc_report_iraqcommission.pdf.
- Kerwin, Donald. 2002. *Migrants, Borders, and National Security: US Immigration Policy Since September 11, 2001*. Staten Island, NY: Center for Migration Studies.
- _____. 2005. The Use and Misuse of 'National Security' Rationale in Crafting US Refugee and Immigration Policies. *International Journal of Refugee Protection* 17: 749-63.
- Legomsky, Stephen H. 2006. The USA and the Caribbean Interdiction Program. *International Journal of Refugee Law* 18 (3-4): 677-95.
- Leiken, Robert S. 2004. *Bearers of Global Jihad?: Immigration and National Security after 9/11*. Washington, DC: The Nixon Center.
- Martin, Daniel C. 2010. *Refugees and Asylees: 2009*. Washington, DC: Department of Homeland Security, Office of Immigration Statistics. www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2009.pdf.
- _____. 2011. *Refugees and Asylees: 2010*. Washington, DC: Department of Homeland Security, Office of Immigration Statistics. www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2010.pdf
- National Immigrant Justice Center (NIJC). 2010. *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court*. Chicago: NIJC. www.immigrantjustice.org/policy-resources/isolatedindetention/intro.html.
- National Immigrant Justice Center, Human Rights First, Penn State Law's Center for Immigrant Rights. 2010. *The One-Year Asylum Deadline and the BIA: An Analysis of Board of Immigration Appeals Decision 2005-2008*. www.immigrantjustice.org/policy-resources/oneyeardeadlinereport/oneyeardeadline.html.
- Osuna, Juan. 2011. Presentation by the Acting Director of the Executive Office of Immigration Review at the Migration Policy Institute, March 14, 2011. <http://events.powerstream.net/002/00592/20110314MPI/#powershow>.
- Papademetriou, Demetrios and Aaron Terrazas. 2009. *Immigrants and the Current Economic Crisis: Research Evidence, Policy Changes, and Implications*. Washington, DC: MPI. www.migrationpolicy.org/pubs/lmi_recessionJan09.pdf.



- Ramji-Nogales, Jaya, Andrew I. Schoenholtz, and Phillip G. Schrag. 2007. Refugee Roulette: Disparities in Asylum Adjudication. *Stanford Law Review* 60 (2): 295-412.
- REAL ID Act of 2005*. Public Law 109-13, *US Statutes at Large* 119 (2005): 231.
- Refugee Act of 1980*. Public Law 96-212, 94 Stat. 102 (March 17, 1980), *US Statutes at Large* 94 (1980): 103.
- Refugee Council USA. The US Refugee Admission and Resettlement Program at a Crossroads: Recommendations by Refugee Council USA. www.rcusa.org/uploads/pdfs/Final%20RCUSA%20USRP%20Reform.pdf.
- Ryan, Kelly. Testimony of the Deputy Assistant Secretary of State, Bureau of Population, Refugees, and Migration before the Senate Special Committee on Aging. 2007. Hearing on Health and Welfare Needs of Elderly Refugees and Asylees, 110th Cong., 1st sess., December 5, 2007, <http://aging.senate.gov/events/hr184kr.pdf>.
- Schoenholtz, Andrew and Jonathan Jacobs. 2002. The State of Asylum Representation: Ideas for Change. *Georgetown Immigration Law Journal* 16 (4): 739-72.
- Schrag, Philip G., Andrew Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach. 2010. Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum. *William and Mary Law Review* 52 (3): 651-804. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1684231.
- Schwartz, Eric P. 2010. Speech by the Assistant Secretary of State, Bureau of Population, Refugees, and Migration, at the Migration Policy Institute's 2010 Immigration Law and Policy conference. Advancing Protection in the 21st Century: Reflections on the 30th Anniversary of the US Refugee Act. March 16, 2010. www.state.gov/g/prm/rls/rmks/2010/138425.htm.
- Transactional Records Access Clearinghouse (TRAC). 2009. Latest Data from Immigration Courts Show Decline in Asylum Disparity. Syracuse, NY: TRAC. <http://trac.syr.edu/immigration/reports/209/>.
- _____. 2011. Immigration Case Backlog Still Growing in FY 2011. Syracuse, NY: TRAC. <http://trac.syr.edu/immigration/reports/246/>.
- United Nations General Assembly. Convention Against Torture. 10 February 1984, United Nations Treaty Series, vol. 1465: 85.
- _____. Convention Relating to the Status of Refugees. 1951. United Nations, Treaty Series, vol. 189: 137. www.unhcr.org/refworld/docid/3be01b964.html.
- _____. Protocol Relating to the Status of Refugees. 1967. United Nations, Treaty Series, vol. 606: 267. www.unhcr.org/refworld/docid/3ae6b3ae4.html.
- United Nations High Commissioner for Refugees (UNHCR). 2006. *Monitoring Report: Canada-United States "Safe Third Country" Agreement: 29 December 2004 – 28 December 2005*. Geneva: UNHCR. www.unhcr.org/455b2cca4.html.
- _____. 2009. *Statistical Yearbook 2008*. Geneva: UNHCR. www.unhcr.org/4bcc5bb79.html.
- _____. 2010. *Asylum Levels and Trends in Industrialized Countries 2009*. Geneva: UNHCR. www.unhcr.org/4ba7341a9.html.
- _____. Executive Committee. 2000. *Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach*. www.unhcr.org/4963237411.html.
- _____. 2011. *Asylum Levels and Trends in Industrialized Countries 2010*. Geneva: UNHCR. www.unhcr.org/4d8c5b109.html.
- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (US PATRIOT ACT)*. Public Law 107-56, *US Statutes at Large* 115 (2001): 272.
- US Citizenship and Immigration Services (USCIS). 2009. Secretaries Napolitano and Clinton Exercise Authority Under the Immigration and Nationality Act (INA) to Exempt Individuals Affiliated with Certain Iraqi Groups from Certain Inadmissibility Provisions. Fact sheet, October 19, 2009. www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=f3d233e559274210VgnVCM100000082ca60aRCRD&vgnnextchannel=f39d3e4d77d73210VgnVCM100000082ca60aRCRD.
- _____. 2010. Statistics provided for meeting of Non-Governmental Organization (NGO) Working Group on Terror-



- ism-Related Inadmissibility Grounds, May 31, 2010. On file with author.
- _____. 2010. USCIS National Stakeholder January Meeting. www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=74adc3531a176210VgnVCM100000082ca60aRCRD&vgnnextchannel=994f81c52aa38210VgnVCM100000082ca60aRCRD.
- _____. 2010. Emergent or Denied Refugee Applications: Expediting Cases, Articulating Reasons for Denial, and Issuing Guidance for Requests for Consideration. Washington, DC: CIS Ombudsman, April 14, 2010. www.dhs.gov/xlibrary/assets/cisomb_recommendation_43_adjudication_refugee_status.pdf.
- US Coast Guard. 2010. Information provided to MPI by Commander Stephen Leslie, US Coast Guard, August 12, 2010. On file with author.
- _____. 2011. Alien Migrant Interdiction. Total Interdictions FY 1982 to Present. Accessed May 19, 2011. www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp.
- US Commission on Immigration Reform. 1997. Refugee and Humanitarian Admissions: Appendices. Washington, DC: US Commission on Immigration Reform.
- US Commission on International Religious Freedom (USCIRF). 2005. *Report on Asylum Seekers in Expedited Removal, Volume II*. Washington, DC: USCIRF. www.uscirf.gov/images/stories/pdf/asylum_seekers/evalCredibleFear.pdf.
- US Congress. Senate Committee on Foreign Relations. 2010. *Abandoned Upon Arrival: Implications for Refugees and Local Communities Burdened by a US Resettlement System That is Not Working*. 111th Cong., 2d sess., July 21, 2010. <http://ugar.senate.gov/issues/foreign/refugee/report.pdf>.
- US Customs and Border Protection. 2006. 2006: A Year of Accomplishment. Accessed February 22, 2011. www.cbp.gov/xp/cgov/about/accomplish/previous_year/accomp_yr06.xml.
- US Department of Health and Human Services (HHS). 2007. *Report to Congress: FY 2007*. Washington, DC: HHS. .
- HHS Office of Refugee Resettlement. 2009. Office of Refugee Resettlement. Fact sheet, January 30, 2009. www.acf.hhs.gov/programs/orr/press/office_refugee_factsheet.htm.
- _____. 2010. Refugee Arrival Data. By Country of Origin and State of Initial Resettlement, 2000-2009. www.acf.hhs.gov/programs/orr/data/refugee_arrival_data.htm.
- _____. 2011. State Refugee Coordinators. Accessed February 4, 2011. www.acf.hhs.gov/programs/orr/partners/state_coordina.htm.
- _____. Administration for Children and Families. Matching Grant program. Accessed March 23, 2011. www.acf.hhs.gov/programs/orr/programs/match_grant_prgr.htm.
- _____. Administration for Children and Families, FY 2012 Online Performance Appendix. www.acf.hhs.gov/programs/olab/budget/2012/op_finalreport_2012.pdf.
- US Department of Homeland Security (DHS). 2010. Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans. News release, January 18, 2010. www.dhs.gov/ynews/releases/pr_1263861907258.shtm.
- _____. 2011. Secretary Napolitano Announces the Extension of Temporary Protected Status for Haiti Beneficiaries. News Release, May 17, 2011. www.dhs.gov/ynews/releases/pr_1305643820292.shtm.
- _____. Office of Immigration Statistics. 2008. *2007 Yearbook of Immigration Statistics*. Washington, DC: DHS. www.dhs.gov/files/statistics/publications/LPR07.shtm.
- _____. Office of Immigration Statistics. 2010. *2009 Yearbook of Immigration Statistics*. Washington, DC: DHS. www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf.
- _____. Office of Immigration Statistics, 2011. *2010 Yearbook of Immigration Statistics*. Washington, DC: DHS. www.dhs.gov/files/statistics/publications/YrBk10RA.shtm.
- _____. Office of Immigration Statistics. 2011. *Refugees and Asylees: 2010*. Washington, DC: DHS. www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2010.pdf.
- US Department of Justice, Executive Office for Immigration Review (EOIR). 2006. *FY 2005 Statistical Yearbook*. Falls



- Church, VA: EOIR. www.justice.gov/eoir/statspub/fy05syb.pdf.
- _____. 2011. *FY 2010 Statistical Yearbook*. Falls Church, VA: EOIR. www.justice.gov/eoir/statspub/fy10syb.pdf.
- US Department of State, DHS, HHS. 2009. *Proposed Refugee Admissions for Fiscal Year 2010, Report to Congress*. Submitted on Behalf of the President of the United States to the Committees on the Judiciary, US Senate and US House of Representatives. www.state.gov/documents/organization/129393.pdf.
- _____. 2010. *Proposed Refugee Admissions for Fiscal Year 2011: Report to the Congress*. www.state.gov/documents/organization/148671.pdf.
- US Government Accountability Office (GAO). 2008. *Immigration Benefits: Internal Controls for Adjudicating Humanitarian Parole Cases Are Generally Effective, but Some Can Be Strengthened*. Washington, DC: GAO. www.gao.gov/new.items/d08282.pdf.
- _____. 2008. *US Asylum System: Significant Variation Existed in Asylum Outcomes across Immigration Courts and Judges*. Washington, DC: GAO. www.gao.gov/new.items/d08940.pdf.
- _____. 2009. *Iraqi Refugee Assistance: Improvements Needed in Measuring Progress, Assessing Needs, Tracking Funds, and Developing an International Strategic Plan*. Washington, DC: GAO. www.gao.gov/new.items/d09120.pdf.
- _____. 2011. *Refugee Assistance: Little Is Known about the Effectiveness of Different Approaches for Improving Refugees' Employment Outcomes*. Washington, DC: GAO. www.gao.gov/new.items/d11369.pdf.
- US Immigration and Customs Enforcement (ICE). 2010. Detention of Refugees Admitted Under INA §207 Who Have Failed to Adjust to Lawful Permanent Resident Status. Memorandum from James Chaparro, Director, ICE Office of Detention and Removal Operations, to Field Office Directors, May 10, 2010.
- US Immigration and Naturalization Service (INS). 2000. Memorandum from Doris Meissner, INS Commissioner, to Regional Directors, District Directors, Chief Patrol Agents, Regional and District Counsel, November 17, 2000.
- van Selm, Joanne and Betsy Cooper. 2005. *The New 'Boat People': Ensuring Safety and Determining Status*. Washington, DC: MPI. www.migrationpolicy.org/pubs/Boat_People_Report.pdf.
- Wasem, Ruth Ellen. 2009. *Cuban Migration to the United States: Policy and Trends*. Washington, DC: Congressional Research Service. www.fas.org/sgp/crs/row/R40566.pdf.
- _____. 2010. *US Immigration Policy on Haitian Migrants*. Washington, DC: Congressional Research Service. <http://fas.org/sgp/crs/row/RS21349.pdf>.



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The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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