



Homeland
Security

September 15, 2026

Dear American Immigration Lawyers Association:

Our immigration court system suffers from a massive backlog. As of July 2026, there were almost 3.5 million cases and 2.3 million asylum claims pending before the immigration courts.¹ Removal proceedings often take years to resolve. This delay is unfair to both the alien and the government. For the vast majority of aliens, meritless asylum claims merely delay the inevitable and allow an alien to develop ties to a community where he or she may not legally remain. For the rare alien with a meritorious claim, the alien remains in limbo for years waiting in line behind millions of people who are exploiting our immigration system.

Asylum offers protection to aliens who have fled their countries due to persecution by the government on account of a protected ground. To be eligible for asylum, an alien must show that he is a “refugee” as defined in 8 U.S.C. § 1101(a)(42)(A), meaning that he is unable or unwilling to return to his country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.² Asylum is a discretionary benefit, meaning the government is not required to grant asylum even if the alien is eligible.

To meet the high bar for asylum eligibility, an alien must demonstrate a well-founded fear of persecution, which means that there is a reasonable possibility of persecution if the alien were to return to his country.³ The fear of persecution must be subjectively genuine, objectively reasonable, and on account of one of the protected grounds. For the fear to be objectively reasonable, the alien must provide “credible, direct, and specific evidence” that “show a reasonable person” would similarly fear persecution.⁴

Persecution is an extreme concept that does not include every sort of offensive treatment.⁵ It is more than unpleasantness, embarrassment, unfair treatment, or discrimination.⁶ Ordinary

¹ These include cases pending before the Board of Immigration Appeals. See Exec. Office for Imm. Review, Pending Cases, New Cases, and Total Completions, <https://www.justice.gov/eoir/media/1344791/dl?inline>; Exec. Office for Imm. Review, Total Asylum Applications, <https://www.justice.gov/eoir/media/1344871/dl?inline>.

² See 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(A).

³ See 8 U.S.C. § 1158(b)(1)(B); *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); see also 8 C.F.R. § 1208.13(b)(2) (2026) (establishing the general regulatory framework for a well-founded fear of persecution).

⁴ *Nagoulko v. I.N.S.*, 333 F.3d 1012, 1016 (9th Cir. 2003); accord, e.g., *Pojoy-De León v. Barr*, 984 F.3d 11, 16 (1st Cir. 2020); *Molina-Cabrera v. Sessions*, 905 F.3d 1103, 1105 (8th Cir. 2018).

⁵ See *Matter of A-H-D-*, 29 I&N Dec. 642, 644 (BIA 2026) (noting the seriousness of conduct required to rise to the level of persecution).

⁶ See *Gilca v. Holder*, 680 F.3d 109, 114-15, 117 (1st Cir. 2012).

economic hardship, personal disputes, and general conditions of upheaval and unrest do not meet the legal standard for asylum.⁷

Similarly, the feared persecution must be committed by a state actor. In narrow circumstances, the actions of a private actor may be attributed to the state when it is unable or unwilling to control the private actor.⁸ But this requires an extraordinary showing, as residents of crime-ridden cities like Chicago could easily claim that the government is unwilling or unable to control private actors. To meet the high legal threshold of the government being “unable or unwilling” to control the non-state actor, the alien must establish that the home government has fundamentally breached its basic duty of protection to its citizens.⁹ This requires the alien to show that the government condoned the private actions or demonstrated a complete helplessness to protect the victim.¹⁰ Because crime and violence occur in all societies, a government does not breach its duty to protect simply because it faces standard difficulties in controlling criminal behavior or because localized law enforcement lapses occur. Therefore, assertions of rampant gang activity or domestic abuse generally fail to meet the standard for asylum.¹¹

The immigration court backlog includes a large number of applicants from Western Hemisphere countries.¹² While individuals in the Western Hemisphere may face economic hardship, insecurity, or other difficult conditions, conditions in most Western Hemisphere countries simply are not a basis for asylum. Asylum is not intended to serve as a panacea for any undesirable country condition. Recent trends show that individuals who illegally migrate within the Western Hemisphere generally do so not because they seek a safe haven from persecution but instead primarily due to a variety of non-humanitarian factors, including economic incentives and misinformation about migration policies.¹³

Asylum claims originating from Western Hemisphere nations are often based on a general fear of gang violence or other criminal activity. These claims generally are untethered to any direct or specific evidence of government involvement and therefore do not meet the legal standard for asylum. In fact, many of the meritless asylum cases that are clogging our immigration system fail from the outset because the alien cannot establish a nexus between the alleged harm and one of the statutory grounds for asylum. This is especially true with claims that allege harm based on

⁷ See, e.g., *Blanco de Belbruno v. Ashcroft*, 362 F.3d 272, 284 (4th Cir. 2004) (observing that fears of retribution over purely personal matters or general conditions of upheaval and unrest do not constitute cognizable bases for granting asylum); *Matter of T-Z-*, 24 I&N Dec. 163, 170-75 (BIA 2007) (discussing standards for nonphysical persecution and distinguishing ordinary economic hardship from severe economic persecution).

⁸ *Matter of Acosta*, 19 I&N Dec. 211, 222-23 (BIA 1985) (recognizing that the harm or suffering had to be inflicted by the government of a country or by persons or an organization that the government was unable or unwilling to control).

⁹ See *Matter of A-B-*, 28 I&N Dec. 199, 203-04 (A.G. 2021).

¹⁰ See *Matter of A-B-*, 27 I&N Dec. 316, 337 (A.G. 2018).

¹¹ See *id.* at 320.

¹² Asylees 2024, Office of Homeland Security Statistics, Department of Homeland Security, <https://ohss.dhs.gov/topics/immigration/asylees/annual-flow-report/fy24-asylees-flow-report>.

¹³ Joshua Klein, Cong. Rsch. Serv., R47182, *International Migration Trends in the Western Hemisphere* at 2-3 (July 15, 2022) (discussing recent trends in Western Hemisphere migration, noting that poor economic conditions and insecurity are push factors for migration while family reunification, enhanced economic security, and disinformation about migration are pull factors).

membership in a “particular social group” centered around gang affiliation or recruitment or fears of domestic violence. These claims fail to meet the asylum standard.¹⁴ The Attorney General has recognized the fatal weakness of these types of claims, stating that, “[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.”¹⁵ Treating generalized societal hardships and private criminal acts as statutory persecution results in claims that are legally deficient on their face. This legal disconnect causes the overwhelming volume of meritless cases currently stalling our immigration courts.

Importantly, an alien also does not have a well-founded fear if he could reasonably avoid persecution by relocating to another part of his country.¹⁶ Put another way, if the alien can relocate to a different part of his country, he will not have a valid asylum claim. Asylum claims in which the alien alleges that there is nowhere within his country that he can safely relocate to generally lack merit because they fail to consider all relevant factors¹⁷ and are generally not supported by objective evidence.

Country reports show that most Western Hemisphere countries are generally safe or have laws that protect their own citizens from harm.¹⁸ Nearly every country in the Western Hemisphere is a party to the 1951 Refugee Convention and/or the 1967 Refugee Protocol, and many have adopted domestic asylum or complementary protection procedures, again reflecting a region-wide legal commitment to refugee protection.¹⁹ Given the safety of these countries and laws in place, most Western Hemisphere countries are able and willing to protect their citizens, and the evidence does not show that Western Hemisphere countries have taken steps to condone the actions of private actors. It is also reasonable for individuals to internally relocate within their country. As these claims are meritless, there is no reason for the filing of such asylum claims in the immigration courts.

We must stop the widespread abuse that is currently undermining our immigration system. Treating asylum as a solution for every immigration case does not help anyone. Instead, it overwhelms our resources and directly threatens the protections reserved for genuine refugees who are fleeing persecution. If you are unhappy about the current administration’s actions curbing asylum abuse at the southern border, you must recognize that these measures are a necessary response to the broken rules and constant exploitation that you helped create and sustain.

¹⁴ See, e.g., *Matter of S-E-G-*, 24 I&N Dec. 579, 583-84 (BIA 2008) (concluding that proposed particular social groups, consisting of Salvadoran youth resisting gang-recruitment and their family members, lacked the required standards of particularity and social visibility to constitute a cognizable social group).

¹⁵ *Matter of A-B-*, 27 I&N Dec. at 320.

¹⁶ 8 C.F.R. § 1208.13(b)(2)(ii) (2026).

¹⁷ See 8 C.F.R. § 1208.13(b)(3) (2020) (setting forth nonexhaustive factors that adjudicators should consider when determining whether an alien can reasonably relocate).

¹⁸ See U.S. Dep’t of State, *Travel Advisories Map*, <https://travelmaps.state.gov/TSGMap/>; Institute for Economics & Peace, *Global Peace Index 2026: Identifying and measuring the factors that drive peace* (June 2026); *Human Rights & Freedoms*, U.S. News & World Report, <https://www.usnews.com/news/best-countries/rankings/human-rights-freedoms>.

¹⁹ See U.N. High Comm’r for Refugees, *Refugee Treaty and Legislation Dashboard*, <https://rimap.unhcr.org/refugee-treaty-legislation-dashboard>.

There is no mystery as to what is driving this behavior. Meritless asylum applications are filed to obtain work permits, to delay deportation, and to force a release from custody. But claims that lack a reasonable legal or factual basis and claims filed with an improper motive are improper and will be dealt with accordingly.

Filing a frivolous asylum application generally renders an alien permanently ineligible for most forms of relief and other immigration benefits.²⁰ Attorneys who file such applications are subject to penalties. The Department will vigorously pursue all available remedies against anyone engaging in this conduct.²¹

We must restore order and accountability to our immigration framework now, or we risk dismantling the humanitarian safety net for those who need it most.

Respectfully,



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²⁰ 8 U.S.C. § 1158(d)(6); *see also* 8 C.F.R. § 1208.20 (2020).

²¹ *See, e.g.*, 8 U.S.C. § 1324c(d); 18 U.S.C. § 1001(a).