



Research

Primer: U.S. Policy on Refugees and Asylum Seekers

JACQUELINE VARAS, KEVIN LENTZ | DECEMBER 5, 2018

EXECUTIVE SUMMARY

- U.S. refugee and asylum programs are designed to provide sanctuary for individuals fleeing persecution in their home countries. Individuals apply for refugee status outside of the United States, while they apply for asylum from within the United States.
- The application process for both refugees and asylees involves biometric screening, criminal checks, and vetting evidence of current or future persecution.
- The number of refugees admitted to the United States dropped in 2018 to its lowest level since 1980. In contrast, the number of individuals seeking asylum has increased to record levels, leading to a large backlog of asylum claims that current government resources are unable to process.
- The Trump Administration is seeking measures to lower both the number of refugees (by lowering the cap) and asylees (by restricting eligibility) seeking entry into the United States.

The United States has long accepted refugees and asylees. Refugee resettlement dates back to the [Displaced Persons Act of 1948](#), when the U.S. government first offered residency to displaced Europeans in the wake of World War II. Today, the United States is a [global leader](#) in refugee resettlement, having welcomed nearly [3.5 million refugees](#) over the past 40 years. In addition, the United States grants asylum to [20,000 to 25,000 individuals](#) each year.

The Refugee Act of 1980 established the modern-day system for identifying, vetting, and accepting refugees and asylees. This legislation [established](#) a uniform method for admitting refugees and authorized federal funds for their resettlement and to promote their self-sufficiency. Per this act, asylum awardees are not capped, while the president dictates the number of refugee admissions. Each fiscal year, the president consults with Congress to set a ceiling for overall refugee admissions as well as limits on how many refugees may come to the United States from each region of the world.

To become a [refugee](#), an individual must be fleeing his or her country due to persecution or fear of persecution for religion, race, nationality, or membership in a social or political group. To be granted refugee status, applicants must be outside of the United States, meet the definition of refugee, and be of special humanitarian concern. To be granted asylum, applicants must also meet the definition of refugee and be of special humanitarian concern, but instead of applying from outside of the United States, they must apply either from inside the United States or at a port of entry.

ADMISSIONS PROCESSES

Refugee Admissions

The U.S. Refugee Admissions program under the Department of State (DOS) dictates the [refugee application process](#). To qualify, applicants must fall under one of three priority categories. Priority 1 (P-1) is for individuals referred by the United Nations High Commission for Refugees (UNHCR), a U.S. embassy, or certain non-government organizations; priority 2 (P-2) is for groups of special humanitarian concern (as dictated by ; and priority 3 (p-3) is reserved for family reunification. Most individuals are admitted via referral. In 2016, 64 percent of refugees were admitted under P-1, 34 percent under P-2, and only 0.5 percent were admitted for family reunification purposes.

To be referred for refugee status in the United States, individuals must first apply for refugee status directly through UNHCR, which vets all applicants separately. Once referred to the United States, refugees must additionally meet U.S. eligibility criteria. All applicants further undergo a screening process in the United States to ensure that they do not have any criminal, medical, or political history that would make them ineligible for admission.

The refugee vetting process involves a collaboration of several federal agencies. First, a [Refugee Support Center \(RSC\)](#) conducts pre-screening interviews with applicants before they depart for the United States. There are nine RSCs around the world, managed and funded by the Department of State, which are charged with gathering preliminary information on applicants and preparing them for security screenings and resettlement consideration. Once approved by the RSC, U.S. Citizenship and Immigration Services (USCIS) officers interview the applicants to determine if they meet eligibility and admissibility criteria for resettlement. This interview is also performed outside of the United States.

Security screenings are the joint responsibility of DOS and Department of Homeland Security (DHS). [The screenings consist of](#) both biometric and biographic checks carried out at multiple stages: immediately after RSC interviews, before a refugee leaves for the United States, and on arrival at a U.S. port of entry. First, DOS runs the names of potential refugees against a known watch-list. Individuals designated by DOS as requiring a higher-level check must also receive a positive Security Advisory Opinion, a process in which biographic data is analyzed by one or more of various agencies including DHS, DOS, The Department of Commerce (DOC), the Federal Bureau of Investigation (FBI), and the Central Intelligence Agency (CIA). Applicants must then pass an inter-agency check conducted by the National Counterterrorism Center, which also reviews biographic information.

Three separate agencies review biometric information (such as fingerprints) collected by the RSC during pre-screening. The FBI performs a biometric check to determine criminal history, the Department of Defense runs the data against biometric information collected from countries with a large U.S. defense presence (such as Iraq), and DHS performs a check for immigration violations and law enforcement and national security concerns. Finally, U.S. refugee applicants must undergo a medical exam. Applicants are considered [ineligible for admission](#) if they have a communicable disease of public health significance, fail to present proof of vaccinations, have a physical or mental disorder with associated harmful behavior, or are drug abusers or addicts.

Individuals that successfully pass screening and meet all admissions requirements are assigned sponsors once they arrive in the United States. These sponsors are resettlement agencies that provides housing, employment, and other services. Upon arrival, refugees are granted the right to work and may request documentation to travel outside the United States. They must wait one year, however, before completing a mandatory application for

legal permanent residency status.

The government designates approved refugees as “principal” refugees, and they have up to two years to petition for their eligible spouse and unmarried children to join them as derivative refugees. In order for spouses to [be eligible](#), they must have been the principal refugee’s spouse before the principal refugee was granted his or her status. Additionally, the unmarried children of the principal refugee are only admissible if they were conceived before the mother or father was granted refugee status and are under 21 at the time of the petition. These derivative refugees count toward the number of total refugees admitted every year. In 2016, spouses and dependent children made up [63 percent](#) of total refugee admissions.

Asylee Admissions

There are [two main ways](#) to seek asylum, both of which require the individual to be physically present in the United States. Individuals can apply for asylum affirmatively through USCIS upon arrival at a port of entry or within one year of their last arrival in the United States. Alternatively, individuals already in removal proceedings can apply for asylum defensively with the Executive Office for Immigration Review (EOIR), under the Department of Justice (DOJ). In 2016, a total of [20,455 individuals](#) were granted asylum, with 57 percent granted asylum affirmatively and 43 percent granted asylum defensively.

After filing for asylee status, the vetting and adjudication procedures differ depending on whether the applicant is seeking asylum affirmatively or defensively. Both affirmative and defensive asylum seekers must demonstrate that they have a “well-founded fear” of future persecution in their home country and prove that they meet the definition of a refugee. Affirmative asylum seekers demonstrate this fear through interviews with USCIS officers. After an application is received but before an interview, they must also undergo biometric collection in which they appear at an application support center to be fingerprinted. Affirmative applicants are permitted to live in the United States while their application is being processed. They are not granted the right to work, however, until a decision is made.

Applicants for defensive asylum file directly with EOIR as a defense against removal from the United States. Individuals are placed into defensive processing under one of two circumstances: They applied for asylum status affirmatively and were denied, and thus placed into removal proceedings, or they were caught trying to enter the United States, either at a U.S. point of entry or elsewhere on the border, and thus placed into expedited removal. Individuals in expedited removal processes must undergo “[credible fear](#)” or “[reasonable fear](#)” interviews to prove their eligibility for asylum. Credible fear interviews are available to individuals that inform Customs and Border Protection officers that they fear persecution or torture in their home countries. Reasonable fear interviews are available to individuals who re-enter the United States after a prior deportation or were convicted of certain felonies, and they require a higher standard of proof. [In 2016](#), 92,000 credible fear screenings were conducted with 75 percent resulting in a positive finding, compared to 9,400 reasonable fear screening with a 32 percent positive finding rate.

If a positive credible or reasonable fear determination is made, the case proceeds to an immigration court, where immigration judges hear arguments from the individual and his or her attorney as well as the U.S. Government (represented by an ICE attorney). If found to be eligible, the applicant will be granted asylee status. If found ineligible, the judge will determine if the applicant is eligible for any other form of relief, and if not, the judge will order the applicant to be removed from the United States.

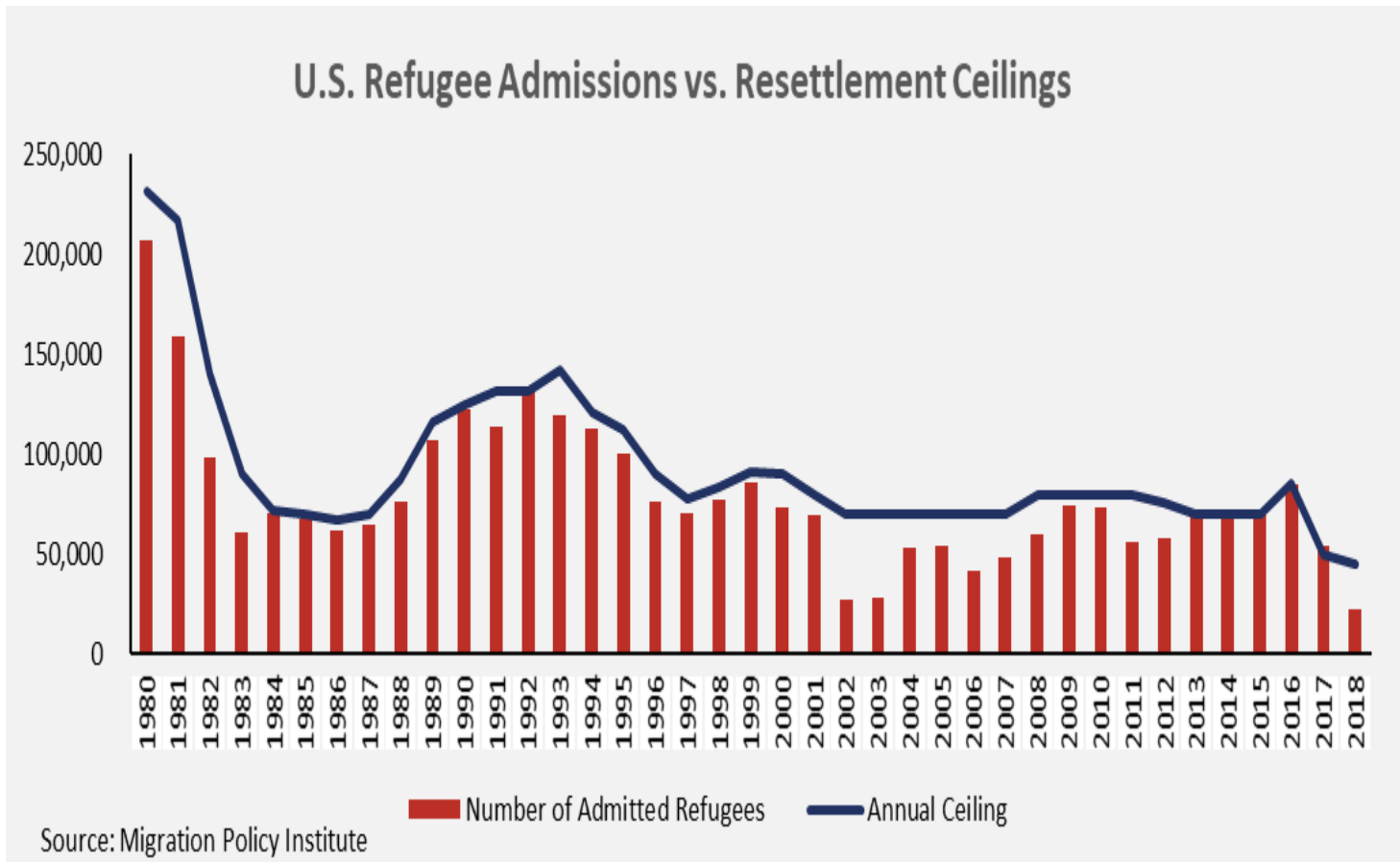
Applicants for asylum, both defensive and affirmative, can be barred from receiving asylee status for a [number of reasons](#)

. Examples include participating in the persecution of another, posing a danger to national security, participating in terrorist activity, or firmly resettling in another country before coming to the United States. If an individual is successfully granted asylum, however, they may petition to bring family members to the United States that were not included in their original asylum applications. After a year of physical presence as an asylee, individuals and their spouses or unmarried children under the age of 21 may apply for green cards.

TRENDS IN REFUGEE AND ASYLEE ENTRY

Refugee Entry

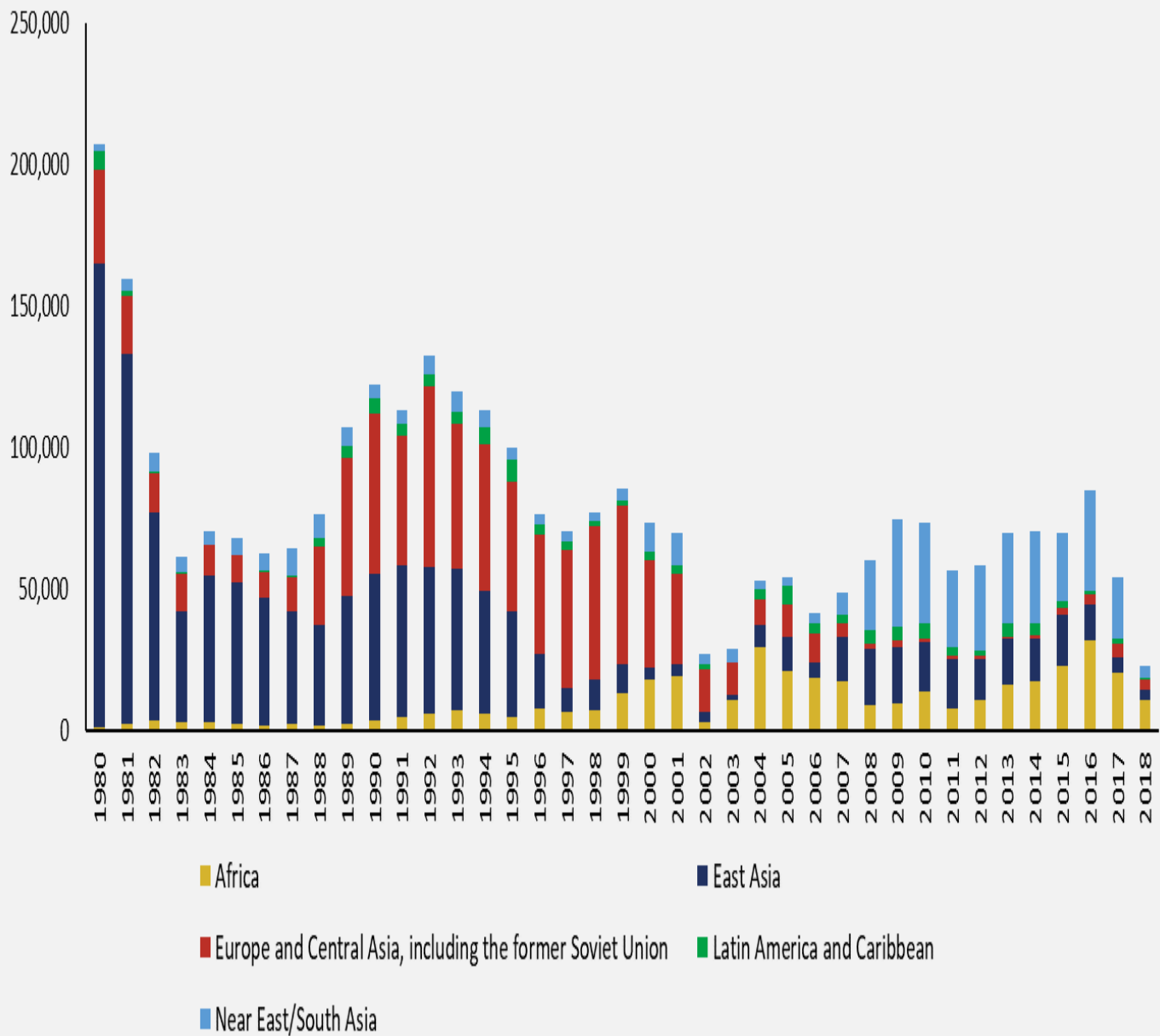
Refugee admissions to the United States have [fluctuated significantly over time](#), as shown in the chart below. When the program was first established in 1980, the United States set an annual cap of 231,700 and admitted 207,000 refugees. This cap dropped to 67,000 by 1986 and rose again to 142,000 by 1993, but the number of refugees admitted never fell far from the cap. This correlation changed after the September 11th terrorist attacks, when fewer than 30,000 refugees were admitted even while the cap was set at 70,000. Similarly, in 2018, the United States admitted 22,491 refugees, the lowest number since the Refugee Act of 1980 and less than half of the 45,000-limit set by the Trump Administration. Next year, the cap will purportedly be [lowered further](#) to 30,000.



The chart below shows how the [regional makeup of refugees](#) changes in response to different global crises. In the early years following the end of the Vietnam War, the vast majority of refugees originated from East Asia.

After the end of the Cold War, an increased number of individuals from Europe and the former Soviet Union sought refuge in the United States. Most recently, the number of refugees originating from countries in the Near East and South Asia rose with the escalation of the wars in Iraq and Afghanistan, and the number of refugees from Syria increased because of the Syrian civil war.

Refugee Admissions by Region



Source: Worldwide Refugee Admissions Processing System

The most recent year of data shows that, of the 22,491 refugees admitted in 2018, almost half came from Africa. This development is new: Over the past 10 years, the largest population of new refugees has generally come from Asia, specifically from countries such as Bhutan and Burma. The percentage of refugees from African countries has gradually risen, however, driven by an increase in refugees from nations such as Somalia and the

Democratic Republic of the Congo.

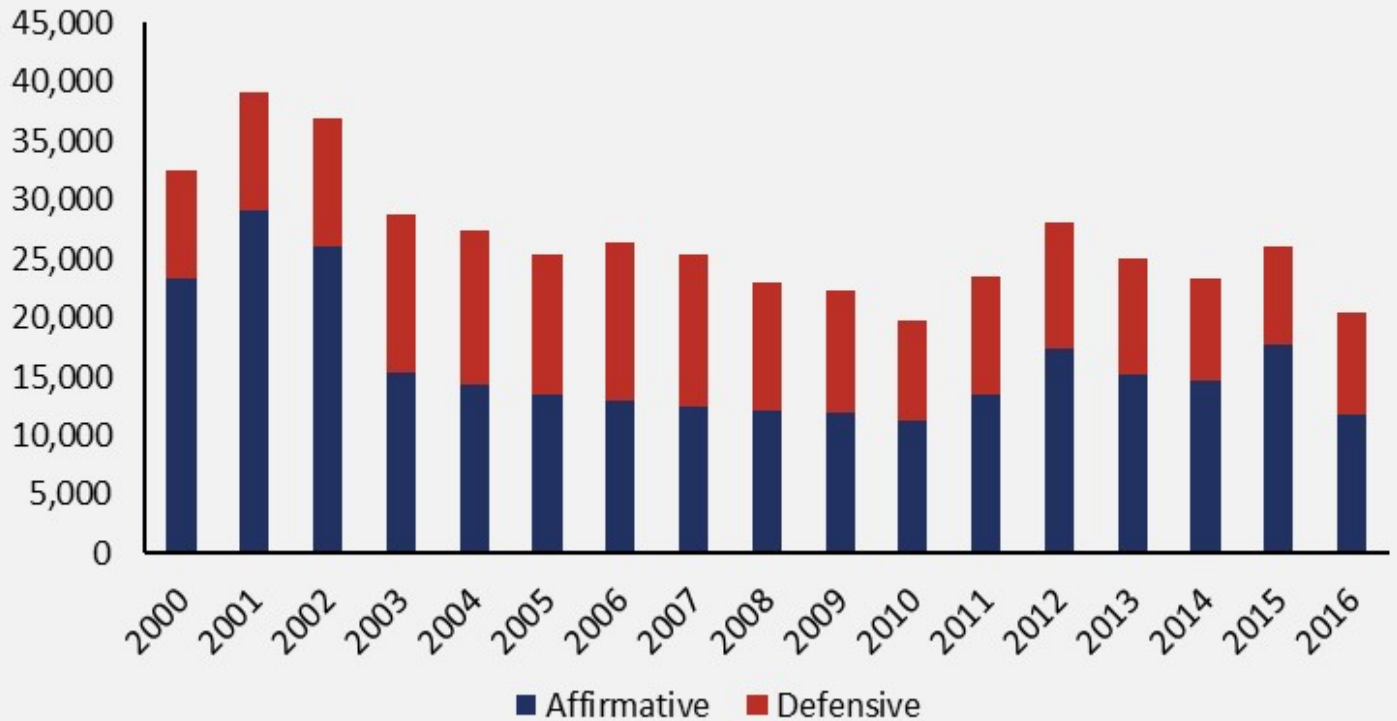
Asylee Entry

The number of individuals seeking asylum in the United States has dramatically increased. In 2016 (the last year of available data), 115,399 individuals applied for affirmative asylum, 39 percent more than in 2015 and the highest amount in 20 years. Similarly, the United States received 65,218 applications for defensive asylum, a 42 percent increase from 2015. There has been a particularly large increase in credible fear screenings, available to individuals caught at the border and placed into expedited removal proceedings. Credible fear interviews have skyrocketed from fewer than 5,100 in 2008 to 92,000 in 2016, of which 75 percent met the credible fear standard.

The increase in asylum seekers has not been met with a corresponding increase in government capability to process applicants. Between 2010 and 2018, during a time when pending immigration cases rose by 200 percent, the number of immigration judges only increased by 60 percent. This mismatch has resulted in a record backlog of nearly 800,000 pending immigration cases in the court system and extended wait times for adjudication.

Due to the backlog and other considerations, an increase in applications does not necessarily translate to an increase in asylees. The chart below shows that number of individuals granted asylum has remained relatively steady over time. There has been a shift in how people seek asylum, however: Since 2007, there has been a relative increase in the proportion seeking asylum affirmatively compared to those seeking asylum as a defense against removal. This trend flipped in 2016, though, when the proportion of people seeking asylum defensively jumped from 32 percent to 43 percent.

Individuals Granted Asylum

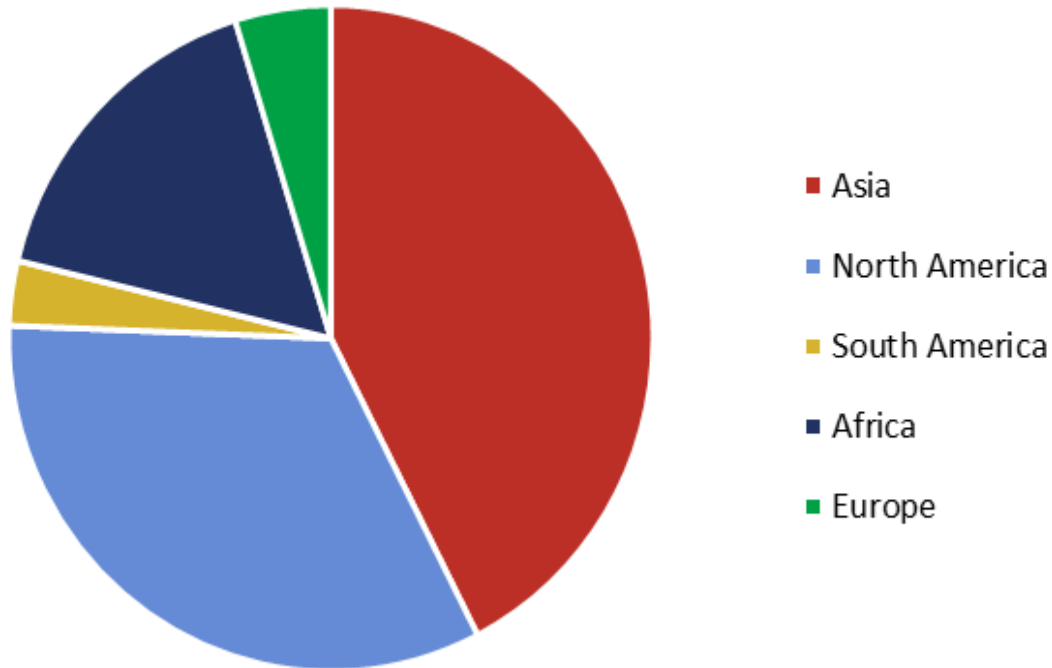


Source: DHS Yearbook of Immigration Statistics

In 2016, the [most common countries](#) from which either an affirmative or defensive asylee originated were China, El Salvador, Guatemala, and Honduras. El Salvador was the country of nationality for 12 percent of affirmative asylees, making it the top source country for affirmative grants. Similarly, China was the source country for nearly 36 percent of defensive asylees. Overall, China, El Salvador, and Guatemala accounted for 42 percent of all individuals granted asylum.

The regional composition of asylees, both [affirmative](#) and [defensive](#), is quite similar. Regionally, the largest group of asylees originated from Asia (42 percent of total asylees), followed by North America (including Central America, 33 percent) and Africa (16 percent). The regional breakdown is displayed in the chart below.

Region of Nationality of All Granted Asylees, 2016



Source: DHS Yearbook of Immigration Statistics

RECENT DEVELOPMENTS

Trump Administration Asylum Executive Order

Recently, President Trump issued an [executive order, which has since been blocked by a federal judge in San Francisco](#), limiting who is legally eligible to seek asylum. The [new rule](#), if adopted by DOJ and DHS, would change current law so that only individuals entering the United States at official ports of entry can apply for asylum. Furthermore, any individual that has crossed the southern border without proper documentation would be ineligible for asylum. These changes would create major shifts in admissibility laws for asylum applicants: Current law dictates that an individual is eligible to apply for asylum no matter where they cross the border if they meet the definition of a refugee and can demonstrate a credible fear of persecution if they return to their home country. This rule would in effect make all future undocumented border crossers ineligible for asylum and would direct all asylum seekers to U.S. ports of entry.

Safe Third Country Agreements

President Trump has also [expressed interest](#) in establishing a “safe third country” agreement with Mexico. Refugees today are rarely able to travel directly from their country of origin to their intended destination; rather, they often pass through multiple “third countries” along the way. A safe third country agreement between two nations allows one nation to return refugees to the other without ruling on the substance of their claims under

one of two conditions: either the third country that the refugee traveled through was a “safe third country,” and therefore the person should have applied for asylum there, or the third country already granted the person protection and was therefore in effect the “first country of asylum.” Currently, the United States has only one safe third country agreement, with Canada.