

# **Affirmative Asylum, Credible Fear, and Reasonable Fear**

March 2019



**U.S. Citizenship  
and Immigration  
Services**

# ASYLUM OFFICES & SUB-OFFICES



U.S. Citizenship and Immigration Services



### ADDED 3 NEW SUB-OFFICES SINCE 2015:

- BOSTON
- NEW ORLEANS
- APSO CENTER

### FACILITY EXPANSION:

- CHICAGO
- SAN FRANCISCO
- ARLINGTON
- MIAMI
- NEWARK
- HOUSTON

# Affirmative vs. Defensive Asylum

- **Affirmative:** USCIS Asylum Officers adjudicate asylum claims submitted to USCIS by aliens who are in the United States and not in removal proceedings with the Executive Office for Immigration Review (EOIR).
  - Applicants receive a non-adversarial interview with an Asylum Officer.
- **Defensive:** Aliens in removal proceedings with EOIR may request asylum or other protection as a defense against removal.
  - U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) arrest and place alien in removal proceedings
    - or the Asylum Office places the alien in removal proceedings after a credible fear screening.
  - An Immigration Judge conducts an adversarial hearing, hears arguments from DHS ICE attorneys, and makes a decision on removability and eligibility.



# Who Can Apply for Asylum with USCIS?

- Any individual physically present in the United States or who arrives in the United States irrespective of status (whether here legally or illegally).
- Except:
  - Individuals who fail to apply within 1 year after the date of arrival in the United States (unless the individual can show changed or extraordinary circumstances).
  - Individuals previously denied asylum in the United States (unless the individual can demonstrate changed circumstances materially affecting asylum eligibility).



# Who May Be Granted Asylum?

- Any individual who has properly applied for asylum and is determined to be a refugee under section 101(a)(42)(A) of the Immigration and Nationality Act.
- Definition of a refugee under section 101(a)(42)(A):
  - An individual who is unable or unwilling to return to his or her country of nationality, or country of last habitual residence if stateless, because of
    - Past persecution or a well founded fear of future persecution
    - On account of race, nationality, religion, political opinion, or membership in a particular social group



# Reasons Why Individuals Can Be Barred from Receiving Asylum

- Persecution of others
- Conviction of a particularly serious crime
- Commission of a serious nonpolitical crime outside the United States prior to arrival
- Danger to national security and/or terrorist activity
- Firm resettlement in another country prior to arrival



# Benefits of Asylum

- Can remain in the United States indefinitely, unless asylum is terminated
- Work authorization
- Can apply for Lawful Permanent Resident status one year after being granted asylum
- Family reunification (spouse and unmarried children)
- Assistance and services from state and private, non-profit agencies through the Office of Refugee Resettlement
- Social Security card



# Highlights of the Affirmative Asylum Process

- Applicants submit fingerprints, photo, and signature to an Application Support Center. These biometrics are checked against FBI, DHS IDENT, and DOD/ABIS holdings.
  - Applicants must submit biometrics before the interview and are verified biometrically against IDENT at the interview.
- Mandatory biographical checks include checks in the USCIS Central Index System, CBP TECS, ICE ENFORCE Alien Removal Module, FBI Name Checks, DOS Consular Consolidated Database, and with the National Counterterrorism Center (NCTC).



# Highlights of the Affirmative Asylum Process

- All applicants have an in person interview with an asylum officer.
- Applicants must bring:
  - any spouse and/or children seeking derivative asylum
  - an interpreter if needed
- Applicants may also bring:
  - an attorney or accredited representative
  - witnesses to testify in support of the application
- Interviews generally last about 90 minutes, although the time may vary depending on the case.



# Highlights of the Affirmative Asylum Process

- Most applicants return to the asylum office to pick up the decision two weeks after the interview.
- Longer processing times may be required for applicants currently in valid status, where security checks remain pending, or when a case is being reviewed by Asylum Division Headquarters staff. Decisions are generally mailed to applicants in these situations.



# Fraud, National Security and Public Safety Considerations

- As part of its mission to provide immigration benefits to eligible applicants, USCIS strives to combat fraud that poses a systemic risk to the integrity of our nation's immigration system. USCIS has dedicated resources and staff that specifically serve to ensure that immigration benefits are given to those who are eligible under law.
- Fraud Detection and National Security Directorate's (FDNS) mission is to enhance the integrity of the immigration system by identifying threats to national security and public safety, detecting and combatting benefit fraud and removing systemic and other vulnerabilities.
- FDNS immigration officers are located in USCIS service centers, refugee and asylum offices and domestic and international field offices. Some FDNS immigration officers are embedded in other government agencies.



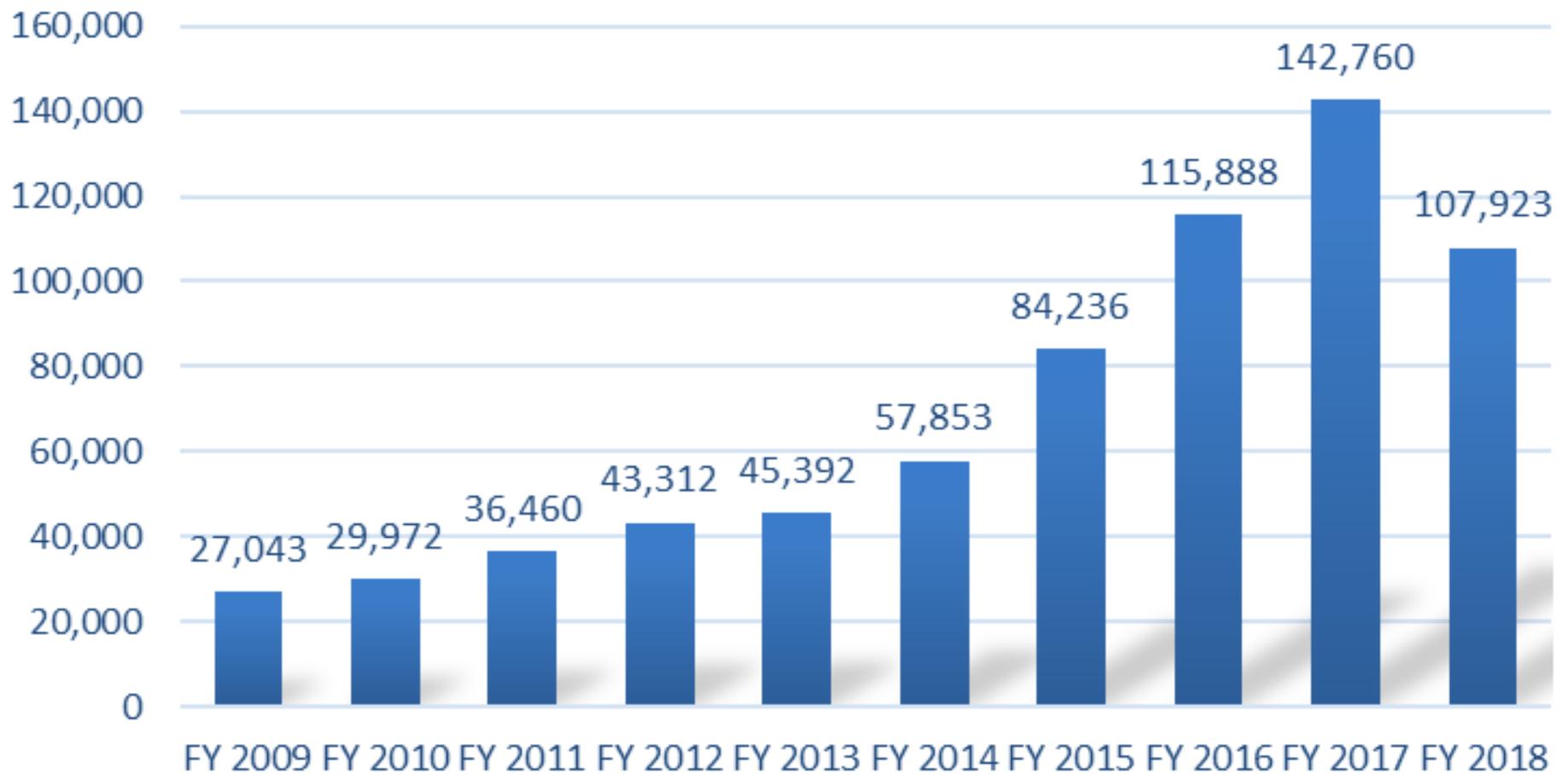
# Integrity Measures

The Asylum Division takes very seriously the integrity of our program and employs the following integrity measures:

- Mandatory biographical and biometric checks of all applicants prior to approval
- Mandatory supervisory review of all asylum decisions
- Random case assignment
- Fraud Detection and National Security Teams
- Government-funded interpreter monitors
- Information sharing with Canada, Australia, New Zealand and the United Kingdom



## Affirmative Asylum Receipts and Reopens



# New Asylum Applications Filed – Top 10 Nationalities (FY18)

#	Nationality
1	Venezuela
2	Guatemala
3	El Salvador
4	China
5	Mexico
6	Honduras
7	Nigeria
8	Haiti
9	India
10	Colombia

# New Asylum Applications Granted - Top 10 Nationalities (FY18)

#	Nationality
1	Venezuela
2	China
3	Guatemala
4	El Salvador
5	Honduras
6	Egypt
7	Mexico
8	Russia
9	Syria
10	Ethiopia

# Expedited Removal

- Expedited removal provisions became effective April 1, 1997 (INA § 235)
  - Applies to individuals arriving at a port of entry who are inadmissible due to fraud or misrepresentation (INA § 212(a)(6)(C)) **OR**
  - Who lack proper entry documents (INA § 212(a)(7))
- Individuals subject to ER are generally detained in detention facilities and ordered removed from the United States without a hearing before an immigration judge.
- ER expanded in 2004 to beyond ports of entry to include individuals apprehended within 100 air miles of the border and within 14 days of illegal entry.



# Credible Fear - DHS Overview

## CBP

CBP apprehends or detains arriving alien pursuant to expedited removal processes.

## ICE

ICE detains alien. If alien expresses a fear of return, alien is granted interview with USCIS.

## USCIS

Credible fear screening is conducted to determine if there is significant possibility of an asylum or withholding claim or protection under CAT.



# Credible Fear - DHS Overview

## USCIS

Credible fear screening determinations:

- Positive determination
- Negative determination

## EOIR

Positive CF → § 240 removal proceedings

Negative CF → CF review proceedings if requested by individual



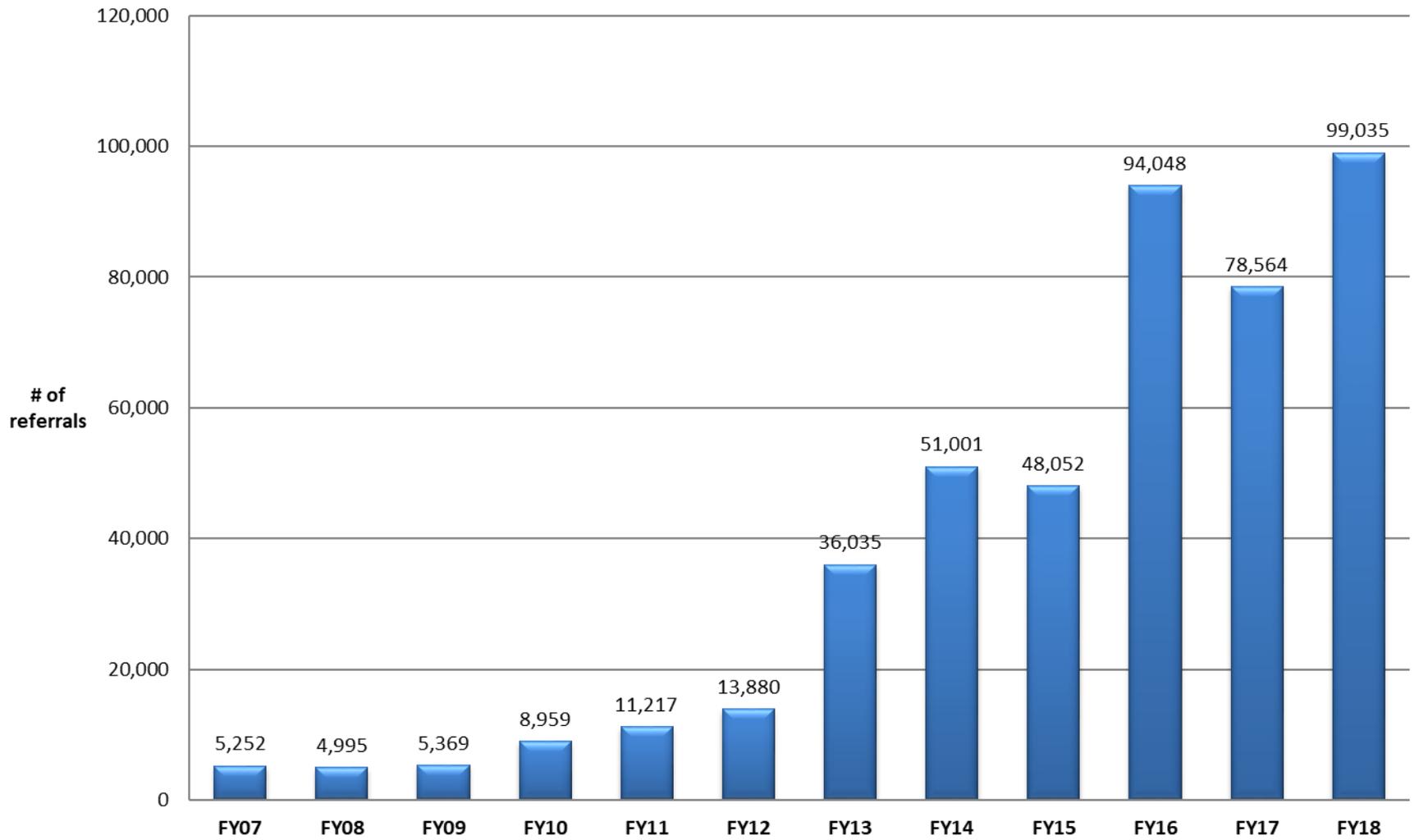
# Credible Fear

## Screening vs. Adjudication

- The credible fear determination is a screening process, not an adjudication.
- The asylum officer does not make the final determination as to whether the individual is eligible for a grant of asylum.
- Individuals found positive for credible fear are placed into § 240 removal proceedings where they may apply for asylum or any other benefit for which they may be eligible before an immigration judge.



## Credible Fear Receipts - All Offices



# Reasonable Fear

In order to comply with international obligations under the Refugee Convention and the Convention Against Torture, the Asylum Division screens certain individuals who are not eligible for any form of relief from removal. These individuals are:

- Individuals subject to **reinstatement** of a prior removal order under INA § 241(a)(5), or
- Individuals who are not lawful permanent residents (LPRs) and have been ordered removed under INA § 238(b) because of a conviction of an “**aggravated felony**” (“final administrative removal).”



# Reasonable Fear – DHS Overview

- The reasonable fear process is triggered when an individual subject to final administrative removal or reinstatement of removal expresses to an Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) officer a fear of returning (to the country to which they have been ordered removed).
- Such circumstances require the officer who issues the removal order to refer the case to an asylum office for a reasonable fear determination.



# Reasonable Fear – DHS Overview

## CBP/ICE

CBP/ICE apprehends or detains alien pursuant to reinstatement or FARO removal

## ICE

ICE detains alien. If alien expresses a fear of return, alien is granted interview with USCIS.

## USCIS

Reasonable fear screening is conducted to determine if there is reasonable possibility persecution or torture.



# Reasonable Fear – DHS Overview

## USCIS

Reasonable fear screening determinations:

- Positive determination
- Negative determination

## EOIR

Positive RF → Withholding-Only proceedings

Negative RF → RF Review proceedings if requested by individual

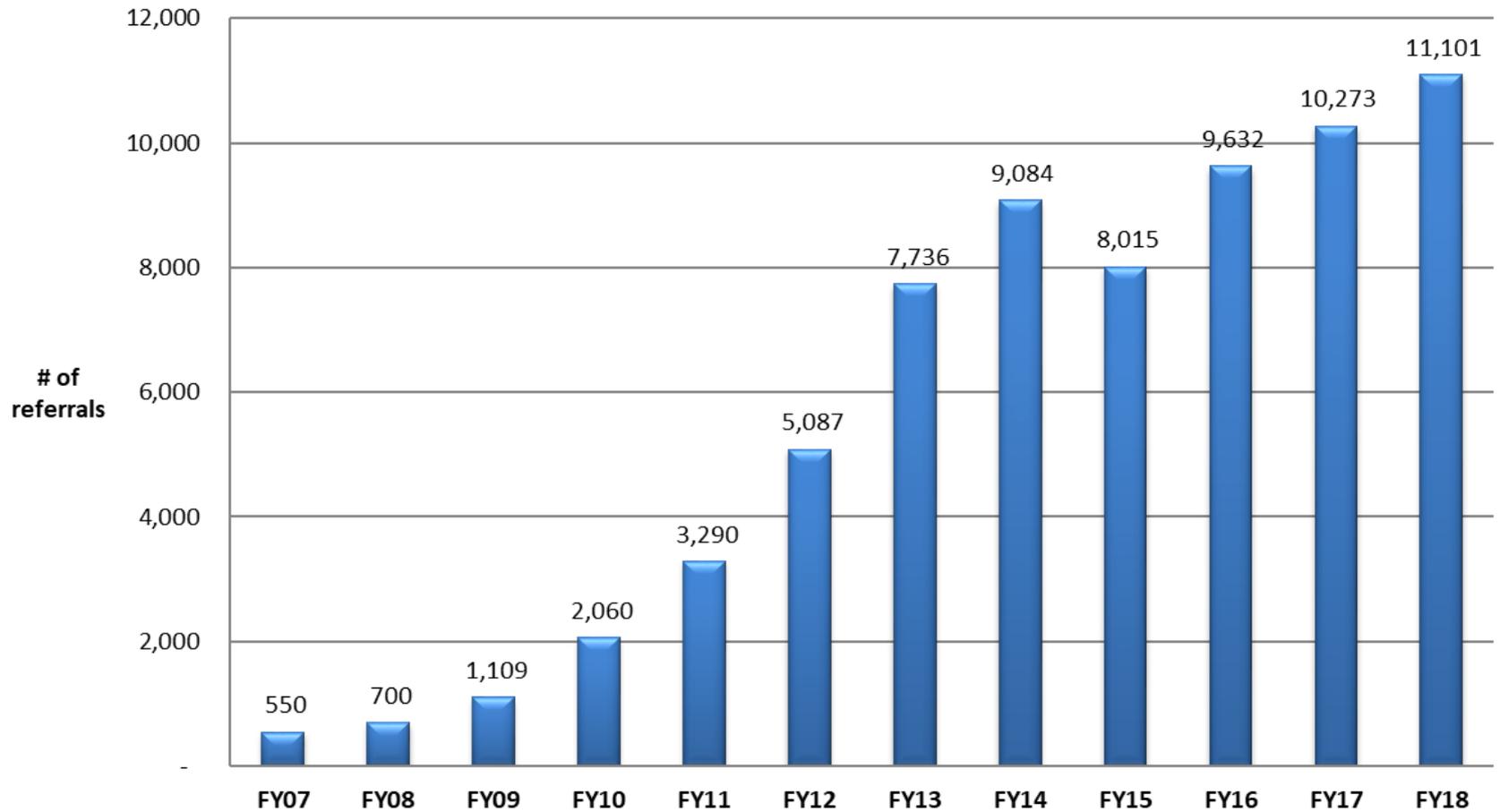


# Reasonable Fear Screening vs. Adjudication

- The reasonable fear determination is a screening process, not an adjudication.
- The asylum officer does not make the final determination as to whether the individual is eligible for a grant of withholding of removal.
- Individuals found positive for reasonable fear are placed into withholding only proceedings before an immigration judge to see if removal should be withheld or deferred from the country of removal due to persecution or torture.



## Reasonable Fear Receipts - All Offices



# Asylum Confidentiality

- Federal Regulations at 8 CFR § 208.6 generally prohibit disclosure to third parties of information contained in or pertaining to asylum applications except under certain limited circumstances.
- Confidentiality is breached when info contained in or pertaining to an asylum application is disclosed to a third party in violation of the regulations, and the unauthorized disclosure is of a nature that allows the third party to link the identity of the applicant to:



# Asylum Confidentiality

- 1) the fact that the applicant has applied for asylum;
- 2) specific facts or allegations pertaining to the individual asylum claim contained in an asylum application; or
- 3) facts or allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum



# Asylum Confidentiality

- Protects asylum applicants, NACARA 203 applicants, credible and reasonable fear screenings.
- Authorized disclosure can be obtained through written consent of the asylum applicant or specific authorization from the Secretary of Homeland Security.
- Disclosure may also be made to U.S. Government officials or contractors and U.S. federal or state courts on a need to know basis related to certain administrative, law enforcement, and civil actions.
- Relatives / I-730 beneficiaries are considered third parties
- See the “Fact Sheet: Federal Regulation Protecting the Confidentiality of Asylum Applicants” found on [USCIS.gov](https://uscis.gov)



# Questions?



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