

The Law of Refugee Status



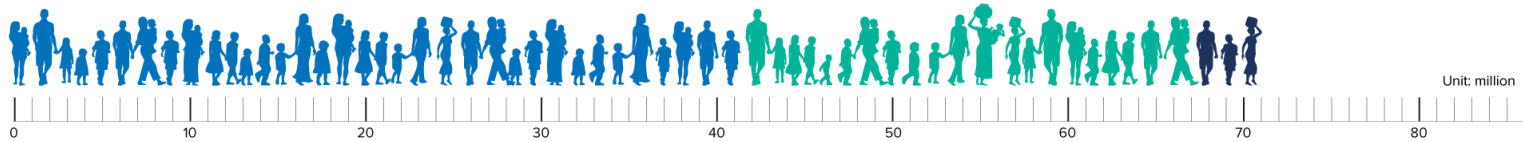
Jonah Eaton – Supervising Attorney

Nationalities Service Center
Philadelphia Partnership for Resilience



70.8 million

forcibly displaced people worldwide



Internally Displaced People
41.3 million

Refugees
25.9 million

20.4 million under UNHCR's mandate
5.5 million Palestinian refugees under UNRWA's mandate

Asylum-seekers
3.5 million

Where the world's displaced people are being hosted



About 80 per cent of refugees live in countries neighbouring their countries of origin

57% of UNHCR refugees came from three countries

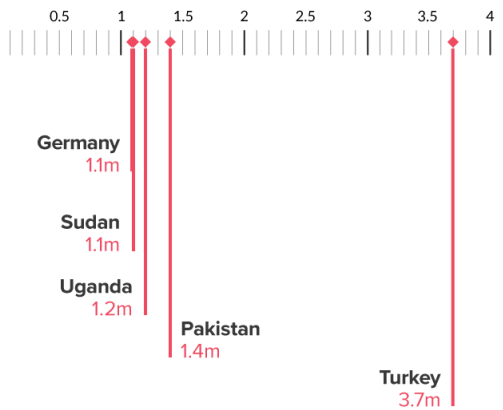


341,800
new asylum seekers

The greatest number of new asylum applications in 2018 was from Venezuelans



Top refugee-hosting countries



UNHCR has data on

3.9 million
stateless people
but there are thought to be millions more



92,400
refugees resettled

37,000 people
a day forced to flee their homes because of conflict and persecution

16,803 personnel
UNHCR employs 16,803 people worldwide
(as of 31 May 2019)

134 countries
We work in 134 countries (as of 31 May 2019)

We are funded almost entirely by voluntary contributions, with 86 per cent from governments and the European Union and 10 per cent from private donors

The Geneva Convention of 1951



Asylum is a surrogate protection regime

tangible legal mechanism to vindicate human rights

“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”

Protocol relating to the Status of Refugees, art. 1, 31 Jan., 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Convention relating to the Status of Refugees, art. 1, 28 Jul., 1951, 189 U.N.T.S. 137.

6 Elements



1. Alienage
2. a well-founded fear
3. of persecution
4. perpetuated by government or actor the government
cannot or will not control
5. on account of
6. one of five enumerated grounds.

Alienage



Must be outside country of origin – you have to cross a
boarder

Distinguish from internally displaced persons

Refugees, Asylees & Asylum Seekers

Refugee Resettlement

Well-founded Fear



Applicant must show “reasonable probability” she will be persecuted – INS v Cardoza-Fonseca, 480 US 421 (1987)

c.f.

“more likely than not” – withholding of removal

Persecution



There must be a sufficient level of harm BUT
no statutory or regulatory definition

“harm or suffering *must* be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome.”

In re Acosta, 19 I. & N. Dec. 211, 223 (BIA 1985), *overruled on other grounds* In re Mogharrabi, 19 I. & N. Dec. 439 (BIA 1987).

“serious violations of human rights . . . constitute persecution.”

United Nations High Commissioner for Refugees, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS ¶ 51 (1979)

“punishment for political, religious, or other reasons that our country does not recognize as legitimate.”

Osaghae v. U.S.I.N.S., 942 F.2d 1160, 1163

Past Persecution



Showing of past persecution -> rebuttable presumption of future persecution – 8 C.F.R. § 208.13 (b)(1)

Past persecution -> possible grant of “humanitarian” asylum

Who is the Persecutor?



Government Actor

Non-government actor

Not general criminality, or random acts of violence

State action or non-action is a requirement

On Account of – Nexus Requirement



The persecutor must be motivated by one of 5 enumerated grounds – race, religion, nationality, political opinion and social group

Motivation may be imputed – Persecutor acts against victim because they believe victim part of group

Motives may be mixed; applicant must establish that the protected ground “was or will be *at least one central reason* for persecuting the applicant”

Shaikh v. Holder, 702 F.3d 897 (7th Cir. 2012).

Enumerated Grounds



1. Race;
2. Religion;
3. Nationality;
4. Political Opinion;
5. Social Group

Group that shares a “common immutable characteristic.”

In re Acosta, 19 I. & N. Dec. 211, 223 (BIA 1985)

A characteristic that cannot or should not be required to change

Category now includes: survivors of FGC; victims of domestic violence; LGBT

Enumerated Grounds



Social Group is an increasingly complicated and restricted; BIA added “particularity” and “social distinction” requirements

Particularity: group is defined in a manner sufficiently distinct that the group would be locally recognized as a discrete class of persons

Matter of S-E-G-, 24 I&N Dec. 579 (BIA 2008).

Social distinction - shared characteristic “should generally be recognizable by others in the community.” Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014).

Erosion of PSG



Matter of A-R-C-G-, 26 I&N Dec. 338 (BIA 2014) landmark decision articulating PSG for victims of domestic violence

BUT

A.G. has the authority to self refer cases 8 C.F.R. § 1003.1(h)(1)(i)

Matter of A-B- 27 I&N Dec. 316 (A.G. 2018)

A-R-C-G- overruled; sweeping and prejudicial pronouncements about viability of domestic violence claims

A.G. signaled to IJs he does not want DV cases granted

Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019) – harder to make PSG on grounds of family

The Process



Refugees, Asylees & Asylum Seekers

Asylum vs. Withholding vs. CAT Withholding

Non-refoulement, art. 33 and Withholding of Removal
(Cardozo-Fonseca withholding vs. asylum standards)

Asylum seeker comes to the US and requests protection;
discretionary relief based on balance of equities

Affirmative vs. Defensive application (in removal
proceedings)

The Process - Jurisdiction



The Executive Branch

Dept. of Homeland Sec.

USCIS

The Asylum Office

ICE

Dept. of Justice

EOIR

The Immigration Courts

Board of Imm. Appeals

The Judicial Branch

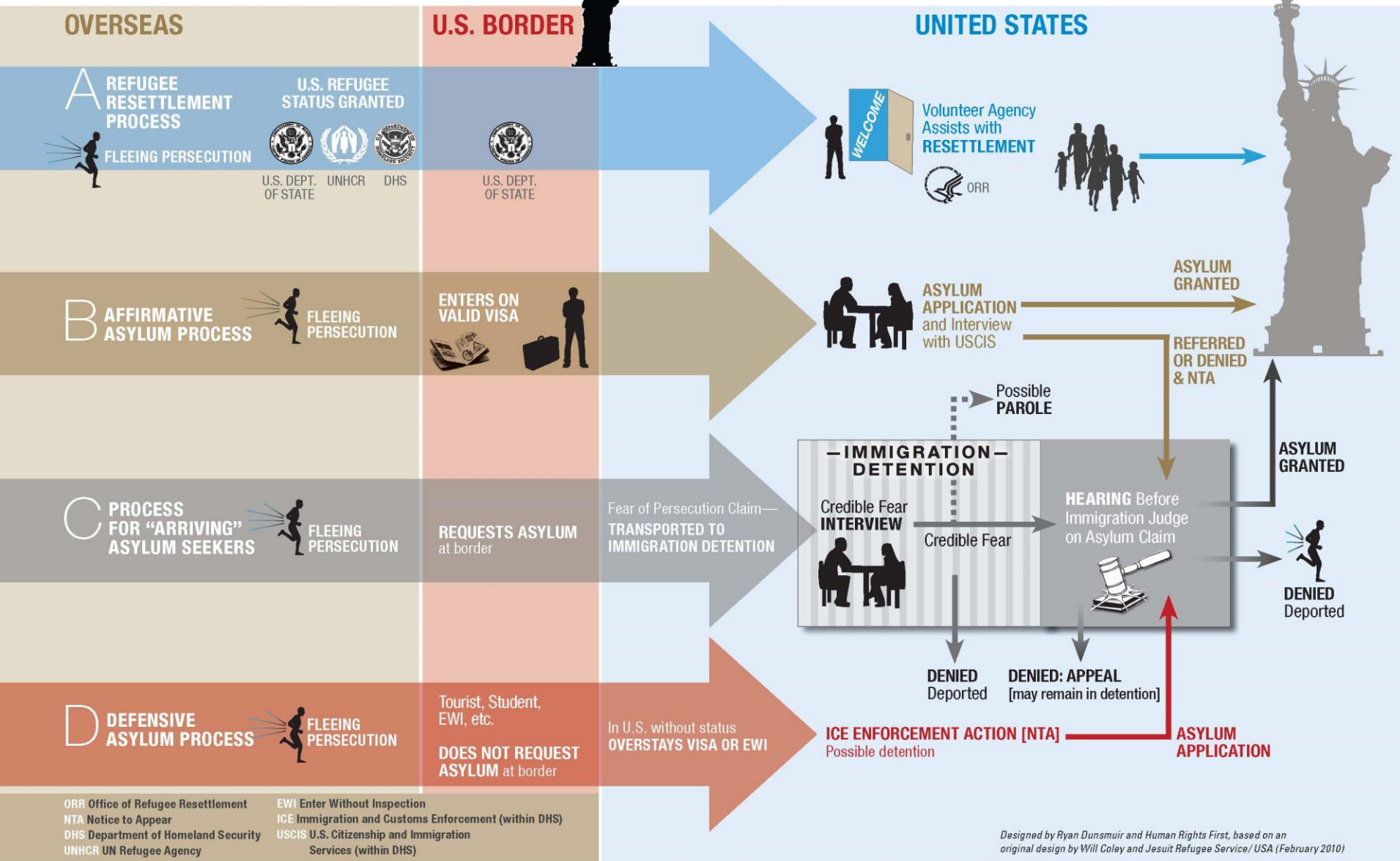
The District Courts

Courts of Appeal

Supreme Court



How Refugees Get to the U.S.



Other Issues



- Asylum bars: Persecutors, criminals, terrorists
 - 1 year deadline
- Internal relocation alternative/firm resettlement/safe third country of asylum
- Discretion – “The Secretary of Homeland Security or the Attorney General *may* grant asylum...” 8 USC §1158(b)(1)(A)

Evidence



- Burden of proof is initially on applicant to show she meets the requirements for asylum
- The Application: Form I-589, Affidavit & Supporting docs
- Testimony: can meet burden if credible, persuasive, refers to specific facts sufficient to show refugee definition is met
 - REAL ID Act 2005 – adjudicator can require corroboration; if not presented, explain why

Evidence



- Expert Testimony/Reports

- There is a right to expert testimony in removal proceedings
See Indradjaja v. Holder, 737 F.3d 212 (2nd Cir. 2013)
- Daubert v. Merrell Dow Pharm., Inc., 509 US 579 (1993), Kumho Tire Co., Ltd. V. Carmichael, 526 US 137 (1999), Fed. R. Evid. 702 control experts in civil cases
- Physical and Psychological Evaluations and/or testimony
 - Adhere to Istanbul Protocol
 - Experts are impartial observers

Asylum Seekers at the Border



- Rule promulgated July 16, 2019 (84 Fed. Reg. 33829) forbidding asylum applicants at US Mexico border unless they apply for and are denied asylum in any third countries they travel through
- Any noncitizen “physically present in the United States or who arrives in the United States . . . may apply for asylum.” 8 USC §1158(a)(1)
- District Court had issued preliminary injunction, SCOTUS just stayed the PI

Refugee Resettlement



- UNHCR identifies candidates for resettlement in high impact areas
- They are referred to the Office of Refugee Resettlement at US DOS
- Multiple rounds of interviews with ORR and DHS
- If selected, refugees are then issued travel documents by the IOM
- Travel to the US and placed with a social service agency such as NSC

Refugee Resettlement



(2) . . . the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

(3) Admissions under this subsection shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation

8 USC § 1157(a)

Erosion of the Resettlement Program



President has broad authority over refugee resettlement, can set the number of refugees admitted per year (<.1% of total refugee population)

Before 2016, number has fluctuated btw 60,000 – 200,000

Post 9/11 – set at 60,000 (only 27,000 admitted)

FY2017 – 110,000

FY2020 – 18,000 (maybe half will be admitted)

Longer delays in security processing

Convention Against Torture



An act committed . . . under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control

8 C.F.R. § 208.18 (Torture Victims Relief Act of 1998)

CAT Withholding – “more likely than not” standard

Must raise claim before IJ but mandatory form of relief

PPR Program

Human Rights Violations at Home

Other Forms of Relief



Extraordinary increase in enforcement against long present/mixed status communities in the US

More people are being thrown into an inadequate and increasingly non-independent adjudication system

77% of detainees at York have no lawyer – pending Penn State study

Cancellation of Removal

For LPRs – 7 years in the US – keep green card, proceedings terminated

For non-LPRs – 10 years in the US – get a green card issued, proceedings terminated

Must show hardship

Waivers

Grounds of admissibility may be waived –hardship, often to USC family members

209(c) waiver for asylees/refugees

Competency

Under Matter of M-A-M-, 25 I&N Dec. 474 (BIA 2011)

IJs can appoint counsel, establish safeguards to protect mentally incompetent Respondents

Our First INVASION by HINDUS and MOHAMMEDANS



A GROUP OF GIANT HINDU-SIKHS NOW RAILROAD LABORERS.

SIKHS, HONG KONG'S CRACK POLICEMEN FROM THE PANJAB, HAVE DESERTED AND COME TO WORK ON A RAILROAD SECTION AT SAN JOSE.

...and Mr. Gillivan says that football is a model in this respect. The other natives drink, he declares, and would not have any friendship for them.

Sikhs From the Panjab.

Mr. Gillivan calls them "Turks." Now, a Turk is a Mohammedan, and the Sikhs are Hindus, coming from Panjab, the Land of the Five Rivers, whose inhabitants still remember the four great battles in which they fought the British to a standstill, and when each side claimed the victory.

The Panjab is the land of brave men and handsome women. It was the Panjab which saved India in the year 1857-58, the day of the mutiny, when Roberts, then a lieutenant in the Bengal Horse Artillery, showed the stuff that was in him. Roberts was in Peshawar, Panjab, then a frontier post. Nicholas was there, too, and the Panjab on this day put their ears to the ground to hear the hoof-beats of Nicholas' sabika horse.

It is the kind of a warrior, we hear, and the greatest of her warriors was Ranjit Singh, the Lion of the Panjab, at whose funeral pile one of his wives were burned to add to the sorrow that was felt at his death.

Here in the Panjab is recruited the Indian army. When the British began to fight about the English.

Sir John Lawrence, afterward Lord Lawrence, went to Lahore. He gave his ruler three extra guns, and Panjab sent a contingent to fight the British.

Small, like all the followers of Mahomet, hates a Hindu.

"They are all men" (Sanskrit words), he explained, which means more than to say.

"Yes," he says, "they were in the police. No, I can't say that they deserted. They left Hongkong and came over here. First they went to British Columbia and I came down here because the climate is better and the men are physically stronger."

lots of work. They worked at the gold-mining mines and many are there now, but they have come down here and are employed upon the railroads. Oh, yes, they are strong, very strong. I have nothing to do with them. We don't agree," he added with a laugh.

Race Hatred Strong.

And so in this corner of the world the Mohammedans and the Hindus glare at each other, and were it not for the law the Mohammedans and Hindus would stay each other. The Mohammedans by killing a Hindu would gain eternal paradise, and the Sikh by killing a Mohammedan would gain merit by sending to another world the oppressor of the Hindu.

Janaki will not eat the flesh of cows and sheep and chickens, but he will not touch the meat of a pig. The Sikhs will eat no food whatsoever, but will they handle the food of the sacred cow? They are strict vegetarians, and live in comparatively poor. Their lineage is shown in their names, for we may not be a Hindu-Nara Singh, Gaur Singh, Parth Singh and Yama Singh, and among these warriors is a priest, Adal Gurmukh.

Perhaps their religion shows answers have things in many a way, carry with them a pistol so that they may not be far from the teachings of Buddha.

The priest, even in the high, does not work. The warriors who have won the British uniform are working upon the Inter-Oceanic Railroad, and they are said to be good workers, for their strength and their strength are the same as the American.

"I have seen them sitting on the ground with their hands on their shoulders as if they were a statue."

"I will see you when you go to the Panjab," I said.

"It is in the western of Great Britain," he said.

BY HIS JOURNALIST
JESSE A. BROWN

MAP SHOWING ASIATIC ZONE PRESCRIBED IN SECTION THREE OF IMMIGRATION ACT, THE NATIVES OF WHICH ARE EXCLUDED FROM THE UNITED STATES, WITH CERTAIN EXCEPTIONS.

(Section indicated by diagonal lines covered by treaty and laws relating to Chinese. The Philippine Islands are United States possessions and therefore not included in barred zone.)

