

## **CRISIS WATCH: Seeking Asylum in the United States**

Asylum seekers in the U.S. have frequently survived complex trauma and endure significant additional stress from an asylum process that is lengthy and complex. It is important for practitioners working with children and families who are seeking asylum, or who have been granted asylum (asylees), to understand how this context can affect safety, stability and well-being.

### **Background**

The legal concept of asylum emerged from the international movement to protect refugees during World War I and culminated in the 1951 U.N. Refugee Convention (and its 1967 Protocols) which defined the term “refugee” as one who has fled their country, crossed an international border and who is unable return home due to a “well-founded” fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

Currently, there are more than 27 million people globally considered refugees. As of 2020, Children make up nearly 50% of all global refugees while they make up less than one third of the world’s population<sup>i</sup>. Less than one-half of one percent will ever have the chance to formally resettle in another country, leaving a significant number of people displaced and in peril. Some refugees may choose to seek protection in a country that honors international laws by pursuing asylum.

The U.S. recognizes the right to seek asylum as detailed in both international law and in its own national laws. When people seek asylum, they must prove to the U.S. government that they meet the legal definition of a refugee, are not subject to any of the “bars” to asylum, and that they warrant a favorable exercise of discretion (generally meaning that they have not violated any laws, including working without authorization, for example). If they are able to meet this burden, they are granted asylum and become what is known as an ‘asylee’. Pursuing asylum is complicated and often adversarial with applicants fighting an uphill battle in proving their claim of persecution. In fact, the vast majority of asylum claims – over 70% – are denied.<sup>ii</sup> If a person has an attorney the grant rate is increased by more than five times.<sup>iii</sup> Unfortunately, people in immigration proceedings do not have the right to representation. Finding private representation is extremely difficult to achieve if someone is detained in immigration detention, has few financial resources, or does not speak English.

### **Snapshot of the State of Asylum in the U.S.**

The process of asylum is long, with the current average wait between filing and decision being more than four years.<sup>iv</sup> The immigration courts are significantly backlogged with more than 1.6 million cases waiting adjudication.<sup>v</sup> This includes close to 700,000 asylum cases.

Many people seeking asylum are imprisoned in U.S. immigration detention facilities while they await a hearing, the vast majority of which are [run by private, for-profit organizations](#). Even if allowed to pursue a case while in the community, asylum seekers are not eligible for federal benefits and therefore face significant barriers to accessing medical care and basic needs.

Asylum seekers may apply for work authorization 150 days after filing their asylum applications, but it may take many months for this to be granted. After being granted asylum, asylees can qualify for a number of benefits and rights, many of which are time-limited; however, there is no coordinated national effort to educate asylees about their rights and help them connect to needed services and supports so their eligibility often lapses before they can access them.

The Trump Administration [instituted a number of policies](#) with significant implications for those seeking safety in the U.S. Two of note are the [Migrant Protection Protocols](#) (MPP) and [Title 42](#), which return people with credible fears of persecution to Mexico either without due process or to await an asylum court hearing. Consequently, tens of thousands of individuals, children and families are forced to live in dangerous and squalid conditions at the U.S. Mexico border with little access to representation and due process. While the Biden Administration has made efforts to rescind MPP and Title 42, states have sued the Administration stalling their repeal.<sup>vi</sup>

The asylum system, like many institutions, is also riddled with bias and inequities. Who gets asylum is often arbitrary and highly dependent on the country of origin of the asylum seeker, whether the case is affirmative or defensive, if the person is detained or not, which judge decides the case, and in which jurisdiction the case is decided.<sup>vii</sup> Financially poor and marginalized people are highly disadvantaged within the asylum system regardless of case merits.

## What's Important for Mental Health Agencies and Practitioners to Know?

Mental health practitioners working with asylum seekers should keep in mind:

1. Likelihood of complex trauma – People pursuing asylum have often endured significant traumatic events and persecution that have acted as a catalyst for seeking safety in another country. The process of reaching the U.S. is often long, involves crossing through multiple countries, and is dangerous. It is common for people to be robbed, beaten, and assaulted on this journey. Once people request asylum in the U.S., they may have been imprisoned in detention facilities for many months or forcibly returned to Mexico where they lived in unsafe conditions. If one is awaiting asylum in a U.S. community, they face significant if not impossible barriers to accessing services and supports.
2. Priority on legal support – The path to achieving safety runs through the immigration courts. Until an asylum seeker has secured legal representation or filed their claim, finding representation is likely to be their sole focus. Pro-bono or low-bono support is often extremely difficult to secure, and it is common for asylum seekers to have heightened feelings of fear and frustration during this process.
3. Lack of safety net – Asylum seekers are unable to access federal safety net systems. This means there are significant barriers to health and mental health care treatment, food support, housing assistance, and more. In the first one to two years after arrival or release from detention, asylum seekers are likely to have significant and pressing safety and security needs that will take precedence over most other concerns.
4. Risks for Exploitation – Because of the lack of benefits and support and the prohibition against working for a substantial period of time, many asylum seekers are at increased risk of exploitation and trafficking thus increasing the chances of further violence and traumatic events.
5. Separation from loved ones – Many asylum seekers have travelled thousands of miles to request asylum in the U.S. Because this journey is arduous and almost always full of peril, it is often done by single individuals with the hope that after they are granted asylum the family can be rejoined in safer conditions in the U.S. Because the asylum process is long, people are often separated from their loved ones for many years. In some cases, their loved ones – including their children – may be in hiding and facing major security threats. This often produces feelings of fear, loss, grief, shame and guilt in people going through the asylum process, especially if they have children. Children who are joining asylees might also feel anger, grief and loss after years of separation from their parent. In addition, policies enacted under the Trump Administration forcibly separated thousands of parents from their children at the U.S./Mexico Border; hundreds of families remain separated to this day. Other forms of family separation continue, in large part a consequence of policies like Title 42 which remains in effect despite ongoing outcry and litigation to repeal it.

6. Uncertainty – Perhaps one of the most profound stressors for children and families seeking asylum is the uncertainty of whether one will be forcibly deported home to an unsafe and possibly deadly situation, or if one will be allowed to remain in the U.S. For individuals separated from family members, the uncertainty of their family’s safety adds to this stress. [Studies](#) show that long wait times for asylum have significant negative effects on wellbeing. The fear of being deported also can deter people from integrating, forming social connections, and working to resolve issues due to traumatic events.

## Recommendations

Mental health practitioners and agencies working with asylum seekers should be aware of their unique context and be prepared to pace their work with an initial priority on safety and security needs. This means being aware of faith-based institutions or ethnic community self-help organizations that can provide housing and other critical supports. Practitioners should also support their clients in trying to secure legal representation and be aware of the agencies in their geographic area that may offer pro-bono or low bono services or provide workshops on [pro-se representation, and also be cognizant of the impact medical and psychological evaluations can have on an individual’s asylum application](#).<sup>viii</sup> Individuals separated from spouses and children face particular mental health stressors and are likely to benefit from enhancing coping and distress tolerance skills. People may not be ready to process trauma or engage in trauma focused treatment until they have achieved a measure of safety (asylum) and, if they have family in danger, until they know their family is also safe. As always, when a client and provider do not come from the same community, ensuring linguistic access and culturally responsive services that incorporate a client’s beliefs around distress and healing is key to providing meaningful and impactful care.

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<sup>i</sup> <https://www.wvi.org/sites/default/files/2022-07/No%20Peace%20of%20Mind.pdf>

<sup>ii</sup> <https://humanrightsfirst.org/library/uscis-records-reveal-systemic-disparities-in-asylum-decisions-2/>

<sup>iii</sup>

<https://trac.syr.edu/immigration/reports/491/#:~:text=Odds%20of%20Gaining%20Asylum%20Five, every%20ten%20win%20their%20case>

<sup>iv</sup> <https://trac.syr.edu/immigration/reports/672/>

<sup>v</sup> <https://www.migrationpolicy.org/article/us-immigration-backlogs-mounting-undermine-biden#:~:text=The%20immigration%20court%20backlog%20now,9.5%20million%20as%20of%20February>

<sup>vi</sup> However, as of September 2022, following a U.S. Supreme Court ruling, the Biden Administration is taking steps to formally “wind down” the latest iteration of MPP

<sup>vii</sup> <https://www.latimes.com/california/story/2020-08-24/who-gets-asylum-trump-bias-disparities>

<sup>viii</sup> <https://www.evaluationalliance.org/>