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Actions to Reduce the Affirmative Asylum Backlog



House Appropriations Committee/Senate Appropriations
Committee Briefing

May 18, 2018

OCFO1

Slide 1

OCFO1

We will update this date when transmitted to DHS for further transmittal to Congress.

OCFO, 5/31/2018

Requirement



Joint Explanatory Statement 2018 includes the following requirement:

USCIS is directed to brief the Committees on specific actions, if any, that the agency is taking to reduce the backlog of asylum applications while ensuring that asylum applicants are properly reviewed for eligibility and for security purposes.

Overview



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- USCIS has experienced a significant increase in two humanitarian programs over the past few years: Affirmative Asylum and Credible Fear.
- The Credible Fear (CF) Program has seen dramatic volatility in case volume during the last several fiscal years. USCIS received 51,001 in FY 2014, 48,052 in FY 2015, 94,048 in FY 2016, and 78,564 in FY 2017. Through Q2 FY 2018, USCIS received 45,064 cases.
- The Affirmative Asylum Program has also seen a significant increase in receipts with 56,898 cases received in FY 2014, 83,197 in FY 2015, 114,965 in FY 2016, and 141,695 in FY 2017. Through Q2 FY 2018, USCIS received 60,934 new filings.

Program Impact



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The USCIS response to the prioritization of the CF workload beginning in FY 2014 relied heavily on diverting staff from the affirmative asylum caseload.

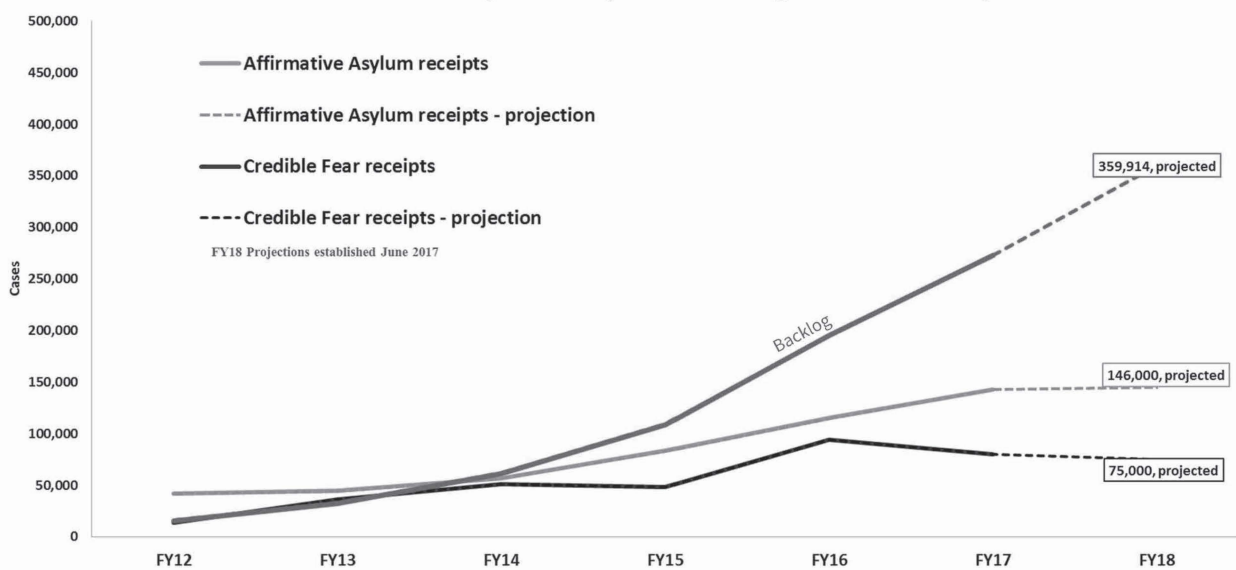
This diversion of resources coincided with a significant increase in affirmative receipts, resulting in a more than 1,700 percent increase in the affirmative asylum backlog over the last five years.

Affirmative Asylum Backlog FY 2018 Receipt Projections



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Credible Fear and Affirmative Asylum Receipts and Pending Caseload - All Asylum Offices



Backlog Reduction Strategy



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To reduce the affirmative asylum backlog, USCIS has:

- (1) Continued to identify and employ strategies to maximize efficiencies in case processing across Asylum Division workloads;
- (2) Implemented policies and developed pilot programs to deter and screen for non-meritorious affirmative asylum filings; and
- (3) Increased its adjudicative capacity by expanding the Asylum Division field office workforce by 188 positions through Q2 FY 2018 (from 1,248 to 1,436 positions), deploying 100 refugee officers to process Asylum Division workloads on a continual temporary duty (TDY) assignment basis, and increasing the number of Fraud Detection and National Security (FDNS) personnel assigned to each asylum office focusing on fraud detection and national security vetting.

Case Processing Efficiencies



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USCIS continues to employ a number of strategies to maximize case processing efficiencies across Asylum Division workloads.

Strategies include:

- Agile development of technological enhancements that automate and streamline all adjudication processes.
- Moving towards centralizing certain fraud and security screenings for all asylum applications.
- Implemented a pilot program to identify certain untimely filed claims and submit such applications to targeted interviews and time-saving adjudication processes.

Policies and Pilots to Deter and Screen for Non-Meritorious Filings



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USCIS has implemented a number of policies and pilot programs intended to deter and screen for non-meritorious asylum applications to ensure that USCIS can render decisions on qualified applications in a more efficient and timely manner. Examples include:

- (1) In January 2018, the Return to Last In, First Out (LIFO) affirmative asylum interview scheduling (also known as reform scheduling);
- (2) In November 2017, commenced the development of a text analytics tool to assist in the detection of fraud across affirmative asylum applications (user testing of the prototype tool commenced in June 2018 and is ongoing); and
- (3) In September 2017, implemented enhanced procedures to identify and screen for cases suspected to have been filed for non-asylum purposes.

Asylum Reform Scheduling (LIFO)



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This system of scheduling prioritizes the most recently filed affirmative asylum applications when scheduling cases for asylum interviews. Giving priority to recent filings allows USCIS to promptly place such individuals into removal proceedings, which reduces the incentive to file for asylum solely to obtain employment authorization. Asylum applicants are eligible to obtain employment authorization after the application has been pending in the backlog for six months. This approach also allows USCIS to render decisions on qualified applications in a more efficient manner.

The priority order for interview scheduling is:

- (1) Applications that were scheduled for interview, but the interview had to be rescheduled;
- (2) Applications that have been pending 21 days or less since filing; and
- (3) All other pending applications, starting with the newer filings and working back towards older filings.

Impact of Asylum Reform Scheduling 1995 – January 2015



- The LIFO scheduling system was in place for affirmative asylum applications from 1995 to 2014 under asylum reform. As a result of the reforms, within the first five years, the number of non-meritorious filings significantly decreased; and, the great majority of applicants received decisions from the Asylum Division within 60 days of filing, and from Immigration Courts within 180 days of filing.
- The reduction in new receipts demonstrated that restricting the availability of employment authorization and the prompt completion of removal proceedings for those not granted asylum actually removed the incentive to file non-meritorious claims. Furthermore, the increase in asylum approval rates by asylum officers indicated that genuine asylum-seekers were being identified, rather than languishing in the backlog.
- Those trends continued throughout the first decade of the 2000s. New asylum receipts continued to decline to a low of 24,000, and remained under 30,000 for seven straight years (FY 2004-FY 2010); the backlog was reduced from a high of 400,000 to just under 5,000 cases by 2009; and, the approval rate hovered between 30 percent and 40 percent.

Impact of FIFO January 2015 – January 2018



- The LIFO method of scheduling ceased to be relevant after the Department of Justice's announcement in 2014 that the Executive Office for Immigration Review (EOIR) would re-prioritize its docket to focus on recent border crossers, including unaccompanied minors, instead of asylum cases referred to EOIR by USCIS. At the same time, USCIS was required to shift staffing resources to the credible fear and unaccompanied child asylum caseload.
- Following the transition to the FIFO model, affirmative asylum filings continued to escalate. A review of the affirmative asylum backlog indicated approximately 20 percent comprised of cases in which, at the time of filing, 10 or more years had lapsed after the applicant's last arrival in the United States. Moreover, compared to the 55,000 Employment Authorization Documents (EADs) issued to individuals with pending asylum application in FY 2012, over 277,000 such EADs were issued in the first three quarters of FY 2017 alone.
- A large percentage of these applicants are using the asylum process to gain access to removal proceedings so they can apply for cancellation of removal and make minimal attempt to prove eligibility for asylum. With the present backlog, these individuals can obtain permission to work in the United States while they wait for their asylum case to be reviewed, an interview scheduled, and a decision to refer their application to removal proceedings before an immigration judge. This trend was noted by the American Immigration Lawyers Association (AILA) which prompted it to issue an AILA Ethics Practice Advisory entitled, *Ethical Considerations Related to Affirmatively Filing an Application for Asylum for the Purpose of Applying for Cancellation of Removal and Adjustment of Status for a Nonpermanent Resident*.

Impact of Return to LIFO: January 2018 to Current

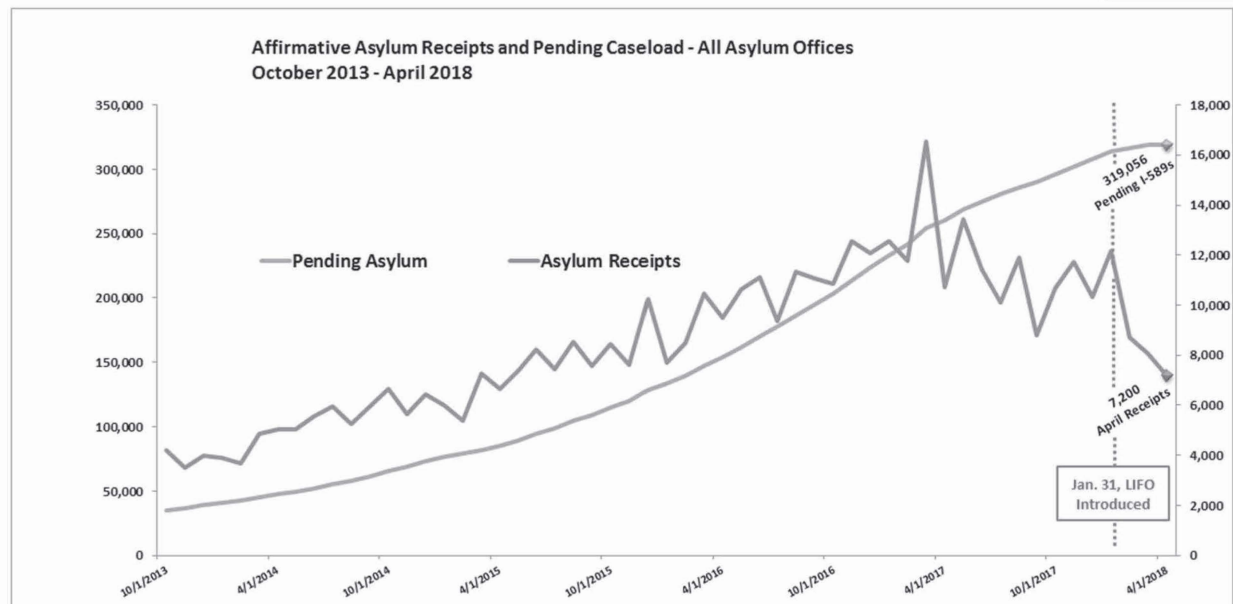


- In January 2018, USCIS reverted to reform or LIFO scheduling.
- It appears LIFO has had an immediate effect on affirmative asylum filings. Affirmative asylum filings were 30 percent lower after LIFO's re-implementation than the three months prior. As a result, the backlog leveled off and did not grow for the first time in several years.
- While it is still early, this change seems to confirm the observations of USCIS and other entities that a number of cases being filed were non-meritorious.

Impact of LIFO on Affirmative Receipts



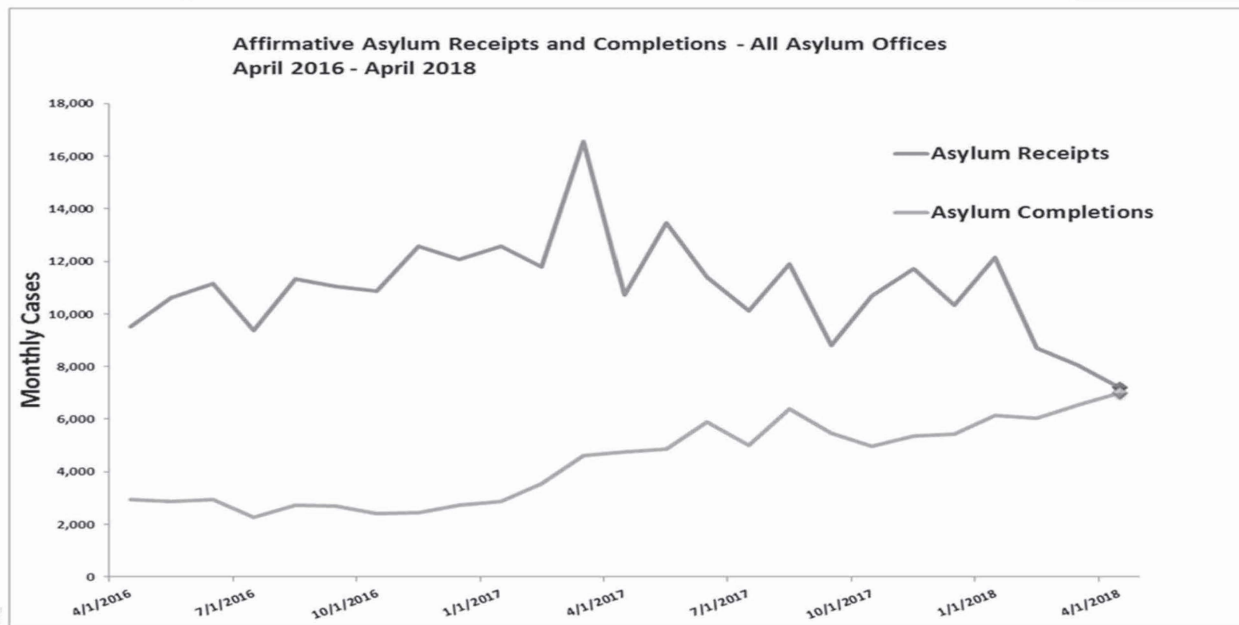
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Trend in Affirmative Receipts and Completions



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Text Analytics Tool



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- USCIS is taking steps recommended by the Government Accountability Office to identify and implement technological tools that officers can use to detect potential fraud patterns across affirmative asylum applications.
- Starting in FY 2018, over \$10 million is being committed over the next three fiscal years to digitize asylum applications and develop a software application that uses sophisticated text processing techniques to enhance document review.
- As of May 31, 2018, 10,000 asylum applications were digitized and by the end of FY 2018, USCIS projects 40,000 affirmative asylum applications will have been digitized and loaded into a database for analysis.

Staffing Resources



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- USCIS continues to evaluate the Asylum Division's staffing needs in light of current trends and projections. In FY 2018, USCIS approved 191 new positions for the Asylum Division including 62 asylum officer (AO) and 14 supervisory asylum officer (SAO) positions. With these additions, the current number of authorized positions for the Asylum Division field offices are 1,436 (687 AOs, 139 SAOs, 610 other positions).
- The Asylum Division currently has an overall vacancy rate of approximately 25 percent. To achieve its officer onboard goal of 90 percent by the end of the fiscal year, it is using overhire position authority, as well as Department's direct hire authority to fill its vacant officer positions. Approximately 90 percent of the 45 direct hire positions have selections made. USCIS has a request pending for additional direct hire authority as it identified a number of additional candidates it could hire from the current list.
- In the interim, approximately 100 refugee officers are being deployed on continual temporary duty (TDY) assignments to enhance the Asylum Division's adjudicative capacity.
- The number of authorized USCIS Fraud Detection and National Security (FDNS) personnel embedded in asylum offices has more than doubled between 2016 and 2018 from 39 to 87 positions.

Challenges and Unknown Factors Impacting Backlog Reduction Efforts



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- **Facilities** - Without changes to the GSA space acquisition process, space constraints may prove to be a limiting factor given the fast-paced growth of the Asylum Division's staffing requirements and the likelihood that additional staffing resources will be identified. USCIS is working with GSA to identify locations for future space acquisition in anticipation of this need.
- **Impact of Policy Decision on Asylum Division Workloads** – Policy decisions related to the following items may have an impact on the affirmative asylum backlog:
 - (1) The ending of TPS for certain populations may trigger ~~unanticipated~~ affirmative asylum filings;
 - (2) The end of "Catch and Release" may require additional resources being diverted towards the credible fear and/or reasonable fear caseloads; and
 - (3) Refugee ceiling determinations which may have a short or long-term impact on the availability of refugee officers to detail on TDY.