Rhetoric v. Reality: Biden Administration Should Correct Misleading Narrative on Asylum Eligibility

Biden administration's misleading claims about asylum eligibility	Actual data on asylum grant rates
"[M]ost migrants who are initially deemed eligible to pursue their claims **ultimately are not granted asylum"** and **"only a small proportion"** of people seeking protection at the border are likely to be granted asylum.	**The majority of people** who establish a credible fear of persecution are **then granted asylum** if their case is decided on the basis of their asylum claim. In Fiscal Years 2022 and 2023 thus far, <u>55 percent</u> of people seeking asylum whose cases were decided on the basis of their asylum claim after a positive credible fear determination **were granted asylum.**

In promulgating recent policy that unlawfully bans and blocks refugees from asylum protections in the United States, the Biden administration has relied on misleading statistics—using a calculation method employed under the Trump administration—to claim that most people seeking safety at the southern border who establish a credible fear of persecution are not eligible for asylum under U.S. law.

This misleading narrative about asylum grant rates in the United States further fuels anti-immigrant rhetoric and fearmongering. Anti-immigrant groups and individuals, Members of Congress, and Trump administration officials have long cited this data to falsely paint people seeking asylum as largely ineligible for asylum, and have continued to do so since the Biden administration revived these misleading claims.

This factsheet examines those claims, corrects misinformation about asylum grant rates, and urges the Biden administration and U.S. agencies to revert to accurate statistics that are not misleading. **Contrary to the misleading claims, the majority of people who establish a credible fear of persecution and then have their case decided by an immigration judge on the basis of their asylum claim are granted asylum.**

What has the Biden administration claimed about asylum grant rates?

On May 11, 2023, the Biden administration published a final rule ("asylum ban") that bans people seeking safety at the southern border from being granted asylum based on how they enter the United States and whether they applied for and were denied protection in a country through which they traveled. Human Rights First and other organizations have issued reports detailing how the ban unlawfully punishes refugees, denies them asylum protections that they are eligible for under

U.S. law, and forces many to wait in danger where they are at risk of kidnapping and violent assaults. On June 25, 2023, a federal court held that the ban violates U.S. law.

When it first proposed to issue the asylum ban and requested comment from the public, the administration claimed that "most migrants who are initially deemed eligible to pursue their claims ultimately are not granted asylum," asserting that "only a small proportion" will be granted asylum.

To back up this claim, the Department of Homeland Security (DHS) and Department of Justice (DOJ) cited data regarding asylum seekers who requested safety at or near the border or at airports and were placed in the "expedited removal" process. People seeking asylum placed in expedited removal who establish a "credible fear" of persecution must have an opportunity to apply for asylum in immigration court. The administration stated that **15 percent of people seeking asylum** who established a credible fear of persecution **from 2014 to 2019** were then granted asylum or other protection. This statistic is **extremely misleading** because it suggests that 85 percent of people were *denied* asylum or other protection. Similarly, DHS and DOJ stated that among cases completed since 2013, "significantly fewer than 20 percent" of people found to have a credible fear were granted asylum, again suggesting that significantly more than 80 percent were denied asylum.

This is not the case. **The method of calculation employed by the Biden administration to arrive at these figures was used by the Trump administration and does not accurately reflect asylum grant rates.** Previously, the Executive Office for Immigration Review (EOIR), an agency within DOJ that oversees the immigration court, calculated grant rates by dividing cases that were granted by the total cases that were decided on the merits (i.e. an assessment of the person's eligibility for asylum). During the Trump administration, in 2018 EOIR began to report asylum grant rates out of the *total completed cases* regardless of whether there was a decision on the merits—a shift in longstanding EOIR practice to calculate asylum grant rates out of cases that there decided on the merits. The total completed cases include cases that were not adjudicated, withdrawn, administratively closed (in some cases because the person was eligible for other relief), or where no asylum application was filed.[1] This method artificially deflates the asylum grant rate and creates the false impression that many asylum seekers were ineligible for asylum even where there was no decision on their asylum claim.

During the Trump administration, **fact-checkers** explained that Former Attorney General Jeff Sessions and other Trump administration officials **misled the public by using this calculation method** to claim that 80 percent of people seeking asylum were ineligible for it, wrongly presenting all completed cases that did not result in asylum grants—including those administratively closed or resolved on other grounds, such as where the applicant was eligible for other relief—as asylum denials simply because they were not calculated as asylum grants. Calculating asylum grants out of all completed cases, rather than out of all completed cases decided on the merits, leads to these false claims.

The Biden administration relied on this same method to reach the figures it cited to attempt to justify its asylum ban. In reality, **nearly 40 percent of all people seeking asylum** who had their cases decided on the merits after a positive credible fear determination have been granted asylum since Fiscal Year (FY) 2013,[2] **and this number would be even higher if it included those who were granted withholding of removal or protection under Convention against Torture— humanitarian protections that are also based on an assessment of a person's risk of persecution or torture in the country they fled.**

In addition to employing a Trump-era misleading calculation method, the administration also deflated the grant rate by selecting a time frame that encompassed Trump administration years, when numerous illegal policies caused grant rates to plummet as many asylum seekers who were eligible for protection were wrongly denied and ordered deported. **If data from FYs 2017-2020 is excluded, nearly 50 percent of people seeking asylum** who had their cases decided on the merits after

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[1] Cases categorized as "no asylum application filed" could include cases where the asylum seeker qualified for other relief or was unable to file an application due to lack of access to counsel, detention, language barriers, and other issues.

[2] Similarly, between FYs 2014-2019, **over 35 percent** of asylum seekers who had established a credible fear and whose cases were decided on the merits were granted asylum. While there is no publicly available data disaggregating by outcomes specifically for people who established credible fear between FYs 2014-2019 (the basis of the administration's 15 percent figure), the administration explained in its proposed rule that it similarly arrived at this statistic by calculating grant rates out of all completed cases, regardless of whether they were decided on the merits.

a positive credible fear determination were granted asylum since FY 2013. Similarly, this grant rate would be higher if it included people who were granted other humanitarian protection. Human Rights First and other organizations filed public comments on the proposed asylum ban rule explaining that these statistics were misleading.

What are the actual grant rates for people seeking asylum?

Asylum seekers establish eligibility for asylum at much higher rates than the Biden administration's assertion suggests. Rates would be even higher if major barriers to seeking protection in the United States were eliminated, including the use of abusive immigration detention to jail many people while they pursue their asylum claims, barriers to access to counsel (especially in detention), the lack of government-funded counsel for people who can't afford it, rushed adjudications that impede the ability to find an attorney or prepare a case, and biased and erroneous adjudications, including by some immigration judges who incomprehensibly deny 99 percent of all cases.

Nonetheless, accurate asylum grant rates make clear that a **large proportion of people who come to the United States to seek safety are able to establish eligibility for asylum under U.S. law despite the inhumane and significant barriers that they face.**

People seeking protection may have their cases adjudicated by different agencies depending on their circumstances and individual decisions made by DHS. For instance, people who request protection at the southwest border may be placed into immigration court proceedings to present their case to an immigration judge or may first be placed into expedited removal and required to pass a credible fear interview in order to have an opportunity to apply for asylum in immigration court proceedings. People seeking protection who are not placed in immigration court proceedings may apply for asylum with the U.S. Citizenship and Immigration Services (USCIS) Asylum Office, and under new Biden administration policy, some people who pass their credible fear interviews may also have their cases decided by the USCIS Asylum Office. Cases that are not granted by USCIS are referred to immigration court, where they are adjudicated by an immigration judge. The Biden administration's statistics relate to people who have passed their credible fear interviews and then had their case decided by an immigration judge. The following uses government data, including data analyzed by Syracuse University's Transactional Records Access Clearinghouse (TRAC)[3], to examine this and other scenarios.

Actual grant rates for people seeking protection who establish a credible fear of persecution and then have their cases decided by an immigration judge (the statistic asserted by the Biden administration):

- **The majority of people** who establish a credible fear of persecution are then granted asylum in immigration court if their case is decided on the basis of their asylum claim.

- In FYs 2022 and 2023 thus far, 55 percent of people who had their asylum cases decided on the merits after a positive credible fear determination were granted asylum.

- Recent figures are consistent with historical grant rates, excluding Trump administration years when asylum grant rates plummeted due to illegal policies. **Since FY 2008 (excluding FYs 2017-2020),** 50 percent of people **seeking asylum who had their cases decided on the merits after a positive credible fear determination were granted asylum.**

Actual grant rates for people seeking protection who have their asylum cases decided in immigration court (including those who have passed credible fear interviews as well as all other people whose asylum cases were decided):

- **Nearly half of all people** who receive decisions in immigration court based on their asylum claim are granted asylum.

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[3] Data on asylum decisions analyzed by TRAC includes only those cases decided on the merits of the asylum claim.

- In FYs 2022-2023 thus far, over [46 percent](#) of all people who received decisions based on their asylum claim in immigration court were granted asylum, and additional people were granted other protection from deportation.
  - This included [asylum grants](#) for **85 percent of all Cameroonian nationals**, **82 percent of all Chinese nationals, 59 percent of all Cuban nationals, 68 percent of all Indian nationals, 86 percent of all Russian nationals, and 75 percent of all Venezuelan nationals** who received asylum decisions.

- Recent figures are consistent with historical grant rates, excluding Trump administration years when asylum grant rates plummeted due to illegal policies. **Since FY 2010 (excluding FYs 2017-2020), 48 percent of all people who received decisions based on their asylum claim in immigration court were granted asylum, and additional people were granted other protection from deportation.**

Actual grant rates for people seeking protection who apply for asylum with the USCIS Asylum Office:

- In calendar year 2022 (through September), **40 percent of people whose cases were decided by the USCIS Asylum Office based on their asylum claim** [were granted asylum](#). Similarly, before Trump administration policies caused grant rates to fall, **in FY 2016,** [44 percent](#) of people whose cases were decided by USCIS on the merits were granted asylum.

- In addition, the majority of those referred to immigration court (rather than granted by the Asylum Office) are [later granted asylum](#) as well. In FYs 2022 and 2023, [76 percent](#) of all cases that were referred to immigration court by USCIS were granted asylum. As Human Rights First [has](#) [noted](#), the system would be more [efficient](#) overall if more people who are eligible for asylum are granted initially at the Asylum Office level, rather than being unnecessarily referred into immigration court removal proceedings.

Recommendations

- **DOJ, EOIR and DHS should revert to** [longstanding](#) **statistical methods that were used before the Trump administration to calculate asylum grant rates.** These agencies, the Biden administration, and Members of Congress should report grant rates by dividing cases granted asylum by total cases that were decided on the merits. Reporting asylum grant rates by dividing cases granted asylum by total completed cases (without regard to whether they were decided on the merits) is inherently misleading.

- **The Biden administration should not rely on Trump-era asylum grant rate data**, as that data can create an erroneous impression about asylum eligibility because grant rates plummeted during that time due to unlawful Trump administration policies that denied asylum for many people who qualified for it under U.S. law.