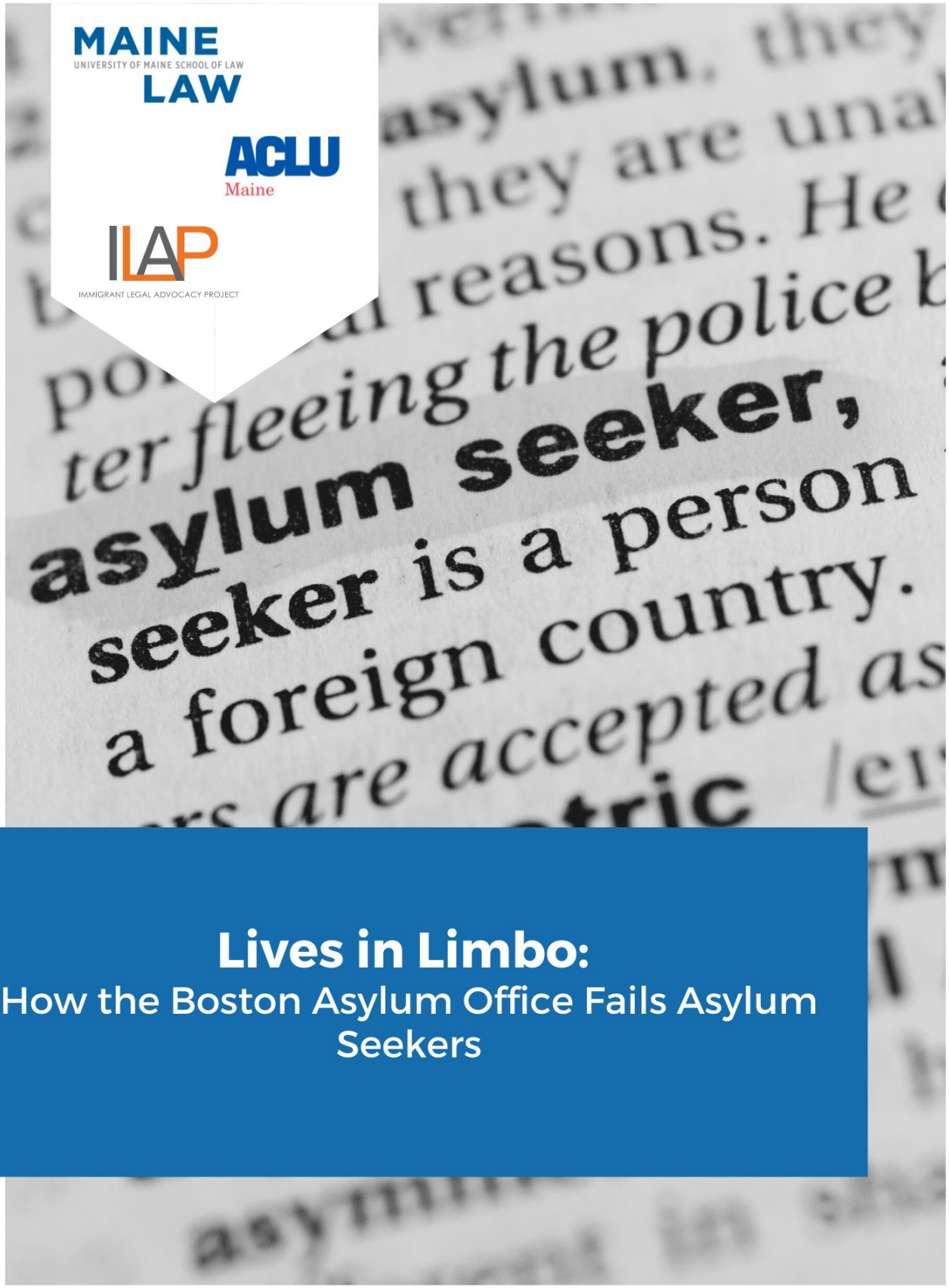


Lives in Limbo:

How the Boston Asylum Office Fails Asylum Seekers

A Report by the Refugee and Human Rights Clinic at the University of Maine School of Law, Immigrant Legal Advocacy Project, American Civil Liberties Union of Maine, and Basileus Zeno, Ph.D. Political Science at Amherst College

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EXECUTIVE SUMMARY

The process of seeking asylum in the United States is long and fraught with stress and hardship. But asylum seekers who apply through the Boston Asylum Office face a unique challenge: an asylum grant rate that is well below the national average. From 2015 to 2020, the Boston Asylum Office, on average, granted a mere 15 percent of asylum applications, with some months granting as low as 1.5 percent of asylum seekers. In contrast, the national average grant rate was nearly *twice* as high: 28 percent.

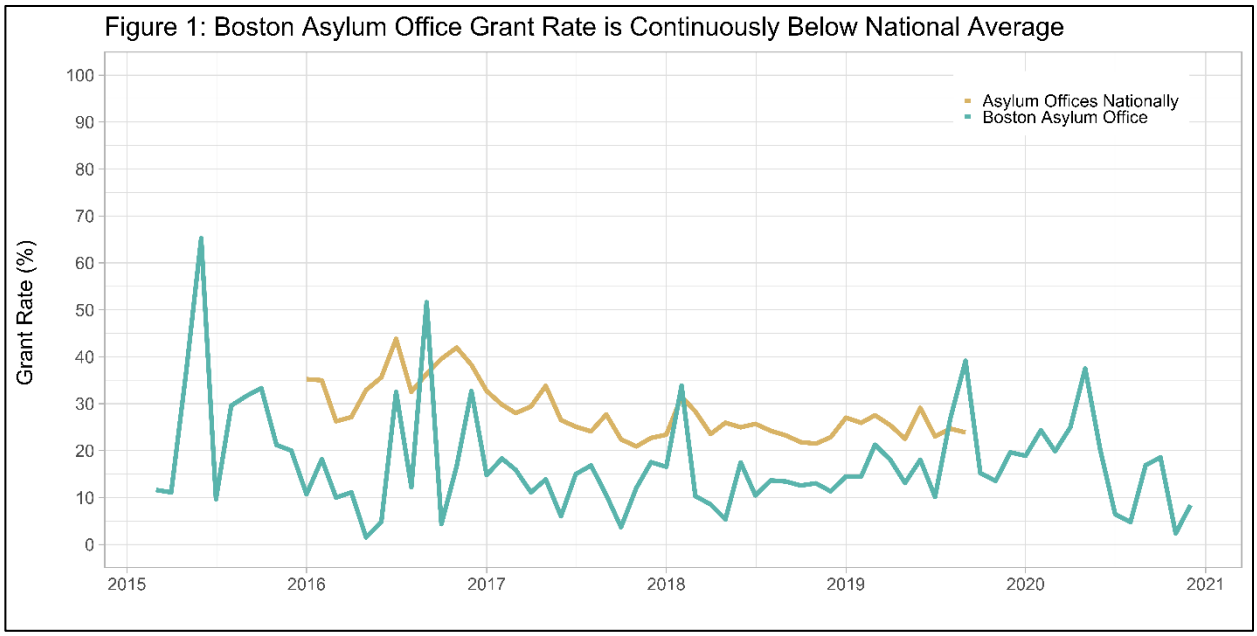


Figure 1: Boston Asylum Office asylum data was collected through a Freedom of Information Act request filed with USCIS and through subsequent litigation regarding the request. *Infra*, METHODOLOGIES. When the Boston Asylum Office first opened in 2015, it had a grant rate of over 60 percent.[1] However, in 2016, the Boston Asylum Office's monthly grant rate dropped as low as 1.5 percent. The national average grant rate, which was reported monthly by USCIS from January 2016 until USCIS stopped regularly sharing this information in September 2019,[2] was approximately 28 percent.

[1] Grant rates for the Boston Asylum Office were calculated by dividing the total number of reported grants per month by the total number of decisions (referral, grant, recommended approval, notice of intent to deny, denials) made within the same month. *See also infra* METHODOLOGIES.

[2] *See Notes from Previous Engagements*, U.S. CITIZENSHIP AND IMMIGR. SERVS., https://www.uscis.gov/outreach/notes-from-previous-engagements?field_release_date_value%5Bvalue%5D%5Bmonth%5D=&field_release_date_value_1%5Bvalue%5D%5Byear%5D=&items_per_page=10&multiple=&topic_id=9213 (last visited Feb. 6, 2022).

This trend worsened following the election of former President Donald Trump. In Fiscal Year (FY) 2021,[3] the Boston Asylum Office reported a grant rate of a mere 11 percent, while the national average was 27 percent.[4] The Boston Asylum Office has failed to adequately explain why its grant rate has remained far below that of the national average.[5] The result of this disproportionately low grant rate is that people fleeing persecution in their home countries are wrongly denied asylum and the protections afforded to them by international and U.S. law. Asylum seekers may ultimately have to wait years for their cases to be resolved. During this time, they are separated from their family members abroad who often remain in danger. All of this compounds stress and trauma on individuals who have already fled persecution.

This report, which was compiled by analyzing documents produced by U.S. Citizenship and Immigration Services (USCIS) in response to a FOIA request, and interviews of asylees, asylum seekers, immigration attorneys, asylum officers (AOs), and supervisory asylum officers (SAOs), seeks to answer the fundamental question: **Why does the Boston Asylum Office approve such a small percentage of asylum cases?**

[3] October 2020 through September 2021.

[4] The Boston Asylum Office self-reported to the American Immigration Lawyers Association (AILA) that "[t]he approval percentage in FY 2021 . . . was approximately 11 [percent]" and that the national average during this same period was 27 percent. *AILA New England Newsletter*, AM. IMMIGR. LAW. ASS'N (Dec. 14, 2021) (updating AILA attorneys on Boston Asylum Office Statistics – responses from the October Asylum Liaison Meeting with USCIS).

[5] In February 2022, the Authors contacted the Director of the Boston Asylum Office, Meghann Boyle, for comment on this disparity. Director Boyle gave two reasons for the low approval rates at the Boston Asylum Office: (1) the COVID-19 pandemic restricted the office's ability to conduct substantive interviews, so the office focused heavily on cases that could be decided without interviews; and (2) the office sees a significant amount of filings by applicants who are ineligible for asylum but apply for asylum in order to be referred to immigration court to pursue Cancellation of Removal (a discretionary form of immigration relief only available before an immigration judge in immigration court for noncitizens who have lived in the United States for many years).
However, Director Boyle's explanations are insufficient and cannot account for the disparity between the Boston Asylum Office's low approval rate and the national average. First, the COVID-19 pandemic could not have played a role in the Boston Asylum Office's low approval rates prior to early 2020 and has impacted asylum offices nationwide, not just the Boston Asylum Office. Second, individuals seeking Cancellation of Removal apply to asylum offices across the country, and no data suggests the Boston Asylum Office receives a disproportionate number of these applications. Rather, as this report demonstrates, there are a number of cultural factors that better explain the Boston Asylum Office's low approval rate.

SUMMARY OF FINDINGS

Our research reveals that the Boston Asylum Office is dominated by a culture of suspicion and distrust toward asylum seekers, which is further exacerbated by internal pressures placed on asylum officers. Specifically, our findings demonstrate that:

(1) High denial and referral rates are likely driven by the oversized role that supervisory asylum officers play within the Boston Asylum Office;
(2) Supervisory asylum officers and asylum officers demonstrate bias that contributes to the low approval rates;
(3) Asylum officers experience high levels of burnout and compassion fatigue, which leads to low approval rates;
(4) Asylum officers face pressure from time constraints, which is exacerbated by the continually growing backlog of asylum cases;
(5) Because of internal pressures, asylum officers cut corners when conducting their job responsibilities, which violates asylum seekers' due process rights; and
(6) Rather than exploring the merits of the asylum seeker's claim, asylum officers put an improper amount of weight on the asylum seeker's credibility and focus on immaterial, peripheral details within their asylum case.

The findings in this report are particularly salient in light of recent proposals to sidestep the immigration courts and have even more asylum cases handled by USCIS asylum offices.[6] Currently, when an asylum officer decides not to grant an asylum application, they either deny the case (for those applicants otherwise in the United States on a valid visa) or refer the case to the Department of Justice's immigration courts (for those applicants who are not in the United States on a valid visa). When an asylum seeker is referred to immigration court, they have another chance to plead their case for asylum. Thus, the immigration courts serve as an important backstop to the improper deportation (*i.e.*, removal) of asylum seekers, especially when asylum officers are not adjudicating cases in a fundamentally fair manner or in accordance with domestic law and international treaties. In fact, many affirmative asylum applications that are referred to immigration court are ultimately granted asylum,[7] indicating that cases referred to immigration court from USCIS asylum offices often meet the standards for asylum.

[6] *Fact Sheet: The Biden Administration Blueprint for a Fair, Orderly and Humane Immigration System*, WHITE HOUSE (July 27, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/27/fact-sheet-the-biden-administration-blueprint-for-a-fair-orderly-and-humane-immigration-system/.
[7] HUM. RTS. FIRST, PROTECTION POSTPONED: ASYLUM OFFICE BACKLOGS CAUSE SUFFERING, SEPARATE FAMILIES, AND UNDERMINE INTEGRATION 1-4 (Apr. 9, 2021), https://www.humanrightsfirst.org/sites/default/files/Protection Postponed.pdf.

Nationally, the immigration courts have an average asylum grant rate of approximately 40 percent,[8] which is significantly higher than the Boston Asylum Office's 15 percent average.[9] As demonstrated in Table 1 below, *the Boston Asylum Office has the second-lowest average grant rate* when compared with asylum offices across the country.[10]

Table 1: Grant Rates of Asylum Offices Nation-Wide

Asylum Office	Grant Rate
San Francisco	52.4%
New Orleans	46.4%
Los Angeles	36.0%
Chicago	32.4%
Arlington	27.1%
Houston	25.9%
Newark	24.6%
Miami	20.7%
Boston	**15.5%**
New York	10.6%

Table 1 shows the average grant rate, as self-reported by USCIS, for each asylum office between January 2016 and September 2019.[11] Only the New York Asylum Office has an average grant rate lower than the Boston Asylum Office.

While the Boston Asylum Office is clearly an outlier, Table 1 also shows that a number of asylum offices also maintain grant rates below that of the national average (28 percent). Indeed, if the findings highlighted within this report are also occurring within asylum offices across the U.S., and the proposed policy to remove immigration courts as the backstop to asylum offices is effectuated, we can expect to see many more asylum seekers with legitimate claims deported from the United States without the due process that our federal laws and international treaties demand. Because persecution is at the core of asylum claims, denying legitimate claims without proper due process exposes asylum seekers to the very persecution from which they have fled.

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[8] *See* TRAC Immigration, *Asylum Decisions*, https://trac.syr.edu/phptools/immigration/asylum/ (last visited Mar. 4, 2022) (showing the average immigration court grant rate from October 2000 to January 2022 is 40 percent, or 255,214 asylum grants out of a total of 638,611 decisions).

[9] The 15 percent grant rate at the Boston Asylum Office was calculated from the compelled FOIA production of the USCIS database. This rate is similar to that calculated from the voluntarily released USCIS data (15.5 percent), which was released to the public each month between January 2016 and 2019. *See* U.S. CITIZENSHIP AND IMMIGR. SERVS., *supra* note 2. The Authors use the 15 percent grant rate obtained through the FOIA litigation because it captures data both before and after the publicly released data and is, therefore, a better indication of the Boston Asylum Office's average grant rate since it first opened in 2015 through mid-2020. *See infra* METHODOLOGIES.

[10] Notably, many asylum offices also have approval rates below that of the immigration courts. As explained further below, referrals from asylum offices add to the U.S.'s growing backlog in the immigration courts. This, in turn, results in meaningful detriments to asylum seekers, such as remaining in legal limbo, being separated from their family members for many more years, and subjecting them to an intentionally adversarial setting. *Infra* IMPACTS. All of these consequences are underscored by the fact that many asylum seekers in immigration court proceedings are eligible for asylum. *See* HUM. RTS. FIRST, *supra* note 7, at 1-4.

[11] *See* U.S. CITIZENSHIP AND IMMIGR. SERVS., *supra* note 2.

INTRODUCTION

Everyone has the right to seek and to enjoy in other countries asylum from persecution.
– Universal Declaration of Human Rights, Article 14.

A. The Affirmative Asylum Process

In 1980, through the passage of the Refugee Act,[12] the United States created the contemporary asylum relief system. In that Act, the United States codified federal laws to implement international treaties and agreements that it had entered over a decade earlier.[13] **As a result, both the United States' international agreements and its federal laws create a legal framework for the federal government to comply with the principles of due process, nonrefoulement, and assimilation and naturalization of refugees.**

Due Process. The United States may not expel an asylum seeker unless it is found that the asylum seeker is not eligible for relief in accordance with the due process of federal and international law.

Nonrefoulement. Under international and domestic law, the United States cannot return or expel a refugee to a place where their life or freedom would be threatened or to a place where there is a substantial risk that they will be tortured.

Assimilation and Naturalization. U.S. regulations promise to, as far as possible, facilitate the assimilation and naturalization of refugees. This is implemented, for example, by creating a legal pathway to U.S. citizenship and providing work authorization for asylum seekers.

An asylum seeker who is not otherwise in removal (*i.e.*, deportation) proceedings may voluntarily file an "affirmative asylum application" with the USCIS Asylum Division, which is housed within the Department of Homeland Security.[14] To be eligible for asylum, the asylum seeker must demonstrate that they previously suffered persecution in the country from which they are fleeing *or* that they have a well-founded fear of persecution in the future. The persecution must have been on account of race, religion, nationality, membership in a particular social group, or political opinion. Once an asylum seeker files their application and supporting evidence with USCIS, the asylum seeker is interviewed by a USCIS asylum officer (AO). For the majority of asylum seekers, an AO is the first government official to hear their case.

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[12] *See* The Immigration and Nationality Act, 8 U.S.C. 1101-1537, Refugee Act of 1980, 94 Stat. 102.

[13] *See* United Nations Protocol Relating to the Status of Refugees, Art. I(a), 19 U.S.T. 6223 (1967) (ratified by the U.S. in 1968); *INS v. Cardoza-Fonesca*, 480 U.S. 421, 436-37 (1987) ("If one thing is clear from the legislative history of . . . the entire 1980 Act, it is that one of Congress' primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees.").

[14] The Department of Homeland Security (DHS) was created after 9/11 in November 2002 and reshaped immigration policy in the United States in the name of protecting national security. "Astronomical budgets and agency structures that funnel money away from national security and toward anti-immigrant hysterics are made possible by the uniquely malleable mission of DHS and the incredibly wide and specialized set of agencies that fall under its authority." Elizabeth F. Cohen, ILLEGAL: HOW AMERICA'S LAWLESS IMMIGRATION REGIME THREATENS US ALL 176 (Basic Books, 2020).

U.S. regulations require that affirmative asylum applicants receive a non-adversarial interview with an AO to determine whether they are eligible for asylum.[15] A non-adversarial interview means that the AO is *not* supposed to be confrontational with the asylum seeker, which differs from civil and criminal court proceedings. For example, USCIS trains its AOs that interrogating or arguing with an asylum seeker is "inappropriate."[16] Rather, AOs should be "neutral decision-maker[s]" and the atmosphere and tone of the interview must be "neutral and professional" regardless of "a difficult or challenging [asylum seeker] or representative, or an [asylum seeker] whom the [AO] suspect[s] is being evasive or untruthful."[17] U.S. law requires that asylum interviews be conducted within 45 days of filing.[18] However, this standard is rarely met, and the application process often extends many years.[19]

In addition to the interview, asylum seekers may submit evidence, such as statements, photographs, documentation, and country conditions reports with their application to help prove their case. AOs review applications, conduct interviews, research country conditions, and ultimately decide whether the applicant will be granted asylum. The AO's decision is *always* reviewed by a supervisory asylum officer (SAO).[20] If an AO and the SAO believe that the individual qualifies, then USCIS will grant the individual asylum. However, if an AO and the SAO do not believe that the individual qualifies for asylum, then the individual is typically referred to immigration court for removal (*i.e.*, deportation) proceedings.[21]

Asylum interviews at the Boston Asylum Office, like all other asylum offices around the country, occur behind closed doors with only the AO, the asylum applicant and their interpreter and/or attorney (if applicable) present. There are no audio transcripts of asylum interviews documenting what occurs during the interview. The only written record of what occurs during an asylum interview is the AO's notes that they take during the interview. Where these notes do not reflect the complete transcript of what is said during an interview, these notes are, by their nature, incomplete and often riddled with errors.

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[15] 8 CFR § 208.9(b).
[16] *Interviewing – Introduction to the Non-Adversarial Interview*, RAIO Directorate – Officer Training, 15-16 (Dec. 20, 2019).
[17] *Id.*
[18] 8 USC § 1158(d)(5)(A)(ii).
[19] HUM. RTS. FIRST, *supra* note 7, at 4.
[20] *Affirmative Asylum Procedures Manual*, U.S. CITIZENSHIP AND IMMIGR. SERVS., RAIO, Asylum Division, 27 (May 17, 2016), https://www.uscis.gov/sites/default/files/document/guides/AAPM-2016.pdf (last visited Mar. 4, 2022).
[21] Many affirmative asylum applications that are referred to immigration court are ultimately granted asylum, indicating that cases referred to immigration court from USCIS often meet the standards for asylum (*i.e.*, have merit). *See* HUM. RTS. FIRST, *supra* note 7, at 1-4.

Without an accurate transcript or recording of what happens during the closed-door asylum interview, improper practices can occur with impunity, especially if an asylum seeker does not have an attorney present to bear witness to the interview. Accurate records of asylum interviews are also important because the records are used to impeach asylum seekers in immigration court. Although immigration court yields a better result for asylum seekers than the asylum process overall, having more accurate interview records could only improve the accuracy of immigration court proceedings.

> ***"Without a lawyer there to observe the interview, you can do what you want as an officer. When there wasn't a lawyer observing my interviews, I sometimes drilled the applicant more than I normally would. I might not show as much compassion . . . because I knew that someone wasn't watching me."***
>
> *Former Asylum Officer, February 2022*

AOs and SAOs are located at one of ten asylum offices across the United States. The Boston Asylum Office serves those living in Massachusetts, Rhode Island, New Hampshire, and Maine. The Boston Asylum Office opened in 2015 as a permanent sub-office of the Newark, New Jersey Asylum Office. Before 2015, Boston's cases were within the sole purview of the Newark Asylum Office, which now serves New Jersey, Delaware, Connecticut, Vermont, parts of New York, and Pennsylvania. In 2020, the Boston Asylum Office became an independent office and is no longer a sub-office of the Newark Asylum Office.

B. Impetus for this Report: The Boston Asylum Office's Low Grant Rates

Pre-2015

Before the Boston Asylum Office opened in 2015, RHRC and ILAP had historically represented asylum seekers before the Newark Asylum Office with above average success, as compared with average national asylum grant rates.

2015

After the Boston Asylum Office opened, RHRC and ILAP witnessed a dramatic drop of the grant rates for their clients.[22] They also observed that clients from certain countries fared far worse than asylum seekers from other countries.[23] What is more, many of the Authors' asylum cases that were later adjudicated within the immigration courts were eventually granted asylum,[24] validating that their cases met the legal standards and should have been granted asylum by the Boston Asylum Office in the first place.[25]

2019

Seeking to understand the reasons behind this notable change in approval rates, the Authors filed a Freedom of Information Act (FOIA) request with USCIS. Despite filing a request to expedite, USCIS did not produce a response within a reasonable time.

2020

Because of this lack of transparency and after a year of inquiries and waiting, in 2020, the Authors filed a complaint in federal court against USCIS seeking to compel a response. [26] In response to the litigation, USCIS produced 6,121 pages—a vast majority of which were heavily redacted—and a large database of the Boston Asylum Office's asylum seeker application data that spanned from 2015 to 2020.[27]

2021-Present

To supplement the information produced by USCIS, the Authors conducted interviews of asylees,[28] asylum seekers, immigration attorneys who represented countless asylum seekers at the Boston Asylum Office, and former AOs and SAOs from asylum offices across the country.[29]

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[22] *Supra* Figure 1.
[23] *Infra* Table 2.
[24] Typically, *years* after their case was referred to immigration court.
[25] This trend has also been documented on a larger scale. *See* HUM. RTS. FIRST, *supra* note 7, at 1-4.
[26] This lawsuit is still pending. *See ACLU of Maine Foundation v. U.S. Citizenship and Immigration Services*, ACLU OF ME., https://www.aclumaine.org/en/cases/aclu-maine-foundation-v-us-citizenship-and-immigration-services (last visited Feb. 6, 2022); *see also* Basileus Zeno, *Trump may be gone, but the U.S. asylum system is still broken*, WASHINGTON POST (Aug. 12, 2021, 5:21 PM), https://www.washingtonpost.com/opinions/2021/08/12/trump-may-be-gone-us-asylum-system-is-still-broken/.
[27] *See infra* METHODOLOGIES.
[28] "Asylees" refers to asylum seekers who have been granted asylum either through an affirmative asylum process with USCIS or defensively through the immigration court.
[29] The Authors were unable to interview current or former AOs or SAOs from the Boston Asylum Office, despite their many attempts. Many AOs and SAOs, regardless of whether they worked at the Boston Asylum Office or another asylum office, were hesitant or unwilling to be interviewed out of fear of potential repercussions. As such, all of the interviewed AOs and SAOs worked at various asylum offices throughout the country. Nonetheless, interviews with these former AOs and SAOs provided the Authors in-depth insights into the likely culture of the Boston Asylum

DR. BASILEUS ZENO'S STORY



An elucidating example of the treatment asylum seekers experience at the Boston Asylum Office is that of Dr. Basileus Zeno, a co-author of this Report who not only has conducted extensive ethnographic research into the U.S. asylum system but also has a lived experience as an asylum seeker before the Boston Asylum Office. When the Arab Spring spread to Syria in 2011, Basileus, who was working on his Ph.D., openly protested the oppressive al-Assad dictatorship. As a result of his opposition to the regime and the harsh crackdown that followed, Basileus could no longer remain in Syria. He and his wife came to the United States on student visas in August 2012, and Basileus applied for asylum in Ohio in July 2013. The couple eventually moved to Massachusetts in 2015 to start their Ph.D.s at the University of Massachusetts Amherst, at which point Basileus's asylum application was transferred to the Boston Asylum Office.

During the *eight years* that they spent waiting for USCIS to adjudicate their asylum claims, the couple completed their master's degrees and Ph.D.s, and had a U.S. born child. During this time, they also continued to advocate for peace and democracy in Syria, and Basileus worked with institutions advocating for nonviolent conflict resolutions.

The U.S. asylum process was designed to help individuals like Basileus, and his should have been an open and shut case. But then came Basileus's interviews at the Boston Asylum Office. Although an asylum interview should be non-adversarial, the AOs at Basileus's multiple interviews ignored the extensive documentation he provided, manufactured inconsistencies by relying on stereotypes of Arabic words, and focused on minutiae unrelated to his asylum claim. Despite the extensive documentation showing that the Syrian government was targeting, arresting, torturing, and murdering people like Basileus and that vocal opponents like him needed protection, the Boston Asylum Office denied Basileus's claim for asylum in May 2021, with no appeal possible. The Boston Asylum Office asserted that he had not satisfied his evidentiary burden and questioned his credibility. Confounded, Basileus filed a Freedom of Information Act request to learn more about what led to the ultimate denial of his application. However, due to extensive redactions, the FOIA response provided no additional insight into the Boston Asylum Office's decision. Ultimately, Basileus and his wife left the United States for Canada in December 2021 to pursue employment-based visas as university professors. Basileus is one of the lucky few with this alternative path available to him but unfortunately securing employment and relocating to Canada is not an option for most individuals denied asylum in the United States.

Office. These stories were further corroborated by numerous interviews with asylum seekers and immigration attorneys, all of whom had countless experiences to draw from while practicing before the Boston Asylum Office.

FINDINGS

In many regards, Basileus's experiences exemplify how the Boston Asylum Office treats asylum seekers generally. As such, Basileus's story is interwoven throughout this Report's findings, impacts, and conclusion.

The findings detailed in this section demonstrate that the Boston Asylum Office is failing asylum seekers in violation of its international obligations and domestic law. This failure creates additional uncertainty and trauma for asylum seekers, and causes unquantifiable ripples into the lives of their families. Our findings strongly suggest that the Boston Asylum Office's disparately high referral rates are driven by a culture of suspicion toward asylum seekers and an overwhelming predisposition to refer asylum seekers to immigration court. This culture to refer is only amplified by the pressures that AOs feel while adjudicating asylum applications, and the lack of transparency in USCIS' asylum offices allows this culture of suspicion and unwarranted referrals to continue unfettered.

> ***"It's always easier to refer a case. You want to give a good record of evidence. But, all things being equal, no interview is perfect. And the less you develop the record, the more injurious the record. . . . [There are] a lot of shortcuts if you want to refer."***
>
> *Former Asylum Officer, October 2021*

AOs are strongly incentivized to cut corners where possible and refer cases at higher rates because of a compounding incentive to align their decisions with the SAOs' predispositions to refer, growing caseloads, and AO job requirements. As a result, AOs may conduct surface-level interviews, skim the asylum seeker's application, conduct inadequate country conditions research, or recycle prior written decisions. For instance, some immigration attorneys had the impression that AOs were writing decisions to refer while the AO was still conducting the interview. Immigration attorneys who have worked with the Boston Asylum Office commonly shared that AOs appear to be finding the easiest way to refer or deny cases. This often is applied through a "rule of threes," where the AO focuses on finding three immaterial inconsistencies within the asylum seeker's story rather than focusing on the merits of their claim.

In addition to resorting to tactics that produce high referral rates, the culture and pressures cause some AOs to burn out quickly, and the turnover with the AOs position is high. Likewise, AOs' demanding caseloads and job duties leave little time for additional training, reflection, or self-care within the workplace. These are all crucial for AO well-being and continuing to improve their efficacy at adjudicating asylum applications in a way that adheres to the law.

We address each of our specific findings below, in turn.

A. The Boston Asylum Office's High Referral Rates are Driven by the Outsized Role of Supervisory Asylum Officers.

The Boston Asylum Office's overwhelming tendency to refer and deny asylum applications is driven by the outsized role SAOs play within the Office. One former SAO who is familiar with the Boston Asylum Office explained that the AOs and the SAOs initially hired at the Boston Asylum Office "tended to be people who did not grant [asylum] that much," and noted that SAOs are given "a lot of leeway" in refusing to give the asylum seeker the "benefit of the doubt." This former SAO went on to add that the Boston Asylum Office "is a planet that has lost its rotational orbit . . . [AOs] are intimidated . . . [and some AOs] have a culture of suspicion hinging on paranoia."

> ***"If you don't have a supportive management staff, it's a lost cause, like trying to swim upstream against unbelievably powerful undercurrents."***
>
> *Former Supervisory Asylum Officer, November 2021*

Former AOs unanimously attested to the outsized influence SAOs have in an AO's asylum decision-making process**. In particular, two aspects of the AO's position highly incentivize AOs to write asylum decisions that align with their supervisor's predispositions: (1) the asylum decision review process, and (2) the employee performance review process.**

When an asylum office has SAOs who are suspicious of asylum seekers and who have a predisposition to refer cases to immigration court—such as the Boston Asylum Office—AOs are strongly incentivized to modify their decisions to match the perceived preference of their SAO. As a result, the office's asylum referral and denial rates skyrocket.

(1) Asylum Decision Review

Current USCIS policies require that SAOs review *all* AO casework and an SAO *must* approve the AO's asylum decision before that decision becomes final.[30] The Affirmative Asylum Procedures Manual states that AOs "must be given substantial deference" and that disagreements between SAOs and AOs ought to be elevated to the Director.[31] Yet, our research reveals that the supervisory review process seldom works as the Manual prescribes.

In practice, SAOs exercise an improper degree of influence over the outcome of an asylum case. Former AOs interviewed explained that many AOs are hesitant to write an asylum decision that they believe their SAO may disagree with. This is because, among other disincentives, doing so can create substantially increased workloads. If an AO disagrees with their SAO in a particular case, the SAO may require the AO to further substantiate their decision by re-interviewing the asylum seeker, conducting further fact investigation, or researching more country conditions.

For example, one asylum seeker whose case was decided by the Boston Asylum Office, shared that they were certain that the AO was being monitored during the interview because they could see the AO's computer screen showing the supervisor's comments and notes during the interview. The AO even told the asylum seeker that if the asylum decision were up to the AO, the AO would grant their asylum case.

Former AOs also noted that they are not provided additional time or given a break in their caseloads to further substantiate their decisions. When an SAO disagrees with an AO's initial decision, the AO must often re-write that decision, and AOs are not given any additional time (or sufficient time) in their schedule to re-write decisions where interviews often occupy the majority of their workload. Accordingly, disagreement with an SAO can be fatal to an AO being able to keep up with their workload. Therefore, if the AO believes their SAO has a predisposition to refer, they may recommend a referral—despite their own inclination to grant—in order to not fall behind.

Additionally, AOs tailor their interviews around what types of questions their SAO may require that they ask before they can refer or grant a case, influencing how the AO conducts their interviews and fact investigations and diminishing the AO's autonomy. This influence is striking given that the AO interviews the asylum seeker and reviews the asylum seeker's application. In contrast, the SAOs rarely interact with asylum seekers. Thus, despite their distinct roles, the AO is incentivized to understand the SAO's questions and predisposition in order to save time in adjudicating cases and, as detailed in the next section, for their job protection.

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[30] *Asylum Officer Basic Training Course: Corps Values and Goals*, U.S. CITIZENSHIP AND IMMIGR. SERVS., RAIO, Asylum Division (Sept. 13, 2006), https://www.aila.org/infonet/aobtc-corps-values-goals; *Affirmative Asylum Procedures Manual*, U.S. CITIZENSHIP AND IMMIGR. SERVS., RAIO, Asylum Division, 27 (May 17, 2016), https://www.uscis.gov/sites/default/files/document/guides/AAPM-2016.pdf.

[31] *Affirmative Asylum Procedures Manual*, U.S. CITIZENSHIP AND IMMIGR. SERVS., RAIO, Asylum Division, 27 (May 17, 2016), https://www.uscis.gov/sites/default/files/document/guides/AAPM-2016.pdf.

(2) Performance Reviews

AOs are subject to the Performance Work Plan (PWP), which is the "primary tool" that SAOs use to assess performance.[32] The PWPs are written by the SAOs and "rate Asylum Officers on critical qualitative elements of the job, including . . . decision writing."[33] This system provides SAOs with an unchecked abundance of power and influence over AOs and their decision making.

Notably, former AOs indicated that they were often hesitant or unwilling to disagree with their SAO out of fear that they might receive a negative mark on their PWP. Conversely, AOs receive positive PWP marks when they turn around decisions quickly. An AO's PWP is based on a numerical score. When an SAO returns an AO's case because, for example, the SAO has further questions or disagrees with the decision, the AO's numerical score is affected. This means that an AO will get a negative numerical score for disagreeing with an SAO. These negative scores can result in probation and job loss. Indeed, disagreements with an SAO can directly affect whether an AO continues to work within an asylum office.

> *"You cannot fight for every case or you'll seem combative and insubordinate so you have to make decisions on which cases you are willing to go against the grain and which ones you fall in line."*
>
> *Former Asylum Officer, February 2022*

B. Asylum Officers Exhibit Bias in the Asylum-Decision Making Process, which Contributes to the Boston Asylum Office's Low Grant Rates.

Humans are not neutral. We are biased, we are discriminatory. People have a very hard time being a neutral adjudicator. There are very few people who can naturally put their biases aside.
– Former Asylum Officer, October 2021

Asylum outcomes in the United States are "highly reliant on the individual decision maker."[34] AOs and SAOs exhibit various biases in the asylum decision-making process, which contributes to the low grant rates within the Boston Asylum Office. Most significantly, AOs and SAOs in the Boston Asylum Office tend to be biased against asylum seekers from certain countries.

Our research strongly suggests that the Boston Asylum Office does not approach applications from certain countries with a neutral stance, but rather presumes they must be fraudulent or pose a security threat. Like any government program, there are going to be instances of individuals seeking to take advantage of the system, and fraud certainly occurs.

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[32] *Asylum Officer Basic Training Course: Corps Values and Goals*, U.S. CITIZENSHIP AND IMMIGR. SERVS., RAIO, Asylum Division 8 (Sept. 13, 2006), https://www.aila.org/infonet/aobtc-corps-values-goals.
[33] *Id.*
[34] Rebecca Hamlin, *Ideology, International Law, and the INS: The Development of American Asylum Policies 1948-Present*, 47 POLITY 320, 334 (2015).

Nonetheless, *the majority of asylum applications are not fraudulent.* For example, as detailed in the chart below, the Boston Asylum Office grants a mere 4 percent of asylum applicants from the Democratic Republic of Congo (DRC) despite the U.S. Department of State's acknowledgment that "significant human rights" abuses occur there, which include "unlawful and arbitrary killings, . . . forced disappearances, [and] torture," all committed by DRC security forces against its citizens.[35]

As shown in Table 2 below, the data collected from the FOIA response corroborates the Boston Asylum Office's bias against asylum seekers from certain countries.

Table 2: Grant and Referral Rates by Asylum Seeker's Country of Citizenship

Country of Citizenship	Boston Asylum Office		Newark Asylum Office	
	Total Decisions	Grant Rate	Total Decisions	Grant Rate
Angola	253	2%	75	17%
Democratic Republic of Congo	163	4%	141	33%
El Salvador	1539	13%	4386	25%
Rwanda	86	20%	17	35%
Uganda	469	21%	87	38%
Burundi	53	26%	24	83%
Syria	32	34%	221	67%
Egypt	151	44%	1593	72%
Cameroon	64	48%	217	44%
Afghanistan	17	59%	32	50%
Turkey	167	59%	1666	86%
Iran	29	69%	71	58%

Table 2 shows the average grant rate based on the asylum seeker's citizenship, as indicated on their asylum application, between 2015 and 2020, for the Boston and Newark Asylum Offices.[36] Countries displayed within this table were chosen because they were specifically named within AO trainings received from the FOIA response, or because they provide useful examples of countries that received particularly favorable or unfavorable treatment by the Boston Asylum Office, as compared to the grant rates of the Newark Asylum Offices. Notably, some countries (*e.g.*, Angola, Democratic Republic of Congo, Rwanda, and Burundi) all have much lower grant rates in the Boston Asylum Office as compared to the Newark Asylum Office. This trend is further corroborated by the Author's experiences at the Boston Asylum Office that resulted in this report. The Newark Asylum Office is useful for comparison for this data because, prior to the creation of the Boston Asylum Office, the Newark Asylum Office adjudicated affirmative asylum cases for the same geographical region and had a higher average grant rate than the Boston Asylum Office. *See* INTRODUCTION. Thus, differences in grant rates between countries is most likely a byproduct of the specific office cultures and operations—and not the asylum seeker populations that each office serves.

[35] U.S. DEP'T OF STATE, DEMOCRATIC REPUBLIC OF CONGO 2020 HUMAN RIGHTS REPORT (Mar. 30, 2021), https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/democratic-republic-of-the-congo/.
[36] Boston Asylum Office asylum data was collected through the Freedom of Information Act request filed with USCIS, and subsequent litigation regarding the request, for both the Boston Asylum Office and Newark Asylum Office. *Infra*, METHODOLOGIES.

Erroneously viewing all cases as potentially fraudulent is not surprising given that, according to the documents produced through the FOIA response, the vast majority of the Boston Asylum Office's employee trainings focus on fraud. Specifically, in response to our FOIA request that asked to see the trainings used in the Boston Asylum Office, USCIS produced 21 trainings, 14 of which addressed fraudulent applications or issues of credibility. As one former AO explained, "constantly hearing about fraud and credibility issues kind of puts you in the mindset of there being a lot of fraud."

Similarly, a bias against non-English speakers is apparent at the Boston Asylum Office. As demonstrated in Figure 2 below, English-speaking asylum seekers are nearly *twice* as likely to be granted asylum as compared to non-English speakers. Conversely, non-English speakers are referred to immigration courts 80 percent of the time, while English speakers are referred to immigration court only 58 percent of the time.[37] This trend might be corroborative of the disparate treatment of the countries in Table 2, as English is not the prominently spoken language within those twelve countries. Alternatively, this trend might also be explained by implicit biases for traits that are commonly associated with English-speakers, such as higher education levels and socioeconomic status.

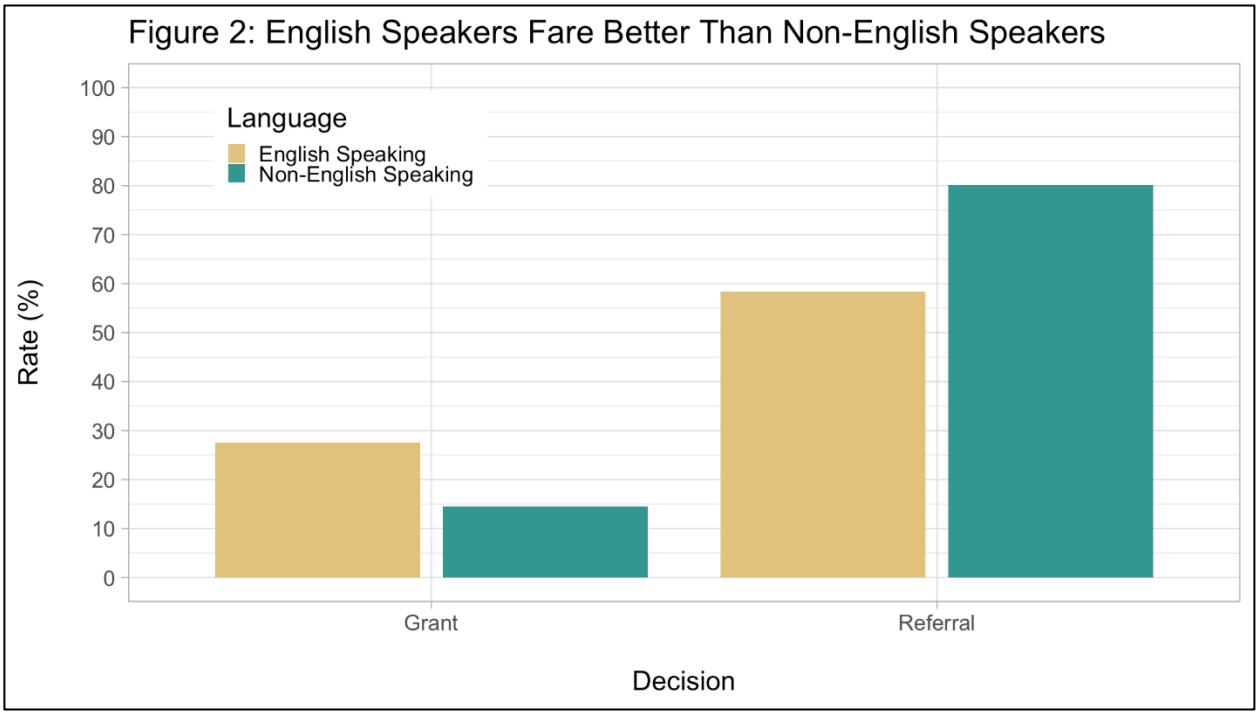


Figure 2 shows the grant and referral rates for English and non-English speaking asylum seekers at the Boston Asylum Office.[38] English speakers have an average grant rate of 27.5 percent of the time and a referral rate of 58.4 percent. In contrast, non-English speakers only were granted asylum 14.6 percent of the time and had an average referral rate of 80.1 percent.

[37] This, in turn, leaves asylum seekers in legal limbo and drains government resources. *See infra* IMPACTS.

[38] This data was calculated from the databases that USCIS provided through the litigation of the FOIA Request, and contains decisions made between 2015 and 2020. *Infra* METHODOLOGIES. The category "non-English speaker" also represents application data that contained "unknown" for the language.

C. Pressures from Time Constraints and Caseloads Incentivize Asylum Officers to Cut Corners.

AOs have a complex and essential list of responsibilities that they must complete to ensure that an asylum seeker's application is provided due process. However, AOs are incentivized to cut corners in these responsibilities while adjudicating cases because, in addition to the reasons listed above, they are not provided adequate time to complete their relatively large caseloads.

> ***"If you could just do the interviews in the timeframe that it needs to be done in and push off the other cases, but [you can't because] you're scheduled. You have attorneys waiting in the waiting room, you're thinking about that. There's so much you have to do because you don't just do the interview and the write up, you do fingerprints, background security checks, pulling all of the programs, then a whole sheet you have to check."***
>
> *Former Asylum Officer, October 2021*

To assure that an asylum seeker's application is adjudicated thoroughly and meets the requirements of due process, an AO is responsible for completing the following non-exhaustive list of job duties:

- Adequately understand ever-changing U.S. asylum laws, including case law
- Review and become familiar with each asylum seeker's case–often consisting of hundreds of pages of documents–prior to the interview
- Research the country conditions and specific details of each asylum seeker's case
- Run background checks
- Build rapport with asylum seekers prior to starting the interview
- Consider what questions to ask in the interview, which typically lasts three to four hours
- Discern which topics need further investigation in the interview
- Be sensitive to the asylum seeker's experienced trauma
- Monitor the amount of time spent on each topic
- Create a written record of the questions asked and the asylum seeker's responses during the interview to serve as the basis for a written decision
- Utilize interpreters to effectively communicate with asylum seekers during the interview
- Conduct at least two interviews per day
- Act as the adjudicator and analyze the facts of the case within the relevant asylum law and write a three- to five-page recommended decision to grant asylum, deny, or refer to immigration court
- Prepare for supervisory review of their recommended decision
- Conduct additional investigations and interviews if requested by the SAO

Former AOs and SAOs note that it is difficult to execute all their assigned duties fully and effectively because of the pressures from time constraints and caseloads. The Boston Asylum Office, on average, receives approximately 5,600 asylum applications per year.[39] However, the office is unable to effectively adjudicate asylum cases it receives within the timeframe mandated by domestic and international law.[40] Because the Boston Asylum Office has received far more applications per year than it can adjudicate, the backlog of cases has continued to grow.[41]

The data reveals that, on average, the Boston Asylum Office adjudicates 30.5 percent of the applications that it receives each year. When the adjudication rate of asylum applications is below 100 percent, some applications will inevitably be reviewed the following year. In the case of the Boston Asylum Office, approximately 70 percent of its new cases are added to the backlog each year. As a result, the Boston Asylum Office's backlog has grown to over 20,000 pending asylum applications.[42] The upshot of this backlog is that most asylum applicants must wait *years* for their asylum interview. For many applicants this delay in adjudication worsened when the Trump Administration instituted a "Last-in, first-out" (LIFO) policy.[43] Rather than resolving cases chronologically based on when they were filed, under LIFO asylum offices prioritize the newest applications while asylum seekers with older applications remain in legal limbo for longer.

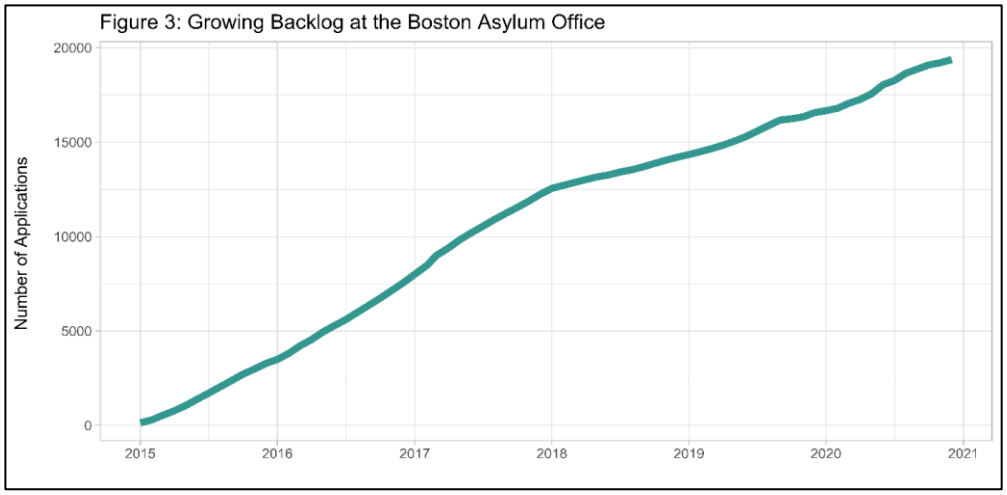


Figure 3 shows the accumulating number of asylum cases at the Boston Asylum Office that have yet to receive a decision.[44] Toward the end of 2020, the Boston Asylum Office had nearly 20,000 pending asylum applications.

[39] This number decreased to 3,119 cases in 2020. This decrease may reflect "Remain in Mexico" policies and the COVID-19 Pandemic.

[40] *See* 8 U.S.C. § 1158(d)(5)(A)(iii) ("[I]n 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.").

[41] This backlog is not unique to the Boston Asylum Office. Nationally, the backlog reached a "historic high" during the Trump Administration, with over 386,000 pending applications by the end of fiscal year 2020. HUM. RTS. FIRST, *supra* note 7.

[42] The Boston Asylum Office self-reported to the American Immigration Lawyers Association that, as of December 2021, it has 20,400 pending asylum applications. *AILA New England Newsletter*, AM. IMMIGR. LAW. ASS'N (Dec. 14, 2021) (updating AILA attorneys on Boston Asylum Office Statistics – responses from the October Asylum Liaison Meeting with USCIS).

[43] *See* Hawthorne Smith, Ph.D. *How the Asylum Backlog Affects Torture Survivors and What the Biden Administration Can Do to Fix It*, Ctr. for Migration Stud. (Feb. 25, 2021), http://doi.org/10.14240/cmsesy022521.

[44] This data was calculated from the databases that USCIS provided through the litigation of the FOIA Request filed by the ACLU of Maine, Maine Law's Refugee and Human Rights Clinic, and the Immigrant Legal Advocacy Project, and contains decisions made between 2015 and 2020. *Infra* METHODOLOGIES.

This accumulation of asylum applications adds pressure to AOs' daily tasks and decisions. AOs have job responsibilities essential to ensuring that we protect those fleeing persecution, ensure asylum seekers receive a decision based on the principles of due process, and meet our domestic and international obligations. These aims and our laws are undermined by AOs cutting corners because they feel the pressure to adjudicate cases in too short time periods.

In fact, many former AOs shared that they felt as though they needed to rush through parts of their preparations and interviews or cut corners to adequately do their jobs. One AO stated that she coped with the time constraints by rushing through her written decisions, neglecting the research and analysis she thought was necessary to do her job well.

> *The interview might be rushed because the interview shouldn't take too long. This probably makes decisions more likely to be negative because if [the asylum seekers] don't have enough time to tell [their] story [then you] don't have a story that shows your eligibility for asylum.*
>
> – Former Asylum Officer, December 2021

Likewise, former AOs also indicated that some AOs may "recycle" decisions:

> *There is a perverse incentive. [AOs have a] stack of cases and have to manage [their] own time. All [cases] must be turned around in a three to five-day period of interviewing . . . AOs ends up recycling the same decision, plugging in new facts. That is very problematic for so many reasons. [When decisions are recycled,] an applicant, and any evidence submitted along with their application, do not have the same opportunity for review for each individual claim. [It's] always easier to refer.*
>
> – Former Asylum Officer, December 2021

Additionally, one possible explanation for the trend shown in Figure 2 (English speakers fare better than non-English speakers), aside from bias, might be the additional time constraints that are placed on AOs when they need to communicate with an asylum seeker through an interpreter. Adding an interpreter to the interview causes the interview to move more slowly because there is a necessary delay after each question and answer while the interpreter communicates what is being said. Because AOs are under such strict time constraints, they may be unable to extend the interview duration when necessary. Thus, adding an interpreter to the interview can significantly reduce how much of the asylum seeker's story the AO can hear. This, in turn, limits the facts that the AO can rely upon when reaching their decision, further decreasing the odds of an asylum grant. As one former AO put it:

> *[I]t takes more time to have a conversation with an interpreter. So, if the interview is one hour and ten minutes (which is what it is supposed to be in training) and there is an interpreter, you get less information in an hour and ten minutes.*
>
> – Former Asylum Officer, December 2021

AOs must manage numerous job responsibilities that are essential to ensure that an asylum seeker's due process is protected. However, completing these duties is feasible *only if* AOs are provided adequate time. Because of the aforementioned time constraints and caseloads that AOs face, many AOs cut corners where possible and are thus unable to fully and fairly adjudicate asylum cases.

D. Burnout and Compassion Fatigue Negatively Affect How Asylum Officers Approach Asylum Cases.

The rigors of the AO position described in the preceding section result in high levels of burnout and compassion fatigue. Former AOs expressed that the longer they stayed in the role, the more desensitized they became to the traumatic experiences of asylum seekers. They also explained that this compassion fatigue impacts the AO's credibility assessment of asylum seekers. One former AO shared that the "statements of applicants become so mundane [that they] lose salience in this process."

> ***"Compassion fatigue is a universal problem among AOs and there is no training on it. It definitely made me less likely to approve [applications]. You definitely lose compassion, which I think blinds you to someone. Not everyone can express themselves in a way that seems credible and so when your compassion fatigue is there and they don't seem credible you think to yourself, 'I'm going to deny this person, I'm so sick of this shit.'"***
>
> *Former Asylum Officer, October 2021*

Interviews with asylum seekers and their attorneys indicate that AOs at the Boston Asylum Office are frequently dismissive of an asylum seeker's trauma. One attorney commented that, "[AOs] are extremely jaded." The attorneys further indicate that AOs sometimes become frustrated and even combative with applicants, which is counterproductive for assessing an asylum seeker's claim and violates the requirement that asylum interviews be conducted in a non-adversarial manner.

> ***"Most of them, it's like they really don't care. I've had clients break down in the interview because they are describing these horrible experiences, and the officer is dismissive."***
>
> *Attorney, November 2021*

E. Asylum Officers Place an Inordinate Focus on Credibility and Immaterial, Peripheral Details of a Case to Find "Inconsistencies" that Lead to Denials and Referrals to Immigration Court.

AOs commonly deny or refer asylum cases based on a determination that an applicant is not credible. Yet such determinations are not made by earnestly questioning applicants about the substance of their claims. Instead, our research suggests that AOs at the Boston Asylum Office look for *any* reason, no matter how insignificant or tangential, to find that an asylum seeker is not credible. In stark contrast to international refugee law (which does not require a credibility determination), U.S. lawmakers incorporated an explicit credibility requirement post-9/11 by way of the Real ID Act. Moreover, although credibility is *only one* factor in an asylum determination,[45] AOs treat it as the "single most salient issue" in practice.[46]

Interviews with asylum seekers, AOs and immigration attorneys confirm that, most often, AOs find support for their negative credibility assessments by pointing to "inconsistencies" within an asylum seeker's story.

> ***"The default - and this is an internal unwritten rule - is that you default to credibility assessments. The rule is a rule of threes. If there are three inconsistencies or not sufficient candidness (things that are highly subjective and easy to write up and very difficult to critique on the supervisory end), identifying three areas of credibility issues is fatal to an applicant's decision."***
>
> *Former Asylum Officer, December 2021*

> ***"They are looking really purposefully and aggressively toward any indication that there is an inconsistency or any indication that there is a lack of credibility and asking confusing and adversarial questions to try to trip-up clients into misstating a minor or irrelevant fact or detail."***
>
> *Attorney, November 2021*

Former AOs explained an unwritten "rule of threes," where a finding of three inconsistencies in an asylum seeker's testimony is sufficient to refer the individual to immigration court for removal proceedings. Yet these "inconsistencies" rarely concern a material fact to an applicant's asylum claim. Rather, AOs focus on minor discrepancies about peripheral matters.

[45] 8 U.S.C. § 1158(b)(1)(B)(ii)-(iii).
[46] Bridget M. Haas, *Asylum Officers, Suspicion, and the Ambivalent Enactment of Technologies of Truth*, *in* TECHNOLOGIES OF SUSPICION AND THE ETHICS OF OBLIGATION IN POLITICAL ASYLUM 105, 111 (2019).

Aside from being peripheral to the heart of an asylum claim, the inconsistencies that lead to denials and referrals in many instances have simple and innocent explanations. Inconsistencies can be caused by the fallibility of the human memory. Asylum seekers frequently wait *years* between filing their application and receiving an asylum interview. These long delays can affect an asylum seeker's memories of their application's specific details.

> ***"The entire strategy that they have is to try to note as many inconsistencies or to create as many inconsistencies and make note of them as possible. And that was it, they would spend a lot of time on small issues, confusing the client, distracting them, and never really asking about persecution because they would have enough to find material inconsistency and refer it. It seemed like [the AOs] were doing the bare minimum."***
>
> *Attorney, August 2021*

Other inconsistencies might be caused by misunderstandings created by language barriers and cultural differences. Moreover, because persecution is at the center of an asylum claim, an asylum seeker may suffer from the types of memory loss that is common amongst survivors of trauma.

Indeed, attorneys stated that many of their clients suffer from depression and post-traumatic stress disorder, and struggle with the disorder's common symptom of memory loss. Further, research has shown that the assumption that truth telling is connected to remembering details like dates, names, and numbers, clearly and consistently, is questionable even in the case of those who have not had to flee violence and persecution or experienced trauma.[47]

Regardless of the asylum seeker's reason for having a less-than-perfect memory, an AO's expectation that the asylum seeker recall tangential facts to their stories with precise accuracy is ignorant of human psychology, illogical, and contrary to the U.S.' federal law and international obligations. Nonetheless, AOs at the Boston Asylum Office spend a disproportionate amount of the interview focusing on these minor and perceived inconsistencies. These inconsistencies, in turn, serve as the basis for denying a case or referring a case to immigration court.

Basileus Zeno: Knowing how important the interview is to the asylum process, Basileus and his attorney prepared extensively for it. Nothing, however, prepared him for the AO's belittling treatment and focus on details immaterial to his claim. During his first interview in March 2017, the AO spent a disproportionate amount of time asking about Basileus's taxi driver for a trip he took from Damascus to Beirut when he left Syria for the last time in July 2012. Later in October 2018, at a second follow-up interview to clarify inconsistencies, the AO referenced a set of specific questions and concerns raised by the SAO, which focused almost solely on details surrounding Basileus's religion and marriage in Lebanon and how he got his Syrian passport in 2011. Despite submitting an official marriage certificate and photographs, the SAO doubted Basileus's marriage and questioned the priest's religion based on the SAO's ignorant and stereotypical understanding of Arabic words and names. Almost none of the questions related to the first interview or the substance of Basileus' asylum claim.

[47] *See* CAROL BOHMER & AMY SHUMAN, REJECTING REFUGEES: POLITICAL ASYLUM IN THE 21ST CENTURY 134-144 (Routledge 2007).

IMPACTS

A. On the Asylum Seeker and their Family

The Boston Asylum Office's high referral rates have significant and harmful impacts on asylum seekers and the asylum seekers' families. The impacts keep families in ongoing danger, strain family bonds, prevent family reunification, leave asylum seekers in legal limbo, compound experienced trauma, and erode mental health.

(1) Family Members Remain in Danger Abroad

Delays in the process of obtaining asylum prevent immediate family members left abroad from joining the asylum seeker in the United States.[48] Many remain vulnerable to violence or danger in their home country (often the reason the asylum seeker was forced to flee), and others may seek refuge in unstable, secondary countries where they remain without legal status while waiting for permission to join their family member in the United States. Many asylum seekers shared that they are plagued by fear for their family members left behind because their family continues to be threatened. For example, one asylum seeker fled to the United States to protect themselves and their family, leaving behind their spouse and young children. While the asylum seeker's case was pending, the spouse and children died under suspicious circumstances. The Boston Asylum Office referred this case to immigration court. In another example, an asylum seeker waiting years for an asylum interview learned their spouse had been murdered in their home country. Their children were left in the care of a relative who fled to a neighboring country where the relative and one child died in tragic circumstances. This case was also referred by the Boston Asylum Office to the immigration court where it is still pending more than seven years after the asylum application was originally filed. Both asylum seekers carry feelings of guilt because they left their families believing it was the best way to protect them but found instead that refuge did not come soon enough. Unfortunately, these scenarios are all too common.

(2) Family Bonds Strained by Separation

Many asylum applicants find that their family relationships suffer due to the prolonged separation.[49] For example, one attorney interviewed for the report spoke of a former asylum seeker who, because of a ten-year delay in the adjudication of his case after a referral from the Boston Asylum Office, was unable to reunite with his wife and children. The wife abandoned their marriage, and the asylum seeker's relationship with his kids suffered immensely; the kids felt betrayed and left behind by their father. In another example, an asylum applicant was able to flee her home country with her infant child, but her husband was unable to secure a visa to escape with her. She lost her initial asylum case before the Boston Asylum Office and, given backlogs in the immigration court, she faces a years' long wait for her case to be adjudicated in court. To date, eight years have passed since she has seen her husband, and their child has spent the majority of their young life without a father.

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[48] If an individual is granted asylum, they can petition for immediate family members to receive asylee status through the "derivative" asylum process. *See Derivative Refugee/Asylee Status for Your Children*, U.S. CITIZENSHIP AND IMMIGR. SERVS., https://www.uscis.gov/forms/explore-my-options/derivative-refugeeasylum-status-for-your-children (Jul. 9, 2020); *Derivative Refugee/Asylee Status for Your Spouse*, U.S. CITIZENSHIP AND IMMIGR. SERVS., https://www.uscis.gov/forms/explore-my-options/derivative-refugeeasylee-status-for-your-spouse (Aug. 6, 2020).

[49] *See* HUM. RTS. FIRST, *supra* note 7, at 5.

(3) Legal Limbo

In their attempts to build a new life, the prolonged limbo of an asylum seeker's immigration status exposes them to forms of "legal violence"[50] by leaving them without access to supports such as federal student aid, social services for their children, or educational opportunities. When an asylum seeker's case is referred to immigration court, this legal limbo is often extended for multiple years.[51] A former asylum seeker expressed her frustration, "I wanted to apply for graduate schools, but I asked myself, 'what if they forced me to leave after six months? Why should I apply?' I am totally lost, and we have no place to go."[52]

This legal limbo can be particularly challenging for asylum seekers who have children born in the United States and are U.S. citizens, as those children may struggle to fully integrate due to the uncertainty of their parent's status. One child, born while their mother was seeking asylum in the United States, spent the first four years of their life here before moving to Belgium after the mother abandoned her asylum claim. The delayed adjudication and later denial of her expedited request by the Boston Asylum Office meant that she was separated from her husband for four years and contributed to her severe depression and economic instability. The child has had a difficult time transitioning to a new life in Belgium.

[50] Cecilia Menjívar and Leisy Abrego, *Legal violence: Immigration law and the lives of Central American immigrants*, 117.5 Am. J. of Soc. 1380-1421 (2012).
[51] *See* Jasmine Aguilera, *A Record-Breaking 1.6 Million People are now Mired in U.S. Immigration Court Backlogs*, TIME (Jan. 20, 2022, 11:31 AM) https://time.com/6140280/immigration-court-backlog/; TRAC Immigration, *Immigration Court Backlog Now Growing Faster Than Ever, Burying Judges in an Avalanche of cases* (Jan. 18, 2022), https://trac.syr.edu/immigration/reports/675/.
[52] Basileus Zeno, *Dignity and humiliation: Identity formation among Syrian refugees*, MIDDLE E. LAW AND GOVERNANCE, 9(3), 282, 297 (2017).

(4) Compounding Trauma



At the root of an asylum seeker’s claim is one or more experiences of persecution, which usually leads to trauma. During their asylum interview with an AO, asylum seekers are required to relive this trauma as they retell their stories.

If the case is not granted at the asylum office and is referred to immigration court, which is the most likely outcome for the Boston Asylum Office, the asylum seeker will have to revisit this trauma yet again—but this time in an intentionally adversarial setting. Each step along the process compounds the trauma experienced by the asylum seeker.

Most asylum cases referred to immigration court are ultimately granted by an immigration judge.[53] This suggests that these cases could have been granted by the AO and that asylum seekers are unnecessarily forced to continually relive the sources of their trauma.

[53] HUM. RTS. FIRST, *supra* note 7, at 1-4.

(5) Mental Health Deterioration

The combined effects of prolonged separation from family members, uncertainty of legal status, and compounded trauma has a detrimental effect on the mental health of asylum seekers. They may suffer from depression, anxiety, and endure nervous breakdowns. For example, one asylum seeker, who became a U.S. citizen in 2019, still has nightmares about being deported and separated from her U.S.-born child. She stated that she wakes weeping and screaming with an intense need to hold her child.

> ***"[My client is] having severe depression. This has derailed his life. It has really destroyed his life . . . I've never seen an individual on the brink of a nervous breakdown. I don't know if he'll survive this or overcome this."***
>
> *Attorney, November 2021*

Basileus Zeno: While waiting for his pending asylum decision, Basileus endured many of the hardships that come to those without permanent status in the United States, including not seeing his family for almost a decade and facing difficulties maintaining his bank account or renewing his driving license. Additionally, after the Boston Asylum Office denied Basileus's asylum case in May 2021, he and his wife were forced to defend their Ph.D. dissertations earlier than planned in order to keep their visa status. Ultimately, after almost a decade of seeking asylum, Basileus and his family lost any hope of finding refuge in the United States. Consequently, they left the United States for Canada in December 2021, where they had new jobs and were forced to rebuild their life yet again. Two weeks before leaving the United States, the Boston Asylum Office sent Basileus a notice requesting to "reopen" his case, seeking a fourth interview in January 2022. The notice arrived far too late and could not undo the years of damage inflicted by the Boston Asylum Office's traumatizing and humiliating treatment of him and his family.

B. On the Asylum System

(1) Delayed Process and Negative Impacts on Immigration Courts

Because asylum office referrals feed directly into the immigration court backlogs, the Boston Asylum Office's above-average referral rate is unnecessarily inundating the immigration courts with cases. The asylum process can take years, not only because of massive backlog within asylum offices,[54] but also because immigration courts around the country also face a significant backlog. In the immigration courts, the national backlog reached nearly *1.6 million* pending cases by the end of December 2021—marking its "highest level ever."[55]

> ***"Last time [my client] and I went to court (March/April 2020) the Judge couldn't find his file and made him come back. The Judge said he would 'squeeze him in' and their hearing was scheduled for two years later in 2022. It can delay people's lives."***
>
> *Attorney, November 2021*

Re-adjudicating a case in immigration court—just to ultimately grant asylum—increases the courts' untenable backlog as well as administrative costs, which are ultimately shifted to the taxpayers. The impact of this delay creates additional challenges for asylum seekers to show, often many years after their initial application, that they meet the requirements of asylum. Attorneys reported that memory issues arise, and witnesses may no longer be able to testify. Furthermore, even minor errors in the court system may result in years-long delay in cases.

(2) Negative Impacts on Obtaining Representation

Having an attorney can dramatically improve an asylum seeker's overall odds of an approval.[56] However, because of the Boston Asylum Office's low grant rate, pro bono attorneys and legal aid organizations are often hesitant to take on affirmative asylum cases.

> ***"[The AO] asked me to sign a document that said I voluntarily agreed to use of this interpreter. And I said no . . . And she said, 'Well this is not what . . . other attorneys are doing.' I felt intensely uncomfortable. Do I push this issue, or do I sign something that is incorrect that will go into the record? . . . I ended up signing it [and I was] intensely uncomfortable. [I] did it because I didn't want to anger her [or] to influence her decision. But I regret that."***
>
> *Attorney, August 2021*

Additionally, attorneys may feel that their ability to advocate effectively for their client is undermined by AOs and the structure and culture of the Boston Asylum Office. Specifically, during interviews, attorneys have stated that they feel pressured to acquiesce to an AO's actions—they may be hesitant to correct an AO because they fear that a negative interaction or perception will adversely impact their client.

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[54] According to numbers provided by the Boston Asylum Office and distributed in the AILA New England Newsletter in December 2021, there are currently 20,400 cases pending in the Boston Asylum Office, and 423,200 cases pending in asylum offices nationwide. *AILA New England Newsletter*, AM. IMMIGR. LAW. ASS'N (Dec. 14, 2021) (updating AILA attorneys on Boston Asylum Office Statistics – responses from the October Asylum Liaison Meeting with USCIS).

[55] *Immigration Court Backlog Now Growing Faster Than Ever, Burying Judges in an Avalanche of cases*, TRAC IMMIGRATION (Jan. 18, 2022), https://trac.syr.edu/immigration/reports/675/.

[56] See HUM. RTS. FIRST, *supra* note 7, at 11.

RECOMMENDATIONS

Our research and data illustrate that there are critical steps that need to be taken to provide asylum seekers the rights guaranteed to them by federal law and international obligations. In doing so, the Authors recognize the need for deeper research and study in this area. These recommendations are not meant to be all inclusive, nor provide specific direction on how to improve the asylum system as a whole, but rather highlight what the Authors found to be some particularly egregious systemic problems that require attention.

(1) The U.S. Government Accountability Office should investigate the Boston Asylum Office and replace asylum officers and supervisory asylum officers who demonstrate bias or lack of cultural literacy.

(2) Ensure a neutral and non-adversarial asylum decision-making process by mitigating the outsized control that supervisory asylum officers have over asylum officer decision making. For example, this could be achieved by not tying an asylum officer's performance review to whether the asylum officer agrees with their supervisor's opinion. Or, as the Boston Asylum Office grows in size, this could also be achieved by adopting policies that have a rotation of supervisors per asylum officer, or creating a random supervisory review of asylum officer decision making. Regardless of the means, best practices for performance reviews are to incorporate 360 degree evaluations, in which asylum officers would be evaluated for how well they complete all aspects of their job, including considering feedback from asylum applicants, attorneys and others with whom they interact. Moreover, asylum officers ought to be given sufficient and anonymous opportunity to evaluate supervisory asylum officers.

(3) Increase transparency in asylum office interviews by creating audio recordings of the asylum interviews and making the recordings readily available to applicants and attorneys. Currently, asylum interviews are conducted behind closed doors with just the asylum officers, the asylum seeker and/or an interpreter and attorney, if applicable. There is no written transcript other than the asylum officer's notes, which may be incomplete and are often erroneous. For cases referred to immigration court, the asylum officer notes are then relied upon by Immigration and Customs Enforcement attorneys in immigration court as they try to impugn the asylum seeker's credibility. Ensuring a verbatim record of what took place in the asylum interview will help level the playing field for asylum seekers who must later appear in immigration court.

(4) Limit asylum officers' adjudication requirements to one asylum interview per day, which would provide asylum officers with additional time to more thoroughly complete their job duties and comply with the due process requirements of federal and international law.

(5) Implement rigorous hiring standards that focus on hiring asylum officers and supervisory asylum officers with language skills and cultural literacy and, once hired, provide asylum officers with support through mentorships and employee wellness programs.

(6) Improve trainings by focusing on implicit bias and racism, particularly on how implicit biases operate and how to mitigate bias. Additionally, increase quality trainings on trauma, compassion fatigue, and cultural literacy. Provide trainings on how to elicit testimony through a cultural literacy lens, which should also include practical examples and opportunities for mock interviews. These trainings should focus on positive approaches to elicit testimony necessary to adequately assess a claim and draft a legally sufficient assessment.

(7) Revise emphasis and orientation of trainings away from "trying to find the lie" to "trying to get the truth." Fraud and credibility trainings should consider asylum seekers' experiences, such as trauma, memory loss, and cultural differences, all of which might influence whether an asylum officer finds the asylum seeker credible.

(8) Use a paper-based adjudications process (similar to the adjudication process used for Special Immigrant Juvenile Status, VAWA, U-visas cases, among others) when it is clear asylum should be granted based upon the evidence submitted, there are no security concerns in the case, and where the claim is supported by ample country conditions research. This approach preserves resources by saving interviews for situations where the outcome is less certain, or for situations where there are credibility or security concerns. This would greatly reduce the backlog, allow many current cases to be processed much quicker, and enhance security by preserving interview resources for where they are needed most: on cases with more complicated security and credibility concerns.

(9) End the "last-in, first-out" (LIFO) policy that prioritizes adjudication of recently-filed asylum applications. This policy dramatically extends the wait times for the hundreds of thousands of asylum applicants with long-pending cases. USCIS should return to its prior "first-in, first-out" (FIFO) policy, which it abandoned for LIFO in January 2018.

CONCLUSION

This report emanated from the Authors' desire to understand the downward trend of affirmative asylum approvals. Our research reveals that the Boston Asylum Office has rejected a growing number of asylum seekers based on practices that violate domestic law and international obligations. Between 2015 and 2020 the Boston Asylum Office's average approval rate was just 15 percent,[57] undermining USCIS's promise in its mission statement: "fairness, integrity and respect for all we serve."[58] The Boston Asylum Office's practices harm asylum seekers and their families and wastes taxpayer dollars by needlessly referring cases to immigration court, a process that adds to the already massive backlog of immigration court cases and drains government resources.

The problems we identified within this report stem, in part, from systemic failures in national asylum policies and procedures pervasive in all asylum offices around the country. Indeed, the asylum backlog, time constraints, burnout, and compassion fatigue faced by AOs in the Boston Asylum Office are not unique to that office. Many presidential administrations have sought to fix the asylum backlog and broken system through bypassing the adversarial immigration courts and granting more authority to asylum offices.[59] However, without first fixing the unjust adjudications and procedures in the asylum offices, this report elucidates the countless failures that would occur should these proposals become a reality.

Unless asylum offices nationwide are thoroughly evaluated for the issues identified in this report, asylum seekers will continue to be harmed by a system that is seemingly unaware of its own failings and consistently violates international obligations and federal law. Until systemic biases are rooted out, time constraints are lessened, and burnout and compassion fatigue are adequately addressed, recent proposals such as the one to allocate more asylum decision-making authority to asylum officers should give the public pause. Our findings show that without fixing an asylum office's cultures of suspicion and distrust toward asylum seekers, in conjunction with the internal pressures placed on asylum officers, our asylum system will continue to perpetuate injustices against asylum seekers and their families, and ultimately run contrary to the laws and values of our nation.

Like so many who apply for asylum at the Boston Asylum Office, Basileus came with the hope of seeking refuge from an authoritarian regime that brutally turned on its own people. He and his wife rebuilt their life from scratch in the United States, had a baby, and succeeded as professors and scholars against all odds. However, the Boston Asylum Office forced them to spend years in legal limbo facing a "violent ordeal of legal necessity untethered from truth."[60] The Boston Asylum Office's mistreatment of Basileus and its decision to deny his asylum claims contributed to his suffering. But this loss is also ours: the United States is now deprived of an individual with so much to contribute.

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[57] *See supra* note 1.

[58] *Mission and Core Values*, U.S. CITIZENSHIP AND IMM. SERVS., https://www.uscis.gov/about-us/mission-and-core-values (Feb. 9, 2022).

[59] *See, e.g., FACT SHEET: The Biden Administration Blueprint for a Fair, Orderly and Humane Immigration System*, WHITE HOUSE (July 27, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/27/fact-sheet-the-biden-administration-blueprint-for-a-fair-orderly-and-humane-immigration-system/.

[60] Basileus Zeno, Unpublished Doctoral Dissertations (2395), *Chapter 5: Not True but Necessary: (Auto)-Ethnography of Legal Violence.* U. MASS. AMHERST (2021), https://doi.org/10.7275/23882657 (contained within *Uprising and Displacement: Ethnographies of Violence and Identity-(Re)Formation Among Syrians*).

METHODOLOGIES

This report is based on both quantitative and qualitative methods. It was created by analyzing documents and data received from FOIA production, as well as interviews with asylees, asylum seekers,[61] immigration attorneys, former asylum officers, and former supervisory asylum officers. Specifically, we conducted more than 100 semi-structured and open-ended interviews, which were obtained through purposeful sampling. We also benefited from the insights of immigration attorneys who have represented countless asylum seekers before the Boston Asylum Office, and who shared their personal observations and the experiences of their anonymized clients.

A. Boston Asylum Office FOIA Request

On July 12, 2019, the ACLU of Maine, Maine Law's Refugee and Human Rights Clinic, and the Immigrant Legal Advocacy Project submitted a FOIA request to USCIS. The goal was to understand why the Boston Asylum Office's approval rates for affirmative asylum cases were substantially lower than rates from asylum offices across the country. Specifically, this request sought "all records regarding the Boston and Newark Asylum Offices' policies, procedures, objectives, and decisions rendered in the affirmative asylum decision making process, regarding affirmative asylum applicants since January 2010 who applied for affirmative asylum at the Newark or Boston Asylum Offices."

One year after filing the original FOIA, USCIS had not produced any documents. Thus, the ACLU of Maine, Maine Law's Refugee and Human Rights Clinic, and the Immigrant Legal Advocacy Project filed a complaint in the U.S. District Court for the District of Maine against USCIS for failing to comply with the FOIA.[62] In response to the complaint, USCIS agreed to produce approximately 6,121 responsive pages. Among these pages were emails, memos, trainings, and asylum officer adjudicator logs. However, these documents were heavily redacted. These extensive redactions are currently being challenged.[63] The Authors conducted a document review of all documents produced by USCIS.

B. USCIS Decision Spreadsheet

As part of the FOIA request, USCIS produced a database of the affirmative asylum applications filed between 2010-2020 in the Boston Asylum Office (25,634 applications) and in the Newark Asylum Office (105,235 applications). For each application, the database included:

- The U.S. state from which the asylum seeker applied;
- The asylum seeker's zip code;

[61] The Authors were careful to only interview former asylum seekers who had been granted or denied asylum or forced to abandon their asylum and whose cases would not be negatively impacted as a result of sharing their experiences with the Boston Asylum Office.

[62] This lawsuit is still pending as of March 15, 2022. *See ACLU of Maine Foundation v. U.S. Citizenship and Immigration Services*, ACLU OF ME., https://www.aclumaine.org/en/cases/aclu-maine-foundation-v-us-citizenship-and-immigration-services (last visited Mar. 11, 2022).

[63] *See id.*

- The asylum seeker's country of birth, citizenship, gender, ethnicity, language, and age at filing;
- The date that the asylum seeker filed for asylum;
- The date of the asylum seeker's interview;
- The date that the asylum office made a decision;
- The decision made on the asylum seeker's application and very brief reasoning;
- The AO and SAO assigned to the asylum seeker's application;
- Whether the asylum seeker was represented by an attorney.

The Authors removed clearly erroneous data and duplicate entries (totaling 451 applications or 0.3 percent of total applications) and analyzed the data using the computer programming language R. This data was supplemented with data from USCIS Quarterly Stakeholder Reports, which USCIS has not published since 2019.[64]

C. Interviews

The Authors conducted numerous interviews with former SAOs, former AOs, immigration attorneys, asylum seekers, and asylees. The interviews were conducted between 2015 and 2022, and ranged from one to three hours in length. The interviews were conducted in private settings with the consent of the participants who were well informed about the objective of the study and that they would receive no personal benefits as compensation for their participation.

The authors conducted a total of 102 interviews: 78 interviews with asylees and asylum seekers, 19 interviews with immigration attorneys, and 5 interviews with former asylum officers and supervisory asylum officers.[65] Interviews with asylum seekers and asylees were conducted in the interviewee's preferred language of communication, which included English, Arabic, and French. Interviews with immigration attorneys and asylum officers were very insightful as they shared their countless experiences practicing before the Boston Asylum Office and compared it to other asylum offices across the country.

The Authors received approval of the Institutional Review Board (IRB) before conducting any of its human research. The IRB approval for this study helped to assure that the human participant's rights and information were protected throughout this study. In addition, the Authors obtained a Certificate of Confidentiality through the National Institute of Health to protect the privacy of the individuals that agreed to be interviewed for this Report. This additional certificate provides federal, state, and local protection against civil, criminal, administrative, legislative, and other proceedings for participants.

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[64] *See id.* USCIS voluntarily reported their affirmative asylum outcomes from January 2016 to September 2019 for each of its national offices. This data was compiled and analyzed by the Refugee and Human Rights Clinic.

[65] The Authors were unable to interview former AOs or SAOs from the Boston Asylum Office, despite their many attempts. *See supra* note 29.