

An Overview of the Asylum Process

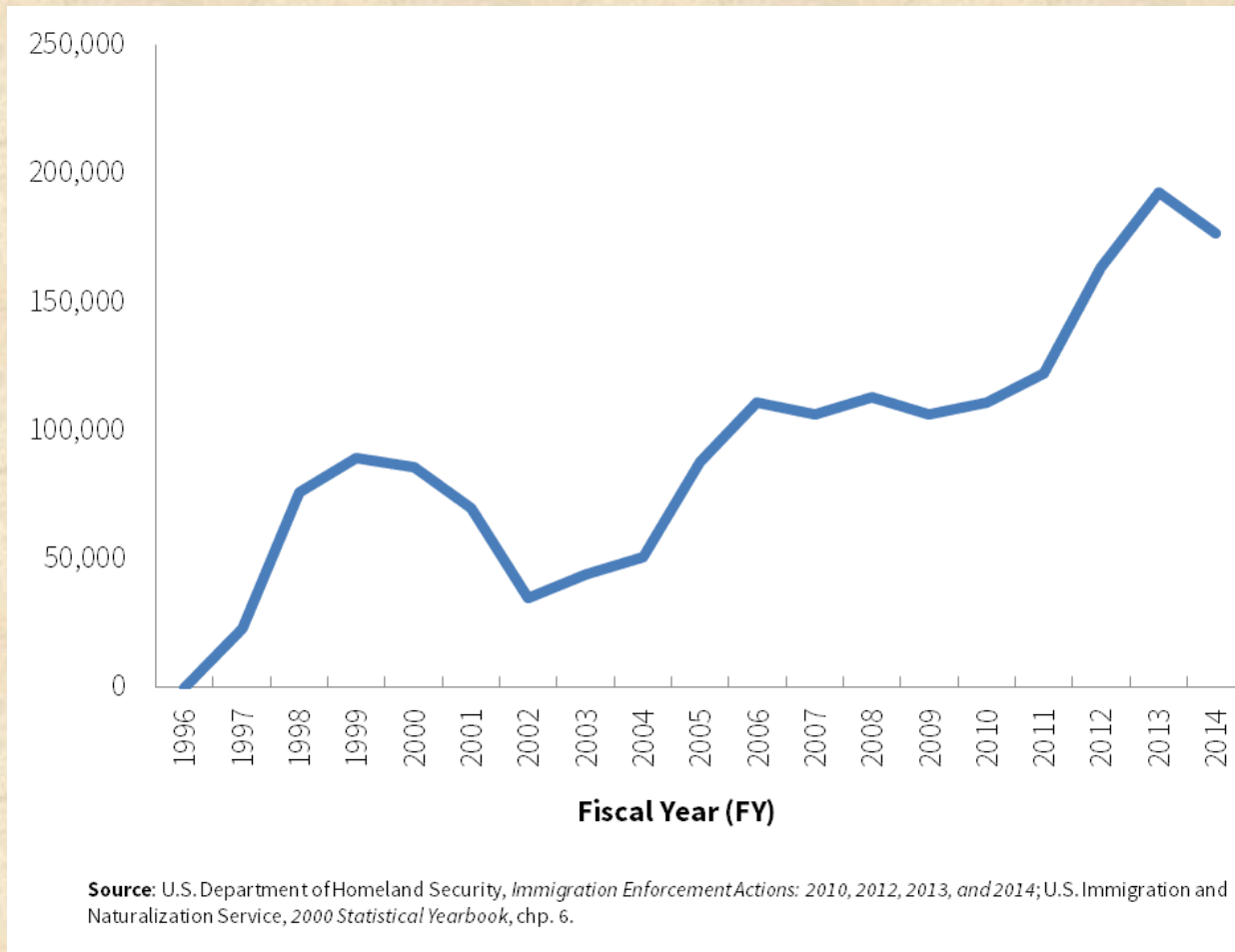
Apprehension by DHS

- In fiscal year ended September, 2016, the Department of Homeland Security (DHS) apprehended 530,250 individuals
 - 77,857 family units (totaling 200,812 for FY 2013-2016)
 - 59,757 unaccompanied children (totaling 206,962 for FY 2013-2106)

Expedited Removal

- Expedited removal where
 - migrant either (a) made misrepresentations or false claims to U.S. citizenship or lacked valid entry documentary and (b) could not show that s/he had been present on the U.S. for two or more years
- Prior to Executive Order 13767 (1/25/17), DHS policy was to limit expedited removal to migrants who were apprehended
 - within 14 days of arrival in the U.S. and
 - within 100 miles of an international land border

Expedited Removals (FY 2001-2014)



Two Limitations on Application of Expedited Removal

- Expedited removal does not apply to unaccompanied minors from non-contiguous countries (such as El Salvador, Honduras, and Guatemala)
- Expedited removal does not apply where the migrant expresses a “credible fear” of persecution or torture

Definition of “Unaccompanied Alien Child (UAC)”

(A) has no lawful immigration status in the U.S.;

(B) has not attained 18 years of age; and

(C) (i) has no parent or legal guardian in the U.S. *or*

(ii) has no parent or legal guardian in the U.S. available to provide care and physical custody

6 U.S.C. §279(g) (2012)

Detention and Release of UAC

- DHS must transfer UAC to the Department of Health and Human Services (HHS) within 72 hours of apprehension. 8 U.S.C. §1232 (b)(3) (2013)
- HHS is required to “promptly place” each child in its custody “in the least restrictive setting that is in the best interests of the child.” 8 U.S.C. §1232 (c)(2)
- “HHS’S Office of Refugee Resettlement (ORR) then manages custody and care of the children until they can be released to family members or other individuals or organizations while their court proceedings go forward.” *A Guide to Children Arriving at the Border*, American Immigration Council, June, 2015 at 9

Priority of Sponsorship

- (1) parent
- (2) legal guardian
- (3) adult relative
- (4) adult individual designated by the child's parent or guardian
- (5) licensed program willing to accept legal custody
- (6) adult or entity approved by ORR

A Guide to Children Arriving at the Border, American Immigration Council, June, 2015 at 9

Where Are UAC Released?

- Of 59,757 UAC apprehended in FY 2016, 52,147 were released to sponsors
- 7,881 were released in CA (the most of any state)
- 1,796 were released in Los Angeles County (the most of any county in the U.S.)
- 950 were released in counties within the San Francisco Bay Area

“Credible Fear” Interview

- DHS officer *required* to ask anyone subject to expedited removal:
 - why s/he left home country
 - whether s/he has concerns about being returned
 - would s/he be harmed if s/he were returned
 - whether s/he has any questions
- If migrant expresses fear of persecution or torture, the migrant is given a “credible fear” interview before an Asylum Officer

Elements of “Credible Fear”

- Migrant must show that there is a “significant possibility” that s/he could establish a claim for asylum or for withholding of removal in a full hearing before an Immigration Judge
- No inquiry into other defenses to removal?
 - Violence Against Women Act

Result of “Credible Fear” Interview

- If Asylum Officer finds that “credible fear” has been shown, migrant is placed in removal, and the case is assigned to an Immigration Judge
- If the Asylum Officer finds that “credible fear” has not been shown, the migrant must be informed that s/he may request immediate review by an Immigration Judge (which must happen within 7 days)

Review of “Credible fear” Finding?

- If the migrant does not request immediate review, the migrant is removed
- If the migrant does request review –
 - If the Immigration Judge affirms the Asylum Officer’s finding, the migrant is removed
 - If the Immigration Judge reverses the Asylum Officer’s finding, the migrant is placed in removal and the case is assigned to an Immigration Judge

Asylum: Elements

- “well-founded fear”
- of “persecution”
- perpetrated by the government or an entity that the government cannot/will not control
- “on account of”
- one of the following:
 - race
 - religion
 - national origin
 - political opinion
 - membership in a particular social group

Bars to Asylum

- One-year filing deadline from entry into U.S.
- Serious nonpolitical crime (such as violent crime or drug trafficking) outside U.S.
 - Conviction not required: probable cause is enough
- Persecution or terrorism
- Conviction of a “particularly serious crime” (such as aggravated felony/prison term ≥ 5 years) in the U.S.

Asylum is Discretionary

- Migrant who satisfies the statutory elements and is not barred may still be denied asylum in the exercise of discretion
- Discretion involves a balancing of factors
 - age
 - health
 - family
 - employment record
 - character witnesses

Equal Justice Under Law?

- Unlike criminal cases, migrants do not have the right to counsel
- Migrants may have counsel at their own expense (or on pro bono basis)
- In 2016, 50% of mothers with children lacked counsel; of these, 90% were removed
- The chances of defeating removal increases by 5 times when migrant has counsel

Equal Justice Under Law? – Part Two

- From 2007-2014, approximately 60% of asylum seekers in New York City were granted asylum, while in the same period, in Omaha and Atlanta, less than 5% were
- Removal rates can be as high 90% in Houston to less than 40% in San Francisco
- Houston, Charlotte, and Atlanta have among the highest rates of removal
- San Francisco has among the lowest rates of removal

Basic Steps in a Removal Case

- Respondent is served with Notice to Appear (NTA) (Form I-862)
- Respondent appears in Immigration Court for Master Calendar Hearing
- Respondent files petition for asylum and/or other relief
- Respondent appears in Immigration Court for merits hearing

Master Calendar Hearing

- Very brief – only a few minutes
- Does respondent have counsel?
- Is address correct?
- Contest service of NTA?
- Waive formal reading of charges?
- Response to allegations of NTA?
- Designate a country of removability?
- Asserting defenses to removability?
- Set date and time for merits hearing

Individual (“Merits”) Hearing

- Usually takes approximately 3-4 hours
- Respondent files supplemental pleadings in support of petition for asylum
- Direct and cross-examination of respondent
- Direct and cross-examination of lay witnesses
- Direct and cross-examination of expert witnesses
- Closing statement

Time Between Master Calendar Hearing and Individual Hearing

- Currently **three and one-half years**
- Respondent has basic human needs – food/housing/clothing/health care/transportation
- School placement (if school age)
- Employment (if working age)
- Building a “resume” of good character
- Avoiding negative influences