



**Congressional
Research Service**

Informing the legislative debate since 1914

What Is Affirmative Asylum?

October 24, 2024

Congressional Research Service

<https://crsreports.congress.gov>

R48249



R48249

October 24, 2024

Andorra Bruno
Specialist in Immigration
Policy

What Is Affirmative Asylum?

Foreign nationals in the United States who are not in removal proceedings may apply to the U.S. Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS) for affirmative asylum. By contrast, persons in removal proceedings before the U.S. Department of Justice's Executive Office for Immigration Review (EOIR) may file defensive asylum applications, which are adjudicated by immigration judges in the course of those proceedings. Most migrants who arrive at the U.S. border without authorization and are able to pursue asylum claims will do so through the defensive asylum process.

Affirmative asylum application filings have reached historical highs in recent years. Filings topped 450,000 in FY2023—nearly double the FY2022 number and more than three times the number in the earlier peak year of FY2017.

To apply for asylum affirmatively, a foreign national in the United States who is not in removal proceedings may submit Form I-589 to USCIS. Foreign nationals may submit affirmative asylum applications regardless of their immigration status. An application may include a principal applicant and one or more dependents (i.e., spouse and unmarried children under age 21). Special rules apply to children under age 18 who qualify as unaccompanied alien children; they may apply for asylum affirmatively even if they are in removal proceedings.

Affirmative asylum application filings have been impacted by a variety of factors. Among these in the last few years have been humanitarian crises in Cuba and Venezuela, which have increased emigration from these countries to the United States. According to DHS data for FY2019-FY2023 combined, Venezuela and Cuba were the top two countries of nationality for application filings. They accounted for more than half of all the affirmative asylum applications filed during this period. Affirmative asylum filings in recent years have also been impacted by various U.S. immigration policies, such as the establishment of new immigration parole policies.

Affirmative asylum applications are adjudicated by asylum officers in the USCIS Asylum Division. To be granted asylum, an applicant must satisfy the definition of a “refugee” in the Immigration and Nationality Act (INA), among other requirements. The act defines a refugee, in brief, as a person who is unable or unwilling to return to the home country because of persecution or a well-founded fear of persecution based on one of five protected grounds (race, religion, nationality, membership in a particular social group, or political opinion). Persons granted asylum (*asylees*) have a dedicated pathway to U.S. lawful permanent resident (LPR) status under the INA. After one year of physical presence in the United States, an asylee may become an LPR through the adjustment of status process, subject to certain requirements.

USCIS data on its decisions on affirmative asylum applications show four separate outcome categories: grants, denials, referrals to EOIR, and closures. In recent years, the most common outcome has been referral to EOIR. USCIS refers asylum cases to EOIR when it determines that an applicant is not eligible for asylum and appears to be inadmissible or deportable under the INA.

DHS reports various data on USCIS affirmative asylum grants to individuals, including annual totals and grants by country of nationality. According to data for FY2019-FY2023 combined, the top five countries of nationality for individuals granted asylum affirmatively were Afghanistan, Venezuela, China, Turkey, and Egypt. They accounted for almost 60% of all affirmative asylum grants during this five-year period. Other data, which are limited to principal applicants, concern the basis of the asylum claim. According to DHS data for FY2020-FY2023 combined, persecution or a well-founded fear of persecution on account of political opinion was the basis for more than half of the affirmative asylum grants over this four-year period. Three protected grounds (political opinion, membership in a particular social group, and religion) accounted for over 90% of the total number of asylum grants to principal applicants during these four years.

Contents

Introduction	1
Affirmative Asylum Process.....	2
Affirmative Asylum Application Filing.....	3
Filings by Nationality.....	5
Decisions on Affirmative Asylum Applications	6
Affirmative Asylum Grants	9
Grants by Nationality	9
Grants by Basis of Asylum Claim.....	10
Conclusion.....	10

Figures

Figure 1. New Affirmative Asylum Applications Filed.....	4
Figure 2. USCIS Decisions on Affirmative Asylum Applications	8
Figure 3. Affirmative Asylum Grants to Individuals	9
Figure 4. Asylum Grants by Protected Ground	10

Tables

Table A-1. New Affirmative Asylum Applications Filed	11
Table A-2. USCIS Decisions on Affirmative Asylum Applications	11
Table A-3. Affirmative Asylum Grants to Individuals.....	12

Appendixes

Appendix. Affirmative Asylum Data.....	11
--	----

Contacts

Author Information.....	13
-------------------------	----

Introduction

The national attention that has been focused in recent years on migrants who arrive at the U.S. border without valid entry documentation and request asylum may leave the misimpression that this is the standard way, or even the only way, to apply for asylum in the United States. In reality, current U.S. law provides broad authority for foreign nationals (aliens¹) to apply for asylum.

Under the main provisions on asylum in Section 208 of the Immigration and Nationality Act (INA), aliens who are physically present in the United States or who arrive in the United States (whether or not at an official port of entry) may apply for asylum regardless of their immigration status, subject to certain restrictions.² Among these restrictions, persons are required to apply for asylum within one year after arriving in the United States unless they can show changed or extraordinary circumstances.³ There is no fee to apply for asylum. An eligible asylum applicant may apply for employment authorization once 150 days have lapsed since the filing of a complete application and may be granted such authorization no earlier than 180 days after the filing date.⁴

Although INA Section 208 applies to applicants for asylum generally, individuals file different types of applications depending on their circumstances. *Defensive* asylum applications are filed by persons in removal proceedings before the U.S. Department of Justice’s (DOJ’s) Executive Office for Immigration Review (EOIR) and are adjudicated by immigration judges in the course of those proceedings.⁵ Most migrants who arrive at the U.S. border without authorization and are able to pursue asylum claims will do so through the defensive asylum process.

By contrast, *affirmative* asylum applications are submitted to the U.S. Department of Homeland Security’s (DHS’s) U.S. Citizenship and Immigration Services (USCIS) by foreign nationals who are not in removal proceedings. Affirmative asylum application filings have reached historical highs in recent years. Filings topped 450,000 in FY2023—nearly double the FY2022 number and more than three times the number in the earlier peak year of the FY2017. This report discusses affirmative asylum application filing and processing, decisions on applications, and related data.

¹ “Alien” is the term used in the Immigration and Nationality Act (INA) for any person who is not a citizen or national of the United States. INA §101(a)(3) (8 U.S.C. §1101(a)(3)). In this report, the terms *alien* and *foreign national* are used interchangeably.

² Persons must be in the United States to apply for asylum. The United States does not provide visas or other entry documentation to enable foreign nationals to travel to the country to request asylum. Asylum seekers and other foreign nationals, however, can schedule appointments with immigration officials before their arrival at certain U.S. Southwest border ports of entry using CBP One, a U.S. Department of Homeland Security (DHS) mobile application. For additional information, see CRS Insight IN12166, *CBP One Application: Evolution and Functionality*.

³ INA §208(a) (8 U.S.C. §1158(a)). For further discussion of these restrictions, see CRS Legal Sidebar LSB10815, *An Overview of the Statutory Bars to Asylum: Limitations on Applying for Asylum (Part One)*.

⁴ 8 C.F.R. §208.7(a). The related INA provision states that an asylum applicant is not entitled to employment authorization but allows for such authorization to be provided by regulation, subject to the restriction that it may not be granted prior to 180 days after the application filing date; INA §208(d)(2) (8 U.S.C. §1158(d)(2)).

⁵ For a discussion of defensive asylum, see CRS Report R47504, *Asylum Process in Immigration Courts and Selected Trends*. This report on affirmative asylum does not systematically identify similarities or differences between affirmative and defensive asylum. In addition, a 2022 joint DHS and DOJ interim final rule established a new “asylum merits interview” process for adjudicating a subset of asylum applications. These applications do not fit the definition of either affirmative asylum applications or defensive asylum applications; they constitute a third category. For further discussion, see DHS, U.S. Citizenship and Immigration Services (USCIS), “Obtaining Asylum in the United States,” September 13, 2023, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states>. For information about the 2022 rule, see CRS In Focus IF12162, *Federal Agency Rule Expands Asylum Officers’ Authority*.

Affirmative Asylum Process

To apply for asylum affirmatively, a foreign national in the United States who is not in removal proceedings may submit Form I-589 to USCIS.⁶ Foreign nationals may submit affirmative asylum applications regardless of their immigration status. As such, applicants may include persons with lawful temporary (nonimmigrant) status⁷; persons with temporary authorization to be in the United States, such as individuals who have immigration parole (discussed below) or temporary protected status (TPS)⁸; and persons without authorization to be in the United States. An application may include a principal applicant and one or more dependents (i.e., spouse and unmarried children under age 21).⁹

Affirmative asylum applications are adjudicated by asylum officers in the USCIS Asylum Division. As part of the adjudication process, the applicant undergoes biographical and biometric background and security checks.¹⁰ Asylum officers interview applicants. These interviews are to be conducted in “a nonadversarial manner.”¹¹ The applicant may bring counsel or a representative to the interview, present witnesses, and submit other evidence.¹² In scheduling asylum interviews, the USCIS Asylum Division generally gives priority to applications that have been pending for 21 days or less under its “last in, first out” (LIFO) scheduling system.¹³ According to USCIS, it “uses the LIFO system to discourage individuals from filing non-meritorious asylum applications primarily to obtain employment authorization during the pendency of their applications”¹⁴

The USCIS Asylum Division’s work on affirmative asylum applications and its other caseloads is subject to “statutory directives, operational capacity, and other policy considerations.”¹⁵ For example, affirmative asylum processing has been significantly impacted by the Asylum Division’s responsibility for another caseload: credible fear screenings. Asylum officers are required to interview foreign nationals who are placed in a streamlined removal process (known as *expedited removal*) if they express a fear of persecution, torture, or returning to their home

⁶ For additional information, see DHS, USCIS, “I-589, Application for Asylum and for Withholding of Removal,” <https://www.uscis.gov/i-589>. This form is used by both affirmative and defensive applicants.

⁷ For additional information, see CRS Report R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief*.

⁸ For additional information, CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

⁹ Special rules apply to children under age 18 who qualify as *unaccompanied alien children*; they may apply for asylum affirmatively even if they are in removal proceedings. An unaccompanied alien child is a child who is under age 18, does not have lawful immigration status in the United States, and does not have a parent or legal guardian in the United States available to provide immediate care; 6 U.S.C. §279(g)(2). For additional information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

¹⁰ For additional information about these checks, see DHS, USCIS, *Asylum Application Processing Fiscal Year 2023*, November 1, 2023, pp. 15-17, https://www.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf (hereinafter, “*Asylum Application Processing Fiscal Year 2023*”).

¹¹ 8 C.F.R. §208.9(b).

¹² Ibid. For a step-by-step explanation of the application process, see DHS, USCIS, “The Affirmative Asylum Process,” March 29, 2023, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process>.

¹³ DHS, USCIS, “Affirmative Asylum Interview Scheduling,” March 29, 2024, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling>. As described on this page, while USCIS prioritizes processing recent applications, it also assigns some asylum officers to work on the applications that have been pending the longest.

¹⁴ *Asylum Application Processing Fiscal Year 2023*, p. 5.

¹⁵ Ibid., p. 2.

countries or an intention to apply for asylum to determine if they have a credible fear.¹⁶ Most persons placed in expedited removal have been apprehended at or near the Southwest border. Those determined to have a credible fear of persecution or torture can pursue defensive asylum applications. According to USCIS, the agency gives high priority to these screenings because persons awaiting credible fear determinations are subject to mandatory detention, with limited exceptions.¹⁷

In processing affirmative asylum applications, USCIS is also subject to directives that require it to prioritize certain applications. For example, the Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43, Division C, §2502(c)) directs DHS to expedite the adjudication of asylum applications filed by certain Afghans who were paroled into the United States beginning on July 31, 2021, in conjunction with the U.S. military withdrawal from Afghanistan. A person granted parole (*parolee*) is authorized to remain in the United States temporarily, for the duration of the parole grant. A parolee does not have a dedicated pathway to lawful permanent resident (LPR) status but may be able to obtain that status through an existing avenue, such as asylum.¹⁸ For asylum applications filed by covered Afghan parolees, P.L. 117-43 requires DHS to “conduct the initial interview on the asylum application not later than 45 days” after the filing date and “in the absence of exceptional circumstances, issue a final administrative adjudication on the asylum application within 150 days” after the filing date. As part of a 2023 settlement agreement in a class action lawsuit brought on behalf of Afghan asylum applicants “still waiting for decision nearly two years after they first arrived in the United States,” DHS agreed to a timeline for adjudicating class members’ applications.¹⁹ According to USCIS, “capacity for this [workload] is drawn from other affirmative asylum processing.”²⁰

Affirmative Asylum Application Filing

Figure 1 shows the number of new affirmative asylum applications filed with USCIS from FY2012 to FY2023 (see **Table A-1** for the underlying data). The data displayed are for applications, not individuals; an application may include a principal applicant and dependent family members. (The years covered in this figure and in subsequent figures and report sections differ due to data availability and other considerations.)

The affirmative asylum application data presented in **Figure 1** reflect the impact of various factors. For example, contributing to the FY2017 uptick in applications were increased filings by

¹⁶ The INA defines “credible fear of persecution” to mean “there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.” 8 U.S.C. §1225(b)(1)(B)(v). For information on the analogous “credible fear of torture” standard, see 8 C.F.R. §208.30(e)(3). For additional information about credible fear and expedited removal, see CRS Report R48078, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*.

¹⁷ See *Asylum Application Processing Fiscal Year 2023*, p. 4.

¹⁸ For additional information, see CRS Report R46570, *Immigration Parole*.

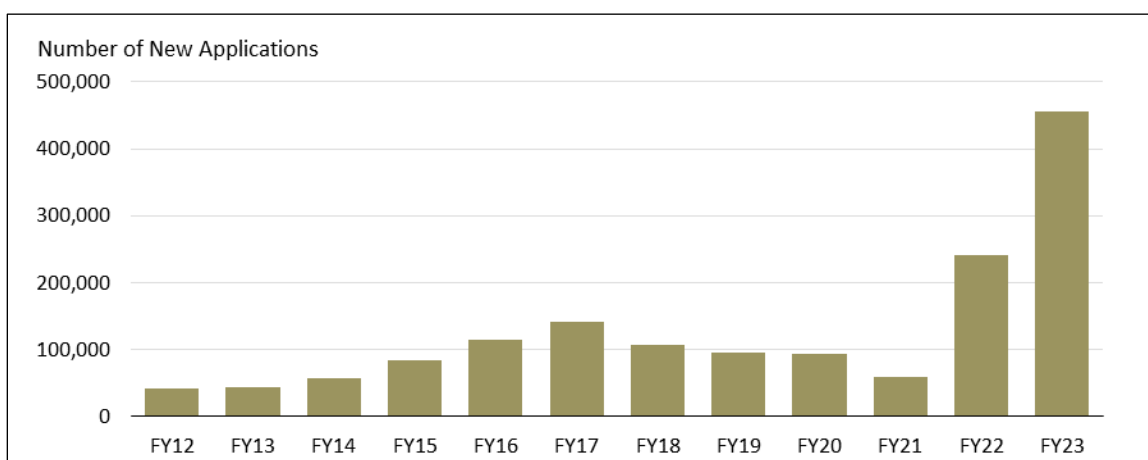
¹⁹ National Immigrant Justice Center, *Afghan People Seeking Asylum Reach Landmark Settlement with U.S. Government in Class Action*, September 11, 2023, <https://immigrantjustice.org/press-releases/afghan-people-seeking-asylum-reach-landmark-settlement-us-government-class-action#:~:text=A%20new%20nationwide%20settlement%20will%20help%20approximately%2020,000>. The case is *Ahmed v. DHS*. The settlement agreement and required USCIS status reports are available on the USCIS Class Action, Settlement Notices and Agreements web page, https://www.uscis.gov/laws-and-policy/other-resources/uscis-class-action-settlement-notices-and-agreements?ddt_mon=&ddt_yr=&query=ahmed&items_per_page=10&page=2.

²⁰ *Asylum Application Processing Fiscal Year 2023*, p. 3.

persons from El Salvador, Guatemala, and Honduras, especially unaccompanied alien children.²¹ The relatively low number of applications filed in FY2021 may be due in part to COVID-19-related travel restrictions.²² Regarding the large increase in the number of applications filed from FY2021 to FY2022, USCIS has noted “a significant surge in asylum applications filed by nationals of Cuba and Venezuela, both of which are currently experiencing documented humanitarian crises catalyzing increased emigration from those countries.”²³

Application filings also increased significantly from FY2022 to FY2023. USCIS has attributed this jump, in part, to applications erroneously filed by migrants who arrived at the Southwest border, were placed in standard removal proceedings, and released from custody. According to USCIS, “although noncitizens in removal proceedings who intend to apply for asylum must do so in immigration court ... many noncitizens incorrectly filed with USCIS instead.”²⁴ USCIS has also identified the availability of online filing for certain affirmative asylum applications, which it announced in early FY2023, as a source of increased application submissions, including applications over which USCIS lacked adjudicatory jurisdiction.²⁵ (Also see the “Decisions on Affirmative Asylum Applications” section.)

Figure 1. New Affirmative Asylum Applications Filed
FY2012-FY2023



Source: CRS presentation of data from DHS, USCIS, *Asylum Application Processing Fiscal Year 2023* (for FY2012-FY2022); and DHS, USCIS, *Asylum Division Monthly Statistics Report, Fiscal Year 2023* (for FY2023).

Notes: Data represent applications, not individuals. Data are limited to new filings. Affirmative asylum data for the same fiscal year in different DHS reports may not match due to data entry delays and different data extraction dates.

²¹ For additional information, see DHS, Office of Immigration Statistics, *Refugees and Asylees: 2017*, March 2019, p. 7, https://ohss.dhs.gov/sites/default/files/2023-12/Refugees_Asylees_2017.pdf; and CRS Report R45489, *Recent Migration to the United States from Central America: Frequently Asked Questions*.

²² DHS, USCIS, *Asylum Application Processing Fiscal Year 2022*, July 17, 2023, p. 5 (footnote 9), https://www.dhs.gov/sites/default/files/2023-08/23_0717_uscis_asylum_application_processing.pdf.

²³ *Ibid.*, p. 5.

²⁴ DHS, Office of Inspector General, *USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims*, “Appendix B: USCIS Comments on the Draft Report,” OIG-24-36, July 3, 2024, p. 19, <https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf>.

²⁵ See *Ibid.*, p. 20. USCIS’s online filing announcement is available at DHS, USCIS, *USCIS Announces Online Filing for Affirmative Asylum Applications*, November 9, 2022, <https://www.uscis.gov/newsroom/news-releases/uscis-announces-online-filing-for-affirmative-asylum-applications>.

Filings by Nationality

According to DHS data on affirmative asylum application filings for FY2019-FY2023 combined,²⁶ the top five countries of nationality for application filings were, in descending order, Venezuela, Cuba, Haiti, Colombia, and Guatemala. Nationals of these countries filed more than 500,000 applications—more than half of the approximately 950,000 affirmative asylum applications filed during this period. Venezuelans and Cubans together filed about 350,000 applications.

Asylum applicants from two countries—Afghanistan and Cuba—illustrate the impact of U.S. immigration policies on asylum filings. Afghans began filing affirmative asylum applications in significant numbers in FY2022. This timing coincides with the granting of parole to tens of thousands of Afghan nationals after the 2021 military withdrawal from Afghanistan. Relatedly, as indicated above, Congress provided for expeditious adjudication of asylum applications filed by Afghan parolees.

Cuba's affirmative asylum story is more complicated. Cuba was the top country for affirmative asylum filings in FY2022 and held the second spot in FY2023. Prior to FY2021, it was not among the top affirmative asylum filing countries. An uptick in Cuban emigration to the United States, coupled with a change in U.S. immigration policy toward Cuba in 2017 (see the text box), helps explain the significant growth in affirmative asylum application filings by Cubans in recent years.

Cubans: U.S. Immigration Policy and Affirmative Asylum

Under a Cuba-specific policy known as *wet foot/dry foot* that was in effect from the mid-1990s until 2017, Cubans who reached the U.S. shore were inspected by immigration officers and generally permitted to stay in the country; they were typically granted immigration parole. As parolees, Cubans were then able to avail themselves of a special pathway to LPR status under the Cuban Adjustment Act.²⁷ This act, as amended, enables Cubans who have been inspected and admitted or paroled into the United States, have been physically present in the country for at least one year, and are admissible for permanent residence to become LPRs.²⁸

In 2017, the Obama Administration changed U.S. immigration policy toward Cuba. That year, DHS ended the *wet foot/dry foot* policy, stating, “By taking this step, we are treating Cuban migrants the same way we treat migrants from other countries.”²⁹ Although the Cuban Adjustment Act remained in place, it continued to apply only to persons who were inspected and admitted or paroled into the country. Without the *wet foot/dry foot* policy and the concomitant routine granting of parole, large numbers of Cubans who arrived in the United States without authorization were no longer eligible to apply for LPR status under the Cuban Adjustment Act. Instead, to be able

²⁶ DHS, Office of Homeland Security Statistics (OHSS), *Refugees and Asylees: 2021*, September 2022, https://ohss.dhs.gov/sites/default/files/2023-12/2022_0920_plcy_refugees_and_asylees_fy2021_v2.pdf; DHS, OHSS, *Refugees and Asylees: 2022*, November 2023, https://ohss.dhs.gov/sites/default/files/2024-03/2023_0818_plcy_refugees_and_asylees_fy2022_v2_0.pdf; DHS, OHSS, *Asylees: 2023*, October 2024, https://ohss.dhs.gov/sites/default/files/2024-10/2024_1002_ohss_asylees_fy2023.pdf; DHS, USCIS, Asylum Division Monthly Statistics Report, Fiscal Year 2022, August 4, 2023; and DHS, USCIS, Asylum Division Monthly Statistics Report, Fiscal Year 2023, November 3, 2023 (the latter two reports are available at <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data>).

²⁷ According to DHS, “the policy commonly known as ‘wet-foot/dry-foot’ generally refers to an understanding under which Cuban migrants traveling to the United States who are intercepted at sea (‘wet foot’) are returned to Cuba or resettled in a third country, while those who make it to U.S. soil (‘dry foot’) are able to request parole and, if granted, lawful permanent resident status under the Cuban Adjustment Act.” DHS, *Fact Sheet: Changes to Parole and Expedited Removal Policies Affecting Cuban Nationals*, January 12, 2017, <https://www.dhs.gov/sites/default/files/publications/DHS%20Fact%20Sheet%20FINAL.pdf>.

²⁸ P.L. 89-732, as amended; 8 U.S.C. §1255 note.

²⁹ White House, *Statement by the President on Cuban Immigration Policy*, January 12, 2017, <https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/statement-president-cuban-immigration-policy>.

to stay in the United States legally, they had to use other immigration mechanisms. A key option for Cubans who had entered unlawfully and had *not* been apprehended and placed in removal proceedings was to apply for asylum affirmatively.³⁰

A more recent policy development may impact affirmative asylum application filings by Cubans as well as Haitians, Nicaraguans, and Venezuelans in future years. In 2023, DHS established new parole processes for nationals of these four countries (commonly known as the *CHNV processes*).³¹ These processes are subject to a set of requirements as well as a monthly numerical cap of 30,000 travel authorizations that applies to the four countries combined.³² Intended to reduce unauthorized migration to the U.S. border, the CHNV processes have different potential affirmative asylum-related implications for nationals of the four countries. Cubans who are granted parole through this mechanism could obtain LPR status under the Cuban Adjustment Act provided they satisfied the other criteria in the act. They would not need to pursue other immigration options, such as asylum, to be able to stay in the country permanently.³³ By contrast, for Haitians, Nicaraguans, and Venezuelans granted parole through the CHNV processes (who do not benefit from a law like the Cuban Adjustment Act), affirmative asylum offers an avenue to obtain LPR status. Assuming these parole policies continue, it remains to be seen if and how they may impact the number of affirmative asylum applications filed by nationals of the four countries.

Decisions on Affirmative Asylum Applications

To be granted asylum by DHS or DOJ, an applicant must satisfy the INA definition of a “refugee,” among other requirements.³⁴ The act defines a refugee, in brief, as a person who is unable or unwilling to return to the home country because of persecution or a well-founded fear of persecution based on one of five protected grounds (race, religion, nationality, membership in a particular social group, or political opinion).³⁵ As noted above, the INA places certain restrictions on the ability of foreign nationals to apply for asylum. It also places certain restrictions on the ability of DHS and DOJ to grant asylum. Statutory grounds for denying an asylum application include the applicant’s conviction for a “particularly serious crime,” “reasonable grounds” for

³⁰ As noted previously, most persons in removal proceedings cannot be considered for affirmative asylum; instead, they can apply for defensive asylum.

³¹ DHS had established a Venezuelan parole process in October 2022. It updated this process in conjunction with establishing new processes for nationals of Cuba, Haiti, and Nicaragua in January 2023. For additional information about the CHNV parole processes, see CRS Report R47654, *Immigration Options for Immigration Parolees*.

³² According to OHSS, more than 500,000 travel authorizations were issued to nationals of the four countries under the CHNV processes from January 2023 through June 2024. Links to OHSS tables on CHNV travel authorizations and other CHNV data through June 2024 are available at https://ohss.dhs.gov/sites/default/files/2024-10/24-1011_ohss_immigration-enforcement-and-legal-processes-tables-june-2024_2.xlsx.

³³ However, according to USCIS, some Cuban parolees choose to simultaneously pursue LPR status under the Cuban Adjustment Act and file affirmative asylum applications. USCIS briefing of CRS, August 6, 2024.

³⁴ INA §208(b) (8 U.S.C. §1158(b)).

³⁵ INA §101(a)(42) (8 U.S.C. §1101(a)(42)). Persons applying for admission to the United States as refugees also must satisfy this definition. Unlike asylum applicants, persons applying for refugee admission undergo all processing abroad; a person may not apply for refugee status from within the United States. For additional information, see CRS Report R47399, *U.S. Refugee Admissions Program*.

considering the applicant a danger to national security, and the applicant's firm resettlement in another country prior to arriving in the United States.³⁶

Persons granted asylum (*asylees*) have a dedicated pathway to LPR status under the INA. After one year of physical presence in the United States, an asylee may become an LPR through the adjustment of status process, subject to certain requirements.³⁷

A USCIS asylum officer's decision on an affirmative asylum application is reviewed by a supervisory asylum officer, who may refer the case to USCIS headquarters for further review.³⁸ If USCIS ultimately determines that an applicant is eligible for asylum, the applicant receives a letter and form documenting the grant of asylum.³⁹ If USCIS determines that an affirmative asylum applicant is not eligible for asylum and the applicant has valid nonimmigrant status, TPS, or immigration parole, the asylum officer denies the application.⁴⁰ If USCIS determines that an applicant is not eligible for asylum and appears to be inadmissible or deportable under the INA, the officer refers the case to an EOIR immigration judge for adjudication in removal proceedings.⁴¹ In those proceedings, the immigration judge evaluates the asylum claim independently as a defensive application for asylum.

Figure 2 presents data on affirmative asylum applications considered by USCIS from FY2012 to FY2023. It shows four separate outcome categories: grants, denials, referrals to EOIR, and closures. The latter are cases administratively closed for reasons such as lack of jurisdiction. A closure in one fiscal year in **Figure 2** could have been refiled or reopened in a subsequent year. (See **Table A-2** for the underlying data.)

³⁶ INA §208(b)(2) (8 U.S.C. §1158(b)(2)). For additional discussion, see CRS Legal Sidebar LSB10816, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)*.

³⁷ INA §209(b) (8 U.S.C. §1159(b)).

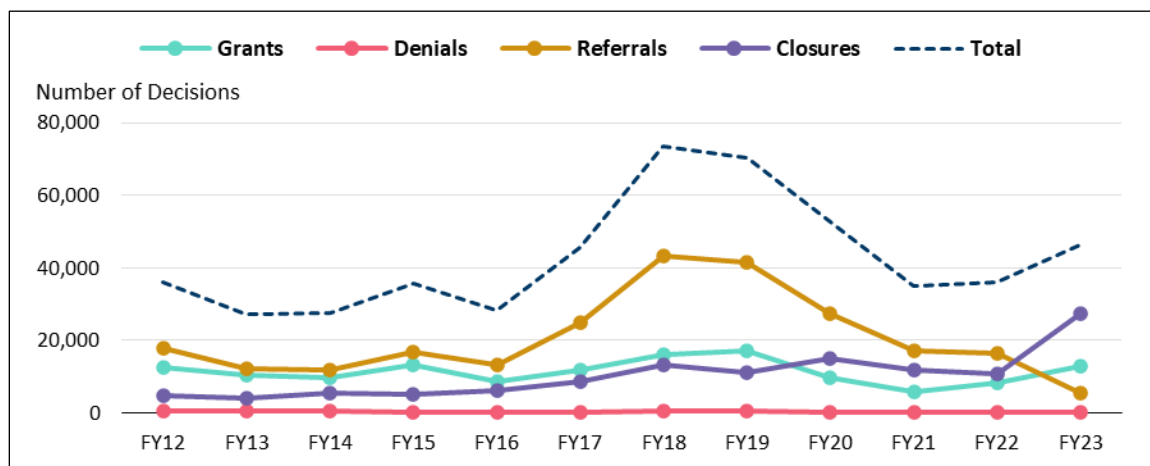
³⁸ DHS, USCIS, "The Affirmative Asylum Process," March 29, 2023; also see 8 C.F.R. §208.14(b), (c).

³⁹ DHS, USCIS, "Types of Affirmative Asylum Decisions," May 31, 2022, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/types-of-affirmative-asylum-decisions>.

⁴⁰ 8 C.F.R. §208.14(c)(2), (3). An applicant in a valid status who is found ineligible for asylum may receive a notice of intent to deny, which will state the reason for the applicant's ineligibility. For further information, see DHS, USCIS, "Types of Affirmative Asylum Decisions," May 31, 2022. Information about the listed statuses is available in CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*; CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*; and CRS Report R46570, *Immigration Parole*.

⁴¹ 8 C.F.R. §208.14(c)(1). For information about inadmissibility, see CRS In Focus IF12662, *Immigration: Grounds of Inadmissibility*.

Figure 2. USCIS Decisions on Affirmative Asylum Applications
FY2012-FY2023



Source: CRS presentation of data provided by DHS, USCIS, on March 13, 2024.

Notes: Data represent applications, not individuals. Closures are cases administratively closed for reasons such as lack of jurisdiction, abandonment, or applicant failure to appear for the asylum interview. Affirmative asylum data for the same fiscal year in different DHS reports may not match due to data entry delays and different data extraction dates.

Figure 2 shows that for all years except FY2023, the most common outcome was referral to an immigration judge. As noted previously, USCIS refers asylum cases to EOIR when it determines that an applicant is not eligible for asylum and appears to be inadmissible or deportable under the INA. USCIS explained to the Congressional Research Service that a key reason for the relatively lower number of referrals in FY2023 was the statutory directive that the agency prioritize asylum applications filed by Afghan parolees (see the “Affirmative Asylum Process” section). According to USCIS, almost all of these Afghan asylum applications have been approved.⁴² Thus, prioritizing these applications for adjudication in FY2023 had the result of increasing the total number of grants and reducing the total number of referrals. Throughout the period depicted in **Figure 2**, there were relatively low numbers of application denials. These denials ranged from 107 in FY2016 to 714 in FY2012 (see **Table A-2**). These data, together with the referral data, indicate that most applicants who were found to be ineligible for asylum were not in a valid legal status.

Figure 2 also shows a relatively high number of case closures in FY2023. Contributing to this increase in closures has been USCIS’s use of “data sweeps of the [affirmative asylum application] backlog and tools to identify applications that may be amenable to expedited or non-interview processing.”⁴³ These efforts include, for example, identifying pending applications filed by principal applicants who have already gained LPR status or may have abandoned their asylum applications and identifying pending applications over which USCIS may not have jurisdiction.⁴⁴

⁴² USCIS briefing of CRS, August 6, 2024.

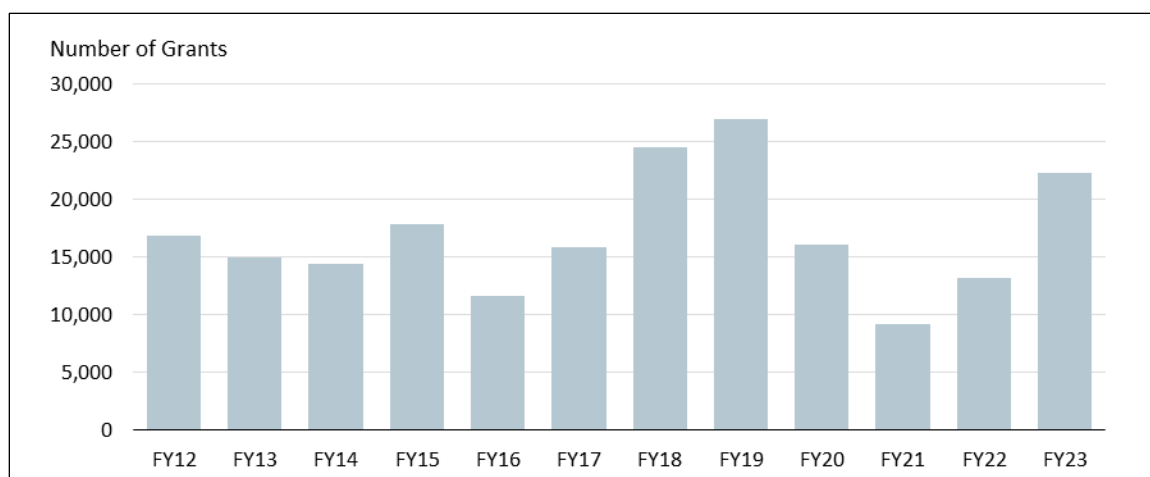
⁴³ *Asylum Application Processing Fiscal Year 2023*, p. 13. The affirmative asylum application backlog is beyond the scope of this report.

⁴⁴ *Ibid.*, and USCIS briefing of CRS, August 6, 2024.

Affirmative Asylum Grants

DHS publishes data on USCIS affirmative asylum grants in its annual *Yearbook of Immigration Statistics*.⁴⁵ **Figure 3** shows asylum grant data for FY2012-FY2023 (see **Table A-3** for the underlying data). Unlike the data presented in **Figure 1** and **Figure 2**, these grants represent individuals (principal applicants and dependent spouses and children), not applications. The fiscal years with the highest numbers of granted applications in **Figure 2** (FY2018 and FY2019) are also the years with the highest number of asylum grants to individuals in **Figure 3**.

Figure 3. Affirmative Asylum Grants to Individuals
FY2012-FY2023



Source: CRS presentation of data from DHS, Office of Immigration Statistics, *2021 Yearbook of Immigration Statistics*, Table 17 (for FY2012); DHS, Office of Homeland Security Statistics (OHSS), *2022 Yearbook of Immigration Statistics*, Table 17 (for FY2013); and DHS, OHSS, *Yearbook 2023*, Table 17 (for FY2014-FY2023).

Notes: Data represent individuals (principal applicants and dependents). Affirmative asylum data for the same fiscal year in different DHS reports may not match due to data entry delays and different data extraction dates.

Grants by Nationality

According to DHS Yearbook data for the five years from FY2019 through FY2023 combined, the top five countries of nationality of individuals granted asylum affirmatively, in descending order, were Afghanistan, Venezuela, China, Turkey, and Egypt.⁴⁶ Each of these countries accounted for at least 5,000 asylum grants during the FY2019-FY2023 period, with the top three receiving more than 10,000 grants each during these five years. Nationals of the top five countries combined received more than 50,000 grants, almost 60% of the approximately 88,000 affirmative asylum

⁴⁵ The latest complete yearbook is DHS, OHSS, *2022 Yearbook of Immigration Statistics*, November 2023, https://ohss.dhs.gov/sites/default/files/2024-03/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf. While the full FY2023 yearbook is not available as of the cover date of this report, some tables, including tables on asylees, have been released. See DHS, OHSS, *Yearbook 2023*, <https://ohss.dhs.gov/topics/immigration/yearbook-immigration-statistics/yearbook-2023>.

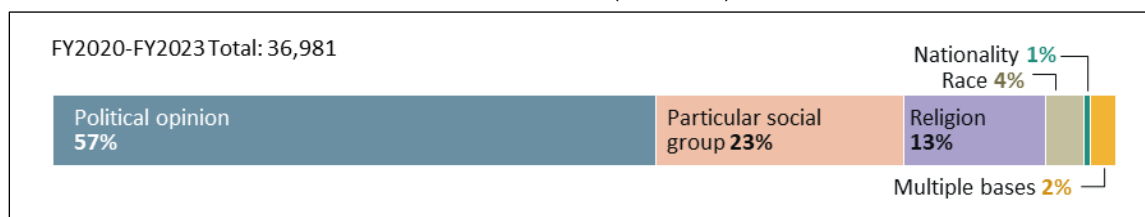
⁴⁶ Annual asylum grant data by region and country are available in DHS *Yearbook 2023*, Table 17, available at <https://ohss.dhs.gov/topics/immigration/yearbook-immigration-statistics/yearbook-2023>. Afghanistan is the top country due to its 14,330 affirmative asylum grants in FY2023. In FY2019-FY2022 combined, its nationals received fewer than 1,500 grants. (See related discussion in the “Filings by Nationality” section.)

grants during the FY2019-FY2023 period. The data do not indicate when persons granted asylum filed their asylum applications.

Grants by Basis of Asylum Claim

Figure 4 depicts the total number of affirmative asylum grants to *principal applicants only* for FY2020-FY2023 combined by the basis of the asylum claim.⁴⁷ These data exclude asylum grants to the dependent spouses and children of principal applicants. **Figure 4** includes the five protected grounds enumerated in the INA definition of a refugee, as discussed above, as well as one other category (“Multiple bases”). As shown, persecution or a well-founded fear of persecution on account of political opinion was the basis for more than half of the affirmative asylum grants over the four-year period. In accordance with the INA refugee definition, the political opinion ground includes claims based on “coercive population control.”⁴⁸ Combined, the top three bases shown in **Figure 4** (political opinion, membership in a particular social group, and religion) accounted for over 90% of the total number of asylum grants to principal applicants during these four years.

Figure 4. Asylum Grants by Protected Ground
FY2020-FY2023 (combined)



Source: CRS presentation of data from DHS, OHSS, *Refugees and Asylees: 2022*, November 2023 (for FY2020); and DHS, OHSS, *Asylees: 2023*, October 2024 (for FY2021-FY2023).

Notes: Data are limited to principal applicants; they exclude asylum grants to dependents. Figure does not include grants where the basis of the claim is unknown, which represent less than 0.1% of total grants. Percentages may not sum due to rounding. Affirmative asylum data for the same fiscal year in different DHS reports may not match due to data entry delays and different data extraction dates.

Conclusion

Affirmative asylum is a key component of the U.S. asylum system. More than 450,000 affirmative asylum applications were filed in FY2023. The number of filings in FY2022 and FY2023 combined exceeded the number of filings in the preceding seven years combined.

While affirmative asylum is a distinct process, both affirmative asylum and defensive asylum are subject to the same INA Section 208 provisions on asylum. Policy changes aimed at restricting defensive asylum—in response to migrants arriving at the U.S. border, for example—may also have impacts on affirmative asylum.

In addition, policy changes in areas beyond asylum—such as the creation of the new immigration parole processes—may also have implications for the affirmative asylum system.

⁴⁷ DHS included these data in two recent annual flow reports: DHS, OHSS, *Refugees and Asylees: 2022*; and DHS, OHSS, *Asylees: 2023*. Earlier reports in this series do not contain comparable data for years prior to FY2020.

⁴⁸ INA §101(a)(42) (8 U.S.C. §1101(a)(42)).

Appendix. Affirmative Asylum Data

Table A-1 provides the underlying data for **Figure 1** on new affirmative asylum applications filed annually with USCIS for FY2012-FY2023.

Table A-1. New Affirmative Asylum Applications Filed

FY2012-FY2023	
Fiscal Year	Applications Filed
2012	41,900
2013	44,453
2014	56,898
2015	83,197
2016	114,965
2017	141,695
2018	106,147
2019	95,959
2020	94,077
2021	59,416
2022	240,787
2023	455,054

Source: CRS presentation of data from DHS, USCIS, *Asylum Application Processing Fiscal Year 2023* (for FY2012-FY2022); and DHS, USCIS, *Asylum Division Monthly Statistics Report, Fiscal Year 2023* (for FY2023).

Notes: Data represent applications, not individuals. Data are limited to new filings. Affirmative asylum data for the same fiscal year in different DHS reports may not match due to data entry delays and different data extraction dates.

Table A-2 provides the underlying data for **Figure 2** on USCIS decisions on affirmative asylum applications annually for FY2012-FY2023. It includes four outcome categories (grants, denials, referrals to DOJ's EOIR, and closures).

Table A-2. USCIS Decisions on Affirmative Asylum Applications

FY2012-FY2023					
Fiscal Year	Cases Grants	Cases Denied	Cases Referred	Cases Closed	Total Cases
2012	12,581	714	17,780	4,820	35,895
2013	10,464	618	12,173	4,104	27,359
2014	9,833	437	11,799	5,371	27,440
2015	13,347	295	16,853	5,254	35,749
2016	8,731	107	13,391	6,039	28,268
2017	11,965	109	24,802	8,566	45,442
2018	16,149	607	43,436	13,228	73,420
2019	17,022	595	41,648	11,034	70,299

Fiscal Year	Cases Grants	Cases Denied	Cases Referred	Cases Closed	Total Cases
2020	9,868	281	27,242	15,179	52,570
2021	5,888	207	17,046	11,789	34,930
2022	8,400	200	16,617	10,693	35,910
2023	12,916	255	5,565	27,390	46,126

Source: CRS presentation of data provided by DHS, USCIS, on March 13, 2024.

Notes: Data represent applications, not individuals. Closures are cases administratively closed for reasons such as lack of jurisdiction, abandonment, or applicant failure to appear for the asylum interview. Affirmative asylum data for the same fiscal year in different DHS reports may not match due to data entry delays and different data extraction dates.

Table A-3 provides the underlying data for **Figure 3** on USCIS affirmative asylum grants to individuals annually for FY2012-FY2023.

Table A-3. Affirmative Asylum Grants to Individuals
FY2012-FY2023

Fiscal Year	Asylum Grants
2012	16,871
2013	14,886
2014	14,420
2015	17,800
2016	11,610
2017	15,800
2018	24,490
2019	26,880
2020	16,100
2021	9,130
2022	13,170
2023	22,300

Source: CRS presentation of data from DHS, Office of Immigration Statistics, *2021 Yearbook of Immigration Statistics*, Table 17 (for FY2012); DHS, OHSS, *2022 Yearbook of Immigration Statistics*, Table 17 (for FY2013); and DHS, OHSS, *Yearbook 2023*, Table 17 (for FY2014-FY2023).

Notes: Data represent individuals (principal applicants and dependents). Data for FY2014-FY2023 are rounded to nearest 10. Affirmative asylum data for the same fiscal year in different DHS reports may not match due to data entry delays and different data extraction dates.

Author Information

Andorra Bruno
Specialist in Immigration Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.