



U.S. DEPARTMENT OF HOMELAND SECURITY **OFFICE OF INSPECTOR GENERAL**

OIG-24-36

July 3, 2024

FINAL REPORT

USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims





OFFICE OF INSPECTOR GENERAL

U.S. Department of Homeland Security

Washington, DC 20528 | www.oig.dhs.gov

July 3, 2024

MEMORANDUM FOR: The Honorable Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims

**JOSEPH V
CUFFARI**

Digitally signed by
JOSEPH V CUFFARI
Date: 2024.07.03
09:05:36 -0700

Attached for your action is our final report, *USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims*. We incorporated the formal comments provided by your office.

The report contains two recommendations aimed at improving planning and reporting related to USCIS' asylum claims. Your office concurred with both recommendations.

Based on information provided in your response to the draft report, we consider both recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please contact me with any questions, or your staff may contact Kristen Bernard, Deputy Inspector General for Audits, at (202) 981-6000.

Attachment

OIG Project No. 22-062-AUD-USCIS



DHS OIG HIGHLIGHTS

USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims

July 3, 2024

Why We Did This Audit

Within the Department of Homeland Security, USCIS administers lawful immigration to the United States. Affirmative asylum applications are submitted to USCIS by noncitizens who are in the United States and are generally not in removal proceedings. We conducted this audit to determine to what extent USCIS timely adjudicates asylum claims to reduce the backlog.

What We Recommend

We made two recommendations to improve planning and reporting related to USCIS' Asylum Division.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at:

DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

U.S. Citizenship and Immigration Services (USCIS) did not adjudicate affirmative asylum applications in a timely manner to meet statutory timelines and to reduce its existing backlog. At the end of fiscal year 2023, USCIS had more than 1 million asylum cases pending determination. Of those, USCIS had more than 786,000 affirmative asylum cases pending determination for a period longer than 180 days from the date of filing. This occurred because USCIS did not have sufficient funding, staffing, and planning to complete its affirmative asylum caseload. USCIS received limited appropriated funding and primarily relied on application fees. However, in 2023, USCIS determined that its fee-funded revenue was not sufficient to support staffing needed to fully execute adjudication and naturalization services. This shortage forced USCIS to prioritize certain types of work over resolving its backlog of affirmative asylum cases and also resulted in USCIS setting performance goals at levels too low to timely adjudicate new claims within the statutory limits and address the existing affirmative asylum backlog.

The rise in asylum claims without a corresponding increase in resources will continue to prevent USCIS from meeting statutory timelines and result in the continued growth of the backlog of affirmative asylum cases. If USCIS continues to not timely adjudicate asylum claims, eligible affirmative asylum applicants will be delayed in obtaining not only asylum, but also related immigration benefits, such as lawful permanent residency and citizenship. USCIS will likely experience increased litigation involving individuals challenging adjudication delays. This takes resources from USCIS' production efforts as these litigation cases take precedence over new affirmative asylum claims and divert already limited resources from timely processing of current-year claims.

USCIS Response

USCIS concurred with both recommendations. Appendix B contains USCIS' management response in its entirety.



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Abbreviations

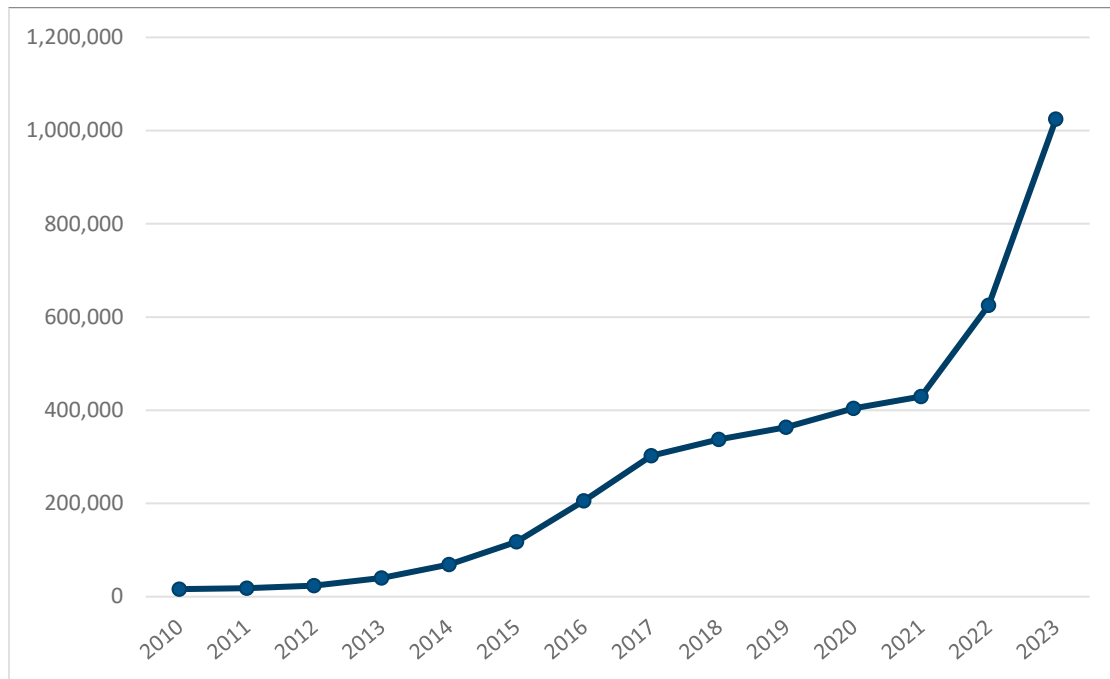
C.F.R.	Code of Federal Regulations
FTE	full-time equivalent
INA	<i>Immigration and Nationality Act</i>
OAW	Operation Allies Welcome
USCIS	U.S. Citizenship and Immigration Services



Background

Asylum seekers come to the United States for protection, claiming they have experienced persecution or fear persecution if returned to their home country. In January of 2018, U.S. Citizenship and Immigration Services (USCIS) announced it was facing a “crisis-level” backlog of pending affirmative asylum cases, with more than 311,000 pending claims.¹ By the end of fiscal year 2022, USCIS’ backlog nearly doubled to almost 625,000 claims, and it tripled to more than 1 million claims at the end of FY 2023. As shown in Figure 1, USCIS has had an affirmative asylum backlog for more than a decade, dating back to 2010 when the backlog stood at approximately 16,000 claims.

Figure 1. Pending Affirmative Asylum Claims for FY 2010 through FY 2023



Source: Department of Homeland Security Office of Inspector General analysis of USCIS’ pending affirmative asylum claims

Within DHS, USCIS is the Federal component that administers lawful immigration to the United States. The Asylum Division of USCIS’ Refugee, Asylum and International Operations Directorate adjudicates affirmative asylum applications (including those filed by noncitizens paroled into the United States under initiatives such as Operations Allies Welcome [OAW]²), conducts credible and reasonable fear screenings, and conducts asylum merit interviews.

¹ *USCIS to Take Action to Address Asylum Backlog*, January 31, 2018, www.uscis.gov.

² OAW is a DHS-led effort across the Federal Government that began in July 2021 to support vulnerable Afghans as they safely resettle in the United States.



Asylum Pathways and Determination Timeframes

The asylum process begins when a person arrives in the United States, claims a fear of return to their home country, or files an asylum application. A noncitizen who is physically present or who arrives in the United States may request asylum through one of the pathways shown in Table 1.

Table 1. Asylum Pathways

Affirmative Asylum	Credible Fear	Asylum Merits Interview	Defensive Asylum
USCIS asylum officers adjudicate asylum applications submitted to USCIS by noncitizens who are in the United States and generally ³ are not in removal proceedings.	USCIS asylum officers conduct credible fear ⁴ screenings for noncitizens in expedited removal proceedings. ⁵	USCIS may retain a noncitizen’s application for asylum following a positive credible fear determination.	Noncitizens in removal proceedings in immigration court may claim asylum as a defense against removal.
Noncitizens receive an interview with an asylum officer for an eligibility decision on the asylum application.	USCIS may retain the asylum application for noncitizens determined to have a credible fear in the asylum merits interview process or refer noncitizens for removal proceedings before a Department of Justice Immigration Judge.	Noncitizens receive an interview with an asylum officer for asylum eligibility determination.	Department of Justice immigration judges conduct proceedings to determine eligibility for asylum and other forms of relief and protection from removal, as well as removability. ⁶

Source: DHS OIG analysis of USCIS asylum pathways

Depending on the pathway of asylum, the asylum officer will generally make a determination on each claim within a specific timeframe, as shown in Table 2. The *Immigration and Nationality Act*

³ According to Public Law 110-457 § 235(d)(7)(B) of the *Trafficking Victim Protection Reauthorization Act*, USCIS has initial jurisdiction over asylum applications filed by unaccompanied children in removal proceedings.

⁴ Credible Fear Screening — Individuals subject to expedited removal who indicate an intention to apply for asylum, express a fear of persecution, or torture or a fear of return to their home country are referred to asylum officers to determine whether they have a credible fear.

⁵ INA section 235(b)(1)(A) authorizes DHS to immediately remove certain noncitizens who DHS has determined to be inadmissible under INA sections 212(a)(6)(C) or 212(a)(7), unless the noncitizen has either an intention to apply for asylum or a fear of persecution.

⁶ Effective October 16, 2023, USCIS issued new instructions for noncitizens whose removal proceedings were dismissed or terminated by the Department of Justice Executive Office for Immigration Review, indicating how and whether the noncitizen can pursue a claim for asylum by submitting a Form I-589, *Application for Asylum and for Withholding of Removal to USCIS*.



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(INA) mandates a timeframe for the adjudication of affirmative asylum applications, absent exceptional circumstances.⁷ The Code of Federal Regulations (C.F.R.) mandates a timeframe for reasonable fear cases, absent exceptional circumstances. Federal Law mandates the timeframe for OAW affirmative asylum applications, absent exceptional circumstances. Also, USCIS has set an internal goal to process credible fear claims within 14 days to limit the amount of time some noncitizens may remain in detention, as statute⁸ requires the noncitizen to remain detained until USCIS makes a determination on their claim.

Table 2. Asylum Division Timeframes

Operational Workloads	Days to Determination
Reasonable Fear ⁹	C.F.R. requires 10 days to a determination, absent exceptional circumstances ¹⁰
Credible Fear	Statute does not prescribe a specific timeframe for making determinations but does require that some noncitizens remain detained until final determination. ¹¹ USCIS has established a goal of completing these cases in 14 or fewer days
Asylum Merits Interviews	C.F.R. requires a decision within 60 days of a credible fear determination, absent exigent circumstances ¹²
Operation Allies Welcome Affirmative Asylum	Public Law requires a final administrative adjudication on all OAW affirmative asylum applications within 150 days after the date the application is filed, absent exceptional circumstances ¹³
Affirmative Asylum	INA requires a final administrative adjudication on non-OAW affirmative asylum applications within 180 days after the application is filed, absent exceptional circumstances ¹⁴

Source: DHS OIG analysis of Asylum Division workload timeframes

⁷ INA § 208(d)(5)(A)(iii).

⁸ INA § 235(b)(1)(B)(iii)(IV), 8 United States Code (U.S.C.) 1225 (b)(1)(B)(iii)(IV).

⁹ Reasonable Fear Screening — Asylum officer determines whether there is a “reasonable possibility” the individual, who is subject to a reinstated order or removal or final administrative order of removal, would be persecuted or tortured in the country to which he or she has been ordered removed.

¹⁰ 8 C.F.R. § 208.31(b).

¹¹ INA § 235(b)(1)(B)(iii)(IV).

¹² 8 C.F.R. § 208.9(e)(2).

¹³ Public Law 117-43 § 2502(c)(2).

¹⁴ According to INA, Title II § 208, 8 U.S.C. § 1158(d)(5)(A)(iii), in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed.

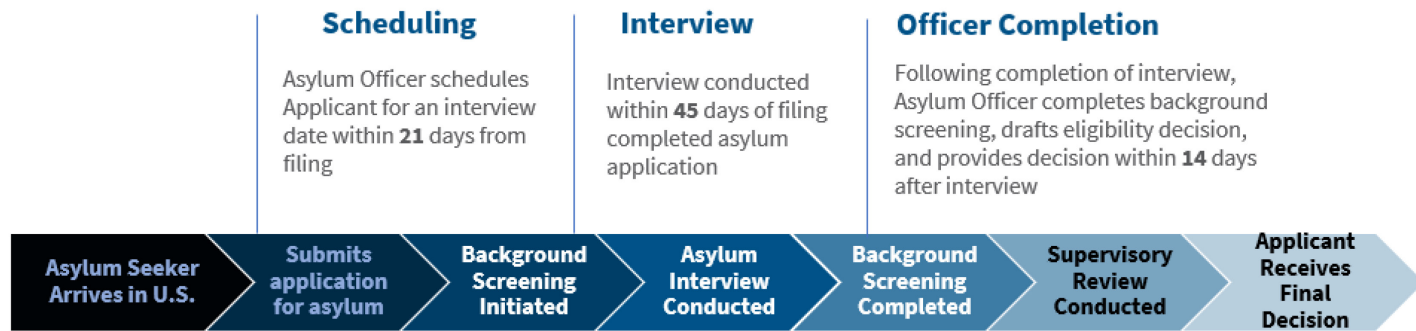


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For affirmative asylum claims, USCIS applies a seven-step process for adjudication and has recommended timeframes within multiple steps of the process, for both the component and the applicant, to meet the 180-day processing requirement. Noncitizens file an affirmative asylum application with USCIS within 1 year of their last arrival in the United States for asylum consideration. USCIS interviews the most recent applicant first, upon the applicant completing required biometric background and security checks, as detailed in Figure 2.

Figure 2. USCIS’ Affirmative Asylum Process



In the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within **180** days after the date an application is filed.

Source: DHS OIG analysis of affirmative asylum processing

USCIS Funding and Resource Planning

USCIS is generally funded through fees charged to applicants and petitioners seeking immigration benefits. However, asylum-related applications do not generate revenue for USCIS. In FY 2021, 97 percent of USCIS’ \$4.8 billion budget was derived from fees charged to those applying for immigration and naturalization benefits, while approximately 3 percent of USCIS’ budget was from appropriations. In FY 2022, Congress appropriated \$275 million, in addition to fee revenue, for USCIS to support processing and reduce backlogs across applications and petitions. USCIS allocated \$26 million from this appropriation specifically to the Asylum Division to reduce its backlog. USCIS did not receive appropriated funding to continue its backlog reduction efforts in FY 2023.

We conducted this audit to determine to what extent USCIS timely adjudicates asylum claims to reduce the backlog.

Results of Audit

USCIS did not adjudicate affirmative asylum applications in a timely manner to meet statutory timelines and to reduce its existing backlog. As of the end of FY 2023, USCIS had more than



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786,000 asylum cases pending determination for over 180 days. This occurred because USCIS did not have sufficient funding, staffing, and planning to complete its affirmative asylum caseload. USCIS received limited appropriated funding and is primarily dependent on revenue from application fees. For 2023, USCIS determined that its fee-funded revenue was not sufficient to support staffing needed to fully execute adjudication and naturalization services. Additionally, USCIS does not receive fees for processing asylum claims and relies on funding from the other fee-generating applications to subsidize the asylum program. This shortage forced USCIS to prioritize certain types of work over resolving its backlog of affirmative asylum cases and also resulted in USCIS setting performance goals at levels too low to timely adjudicate new claims within the statutory limits and address the existing affirmative asylum backlog.

The rise in asylum claims without a corresponding increase in resources will continue to prevent USCIS from meeting statutory timelines and result in the continued growth of the backlog of affirmative asylum cases. If USCIS continues to not timely adjudicate asylum claims, eligible affirmative asylum applicants will be delayed in obtaining not only asylum, but also related immigration benefits, such as lawful permanent residency and citizenship. USCIS will likely experience increased litigation involving individuals challenging adjudication delays. This takes resources from USCIS' production efforts as these litigation cases take precedence over new affirmative asylum claims and divert already limited resources from timely processing of current-year claims.

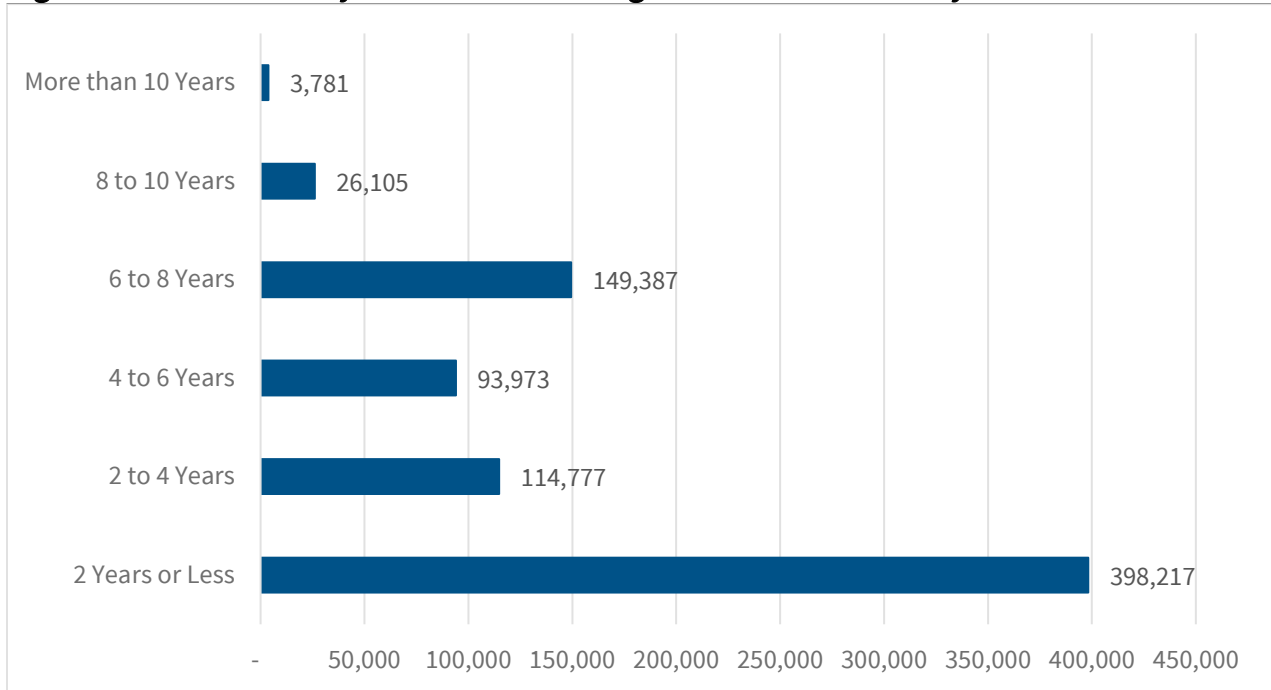
USCIS Did Not Adjudicate Affirmative Asylum Applications Timely

USCIS did not adjudicate affirmative asylum applications within the mandated timeframe. The INA requires completion of final administrative adjudication of affirmative asylum applications within 180 days of filing, absent exceptional circumstances.¹⁵ At end of FY 2023, USCIS had more than 1 million asylum cases pending determination. Of those, more than 786,000 affirmative asylum cases were pending determination for more than 180 days (approximately 77 percent) and more than 388,000 were pending for more than 2 years (approximately 38 percent). Figure 3 shows the number and length of time for affirmative asylum cases that had been pending for more than 180 days at the end of FY 2023.

¹⁵ INA § 208(d)(5)(A)(iii), 8 USC § 1158(d)(5)(A)(iii).



Figure 3. Affirmative Asylum Claims Pending for More than 180 days as of FY 2023



Source: DHS OIG analysis of pending affirmative asylum applications

Since FY 2011, USCIS has completed¹⁶ fewer affirmative asylum applications than it received during each year. Between FY 2020 and FY 2023, USCIS completed less than one quarter of the total affirmative applications it received. The following are results for FY 2022 and FY 2023:

- FY 2022: USCIS completed approximately 40,000 (17 percent) of the approximately 232,000 affirmative asylum applications received in FY 2022. It did not adjudicate 97 percent of applications it received within the statutory timeframe of 180 days.
- FY 2023: USCIS completed approximately 44,000 (10 percent) of the approximately 444,000 affirmative asylum applications received in FY 2023. Again, USCIS did not adjudicate 97 percent of claims it received within the 180-day timeframe. Figure 4 illustrates the gaps between the number of affirmative asylum case receipts, completions, and pending cases that remained open each FY.

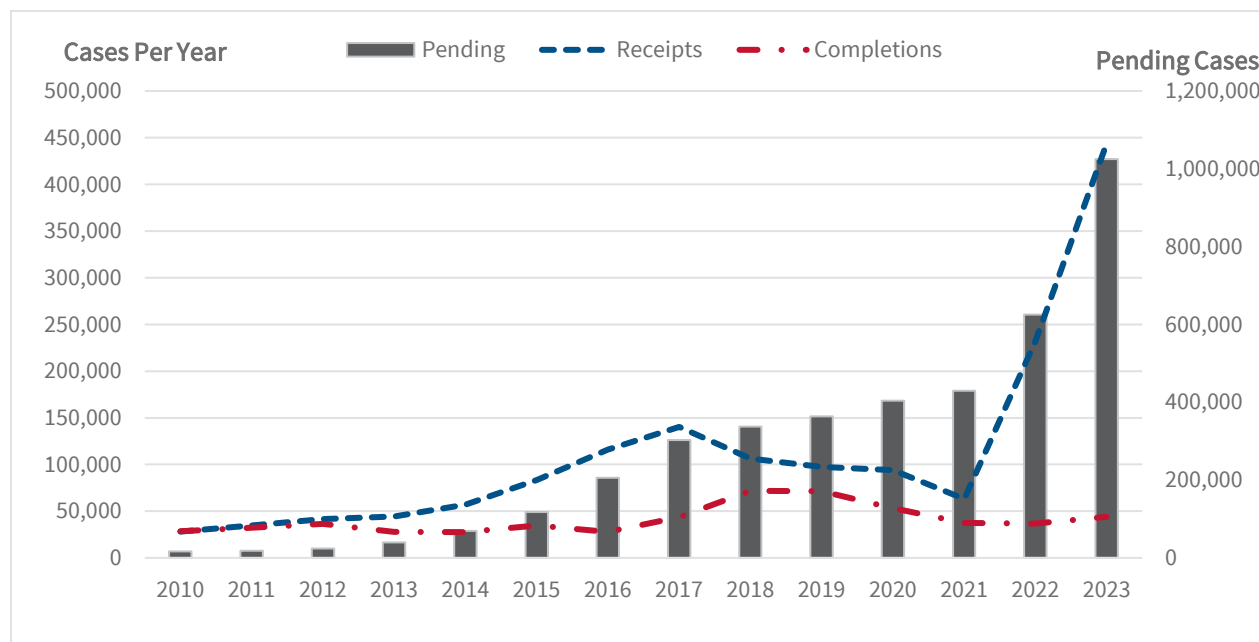
97%

of the affirmative asylum claims received in both FY 2022 and FY 2023 were not adjudicated within 180 days of filing.

¹⁶ USCIS FY completions may consist of applications filed in previous years.



Figure 4. Number of Affirmative Asylum Applications Received, Completed, and Pending for FY 2010 through FY 2023



Source: DHS OIG analysis of receipts, completions, and pending cases

Funding for USCIS Is Not Sufficient to Reduce Affirmative Asylum Backlog

Funding shortages prevented USCIS from timely processing current and backlogged affirmative asylum claims. USCIS’ FY 2022 budget overview and justification noted that current fee collection did not increase USCIS’ capacity to substantially reduce its backlogs. In the FY 2022 continuing resolution, Congress provided USCIS \$250 million for application processing and the reduction of backlogs across USCIS directorates, which was superseded by \$275 million in annual appropriations. Appropriations were provided to address USCIS’ backlog through hiring additional personnel, to include \$26 million to the Asylum Division for hiring asylum officers, increasing overtime, and funding other related costs. Despite the additional appropriations funding, USCIS was unable to fully address the affirmative asylum backlog.

In 2023, USCIS projected an average annual deficit of \$1.9 billion at approved fee funding levels. That same year, USCIS requested nearly \$904 million in appropriations for operations and support, to include application processing, and the reduction of backlogs within USCIS directorates. USCIS’ request included an increase of more than 1,000 full-time equivalent positions (FTEs) and \$375.4 million for asylum adjudications. In response, Congress provided USCIS \$242.9 million for the E-Verify program and refugee processing but stipulated that appropriations did not provide funding for backlog reduction.



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Compounding its funding problems, USCIS does not require fees for those seeking asylum. As a result, costs associated with this aspect of the component's mission must be subsidized by all other fee-paying applicants and petitioners. USCIS uses a fee schedule approved in 2016 with limited congressional appropriations to conduct its work. From FYs 2018 through 2022, USCIS' fee-generated revenue increased 21 percent while non-fee generating affirmative asylum applications increased more than 54 percent. However, in FY 2020 USCIS faced the prospect of furloughing more than 13,000 employees, or 70 percent of its workforce, due to projected revenue shortfalls from lower receipt income and lack of congressional funding. In a 2022 congressional hearing,¹⁷ the Director of USCIS acknowledged the increasing budgetary demands of humanitarian workloads. She further emphasized the component's desire to shift humanitarian programs from reliance on fee funding to appropriations.

In January 2024, DHS issued a final rule increasing USCIS fees. The final rule institutes an Asylum Program Fee surcharge of \$600 to be paid by employers who file worker-related petitions.¹⁸ USCIS determined Asylum Program Fees would generate approximately \$313 million in revenue. The final fee rule was effective April 1, 2024. However, the anticipated fees generated from the final rule will not be sufficient to allow USCIS to adjudicate new affirmative asylum cases within the statutory timelines and address the backlog.

Asylum Division Staffing Levels Are Insufficient to Process Affirmative Asylum Claims

The Office Performance and Quality¹⁹ group in USCIS developed a staffing model that forecasted the need for a total of 3,284 Asylum Division FTEs in FY 2023. However, the Asylum Division was not able to staff at that level due to funding limitations. USCIS uses a staffing allocation model to determine the staffing required to meet expected workloads based on estimated application numbers for the upcoming FY. The staffing model informs revenue projections (fees collected from processing claims) based on estimated application numbers and assesses the cost for USCIS to adjudicate these applications.

Between FY 2018 and FY 2023, the staffing model forecasted that the Asylum Division required a cumulative total of 12,154 FTEs to process anticipated asylum claims, excluding backlogged affirmative asylum cases. However, during that period, the Asylum Division was only authorized 9,793 FTEs. The Asylum Division staffing shortfall was most pronounced in FY 2023, when the USCIS staffing model identified the need for 3,284 Asylum Division FTEs but USCIS only authorized 1,988 FTEs for the division.

¹⁷ House Committee on Appropriations, Subcommittee on Homeland Security, *United States Citizenship and Immigration Services FY23 Budget Request*, April 6, 2022.

¹⁸ The Asylum Program Fee surcharge would be paid by employers filing either Form I-129, *Petition for a Nonimmigrant Worker*; Form I-129CW, *Petition for a Nonimmigrant Transitional Worker*; or Form I-140, *Immigrant Petition for Alien Workers*.

¹⁹ The Office of Performance and Quality provides data and operational analyses, including staffing model forecasts, to senior USCIS decision makers. Staffing models are based on input from USCIS directorates and offices.



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In addition to determining recommended staffing levels, USCIS uses another tool to determine the amount and allocation of resources needed to address the backlog of affirmative asylum cases. USCIS developed an operational planning model, which USCIS senior officials informally use, to determine how hypothetical shifts in staff levels and workload priorities impact backlog reduction. USCIS enters resource inputs into the planning model to run different resource allocation scenarios and determine how different resource configurations impact backlog reduction. After applying the operational planning model to affirmative asylum cases, USCIS projects, even with additional appropriated funding, the affirmative asylum backlog will increase to over 2 million cases by FY 2030.

USCIS Prioritized Credible Fear and Other Cases Over Its Backlog of Affirmative Asylum Cases

With limited funding and a shortage of staff needed to complete current and backlogged affirmative asylum workloads, USCIS had to reprioritize its workload to address increasing credible fear claims with expedited completion goals and expanded humanitarian programs such as OAW. Specifically, USCIS leadership focused on cases that had statutory or regulatory processing requirements and cases with shorter completion timeframes or goals. For example, when credible and reasonable fear cases increased due to an influx of individuals arriving at the U.S. Southwest land border, USCIS redirected asylum officers to process those claims first. USCIS shifted priorities to credible fear processing due to the surge of expected asylum claims at the border related to the expiration of Title 42.²⁰ Specifically, in June 2023, the Asylum Division allocated more than 90 percent of its asylum officers to process credible fear screenings, while it only allocated about 3 percent to process affirmative asylum claims. During FY 2023, USCIS also prioritized OAW and Asylum Merits Interview applications because of the processing timeframe requirements.

According to USCIS officials, pending legal action against USCIS also contributed to priority shifts in workload. Affirmative asylum applicants with applications pending for multiple years sued USCIS, seeking relief from component delays by filing a Writ of Mandamus²¹ to compel the Government to issue a decision. Mandamus affirmative asylum cases increased from 1,545 in FY 2022 to 2,060 as of May 2023. USCIS asylum officers prioritized the adjudication of certain Mandamus affirmative asylum cases over newly filed affirmative asylum cases. According to the

²⁰ The Title 42 public health order expired on May 11, 2023, allowing the return of Title 8 immigration authorities to process and remove individuals who arrive at the U.S. border unlawfully. Prior to that date, the Center for Disease Control and Prevention order under Title 42 imposed COVID-19 mitigation protocols, which enabled DHS to both reduce the number of noncitizens held and to suspend entry of persons from certain countries into the United States.

²¹ A Writ of Mandamus is a district court filing used to compel an agency to perform a duty owed to the plaintiff. USCIS may expedite cases for applicants with long-standing asylum claims who use this style of litigation to seek action.



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Office of the Citizenship and Immigration Services Ombudsman,²² backlogs can lead to increases in litigation from applicants, which creates adjudication deadlines.²³ Diverting resources to meet the litigation deadlines can increase processing times elsewhere. USCIS realigned resources in anticipation of increased workloads due to the rising number of Mandamus lawsuits over the past year. Expediting applications associated with legal action also contributed to stretching USCIS' already limited resources even more.

USCIS Set Goals that Would Not Lead to Backlog Reduction

Although USCIS set completion goals for affirmative asylum claims, due to funding limitations, these goals did not include completing all new anticipated claims within the INA's time limits nor address the existing affirmative asylum backlog. For each FY, USCIS calculates the total number of affirmative asylum cases it anticipates receiving for that year. Based on the anticipated receipts and staffing availability, the Asylum Division establishes goals based on multiple factors including the targeted number of completions, percent completed within designated timeframes, and average processing times. USCIS could not set completion goals to match anticipated receipts based on its staffing limitations. For FYs 2018 through 2022, USCIS Headquarters set completion goals that were 35 percent to 76 percent lower than anticipated affirmative asylum receipts due to existing staffing levels and competing priorities. Specifically for FY 2023, the Asylum Division anticipated receiving 150,000 affirmative asylum applications yet set a completion goal of 65,000, as shown in Table 3.

Table 3. Comparison of Affirmative Asylum Completion Goals to Anticipated Receipts

Fiscal Year	Anticipated Receipts	Completion Goals	Percent of Anticipated Completion
2018	146,000	75,987	52.05%
2019	114,000	71,322	62.56%
2020	92,000	70,000	76.09%
2021	95,000	34,000	35.79%
2022	70,000	35,000	50.00%
2023	150,000	65,000	43.33%

Source: DHS OIG analysis of completion goals in relation to anticipated receipts

²² The Office of the Citizenship and Immigration Services Ombudsman was established by the *Homeland Security Act of 2002* as an independent office that reports to DHS Headquarters and is separate from USCIS.

²³ *Annual Report 2022*, Citizenship and Immigration Services Ombudsman, June 30, 2022.



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Conclusion

The rise in asylum claims without a corresponding increase in resources will continue to prevent USCIS from meeting statutory timelines and result in the continued growth of the backlog of affirmative asylum cases. USCIS' staffing has been insufficient to address its existing workload. As affirmative asylum claims have continued to increase, USCIS management has prioritized other asylum actions. USCIS is also experiencing increased litigation involving individuals challenging adjudication delays. This takes resources from USCIS' production efforts as these litigation cases take precedence over new affirmative asylum claims and divert already limited resources from timely processing of current-year claims. If USCIS continues to not timely adjudicate asylum claims, eligible affirmative asylum applicants will be delayed in obtaining not only asylum, but also related immigration benefits, such as lawful permanent residency and citizenship.

Recommendations

Recommendation 1: We recommend the Director of USCIS develop and implement a multi-year operational plan that will enable USCIS to adjudicate new affirmative asylum claims consistent with the law and reduce the backlog. The plan should include clear priorities and goals, appropriate staffing levels, an analysis of funding, and how that funding will be generated.

Recommendation 2: We recommend the Director of USCIS prepare and submit annual budget requests consistent with the established multi-year operation plan as outlined in Recommendation 1.

Management Comments and OIG Analysis

USCIS management provided comments in response to a draft of this report. In its comments, USCIS included a broader perspective of operations and additional context for the audit report. We included the comments in their entirety in Appendix B. We also received technical comments and revised the report as appropriate. We consider both recommendations open and resolved. A summary of USCIS' responses and our analysis follows.

USCIS' Response to Recommendation 1: Concur. USCIS described existing activities including its workload, staffing, and asylum backlog forecasts; its Annual Operating Plan; and its annual budget requests to Congress. Additionally, USCIS implemented a new fee rule in April 2024. Approximately \$300 million of the increased revenue from this rule will be used to offset the costs associated with the asylum program. Building on these existing activities, USCIS will develop an affirmative asylum multi-year operational plan by September 30, 2025, which will include clear performance metrics and performance targets for asylum processing and hiring. The plan will



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also reflect priorities and goals, appropriate staffing levels, and an analysis of funding based on revenue projections. The estimated completion date is September 30, 2026.

OIG Analysis of USCIS' Comments: We consider these actions responsive to the recommendation, which we consider open and resolved. We will close this recommendation when USCIS provides the multi-year operational plan showing the appropriate staffing levels needed, analysis of needed funding, and how that funding could be generated to adjudicate new affirmative claims and reduce the backlog.

USCIS' Response to Recommendation 2: Concur. USCIS continues to seek resources for decreasing the affirmative asylum backlog as well as the rest of the component's backlog workload. The current fee collections do not fully support the increase in capacity needed to make significant progress in reducing the backlog. Sustained funding for backlog reduction is necessary to eliminate the current backlog. USCIS' Office of the Chief Financial Officer will work alongside DHS and the Office of Management and Budget to submit an annual request to Congress by February 3, 2025, as required by statute. In addition, USCIS supports the national security supplemental request sent to Congress in FY 2024, which would allow USCIS to add more than 1,600 asylum officer positions, as well as additional funding dedicated for the sole purpose of helping reduce the USCIS backlog. The estimated completion date is September 30, 2026.

OIG Analysis of USCIS' Comments: We consider these actions responsive to the recommendation, which we consider open and resolved. We will close this recommendation when USCIS provides documentation of the operational plan and submission of the plan and need for funding to Congress.



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Appendix A: Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Pub. L. No. 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of this audit was to determine to what extent USCIS timely adjudicates asylum claims to reduce the backlog. Based on interviews, observations, and preliminary data, we decided to focus on USCIS' efforts to adjudicate asylum claims timely, including reducing the affirmative asylum backlog.

To answer our objective, we conducted interviews with officials from USCIS directorates and program offices. We interviewed officials from:

- Service Center Operations Directorate
- Field Operations Directorate
- Office of Performance and Quality
- Refugee, Asylum, and International Operations Directorate
- Office of the Chief Financial Officer
- Office of Information and Technology
- Fraud Detection and National Security Directorate
- Office of Human Capital and Training
- Central Region Field Operations Directorate
- National Benefits Center
- Potomac Service Center
- Nebraska Service Center
- Asylum Division Headquarters
- Asylum Vetting Center
- Office of the Citizenship and Immigration Services Ombudsman

We reviewed applicable Federal laws and regulations associated with adjudicating applications and petitions for immigration and naturalization benefits. We analyzed USCIS policies, procedures, staffing reports, and internal goals and metrics for applications and petition receipts and completions for asylum to answer our objective. We also reviewed congressional testimony and prior audit reports from DHS OIG, the U.S. Government Accountability Office, and USCIS related to our objective.

We visited USCIS field offices in Houston, Texas, and Mount Laurel, New Jersey, based on proximity to DHS OIG staff. We then selected asylum office site visits based on pending asylum application numbers (high, medium, and low). Additionally, the team visited the Asylum Vetting



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Center in Atlanta, Georgia, which processes local affirmative filings, supports the Houston Asylum Office's credible fear workload, and processes congressional inquiries. We visited the following five asylum offices:

- Houston Asylum Office, Houston, Texas
- Newark Asylum Office, Newark, New Jersey
- New York Asylum Office, Bethpage, New York
- Miami Asylum Office, Miami, Florida
- Boston Asylum Office, Boston, Massachusetts

During our asylum office visits, we observed asylum officers as they conducted affirmative and credible fear interviews. We also observed a walk-through of how the officers use Global, USCIS' case management system, to handle and process asylum applications and claims. We interviewed asylum officers, supervisors, and senior officials to determine their roles and responsibilities and the challenges they face in processing asylum claims. We also spoke with officials to get an understanding of whether the Asylum Division was meeting goals and how it evaluated efficiency in meeting goals. We evaluated the data used for the projected goals by comparing 2 years of receipts in the projections to actual receipts from Global for reasonableness. In addition, we gained an understanding of the model USCIS used to develop its goals through interviews with subject matter experts and compared the projections provided to observations to determine completeness. We found the data sufficient to support our findings and conclusions although we did not recalculate completions goals.

We leveraged the DHS OIG Office of Innovation to obtain direct access to USCIS application processing systems including USCIS' Electronic Immigration System, Computer Linked Application Information Management System 3, and Global. We analyzed processing data obtained from the three systems to determine the extent of backlogs among operational directorates within USCIS to identify current and historical backlogs. Based on preliminary data, we focused this audit on the affirmative asylum backlog. Through direct access to Global, we obtained summary schedules of USCIS' data on received, completed, and pending affirmative asylum (including OAW), credible fear, reasonable fear, and Asylum Merits Interview caseloads for FY 2018 through FY 2022.

To determine whether asylum claims were adjudicated timely, we used Global data and compared actual processing times against the statutory requirements for USCIS' established goals. We analyzed the data to determine the average decision time for claims and the number of claims in a pending status for each workload. We also analyzed the number of pending claims and the average time taken to decide claims for each of the workloads. To access the reliability of the Global data, we conducted interviews with USCIS subject matter experts to obtain data dictionaries, tables and fields, and other related documentation. The DHS OIG Data Service Division held meetings with subject matter experts to obtain clarification of the data tables and



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fields in Global. We performed testing of the data used for our analysis to compare the USCIS internal dashboards to data pulled by the Data Service Division in Global. We also observed the use of Global during site visits. We found the data sufficient and reliable to support our conclusions.

In planning and performing our audit, we identified internal control components and underlying internal control principles that were significant to the audit objective. Specifically, we identified USCIS's control environment and risk assessment components as significant, including four internal control principles. We identified weaknesses in the risk assessment component with establishing goals for timely completion of affirmative asylum applications, which are addressed in the body of the report. However, we limited our assessment to the audit objective, which may not have disclosed all internal control deficiencies that may have existed at the time of our audit.

We conducted this audit from September 2022 through January 2024 pursuant to the *Inspector General Act of 1978*, 5 U.S.C. §§ 401–424, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

DHS OIG's Access to DHS Information

During this audit, USCIS provided timely responses to our requests for information and did not delay or deny access to information we requested.



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Appendix B:
USCIS Comments on the Draft Report

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009



**U.S. Citizenship
and Immigration
Services**

June 12, 2024

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Ur M. Jaddou UR M
Director JADDOU
U.S. Citizenship and Immigration Services

Digitally signed by UR M
JADDOU
Date: 2024.06.17
09:07:02 -04'00'

SUBJECT: Management Response to Draft Report: "USCIS Faces
Challenges Meeting Statutory Timelines and Reducing its
Backlog of Affirmative Asylum Claims"
(Project No. 22-062-AUD-USCIS)

Thank you for the opportunity to comment on this draft report. U.S. Citizenship and Immigration Services (USCIS) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

USCIS appreciates the OIG acknowledging in the OIG draft report that USCIS is neither sufficiently funded nor staffed to complete all its asylum-related workloads.¹ USCIS must therefore prioritize where to allocate its limited staffing resources.² Specifically, USCIS' ability to adjudicate affirmative asylum applications is constrained by the agency's finite resources and lack of continuous Congressional appropriations.

USCIS acknowledges that the agency has not adjudicated asylum applications in a manner sufficient to reduce its existing backlog. However, the OIG's draft report does

¹ A cadre of USCIS asylum officers, who are required by statute and regulation to be specially trained, are responsible for these affirmative asylum and protection screening workloads, as well as threshold screenings under the U.S.-Canada Safe Third Country Agreement, asylum merits interviews and adjudications pursuant to the March 2022 interim final rule titled "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers," and applications for relief under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). As of May 2024, USCIS has approximately 824 asylum officers onboard, of whom over 250 are in training.

² Section 208(d)(5)(A)(ii) of the Immigration and Nationality Act (INA) provides "in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;" section 208(d)(5)(A)(iii) likewise provides, "in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed." Although federal courts have acknowledged these timeframes are aspirational, not mandatory, in nature, *see e.g., Guo v. Mayorkas*, et al. No. 23-cv-429 (C.D. Cal. Aug. 15, 2023), USCIS nevertheless endeavors to administer the asylum program as efficiently as practicable in its current operating environment.

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not provide readers with the broader context of how the many, and constantly changing, factors outside of USCIS' control directly affect asylum-related caseloads. These include the significant increase in the number of border protection screenings in recent years that asylum officers must conduct, fundamental changes in patterns of global migration, and multiple humanitarian crises abroad, inducing increased irregular migration to the United States. These ever-changing factors, along with a prolonged, significant increase in affirmative asylum application filings; growing numbers of protection screenings that USCIS asylum officers must conduct; and insufficient Congressional appropriations to address the backlog, all contribute to the affirmative asylum backlog. Further, the OIG draft report does not include information on actions USCIS has taken to ensure only affirmative asylum applications filed for the purpose of gaining asylum, and that USCIS has both authority and jurisdiction to adjudicate, remain pending with USCIS. USCIS remains committed to administering the nation's lawful immigration system, including the affirmative asylum program, and is working to reduce the affirmative asylum backlog to the maximum extent practicable with the resources available. To this end, USCIS created an Asylum Program Fee for business petitioners in the new fee rule that was implemented on April 1, 2024. The Asylum Program Fee will offset some of the costs associated with the asylum program and resource the Asylum Division in a way that will allow USCIS to address the growing affirmative asylum case load. Sustained Congressional appropriations for backlog reduction, however, is necessary to ultimately eliminate the current backlog.

Protection Screening and Affirmative Asylum Application Increases

The historic increase in affirmative asylum applications USCIS received from fiscal year (FY) 2021 through FY 2023 noted in the OIG's draft report, continues. During the first six months of FY 2024, USCIS received 216,945 affirmative asylum applications and completed 73,551.³ In addition, during this same timeframe, USCIS received a historic 105,445 referrals for protection screenings, and completed 118,189.⁴

However, it is important that readers of the OIG's draft report understand that USCIS faced challenges addressing affirmative asylum cases that are not fully described in the draft report. During FY 2021 and FY 2022, for example, USCIS prioritized certain applications due to the court-ordered re-implementation of the Migrant Protection Protocols (MPP).⁵ Under MPP, citizens and nationals of certain countries other than Mexico, who arrived in the United States by land from Mexico, could be returned to Mexico while their U.S. removal proceedings were pending. Individuals who were

³ Case completions includes affirmative asylum applications that the Asylum Division granted, denied, referred to immigration court, administratively closed, or terminations of asylum status. The Asylum Division administratively closes cases due to lack of jurisdiction, abandonment, withdrawal, because the applicant is ineligible for asylum as a United States citizen, or because the applicant failed to appear for biometrics collection or their asylum interview. Cases completed in one fiscal year may have been filed or interviewed in a previous fiscal year.

⁴ See USCIS Asylum Division Monthly Statistics Report, Fiscal Year 2024, March 2024, May 7, 2024, available at https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2024todatestats_240331.xlsx.

⁵ See Department of Homeland Security, Court Ordered Reimplementation of the Migrant Protection Protocols, Nov. 1, 2022, available at <https://www.dhs.gov/archive/migrant-protection-protocols>.



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potentially subject to MPP, or who were subject to MPP, who expressed a fear of persecution or torture in Mexico, were referred to USCIS for an MPP *non-refoulement*⁶ interview and assessment.

During FY 2021 and FY 2022, USCIS received 1,470 and 16,623 MPP interview referrals, respectively,⁷ and MPP *non-refoulement* interviews were the USCIS Asylum Division's first interview priority. Accordingly, asylum officers conducted *non-refoulement* interviews while the noncitizen remained in U.S. Department of Homeland Security (DHS or the Department) facilities.⁸ Specifically, the court-ordered re-implementation MPP required the USCIS Asylum Division to divert limited resources and to designate a considerable portion of its asylum officers to the expeditious completion of this *nonrefoulement* interview workload. These interviews remained the Asylum Division's first priority until August 8, 2022, when the U.S. District Court for the Northern District of Texas lifted its injunction requiring the DHS to reimplement MPP in good faith.⁹

The COVID-19 pandemic also had a significant effect on asylum operations. While the number of asylum applications received by USCIS declined during the pandemic, USCIS' ability to complete asylum applications also fell due to health and safety mitigation protocols, as well as staff attrition related to an agency hiring freeze and threatened furlough. USCIS closed offices to the public for several months in 2020, and from March until June 2020, only a select few mission-critical staff were permitted into each office.¹⁰ This reduction in the number of staff who were in person at offices resulted in delays of file transfers and reviews, as well as a notable increase in the backlog because USCIS was unable to interview affirmative asylum applicants during this time. When asylum offices reopened to the public on June 4, 2020, they operated at greatly reduced capacity through March 2022 due to COVID-19 mitigation measures. Along with the emerging COVID-19 pandemic, USCIS revenue decreased significantly by 50 percent in April 2020 and 25 percent in May 2020. This unprecedented drop in revenue coupled with low funding reserves, forced USCIS to issue furlough notices to 70 percent of staff, over 13,000 individuals. The substantial decrease in revenue, however, did not continue into the summer, and USCIS was able to cancel the furlough in the summer of 2020. However, in tandem with the furlough notices, USCIS implemented a hiring freeze in May 2020 that restricted USCIS' ability to recruit asylum officers and

⁶The principle of non-refoulement is that refugees should not be returned to a country where they face serious threats to their life or freedom.

⁷ See Department of Homeland Security, 2022 DHS Congressional Appropriations Reports, *FY 2022 Report to Congress Asylum Application Processing*, July 17, 2023, available at https://edit.dhs.gov/sites/default/files/2023-08/23_0717_uscis_asylum_application_processing.pdf.

⁸ See Department of Homeland Security, Office of Strategy, Policy, and Plans, *Guidance regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols*, Dec. 2, 2021, available at https://www.dhs.gov/sites/default/files/2022-01/21_1202_plcy_mpp-policy-guidance_508.pdf.

⁹ See *Texas v. Biden*, 2:21-cv-00067 (N.D. Tex.).

¹⁰ See Department of Homeland Security, Office of Inspector General, *Continued Reliance on Manual Processing Slowed USCIS' Benefits Delivery During the COVID-19 Pandemic*, OIG-22-12, Dec. 28, 2021, available at <https://www.oig.dhs.gov/reports/2022/continued-reliance-manual-processing-slowed-uscis-benefits-delivery-during-covid-19-pandemic/oig-22-12-dec21>.



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other positions until April 2021. As a result of this, the Asylum Division's staffing levels fell from more than 800 officers to fewer than 700 officers through attrition.¹¹

Further, USCIS experienced a dramatic increase in the affirmative asylum backlog in FY 2022 and FY 2023 that directly correlates with the significant influx of noncitizens arriving at the U.S.-Mexico border during that time. To address the surge and decompress overcrowded U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) detention facilities, many noncitizens were placed in standard removal proceedings and released from custody.¹² Although noncitizens in removal proceedings who intend to apply for asylum must do so in immigration court as a defense to their removal, known as a defensive asylum application, many noncitizens incorrectly filed directly with USCIS instead. Therefore, the volume of affirmative asylum applications received by USCIS nearly doubled between FY 2022 and FY 2023, from 240,787¹³ to 454,339.¹⁴

Additionally, the impact of border arrivals on USCIS was especially acute following the expiration of the Title 42 public health order in May 2023.¹⁵ When Title 42 expired, DHS returned to processing all noncitizens arriving at the U.S.-Mexico border under longstanding Title 8 immigration authorities, including extensive use of expedited removal and other types of administrative removal.¹⁶ However, any noncitizen in expedited removal proceedings who indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to their country of removal, must be referred to USCIS for a credible fear interview. USCIS conducts reasonable fear interviews for noncitizens who are subject to a reinstated order of removal or final administrative removal order¹⁷ and express a fear of return to the country to which they have been ordered removed.

The increased use of expedited removal and administrative removal therefore resulted in a substantial increase in credible fear and reasonable fear referrals to USCIS. Specifically, the volume of credible fear and reasonable fear referrals received by USCIS

¹¹ See Department of Homeland Security, 2022 DHS Congressional Appropriations Reports, *FY 2022 Report to Congress Asylum Application Processing*, July 17, 2023, available at https://edit.dhs.gov/sites/default/files/2023-08/23_0717_uscis_asylum_application_processing.pdf.

¹² Some noncitizens were released with a Notice to Appear (NTA) before a Department of Justice Executive Office for Immigration Review (EOIR) immigration court at their intended destination in the United States, while others were released with a Notice to Report to an ICE office at their intended destination in the interior of the United States, where they would be issued an NTA and placed in removal proceedings.

¹³ See Department of Homeland Security, 2023 DHS Congressional Appropriations Reports, *FY 2023 Report to Congress Asylum Application Processing*, Nov. 1, 2023, available at https://edit.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf.

¹⁴ See USCIS Asylum Division Monthly Statistics Report, Fiscal Year 2023, Oct. 2022 to Sept. 2023, Nov. 3, 2023, available at https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx.

¹⁵ Section 265 of the Public Health Services Act, 42 U.S.C. § 265, authorizes the Centers for Disease Control and Prevention ("CDC") to bar the entry of individuals into the United States to protect the public from contagious diseases. Use of the Title 42 policy to expel noncitizens on public health grounds ended at 11:59 PM Eastern Time on May 11, 2023, when the national emergency proclamation concerning the COVID-19 pandemic expired.

¹⁶ INA §§ 235, 238, 241.

¹⁷ INA §§ 238(b), 241(a)(5).



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more than doubled between FY 2022 and FY 2023, from 75,260¹⁸ to 160,129.¹⁹ Through its Southwest Border Coordination Center, DHS directed USCIS to prioritize the adjudication of an unprecedented number of credible fear referrals, significantly impacting the agency's ability to adjudicate affirmative asylum cases.²⁰

Further, the unintended consequence of a change in USCIS policy resulted in an increase in the number of affirmative asylum applications. On November 9, 2022, USCIS announced online filing for affirmative asylum applications, the availability of which made it easier for asylum applicants to file with USCIS. This efficiency also resulted in filings even when USCIS lacks jurisdiction to adjudicate the application. The volume of affirmative asylum applications received by USCIS nearly doubled between FY 2022 and FY 2023, from 240,787²¹ to 454,339, even though USCIS lacked jurisdiction over many of these applications.²² These erroneously filed applications artificially inflate the affirmative asylum backlog while still placing an operational burden on USCIS resources.

During FY 2024, USCIS implemented measures to identify and address erroneously filed applications by noncitizens placed in removal proceedings. First, USCIS used innovative technology to identify applications filed online by noncitizens in removal proceedings, and in February 2024 launched an automated process to administratively close these cases, thereby using fewer staffing resources to quickly remove them from the backlog. To illustrate the strain that erroneous filings place on USCIS resources, in FY 2024 through Quarter 2 (Q2), USCIS administratively closed 46,755 cases based on lack of jurisdiction and 2,397 cases based on a previously unfiled NTA.

Second, in April 2024, USCIS expanded its technological capabilities to start rejecting asylum applications filed online by applicants in removal proceedings, consistent with its existing procedures to reject paper asylum applications filed by applicants in removal proceedings. In addition to freeing up staffing resources required to process these erroneously filed applications, these technological developments are an important step to improving the customer experience to ensure that affirmative and defensive applicants

¹⁸ See Department of Homeland Security, 2023 DHS Congressional Appropriations Reports, *FY 2023 Report to Congress Asylum Application Processing*, Nov. 1, 2023, available at https://edit.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf.

¹⁹ See USCIS Asylum Division Monthly Statistics Report, Fiscal Year 2023, Oct. 2022 to Sept. 2023, Nov. 3, 2023, available at https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx.

²⁰ Because of the statutory provisions on mandatory detention, DHS makes the rapid completion of credible fear and reasonable fear cases a high priority. When credible fear and reasonable fear screenings increase due to an influx of individuals arriving at the border, USCIS assigns more asylum officers to these urgent caseloads, which decreases the number of asylum officers available to conduct affirmative asylum interviews and complete adjudications. This extends the amount of time affirmative asylum applicants must wait for their asylum interviews and increases the backlog. See Department of Homeland Security, 2023 DHS Congressional Appropriations Reports, *FY 2023 Report to Congress Asylum Application Processing*, Nov. 1, 2023, available at https://edit.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf.

²¹ See Department of Homeland Security, 2023 DHS Congressional Appropriations Reports, *FY 2023 Report to Congress Asylum Application Processing*, Nov. 1, 2023, available at https://edit.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf.

²² See USCIS Asylum Division Monthly Statistics Report, Fiscal Year 2023, Oct. 2022 to Sept. 2023, Nov. 3, 2023, available at https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx.



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are filing their applications in the correct location and with the correct U.S. government agency.

In addition to the impact of recent border arrivals on the affirmative asylum backlog, USCIS also identified an increasing number of late-filed affirmative asylum applications, referred to as “cancellation cases.” With certain exceptions, noncitizens must submit their asylum application within one year of the date of their last arrival in the United States. Between September 2022 and May 2024, the volume of pending cases filed by applicants who have been living in the United States for at least 10 years increased from 26,000 to 47,700 cases. A noncitizen who is in removal proceedings may be eligible for “cancellation of removal,” a form of discretionary relief that provides the noncitizen with lawful permanent resident status (*i.e.*, a “green card”) if they meet certain criteria, including continuous residence in the United States for at least 10 years.²³ Cancellation of removal, however, is available only to noncitizens in removal proceedings before EOIR; there is no mechanism to apply with USCIS for cancellation of removal as an immigration benefit. Consequently, some noncitizens file late, non-meritorious asylum applications solely for USCIS to place them in removal proceedings before EOIR, where they may apply for cancellation of removal.

To process more efficiently late-filed affirmative asylum applications, in November 2022, the Asylum Division formalized procedures it began testing in 2018, whereby the agency offers applicants with late-filed cases the opportunity to waive the asylum interview and be referred to immigration court based on the one-year filing deadline bar to applying for asylum. In the past five fiscal years, approximately 20 percent of applicants who received the opportunity to waive their interview accepted the offer.

Insufficient Funding

Although the OIG’s draft report also acknowledges that funding shortages prevented USCIS from timely processing current and backlogged affirmative asylum applications, it is also important to highlight that the OIG draft report does not fully address the funding challenges USCIS faces. USCIS’ budget is primarily funded through filing fees submitted by individuals seeking certain immigration and naturalization benefits and, because USCIS does not charge a filing fee for asylum applications, the agency must subsidize the asylum program with funds collected from fee-generating work streams and congressional appropriations. Over the last three fiscal years, USCIS received just 3-4 percent of its budget from congressional appropriations. Further, while USCIS prepares, on an annual basis, estimates of incoming asylum workloads and the staffing needed to complete those workloads, due to funding limitations, USCIS was unable to staff to the necessary levels.

Due to its statutory reliance on filing fees for the majority of its budget, USCIS typically seeks to update its fee structure every two years. However, given federal court orders

²³ INA § 240A.



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regarding the 2019 Fee Rule,²⁴ USCIS' fee structure was frozen between December 2016 and April 2024. Fee revenue over this time therefore did not keep pace with the growth in USCIS' operating costs and increased demands for immigration benefits. On January 31, 2024, USCIS published a final rule²⁵ to adjust certain immigration and naturalization benefit request fees. The rule includes a new Asylum Program Fee of up to \$600 to be paid by employers who file certain employment-based visa petitions. Over time, this new fee will allow USCIS to cover a greater share of its operating costs and support more timely processing of new asylum applications. Still, appropriated funding from Congress remains necessary to reach and maintain the staffing levels needed to address and reduce the affirmative asylum backlog.

In February 2024, a bipartisan group of Senators announced a national security agreement that USCIS supports that would allow USCIS to hire and onboard over 1,600 additional asylum officers as well as additional funding dedicated for the sole purpose of helping reduce the USCIS backlog. To date, however, Congress has not passed this agreement.

Following the President's budget request for FY 2022,²⁶ USCIS received \$275 million for application processing, including the reduction of the asylum backlog. USCIS used a portion of this funding to hire more than 150 Asylum Division staff, including 80 asylum officers, who adjudicated more than 1,000 of the longest pending affirmative asylum applications per month in FY 2022. Although the President's FY 2023 budget request to Congress²⁷ included \$765 million to reduce USCIS application and petition backlogs, support the increased refugee admissions ceiling, and fund asylum processing, USCIS received no additional appropriated funding for asylum processing or to reduce backlogs.

The President's FY 2024 budget²⁸ request sought funds necessary to enable the Asylum Division to complete up to 150,000 credible fear determinations and requested supplemental funding for an additional 1,600 asylum officers and associated support staff to hear migrant claims and facilitate timely immigration dispositions, including expedited removal for those without a valid claim to remain in the United States. Additionally, the Office of Management and Budget (OMB) submitted a supplemental budget request that included \$755 million and funding for 1,600 asylum officers for surging Southwest Border Workload. In March 2024, Congress appropriated \$281 million to USCIS, including \$34 million for affirmative asylum backlog processing and the reduction of affirmative asylum processing times, to be used during FY 2024. USCIS is currently analyzing the most effective way to spend these funds, including technological

²⁴ In August 2020, USCIS published the FY 2019 final fee rule to adjust fees. This rule was enjoined by a federal judge within weeks after publication. The fee adjustments in this rule were not allowed to be implemented. The fee rule enacted in 2024 April resolved the legal actions related to the FY 2019 final fee rule.

²⁵ See "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," <https://www.federalregister.gov/documents/2024/01/31/2024-01427/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>

²⁶ <https://www.govinfo.gov/app/collection/budget/2022>

²⁷ <https://www.govinfo.gov/app/collection/budget/2023>

²⁸ <https://www.govinfo.gov/app/collection/budget/2024>



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improvements to reduce processing times and other costs associated with reducing the affirmative asylum backlog. USCIS anticipates these appropriated funds will be used to support payroll and technology initiatives. Payroll funding will be used for non-OAW affirmative asylum work performed on regular time or overtime that helps to reduce the backlog and overall processing times. Examples include but are not limited to interviewing or processing of affirmative asylum applications, affirmative asylum jurisdictional work, affirmative asylum administrative closures, and mandamus cases. The appropriated funds will also be used to support technological improvements, such as improvements in intake, digitization, and case management systems, that will help reduce the affirmative asylum backlog and overall processing times.

USCIS, however, does not anticipate being able to hire additional asylum officers using these FY 2024 appropriated funds because USCIS did not receive the funding until halfway through the fiscal year. Operationally, it would take most, if not all, of the remainder of the fiscal year to hire and begin training new asylum officers. Further, there is no guarantee that Congress will continue this appropriated funding in FY 2025. Without a guarantee of the appropriated funds, at the start of FY 2025 USCIS could lack the resources necessary to retain any of the new officers hired during FY 2024.

USCIS acknowledges the challenges it faces in addressing the affirmative asylum case backlog. However, this backlog must also be considered within the broader, complex context of events that directly impact that number of asylum applications received, the events that affect USCIS' ability to process applications, and USCIS' funding structure.

The draft report contained two recommendations with which USCIS concurs. Enclosed find our detailed response to each recommendation. USCIS previously submitted technical comments addressing several accuracy and contextual issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.



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Enclosure: Management Response to Recommendations Contained in OIG (Project No. 22-062-AUD-USCIS)

OIG recommended that the Director of USCIS:

Recommendation 1: Develop and implement a multi-year operational plan that will enable USCIS to adjudicate new affirmative asylum claims consistent with the law and reduce the backlog. The plan should include clear priorities and goals, appropriate staffing levels, an analysis of funding, and how that funding will be generated.

Response: Concur. Each fiscal year, USCIS develops forecasts for all incoming workloads and the staffing levels needed to complete the incoming work. Specifically, these workload and staffing estimates are developed and refined annually and provide forecasts up to seven years in the future. USCIS relies upon these estimates, which include asylum workloads and staffing needs, for revenue forecasts and the fee rules that set the fees USCIS charges to ensure USCIS is properly funded to achieve its mission.

USCIS also forecasts its backlog and submits annual backlog elimination plans to the Office of Management and Budget (OMB). The Refugee, Asylum and International Operations (RAIO) Directorate also develops an Annual Operating Plan specific to RAIO that links to USCIS strategic goals and includes metrics for asylum hiring and processing goals, and the USCIS Office of the Chief Financial Officer works alongside DHS stakeholders and OMB, as appropriate, to submit the annual request to Congress in the timeframe required by statute.

USCIS implemented a new fee rule on April 1, 2024, which is expected to increase annual revenue by an estimated \$1.1B per year. The \$1.1B in additional annual revenue is expected to include approximately \$300M per year of revenue from an Asylum Program Fee included in the filing costs that business petitioners pay. This \$300M in revenue will be used by USCIS specifically to offset some of the costs associated with the asylum program. For example, this funding will enable USCIS to hire up to several hundred additional staff members to address the growing affirmative asylum workload.

Building upon these existing activities and the USCIS Annual Operating Plan, USCIS will develop an affirmative asylum multi-year operational plan¹ by

¹ Any multi-year plan to address adjudicating all new affirmative asylum claims and reduce the backlog will require sustained congressional appropriations. USCIS received \$275M in congressional appropriations in FY 2022 and \$68.8M in congressional appropriations in FY 2024 to support backlog reduction and application processing activities. With the funding received in FY 2022, USCIS was able to fund 644 new positions, including over 150 new positions specifically for the affirmative asylum backlog. Continued Congressional support in the form of



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September 30, 2025, which will include clear performance metrics and performance targets for asylum processing and hiring. The plan will also reflect priorities and goals, appropriate staffing levels, and an analysis of funding based on revenue projections, and will be implemented during fiscal year (FY) 2026.

Estimated Completion Date (ECD): September 30, 2026.

Recommendation 2: Prepare and submit annual budget requests consistent with the established multi-year operational plan outlined in Recommendation 1.

Response: Concur. USCIS continues to seek resources commensurate to the workload for decreasing the affirmative asylum backlog as well as the rest of the agency's backlog workload. For example, USCIS recently submitted its "Resource Allocation Plan" to the Department as an initial request for FY 2026 funds, which is consistent with a multi-year approach to support backlog reduction. USCIS' Office of the Chief Financial Officer (OCFO) is working alongside DHS and OMB to submit an annual request to Congress by February 3, 2025, as required by statute. It is also important to note that USCIS supports the national security supplemental request sent to Congress in FY 2024 which would allow USCIS to hire and onboard over 1,600 additional asylum officers, as well as additional funding dedicated for the sole purpose of helping reduce the USCIS backlog.

Current USCIS fee collections do not adequately support the increase in capacity needed to make significant progress in reducing the backlog. In an effort to offset the cost of processing affirmative asylum claims, USCIS created an Asylum Program Fee for business petitioners in the new fee rule that was implemented on April 1, 2024. This funding will support USCIS staffing to address the growing affirmative asylum case load. However, sustained Congressional appropriations for backlog reduction is necessary to ultimately eliminate the current backlog.

Estimated Completion Date (ECD): September 30, 2026.

appropriations for backlog reduction will be essential to any future backlog reduction and elimination plan for USCIS.



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Appendix C: Report Distribution

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Assistant Secretary for Office of Public Affairs
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