

RCUSA Advocacy Days Factsheet: An Overview of the U.S. Asylum System

Asylum is the heart of the refugee protection system, both in the United States and globally. The right to seek asylum is enshrined in the *Immigration and Nationality Act* and the 1951 Refugee Convention and its 1967 Protocol. Congress clearly intended the *Refugee Act of 1980* to align U.S. domestic law with our international treaty obligations; this foundational principle was later affirmed by the U.S. Supreme Court. **Federal law is unequivocal: Anyone who is physically present or arrives in the United States may apply for asylum** regardless of their documentation or manner of entry. Yet since January 2025, the Trump administration has enacted a sweeping policy agenda to end access to asylum for people fleeing persecution and torture abroad.

What is the U.S. Asylum System?

Non-citizens present or arriving in the United States have a legal right to ask for protection if they fear return to their home country or any other country of removal. This can happen in three different ways:

- *Removal proceedings*: Many people have their asylum claim heard by a Department of Justice (DOJ) immigration judge (IJ) controlled by the Attorney General (AG). This is an adversarial proceeding in immigration court where the government is represented by a Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) trial attorney. Non-citizens have a right to counsel, but not at government expense. The majority of people therefore represent themselves. If a non-citizen proves they are a refugee or qualifies for another form of humanitarian relief, such as protection against torture, they will be allowed to stay.
- *Expedited removal*: Some people who have been in the United States for less than two years are placed in expedited removal proceedings administered by DHS. Even in this fast-track proceeding, Congress requires DHS to screen for whether a person may be eligible for asylum or other forms of humanitarian protection.
- *Affirmative asylum*: People who are not in removal proceedings can apply for asylum at a DHS Asylum Office. Their claim is heard during a non-adversarial interview with a specially-trained asylum officer (AO).

What is Happening with the U.S. Asylum System?

The administration has relentlessly tried to end the right to seek asylum through indiscriminate arrests, repeated violations of court orders, abusive detention conditions, systematic denial of due process and access to counsel, halting of asylum adjudications, [replacement of professional civil servants and competent IJs](#) with anti-immigrant ideologues, and rendition of asylum seekers to dangerous third countries. These policies are integral to the administration's broader assault on the rule of law and our constitutional system of checks and balances, as it ignores Congressional mandates and evades judicial review. At the same time, H.R.1 (the OBBBA) imposed burdensome fees on asylum applicants, many of whom are indigent, while the administration has worked to limit or [deny them access to work permits](#).

LAWLESS ENFORCEMENT

Since taking office, the administration has continually ramped up its program of unconstitutional arrests and detentions of people, [including many asylum seekers](#), in the street during indiscriminate sweeps, at their homes and workplaces, and at ICE check-ins, Asylum Office interviews, and immigration courthouses. Flush with H.R.1 money, the administration has [detained the parents of more than 11,000 U.S. citizen children](#) in its mass deportation campaign and is using [family separation and prolonged detention of children](#) as a deterrence strategy. It has [violated court orders in at least 300 separate immigration habeas corpus cases](#). It is also [pressuring immigration judges](#) to deny all bond requests.

ABUSIVE CONDITIONS OF DETENTION

DHS's skyrocketing detention budget enriches for-profit contractors while imprisoning thousands of individuals seeking asylum, including [pregnant and nursing mothers](#) and [children like 5-year-old Liam Ramos](#), in facilities that lack

the most basic services and rudimentary medical care. Members of Congress who recently conducted a surprise inspection at a detention facility encountered what they described as [“shocking,” “shameful,” “frightening,” and “disgusting” conditions](#) that included people mostly laying on the floor packed “like sardines.” Horrifyingly, at least [28 people have died in ICE custody so far in FY 2026](#). ICE relentlessly pressures asylum seekers to give up their legal rights, using the threats of continued detention and transfer to dangerous third countries to coerce them into abandoning their claims.

TRANSFER TO DANGEROUS THIRD COUNTRIES

The administration has [entered into agreements](#) with at least [27 countries](#) to accept the transfer of third-country nationals from the United States. Many of these countries are governed by corrupt autocrats known for human rights violations, are experiencing ongoing armed conflict, or are refugee-producing states themselves. People transferred under these agreements have been subject to serious human rights violations like arbitrary imprisonment and onward transfer back to their home countries to face the risk of persecution or torture. Some of these agreements, known as [Asylum Cooperative Agreements \(ACAs\)](#), involve removing asylum seekers to a third country that is not their own, rather than hear their claims in the United States. These agreements lack critical legally-required safeguards because of insufficient protection from persecution or torture and the absence of full and fair asylum procedures in the third countries’ legal systems.

DUE PROCESS DENIED

Since taking office, the administration has relentlessly attacked the asylum system designed by Congress by blocking or expelling people arriving at the border from applying for asylum, [halting the processing of asylum claims](#) by the DHS Asylum Office, and transforming the immigration court system into a cog in America’s mass deportation machine.

The administration is rigging the legal system against asylum seekers. It continues to dismantle legal protections for [families](#) and people at risk of [gender-based violence](#). At the same time, it is waging an all-out war on access to legal counsel for asylum seekers by [defunding legal services](#) for unaccompanied children and other especially vulnerable populations; [shutting down a critical accreditation program](#); and imprisoning asylum seekers in remote locations, far from their community networks and legal service providers. ICE then relentlessly pressures asylum seekers into abandoning their rights and “voluntarily” accepting deportation.

The administration had adopted policies to [“pretermite”](#) (terminate without a hearing) asylum cases in immigration court on the basis of ACAs, purportedly “incomplete” asylum applications, and where ICE has prejudged the applicant is unlikely to be eligible for relief. In a further assault on due process, the administration is trying to eviscerate asylum seekers’ ability to [appeal](#) wrongful IJ decisions.

Congress requires that even people with orders of removal or criminal convictions be provided with a meaningful opportunity to claim fear before their removal. If an IJ or AO determines a person is at significant risk of persecution or torture, [DHS cannot deport them](#). DHS has consistently failed to conduct fear screenings as required by law.

BILLS TO CONSIDER:

Real Courts, Rule of Law Act – [H.R.7836](#) (119th Congress) would remove the immigration court system from the Executive Branch and establish independent immigration courts under Art. I of the Constitution.

Asylum Seeker Work Authorization Act – [H.R.1325](#) / [S. 255](#) (118th Congress) would expedite work authorization and shorten the waiting period for receiving employment authorization to 30 days from the filing of the asylum application.

MELT ICE Act – [H.R.7190](#) (119th Congress) would require the release of detained immigrants, repeal DHS’ detention and ankle monitoring authorities, defund ICE’s civil immigration enforcement activities, and establish a social services grant program for people impacted by immigration enforcement.