

COMPARATIVE VISIONS FOR A U.S. GROUP-BASED ASYLUM PROPOSAL

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ABSTRACT

Images of asylum seekers and migrants desperate to enter the United States at the southern border abound in U.S. media. Less familiar to the American public, but intertwined with the highly politicized modern migration crisis, is the ever-growing backlog of pending asylum applications before both the Asylum Office and Immigration Courts. This backlog has many causes, including under-resourced agencies, a growing number of asylum applicants, the high evidentiary burden and complexities inherent to asylum law, and the lack of counsel for many asylum seekers. In response to this crippling backlog, some scholars propose the adoption of a “group-based” asylum mechanism. The U.S. government already uses group-based determinations in its refugee admissions program, as does UNHCR and other countries, to efficiently process large groups of refugees. Using a comparative approach, I examine group-based asylum mechanisms in the Organization of African Unity, several European Union member states, Canada, and Brazil. Analyzing these mechanisms, I identify criteria and possible procedures for the implementation of a U.S. group-based asylum mechanism to expedite certain asylum determinations. I explain that group-based asylum is a common-sense, cost-effective solution to modern challenges within asylum adjudication. The U.S. should learn from its peer countries and implement a group-based asylum mechanism to streamline adjudications in a time of increasing numbers of refugees around the globe. I propose administrative mechanisms for burden shifting that

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would lessen the evidentiary and procedural hurdles for asylum applicants falling within designated groups (“presumptive asylees”) to achieve the cost- and time-saving purpose of group-based asylum.

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INTRODUCTION

Images of asylum seekers and migrants desperate to enter the United States at the southern border are well known in the U.S. media. Less familiar to the American public, but intertwined with highly politicized modern migration crises, is the ever-growing backlog of pending asylum applications before both the Asylum Office and the Immigration Courts.¹ This backlog has many causes, including under-resourced agencies, a growing number of asylum applicants, the current complexity of asylum law, and that asylum seekers are often unassisted by legal counsel.² While the U.S. is not alone in navigating the policies and politics of a growing number of asylum seekers from across the globe, the U.S. has a unique problem in its inability to efficiently process and issue decisions on asylum applications compared to peer asylee-receiving countries.³ With Congress unable to make meaningful legislative changes to the asylum system, immigration agencies are left on their own to fight off the total collapse of the U.S. asylum system.

To understand how inefficient the United States' asylum system currently is, consider the following hypothetical example of an asylum seeker named Fareeda.⁴ Fareeda came to the U.S. seeking asylum in early 2024 after being pursued and eventually physically attacked by the Taliban in her home country of Afghanistan because of her work educating women. After managing to secretly escape Afghanistan and making her way to Mexico, Fareeda presented herself to officials at a port of entry at the U.S. border and expressed

1. *See infra* Part I.B.

2. *See id.*

3. *See* U.N. HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2023, at 2 (2024), <https://www.unhcr.org/us/global-trends-report-2023> [<https://perma.cc/8HHP-EMPA>] (listing Germany as receiving the second largest number of asylees and refugees after the U.S.); *compare* Asylum Information Database, *Overview of the main changes since the previous report update: Germany* (June 16, 2025) <https://asylumineurope.org/reports/country/germany/overview-main-changes-previous-report-update/> [<https://perma.cc/Y7UA-4HYH>] (listing the average asylum processing time as 8.7 months in 2024) *with* Ayelet Parness, *Asylum Backlog Presents Anguish, Uncertainty for Seekers*, HIAS (Apr. 4, 2024), <https://hias.org/news/asylum-backlog-presents-anguish-uncertainty-seekers/> [<https://perma.cc/8YXY-A2WM>]; AM. IMMIGR. LAWS. ASS'N, HIGH-STAKES ASYLUM: HOW LONG AN ASYLUM CASE TAKES AND HOW WE CAN DO BETTER 16, AILA Doc. No. 23061202 (2023) (noting a six-year wait time for an asylum decision from the Asylum Office).

4. The following facts are not based on any individual but is a composite of clients I have worked with in practice.

her fear of return to her home country of Afghanistan. Fareeda made it through expedited removal proceedings at the border and was released into the U.S. to await full immigration court proceedings. Fareeda now faces a large uphill battle to eventually win asylum in the U.S. She would need to first establish herself in a new community and wait for her case to be initiated with an immigration court, an administrative court she may not be aware of or know how to differentiate from other immigration agencies. After attending her first immigration court hearing, a judge tells Fareeda that she needs to file a Form I-589 to apply for asylum.⁵ Fareeda seeks out a lawyer to assist with her asylum claim but learns that a private attorney charges about \$10,000 for representation for asylum claims in immigration court. Fareeda instead decides to seek pro bono assistance from a local non-profit. Fareeda is relieved to be accepted as a client at this non-profit but learns that this is just the beginning of the work ahead of her. Over the course of the next year or several years, Fareeda will spend many hours recounting the horrors of her attack and her lifelong gender discrimination in Afghanistan to many strangers, she will undergo psychological and medical evaluations to document the harms she suffered, and she will testify and be cross-examined about those experiences in an adversarial immigration court hearing. Her lawyer will also do hours of research to assemble evidence of the country conditions in Afghanistan, perhaps even engaging experts, and will craft legal arguments explaining why the immigration judge should use their discretion to grant Fareeda asylum. In spite of their efforts documenting Fareeda's claim, her lawyer advises her that there is no guarantee that she will win her asylum case because the immigration judge assigned to her case is skeptical of gender-based asylum claims.

In response to the ever-growing U.S. asylum backlog, scholars have called for the creation of a "group-based" asylum mechanism through which U.S. immigration agencies could designate certain

5. Although asylum seekers must apply for asylum within one year of their entry to the U.S., there is no guarantee that Fareeda's first immigration court hearing would happen during that time and, other than a small notice in English on her immigration paperwork, Fareeda may not know about the need to file Form I-589 within her first year of being in the U.S. See U.S. CITIZENSHIP IMMIGR. SERV., FORM I-589, INSTRUCTIONS FOR APPLICATION FOR ASYLUM AND FOR WITHHOLDING OF REMOVAL 7 (2025), <https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf> [<https://perma.cc/LQD3-YT2Q>] ("If you are unable to explain why you did not apply for asylum within the first year after you arrived in the United States or your explanation is not accepted by the Government, you may not be eligible to apply for asylum.").

groups of migrants as presumptively eligible for asylum based on shared characteristics, experiences, or risk of future harm. This mechanism would provide a release valve for our current adjudication system, in which individual asylum seekers bear the entire evidentiary burden of proving they meet the refugee definition.⁶ In 2022, the U.S. Citizenship and Immigration Services (USCIS) Ombudsman embraced recommendations for the adoption of such a group-based approach to triage the existing asylum backlog.⁷ Despite the use of group-based designations in its refugee program and the growing use of group-based asylum determinations to address asylum backlog in foreign law systems, the U.S. has yet to adopt a group-based asylum mechanism.⁸

This Article examines the viability of group-based designation of asylees to expedite certain adjudications within the U.S. asylum system by looking at points of comparison within international and domestic legal systems of the Organization of African Unity, the European Union, Canada, and Brazil. Some scholars identify group-based asylum mechanisms as an understudied area in comparative legal studies.⁹ Further, the use of group-based asylum and refugee

6. See, e.g., Philip G. Schrag, Jaya Ramji-Nogales & Andrew I. Schoenholtz, *The New Border Asylum Adjudication System: Speed, Fairness, and the Representation Problem*, 66 HOWARD L. J. 571, 616–25 (2023) (describing that the asylum adjudication process created by the Biden administration requires applicants to meet arduous evidentiary burdens in a short time frame); Denise Gilman, *Making Protection Unexceptional: A Reconceptualization of the U.S. Asylum System*, 55 LOY. UNIV. CHI. L. J. 1 (2023) (proposing a move away from exceptionalist asylum models toward a more streamlined and accessible protection framework). See also James C. Hathaway, Professor of Law and Founding Director of the Program in Refugee and Asylum Law, U. Mich. L. Sch. Address Before Canada's Standing Senate Committee on Human Rights (Nov. 6, 2023), in SENATE CANADA, Nov. 2003, at 6 <https://sencanada.ca/en/Content/Sen/Committee/441/RIDR/45EV-56447-E> [<https://perma.cc/CV9T-UK88>] (“The second [proposal] is quick normally[:] group-based assessment of status. To put it simply, we do not need a \$25,000 hearing to figure out that an Afghan woman is a refugee. Most refugees do not require the bells and whistles system that we have.”).

7. U.S. CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, *Annual Report 2022*, DEP'T OF HOMELAND SEC., at 45 (June 30, 2022), https://www.dhs.gov/sites/default/files/2022-06/CIS_Ombudsman_2022_Annual_Report_0.pdf [<https://perma.cc/4C8W-VPVT>].

8. See *id.* (calling for the adoption of a group-based asylum mechanism in the U.S.).

9. See generally Derya Ozkul and Caroline Nalule, *Recognising Refugees: A Review of the Literature and Approaches (1990-2020)*, REF MIG, at 5 (2023) https://opus4.kobv.de/opus4-hsog/frontdoor/deliver/index/docId/4994/file/RefMig_

determinations, despite being an existing feature of the U.S. refugee system, are understudied in the U.S. legal literature. This Article addresses both gaps by examining the purposes and methods of adoption for group-based asylum mechanisms in other legal systems to apply the lessons of those systems to the U.S. asylum system. It begins by briefly examining the history of group-based asylum determinations at the international level. This examination makes clear that there is a lack of a universal understanding or consistent vocabulary for what the author refers to as “group-based asylum” across international and domestic asylum systems. Therefore, this Article sets forth a definition of group-based asylum mechanisms that it uses to identify analogous comparative examples for a U.S. proposal.

Based on its comparative analysis, this Article concludes that the U.S. can and should adopt a group-based mechanism to expedite certain asylum claims, shifting the evidentiary burden away from asylum seekers who are part of certain demographic groups. It identifies various administrative means to implement a group-based mechanism for identifying asylees within the current backlog and to prevent future backlog in our asylum system, balancing the competing interests of expediency and certainty against security and accuracy. This proposal focuses specifically on a group-based mechanism as a means of *granting* asylum, rather than as a means of denying asylum claims, given due process limitations on denials.¹⁰ In this way, a group-based asylum mechanism would add an adjudicative pathway to the existing asylum system by identifying presumptive asylees without undercutting the rights of those whose

Working_paper_1.pdf. [<https://perma.cc/9KRS-XWRS>] (“Group recognition, where refugees are recognised on the grounds of their nationality or other identity grounds, is also a prevalent form of recognition, but has been subject to much less scholarly attention. There is little legal scholarship that traces the origins and development of RSD.”); Matthew Albert, *Governance and Prima Facie Refugee Status Determination: Clarifying the Boundaries of Temporary Protection, Group Determination, and Mass Influx*, 29 REFUGEE SURV. Q. 61 (2010).

10. See *Grace v. Whitaker*, 344 F. Supp. 3d 96, 126 (D.D.C. 2018), *aff’d in part, rev’d in part sub nom.*, *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020) (enjoining proposed regulations barring certain categories of asylum claims). *But see* Brian Soucek, *Categorical Confusion in Asylum Law*, 73 FL. L. REV. 473, 510–11 (2021), <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1619&context=fllr> [<https://perma.cc/82QM-DY7B>] (addressing confusion among courts about the legality of categorical determinations in asylum adjudications and explaining that case-by-case adjudications are best understood as an individualized opportunity to present evidence, not a requirement to do so, thereby allowing for categorical presumptions in asylum adjudications).

claims may fall outside of group designations or by sacrificing individualized vetting.

Part I of this Article begins by providing context for the current international challenge of the increasing number of refugees and the U.S. asylum system's failures to deal with this challenge. It also details examples of existing group-based determinations in U.S. administrative law, including immigration law. Part II turns to the development, challenges, and successes of group-based asylum determinations in international and foreign law systems, including the Organization of African Unity, several European Union countries, Canada, and Brazil. In Part III, it incorporates lessons from these comparative examples and identifies the likely hurdles to implementation of a group-based asylum mechanism in the U.S.

Finally, Part IV provides concrete guidance for developing a group-based asylum mechanism in the U.S. It establishes that the system should identify presumptive asylees based on certain procedural and substantive criteria, including adaptability to changing conditions, transparency of process and determinations, easily defined groups, the availability of reliable information, and the lack of complicating factors, such as statutory bars or credibility issues. While there are undoubtedly downsides and challenges to the adoption of such a mechanism, this Part urges that the benefits are numerous, particularly regarding backlog reduction, cost-savings, and increased expediency for asylum seekers.

I. BACKGROUND: MORE REFUGEES, MORE BACKLOG

This Part provides some context for group-based refugee and asylee¹¹ determinations under international refugee law. It provides a brief explanation of the international refugee protection system and the current challenge of historic numbers of refugees around the

11. This Part uses “refugee” and “asylee” interchangeably, as the terms are functionally the same for purposes of group-based determinations in international law contexts. Later, I distinguish between the two to match U.S. legal definitions and usage. The difference stems from where an individual is determined to be in need of protection—either outside of the United States (refugee) or within the United States (asylee). *Compare* Immigration Nationality Act (INA) § 101(a)(42)(A), 8 U.S.C. § 1101 and INA § 108, 8 U.S.C. § 1101 (defining “refugee”) with INA § 208, 8 U.S.C. § 1158 (permitting admission of asylees, those determined to meet the definition of refugee, who apply when physically present in the U.S.) and INA § 207, 8 U.S.C. § 1157 (permitting admission of refugees so designated before entering the U.S.).

globe. It then describes the current state of the U.S. asylum adjudication system, including growing backlogs and complexity in the individual adjudication system. Finally, it briefly notes areas in which the U.S. already uses group-based determinations to make expedient and consistent decisions in other areas of administrative and immigration law.

A. Refugees and Refugee Protections: Putting Post-World War II Promises to the Test

International protections for refugees and otherwise targeted populations developed in response to the horrors of World War II and the large groups of displaced individuals that resulted. The Refugee Convention of 1951 was the first international instrument to obligate states to provide safe haven and guarantee *non-refoulement* (non-return) for individuals “unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”¹² Historically, forced displacement often occurs on a large scale for entire communities, minority groups, or peoples.¹³ Indeed, the refugee protections before 1951 were limited to identified groups from specific countries or regions without state protection.¹⁴ However, the modern international refugee system was designed to center the individual rights of refugees, not as collectives.¹⁵ States were left to fulfill this obligation through the adoption of individual

12. U.N. High Comm’r for Refugees, *Introductory Note to Convention and Protocol Relating to the Status of Refugees*, at 3 (2010) <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> [hereinafter UNHCR Introductory Note] (on file with the *Columbia Human Rights Law Review*)

13. Jean-Francois Durieux & Agnès Hurwitz, *How Many is Too Many? African and European Legal Responses to Mass Influxes of Refugees*, 47 GERMAN Y.B. INT’L L. 105, 108 (2004).

14. Jean-François Durieux, *The Many Faces of “Prima Facie”: Group-Based Evidence in Refugee Status Determination*, 25 REFUGEE 151, 154 (2008).

15. See *id.* at 106. The concept of the individual as a subject of international law developed alongside the concept of “Responsibility to Protect,” or the idea that States are vehicles to protect the rights of individuals rather than States as concentrations of power. See Simone Gorski, *Individuals in International Law*, in MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW (2013), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e829> [<https://perma.cc/V3FQ-4QAF>].

refugee and asylee determinations within their domestic legal systems without specific guidance from the Refugee Convention.¹⁶

Nevertheless, the displacement of entire peoples and mass migration of refugees continued. Despite the individual adjudication mechanisms adopted by states, the U.N. High Commissioner for Refugees (UNHCR) explains that “[r]ecourse has . . . been had to so-called ‘group determination’ of refugee status, whereby each member of the group is regarded *prima facie* (i.e., in the absence of evidence to the contrary) as a refugee” in certain circumstances.¹⁷ In 1956, Hungarian migrants were treated as presumptive refugees after a failed revolution.¹⁸ Similarly, refugees fleeing Vietnam in the late 1970s were also treated as *prima facie* refugees in many receiving nations.¹⁹ With this history, it’s a wonder that the norm of individual asylum adjudications was and continues to be so strong. Perhaps this can be explained by the suggestion that group-based determinations are “better conceptualized as being concerned with a refugee legal status granted when the host State’s [refugee status determination] apparatus is overwhelmed, rather than a procedure adopted in response to a numerically large influx.”²⁰

While the challenges of mass migration are not new, the international refugee protection system is under increased strain due to growing numbers of refugees and displaced populations in our current decade.²¹ UNHCR notes that 2021 marked the first year that

16. See Durieux, *supra* note 14, at 110; see also UNHCR Introductory Note, *supra* note 12, at 11 (defining “refugee” and accompanying rights in the singular).

17. U.N. High Comm’r for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, at ¶ 44, U.N. Doc. HCR/1P/4/ENG/REV. 4 (2019), <https://www.refworld.org/policy/legalguidance/unhcr/2019/en/123881> [hereinafter UNHCR Handbook] (on file with the *Columbia Human Rights Law Review*) (citation omitted).

18. Bonaventure Rutinwa, *Prima Facie status and refugee protection*, (U.N. High Comm’r for Refugees Evaluation and Policy Analysis Unit, Working Paper No. 69, 2002), <https://www.refworld.org/reference/nirrs/unhcr/2002/en/87319> (on file with the *Columbia Human Rights Law Review*).

19. Sten A. Bronee, *The History of the Comprehensive Plan of Action*, 5 INT’L J. REFUGEE L. 534, 536 (1993).

20. Albert, *supra* note 9, at 66; see also Durieux, *supra* note 14, at 119 (analyzing the legal systems and institutions used in Africa and Europe to manage the administrative and humanitarian challenges posed by mass refugee influxes).

21. T. ALEXANDER ALEINIKOFF & LEAH ZAMORE, *THE ARC OF PROTECTION: REFORMING THE INTERNATIONAL REFUGEE REGIME 1* (2019).

rates of forced displacement exceeded those in the aftermath of World War II.²² According to UNHCR, 3.6 million claims of refugees and asylees were filed in 2023, with the U.S. receiving 1.2 million of those claims, followed by Germany (329,100), Egypt (183,100), Spain (163,200), and Canada (146,800).²³ More frequent and devastating mass migration events due to natural disasters, failed governments, climate change, violent conflict, and general instability are on the rise.²⁴ Examples of forcibly displaced populations can be found in Europe, Asia, Africa, and the Americas.²⁵ Like the United States, countries such as the United Kingdom and Germany grapple with the impact of large arrivals of asylum seekers on their asylum systems.²⁶

22. Adrian Edwards, *Forced Displacement Worldwide at its Highest in Decades*, UNHCR (June 19, 2017), <https://www.unhcr.org/news/stories/forced-displacement-worldwide-its-highest-decades> [https://perma.cc/C5A2-BUUN] (asserting in 2017 that forced displacement was at its highest level since UNHCR was founded after World War II).

23. U.N. HIGH COMM'R FOR REFUGEES, *GLOBAL TRENDS: FORCED DISPLACEMENT IN 2023*, at 2 (2024), <https://www.unhcr.org/us/global-trends-report-2023> [https://perma.cc/8HHP-EMPA].

24. *Id.* at 7 (explaining that “[t]he frequency, extent, duration and intensity of conflicts as measured by conflict-related fatalities is closely correlated with the number of people forced to flee in each year” and that that number is increasing).

25. See, e.g., *Ukraine Emergency*, USA FOR UNHCR, <https://www.unrefugees.org/emergencies/ukraine/> (on file with the *Columbia Human Rights Law Review*) (last visited Feb. 17, 2026) (detailing the ongoing humanitarian emergency and large-scale displacement resulting from the war in Ukraine); *Rohingya Refugee Crisis Explained*, USA FOR UNHCR (Aug. 23, 2023), <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained> (on file with the *Columbia Human Rights Law Review*) (explaining the causes and scale of the refugee crisis faced by Rohingya population, after their prosecution in Myanmar); *South Sudan Refugee Crisis Explained*, USA FOR UNHCR (July 24, 2023), <https://www.unrefugees.org/news/south-sudan-refugee-crisis-explained/> (on file with the *Columbia Human Rights Law Review*) (describing the displacement and humanitarian needs stemming from the South Sudan refugee crisis, caused by a violent conflict in the country); *Venezuelan Refugee and Migrant Crisis*, INT'L ORG. FOR MIGRATION, <https://www.iom.int/venezuelan-refugee-and-migrant-crisis> [https://perma.cc/ETK6-MVX3] (last visited Feb. 17, 2026) (analyzing the scale and regional impact of the Venezuelan refugee and migrant crisis).

26. Colin Yeo, *Briefing: four problems in the UK asylum system and how to address them*, FREE MOVEMENT (Jan. 16, 2026), <https://freemovement.org.uk/briefing-the-sorry-state-of-the-uk-asylum-system/> [https://perma.cc/3K33-WQBN]; Tom Sasse, Rhys Clyne & Sachin Savur, *Asylum Backlog*, INST. FOR GOV'T (Feb. 24, 2023), <https://www.instituteforgovernment.org.uk/explainer/asylum-backlog> [https://perma.cc/NK3A-HM2F]; *Germany: Asylum procedure slightly faster*, INFOMIGRANTS (Oct. 20, 2023), <https://www.infomigrants.net/en/post/52723/germany-asylum-procedure-slightly-faster> [https://perma.cc/93UL-APZP].

Furthermore, there has been a rise in border securitization and externalization that limit freedom of movement and make it harder for individuals to flee dangerous conditions without encountering and being trapped by formal migration systems.²⁷ Thus, many States face an unprecedented number of refugees during an era of maximum border security, causing many migrants to be caught up in increasingly securitized and complex immigration systems. Unsurprisingly, this has strained refugee protection systems in many countries and led some to label these situations as “migrant crises” in Europe and the Americas.²⁸ Another way of looking at this “crisis” is that States are for the first time being asked to live up to the obligations the Refugee Convention was designed to address.

Since 2016, UNHCR has encouraged States to use group-based determinations to increase efficiency in processing refugee and asylum determinations.²⁹ In 2019, UNHCR first issued guidance for

27. See, e.g., Jeff Crisp, *What is Externalization and Why is it a Threat to Refugees?*, CHATHAM HOUSE (Mar. 5, 2021) <https://www.chathamhouse.org/2020/10/what-externalization-and-why-it-threat-refugees> [<https://perma.cc/TNT7-5BLJ>] (explaining that externalization involves shifting migration control responsibilities to third countries to prevent asylum seekers from reaching destination states); Bill Frelick, Ian M. Kysel & Jennifer Podkul, *The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants*, 4 J. MIGRATION & HUM. SEC. 190, 194 (2016) (arguing that externalization policies undermine asylum seekers’ rights by limiting access to protection mechanisms); AYELET SHACHAR, *THE SHIFTING BORDER: LEGAL CARTOGRAPHIES OF MIGRATION AND MOBILITY 1* (2020), <https://thecic.org/wp-content/uploads/2023/08/Shachar-Shifting-Border-RODA-Final.pdf> [<https://perma.cc/8QVT-4CY7>] (theorizing that states increasingly project border controls beyond their territory to regulate mobility and migration).

28. See, e.g., *Refugee Crisis in Europe*, USA FOR UNHCR <https://www.unrefugees.org/emergencies/europe/> [<https://perma.cc/7EGG-G3A3>] (last visited Feb. 17, 2026) (providing an overview of refugee displacement and humanitarian needs in Europe); Fergal Keane, *Migrant crisis: How Europe went from Merkel's 'We can do it' to pulling up the drawbridge*, BBC (Sept. 3, 2025), <https://www.bbc.com/news/articles/cn5e5q7w41eo> [<https://perma.cc/M7HJ-JR5E>] (describing Europe’s shift from welcoming refugee policies to more restrictive border controls).

29. U.N. High Comm’r for Refugees, *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status*, U.N. Doc. HCR/GIP/15/11, ¶ 17 (June 24, 2015), [hereinafter UNHCR Guidelines] <https://www.refworld.org/policy/legalguidance/unhcr/2015/en/105663> (on file with the *Columbia Human Rights Law Review*) (including prima facie determinations as part of its “new strategic direction” for refugee status determinations); UN High Comm’r for Refugees, *Refugee Status Determination*, U.N. Doc. EC/67/SC/CRP.12, ¶ 8–10 (May 31, 2016), [hereinafter UNHCR *Refugee Status Determination*] <https://www.refworld>

adopting group-based asylum mechanisms through the recognition of *prima facie* refugee status to address mass migration events.³⁰ UNHCR explained that a *prima facie* or group-based approach is well-suited to situations of large influxes of refugees into a certain territory or where similarly situated individuals shared a “readily apparent risk of common harm.”³¹ UNHCR identifies groups in individuals sharing characteristics, such as “ethnicity, place of former habitual residence, religion, gender, political background or age, or a combination thereof, which exposes them to risk.”³² UNHCR emphasized that these group-based determinations should be made based on “relevant, current, and reliable sources.”³³ When reliable information is scarce or there is conflicting information, “UNHCR has a long-established practice of recommending to governments the application of a *prima facie* approach to given situations.”³⁴ In 2024, UNHCR issued additional guidance on how and when States can implement such an approach using “differentiated asylum case processing modalities.”³⁵ There, UNHCR suggests that States implement a *prima facie* approach through a simplified refugee status determination “in situations where the nationality of the group is easily determined due to the availability of documentation or in a context of mass influx.”³⁶

B. The Broken U.S. Asylum Adjudication System

Within this context of rising numbers of refugees, the U.S. asylum system is buckling under a historic backlog of cases and inadequate funding to process and adjudicate claims of those seeking protection in the U.S. The current asylum system is premised on individual asylum seekers filing applications for asylum with either USCIS’s Asylum Office or an immigration court under the purview of the U.S. Department of Justice (DOJ), depending on the individual’s

.org/reference/annualreport/unhcr/2016/en/112071 [https://perma.cc/32SB-LSW7] (highlighting group-based determinations as efficiency mechanisms).

30. UNHCR Handbook, *supra* note 17, at 203.

31. *Id.* at 205.

32. *Id.*

33. *Id.* at 206.

34. UNHCR *Refugee Status Determination*, *supra* note 29, at ¶ 17.

35. U.N. High Comm’r for Refugees, *Implementing Differentiated Asylum Case Processing Modalities*, ¶ 1 (Aug. 2024) [hereinafter UNHCR, *Differentiated Asylum Case Processing*], <https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148370> [https://perma.cc/K547-RWYN].

36. *Id.* at 3.

immigration history.³⁷ Each applicant bears the burden of proving that they individually meet the definition of a refugee, including by providing details of their individualized fear of return, and their home country's inability or unwillingness to protect them from persecution.³⁸ As a result, "an asylum case is a factual account of what can be the most traumatic moment of a person's life[, with] [e]ach case involv[ing] a unique set of facts and legal considerations that have to fit a narrow definition to win protection."³⁹ Because of the lack of pre-hearing screening, every case must be prepared to the fullest extent even if it is ultimately uncontested on the day of the merits hearing or interview.⁴⁰ Under the current system, "a straightforward asylum case does not exist."⁴¹

Both the Asylum Office and the immigration courts are backlogged in adjudicating asylum applications. In fiscal year 2023, approximately 444,000 asylum applications were filed with the Asylum Office, while only about ten percent of those applications were adjudicated.⁴² In 2023, the number of pending applications with

37. HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., R47504, *HOMELAND SECURITY & EMERGENCY MANAGEMENT; IMMIGRATION 1* (2025). For the purpose of this discussion, the procedural distinction is inconsequential because both systems face severe asylum backlogs in adjudications. The Asylum Office decides affirmative asylum applications, filed by noncitizens who are not in removal proceedings. An asylum officer interviews the applicant and either grants asylum or refers the case to removal proceedings. When DHS initiates removal proceedings against a noncitizen, that noncitizen may file an asylum application as a defense to deportation ("defensive asylum"). Defensive asylum applications are adjudicated by a DOJ-employed immigration judge.

38. This applies except for claims that cover a family, both the principal applicant and their derivative beneficiaries. Derivative status does not include children over 21 or extended family members, let alone co-workers, political party members, or other individuals with similar bases for asylum eligibility.

39. AM. IMMIGR. LAWS. ASS'N, *supra* note 3, at 8.

40. See Jaya Ramji-Nogales, Andrew I. Schoenholtz & Phillip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 376 (2007), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub> [<https://perma.cc/W8Z8-6FBU>] ("[A]dvocates are able to collect affidavits from lay and expert witnesses and corroborating documents; are familiar with the Immigration and Nationality Act, its regulations, and case law; understand the court's standards for corroboration and authentication; know filing requirements and timetables; and know how to conduct examination of witnesses.").

41. AM. IMMIGR. LAWS. ASS'N, *supra* note 3, at 8.

42. Memorandum from Joseph V. Cuffari, Inspector Gen., U.S. Dep't of Homeland Sec. to Ur M. Jaddou, Dir., U.S. Citizenship & Immigr. Servs., at 6-7 (July 3, 2024) [hereinafter *DHS Memo to USCIS*], <https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf> [<https://perma.cc/NBM3->

the Asylum Office exceeded 1 million.⁴³ In part, this backlog is due to the requirement that asylum officers split their time between conducting full interviews and shorter initial interviews of asylum seekers placed in expedited removal procedures upon arrival to the U.S.⁴⁴ Making matters worse, the Asylum Office often refers cases to immigration court rather than granting asylum.⁴⁵ The failure of the Asylum Office to grant asylum to eligible asylum seekers in the first instance contributes to this growing backlog by forcing asylum claims to be re-adjudicated as a defense to deportation in immigration court.⁴⁶ Studies show that grant and referral rates vary widely by jurisdiction and among individual asylum officers.⁴⁷ By September 2025, the immigration court backlog hovered around 3.4 million

64NU]. This is a notable increase from 2022, in which approximately 667,040 applications were pending. Letter from Rep. Andy Barr to Ur M. Jaddou, Dir., U.S. Citizenship & Immigr. Servs. (Feb. 17, 2023), https://www.uscis.gov/sites/default/files/document/foia/Asylum_backlog-Representative_Barr.pdf [<https://perma.cc/J7QU-RALZ>].

43. DHS Memo to USCIS, *supra* note 42, at 6–7.

44. U.S. CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, *supra* note 7, at 49–50. Some individuals without status are placed in expedited proceedings known as expedited removal. If an individual claims a fear of return to their home country once in expedited removal, then an asylum officer will screen that individual for a “credible fear” of return. Despite receiving a pre-screening to remain in the country, this does not lessen the burden of proof in subsequent asylum adjudication hearings.

45. HUM. RTS. FIRST, USCIS RECORDS REVEAL SYSTEMIC DISPARITIES IN ASYLUM DECISIONS (2022), <https://humanrightsfirst.org/wp-content/uploads/2022/09/AsylumOfficeFOIASystemicDisparities.pdf> [<https://perma.cc/QKF2-YLYX>]. Immigration Judges more often than not approve asylum claims referred from the Asylum Office. *Id.*

46. One report argues that supervisory control, officer burnout, time pressures, and over-emphasis on credibility affect Asylum Office grant rates. UNIV. MAINE SCH. L. REFUGEE HUM. RTS. CLINIC ET AL., LIVES IN LIMBO: HOW THE BOSTON ASYLUM OFFICE FAILS ASYLUM SEEKERS (2022), <https://mainelaw.maine.edu/wp-content/uploads/sites/1/Lives-in-Limbo-How-the-Boston-Asylum-Office-Fails-Asylum-Seekers-FINAL-1.pdf> [<https://perma.cc/4XK4-RPUA>].

47. Ramji-Nogales, Schoenholtz & Schrag, *supra* note 40, at 372–74 (“[O]ur data also showed some dramatic differences across geographic territory. Among regional asylum offices, overall grant rates for applications from nationals of eleven APCs varied between 26% in one region and 62% in another region.”); SAFE HARBOR CLINIC BROOK. L. SCH., A FIEFDOM ON LONG ISLAND: AN INVESTIGATION INTO THE CULTURE AND PRACTICES OF THE NEW YORK ASYLUM OFFICE (2023), <https://www.brooklaw.edu/media/jm1lgic/a-fiefdom-on-long-island.pdf> [<https://perma.cc/P2X7-Q8JF>]; UNIV. MAINE SCH. L. REFUGEE HUM. RTS. CLINIC, *supra* note 46.

pending cases,⁴⁸ with about 2.3 million of the pending cases involving asylum applications.⁴⁹

This backlog is catastrophic for asylum seekers, who are forced to live in uncertainty. “The psychosocial and economic costs of such long wait times to both asylum seekers and their families, as well as to their host communities (particularly when asylum seekers have limited rights to employment), are high and can have effects that stretch on for years afterwards.”⁵⁰

Several factors contribute to the backlog. First, the stringent evidentiary requirements of U.S. asylum law cause delays as applicants struggle to obtain required evidence. As Professor Sabrineh Ardalan explains, “adjudicators have increasingly demanded extensive proof of an applicant’s claim—proof that can be extraordinarily difficult to obtain without legal representation.”⁵¹ For example, to corroborate and prove a single asylum claim, asylum seekers and their lawyers regularly gather and submit witness statements and testimony, photographs, original government documents or media reports, forensic medical evaluations, psychological evaluations, expert testimony on country conditions, and hundreds of pages of country conditions and human rights reports.⁵² These requirements contribute to longer hearings and interviews, already characterized by adjudicators’ fact-intensive

48. See *Immigration Court Quick Facts*, TRACIMMIGRATION <https://www.tracreports.org/immigration/quickfacts/eoir.html> [https://perma.cc/F9W4-CJFX] (last visited Feb. 14, 2026) (providing statistical overview of immigration court caseloads, completion rates, and case outcomes).

49. *Id.* The number of asylum cases within all immigration court cases is hard to identify because many asylum seekers without counsel struggle to properly complete and file their asylum application, thereby completing just the first step in asserting an asylum claim. *Asylum in the United States*, AM. IMMIGR. COUNCIL (Jan. 15, 2024), <https://www.americanimmigrationcouncil.org/factsheet/asylum-united-states/> [https://perma.cc/7VBB-4VVN].

50. HANNE BEIRENS, MIGRATION POL. INST., CHASING EFFICIENCY: CAN OPERATIONAL CHANGES FIX EUROPEAN ASYLUM SYSTEMS?, at 27 (2020), <https://www.migrationpolicy.org/sites/default/files/publications/MPIE-Chasing-Efficiency-EuropeAsylum-Final.pdf> [https://perma.cc/V6WD-PP68]; AM. IMMIGR. LAWS. ASS’N, *supra* note 3, at 16; see also Sonia Geba, *Legal Liminality Across Borders: Examining the Migrant’s Right To “Human Time” on the Shifting U.S.-Mexico and Türkiye-Syria Borders*, 38 GEO. IMMIGR. L. J. 327 (2024).

51. Sabrineh Ardalan, *Access to Justice for Asylum Seekers: Developing an Effective Model of Holistic Asylum Representation*, 48 UNIV. MICH. J. L. REFORM 1001, 1014 (2015).

52. See, e.g., AM. IMMIGR. LAWS. ASS’N, *supra* note 3, at 9–11.

inquiries.⁵³ Additionally, many asylum applicants must overcome practical hurdles, including PTSD, language barriers, and misinformation about the asylum process.⁵⁴ All of this is exacerbated by the overwhelming opacity of the asylum system. For example, all Asylum Office decisions and many asylum decisions in immigration court arrive via oral decisions or unpublished orders that do not contain any reasoning, particularly when a case is strong or uncontested.⁵⁵ Furthermore, the Board of Immigration Appeals, the administrative appellate body to the immigration courts, often publishes decisions with few factual details.⁵⁶ Thus, because of the fact-specific nature of asylum claims and the lack of clear precedent, few transparent rules for asylum standards develop.⁵⁷

Consequently, asylum seekers and their counsel are forced to commit ever more resources, time, and energy to their claims. These

53. *See id.* at 9 (“The federal government places significant weight on the consistency of the information and the corroborating evidence presented by the asylum seeker, as required by the 2005 Real ID Act.”); Brian Soucek, *Categorical Confusion in Asylum Law*, 73 FL. L. R. 473, 478–485 (2021) (describing the evolution of the insistence on case-by-case legal determinations in asylum cases involving particular social groups).

54. Ardalan, *supra* note 51, at 1018–22 (listing community rumors and misinformation, PTSD, trauma, lack of information about asylum that also leads asylum seekers to omit/forget parts of their stories, and the need for medical and mental health services as barriers to asylum seekers success).

55. Margy O’Herron, *The Immigration Court System, Explained*, BRENNAN CTR. FOR JUST. (June 24, 2025), <https://www.brennancenter.org/our-work/research-reports/immigration-court-system-explained> [<https://perma.cc/BA3B-VCG7>] (“In the vast majority of cases, immigration judges issue an oral decision in court at the end of the hearing”); *The Affirmative Asylum Process*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process> [<https://perma.cc/5RC8-CCPJ>] (“[Y]ou will return to the asylum office to pick up the decision 2 weeks after the asylum officer interviewed you”).

56. Scott Rempell, *Unpublished Decisions and Precedent Shaping: A Case Study of Asylum Claims*, 31 GEO. IMMIGR. L. J. 1, 48 (2016). (“The study documented too many instances where the [BIA] employed verbiage that masked or arguably misconstrued the record.”). Furthermore, even at the BIA level, published and unpublished decisions vary significantly and fail to create a coherent body of law. *Id.* at 1 (“[M]any of the rule statements the court applied in unpublished decisions contradicted rules it promulgated in its public decisions, which indicates the ‘book law’ is not completely settled. The court also reached inconsistent outcomes regarding a significant percentage of its unpublished cases.”).

57. *See, e.g.*, Brian Soucek, *Categorical Confusion in Asylum Law*, 73 FL. L. R. 473, 478–485 (2021) (describing the evolution of the insistence on case-by-case legal determinations in asylum cases involving particular social groups).

requirements contribute to the lack of legal representation for asylum seekers, since immigration practitioners are resource-constrained. Further, stringent evidentiary requirements prevent non-immigration practitioners from being able to easily take on a case pro bono, decreasing the share of represented asylum seekers and contributing to worse results for applicants.⁵⁸ In fact, since EOIR started providing relevant data in 2018, the proportion of represented respondents decreased from two-thirds to one-third, while the number of pending cases quadrupled.⁵⁹

These backlogs are not only detrimental for the asylum seekers forced to wait in uncertainty, but also for the immigration agencies tasked with processing these claims. These agencies face the increasing numbers and complexity of asylum adjudications with inadequate funding and resources.⁶⁰ Since 2007, the number of pending immigration court cases has increased 2000 percent, yet the number of immigration judges has barely kept pace.⁶¹ In 2024, the

58. *Too Few Immigration Attorneys: Average Representation Rates Fall from 65% To 30%*, TRACIMMIGRATION (Jan. 24, 2024), <https://tracreports.org/reports/736/> [<https://perma.cc/G7JS-L3PL>] (describing that immigration attorneys are crucial for both fairness and efficiency, since attorneys alleviate a variety of administrative delays and generally “facilitate a more functional legal process”); *Speeding Up the Asylum Process Leads to Mixed Results*, TRACIMMIGRATION (Nov. 29, 2022), <https://tracreports.org/reports/703/> [<https://perma.cc/A46D-XNH9>] (reporting that “[o]nly 18 percent [of asylum seekers] won asylum when unrepresented,” in part because unrepresented asylum seekers often struggle to complete the initial asylum application); *Outcomes of Immigration Court Proceedings*, TRACIMMIGRATION <https://tracreports.org/phptools/immigration/closure/> [<https://perma.cc/2SSF-2F34>]; Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 UNIV. PA. L. REV. 1, 28-30 (2015); Andrew Schoenholtz & Hamutal Bernstein, *Improving Immigration Adjudications through Competent Counsel*, 21 GEO. J. LEGAL ETHICS 55 (2008); see also Edgar Sandoval, *A New Challenge for Asylum Seekers: Lawyer Shortages*, N.Y. TIMES (May 19, 2024), <https://www.nytimes.com/2024/05/19/us/migrants-lawyer-shortages.html> (on file with the *Columbia Human Rights Law Review*).

59. Studies indicate that respondents with pending asylum applications are represented at a rate of about 70 percent. See HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., IF12158, U.S. IMMIGRATION COURTS: ACCESS TO COUNSEL IN REMOVAL PROCEEDINGS AND LEGAL ACCESS PROGRAMS, at 1 (2024). However, given the difficulty of filing an asylum application without the assistance of counsel, the 70 percent figure does not necessarily represent the rate of representation for all asylum seekers in immigration court proceedings.

60. DHS Memo to USCIS, *supra* note 42, at 7.

61. AM. IMMIGR. COUNCIL, THE COST OF IMMIGRATION ENFORCEMENT AND BORDER SECURITY 7 (2024). Further exacerbating this problem is the Trump Administration’s recent firings of immigration judges throughout the country.

725 immigration judges employed by the DOJ carried an average of 5,000 cases each.⁶² The average adjudication time, from case initiation to decision, is nearly four years.⁶³ Perhaps reflecting increasingly complex evidentiary requirements, immigration judges in 2023 decided an average of about 500 cases a year compared to 1000 a year in 2009.⁶⁴ While not all cases involve asylum claims, the backlog across all cases in immigration court results in a longer wait for a decision for asylum seekers in immigration court proceedings.⁶⁵ For claims before the Asylum Office, the wait for a decision is nearly six years.⁶⁶ This backlog impairs the government's interest in the finality of these claims, and the security vetting that comes with asylum adjudication is delayed.

The immigration agencies have no merit-based mechanism to organize and prioritize asylum adjudication to alleviate the backlog. Neither USCIS nor Department of Homeland Security (DHS) trial attorneys in immigration court have a system of pre-screening cases, or for exercising discretion to decide which cases are more complex than others.⁶⁷ Thus, only after the asylum seeker has already gathered hundreds of pages of evidence, prepared to testify, and faced the stress of a hearing do they know whether their case will be highly scrutinized or quickly granted. DHS's only policies for navigating this

Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NEWS (Nov. 12, 2025, 6:35 PM EST), <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>.

62. AM. IMMIGR. COUNCIL, *supra* note 61; see *New Proceedings Filed in Immigration Court*, TRACIMMIGRATION, <https://tracreports.org/phptools/immigration/ntanew/> [<https://perma.cc/A6BE-VVHQ>] (documenting the growing federal budget allocated to immigration enforcement operations and border infrastructure).

63. MUZAFFAR CHISTI ET AL., MIGRATION POL'Y INST., AT THE BREAKING POINT: RETHINKING THE U.S. IMMIGRATION COURT SYSTEM 16 (2023), https://www.migrationpolicy.org/sites/default/files/publications/mpi-courts-report-2023_final.pdf [<https://perma.cc/M38E-VPCJ>].

64. *Id.* at 15.

65. In 2023, ICE offices—which are responsible for initiating cases in immigration court for many recently arrived migrants entering at the southern border—told migrants in New York to return in 2033 for their first check in appointment to initiate their immigration court case. Elliot Spagat, *Immigrants Waiting 10 Years in US Just to Get a Court Date*, APNEWS (Apr. 26, 2023, 2:09 PM EST), <https://apnews.com/article/immigration-courts-wait-54bb5f7c18c4c37c6ca7f28231ff0edf> [<https://perma.cc/E53F-JDBM>].

66. Parness, *supra* note 3; AM. IMMIGR. LAWS. ASS'N, *supra* note 3, at 16.

67. *But see* U.S. CITIZENSHIP & IMMIG. SERVS., BACKLOG REDUCTION OF PENDING AFFIRMATIVE ASYLUM CASES 8 (2021) (allowing the Asylum Office to waive an interview for certain cases).

backlog is the selective use of prosecutorial discretion⁶⁸ and “non-appearance,” or DHS attorneys simply not showing up for a merits hearing in immigration court.⁶⁹ An exception is the Congressionally directed prioritization of the Afghan asylum claims for individuals who were evacuated in 2021.⁷⁰

As other scholars and commentators note, these conditions are pushing the U.S. asylum system to the brink of collapse.⁷¹ These backlogs and increased evidentiary requirements undoubtedly contribute to the increased cost in terms of government resources

68. See, e.g., Memorandum from Kerry E. Doyle, Principal Legal Advisor to U.S. Immig. & Customs Enft, Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (Apr. 3, 2022) (explaining that “the exercise of prosecutorial discretion, where appropriate, can preserve limited government resources, achieve fair and just outcomes in individual cases, and advance DHS’s mission of administering and enforcing the laws of the United States”). Note, however, that the Trump administration rescinded the application of this policy memo early in his second administration. See Memorandum from Sirce E. Owen, Acting Director, U.S. Dep’t of Just. Exec. Off. for Immig. Rev., Memorandum to All of EOIR: Cancellation of Policy Memorandum 21-25 (Jan. 29, 2025) [hereinafter Owen Memorandum] [<https://perma.cc/3J96-6BND>]. Prosecutorial discretion may still be used on an ad hoc basis. See *U.S. v. Texas*, 599 U.S. 670, 684–85 (2023) (holding the Court cannot order the executive branch to take enforcement actions against violators of federal law).

69. AM. IMMIGR. LAWS. ASS’N, PRACTICE POINTER: ADVOCATING IN IMMIGRATION COURT WHERE OPLA DOESN’T APPEAR OR DOES NOT RESPOND (2024), <https://www.aila.org/library/practice-pointer-advocating-in-immigration-court-where-opla-doesnt-appear-or-does-not-respond> (on file with the *Columbia Human Rights Law Review*) (“[P]ractitioners have seen increasing instances of OPLA (1) not appearing at immigration court hearings and (2) not filing responses to noncitizens’ motions and other filings with the immigration court.”).

70. *Operation Allies Welcome*, DEP’T OF HOMELAND SEC. (Jan. 22, 2026), <https://www.dhs.gov/archive/operation-allies-welcome> [<https://perma.cc/KR4R-EMS6>]. Even with this policy in place, Afghan asylum seekers had to resort to federal litigation to demand that DHS fulfill its own processing timelines. See Press Release, Nat’l Immigr. Just. Ctr., Afghan People Seeking Asylum Reach Landmark Settlement with U.S. Government in Class Action (Sept. 11, 2023), <https://immigrantjustice.org/press-release/afghan-people-seeking-asylum-reach-landmark-settlement-with-u-s-government-in-class-action/> [<https://perma.cc/7V8M-7EE4>].

71. See, e.g., Chisti et al., *supra* note 63, at 15 (highlighting “how a shortage of judges is not the sole source of problems in the court system”); see Gilman, *supra* note 6 (presenting how the current “exclusionary asylum process” creates problems in insecurity and danger, legitimacy, and breaches in the rule of law).

spent on adjudicating each asylum claim.⁷² Unfortunately, Congressional appropriations do not reflect this reality.⁷³ Rather, Congress continues to increase funding of immigration enforcement, including detention and border security, without providing adequate resources for adjudication of asylum or deportation cases.⁷⁴ The Trump administration has now encouraged more rapid adjudication of asylum applications, without a corresponding increase in funding or the creation of new adjudicatory guidelines.⁷⁵ These conditions also contribute to a fundamental misunderstanding of asylum by asylum

72. See James C. Hathaway, *Assigning Protection: Can Refugee Rights and State Preferences be Reconciled?*, 175 J. INSTITUTIONAL & THEORETICAL ECON. 33, 33 (2019) (“Put simply, resources are presently inversely correlated with protection responsibilities.”).

73. U.S. DEP’T OF HOMELAND SEC. OFF. OF INSPECTOR GEN., USCIS FACES CHALLENGES MEETING STATUTORY TIMELINES AND REDUCING ITS BACKLOG OF AFFIRMATIVE ASYLUM CLAIMS 5 (2024), <https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf> [<https://perma.cc/7K2H-NTNY>] (“This [funding] shortage forced USCIS to prioritize certain types of work over resolving its backlog of affirmative asylum cases and also resulted in USCIS setting performance goals at levels too low to timely adjudicate new claims within the statutory limits and address the existing affirmative asylum backlog.”).

74. AM. IMMIGR. COUNCIL, THE COST OF IMMIGRATION ENFORCEMENT AND BORDER SECURITY 3 (2024), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/cost_of_immigration_enforcement_factsheet_2024.pdf [<https://perma.cc/QKG5-KXZW>] (“[T]he United States spent nearly three times as much on immigration detention alone than it did on the entire adjudication system for removal and asylum claims. This consequently—leads to skyrocketing case backlogs and years of delay.”).

75. This claim is in part based upon comments made to the author and her clinic students by immigration judges during clients’ hearings, as well as direct reports from other immigration lawyers. See also *Trump Administration to Asylum Officers and IJs: Go Faster!*, THE ASYLUMIST (Mar. 19, 2025), <https://asylumist.com/2025/03/19/trump-administration-to-asylum-officers-and-ijs-go-faster/> [<https://perma.cc/ZE4X-VJ47>] (reporting that the Trump Administration is pressuring asylum officers and immigration judges to adjudicate more asylum cases). Additionally, the Executive Office of Immigration Review (EOIR), which houses the immigration courts and the Board of Immigration Appeals, has pushed new policies encouraging the “pretermission” (denial or rejection) of asylum claims and fired immigration judges whose decisions are deemed too favorable to noncitizens. See *H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025) (holding that that an IJ may pretermit (dismiss) an asylum application where the applicant has not established prima facie eligibility for relief); Owen Memorandum, *supra* note 68 (encouraging adjudicators to pretermit or reject asylum applications that detail legally insufficient facts for an asylum claim); Ximena Bustillo & Scott Simon, *The Trump administration fired nearly 100 immigration judges in 2025. What’s next?*, NPR (Jan. 10, 2026), <https://www.npr.org/2026/01/10/nx-s1-5672386/the-trump-administration-fired-nearly-100-immigration-judges-in-2025-whats-next> [<https://perma.cc/2CGR-QYUP>].

seekers, the general public, politicians, and too-often, government attorneys who participate in and serve as adjudicators in these proceedings. Perhaps that is the goal of lawmakers who refuse both to provide additional funding to the asylum system and to pass new legislation to reform it. Nevertheless, immigration agencies are not without additional tools to address these challenges.

C. Group-Based Determinations in U.S. Law

Despite the U.S. not yet adopting a group-based determination mechanism in its asylum system, such a mechanism is not without precedent in domestic and foreign law. Indeed, other areas of U.S. law, including other types of immigration benefits, employ categorical or group-based determinations to answer factual questions to process large numbers of legal and administrative claims. As detailed below, examples of these mechanisms also exist in foreign law.

First, administrative law generally provides useful examples of the concept of adjudicating voluminous technical determinations in a consistent and efficient way through classification. For example, trade law utilizes the U.S. Harmonized Tariff Schedule to comprehensively classify physical goods for imports so that standardized tariffs can be applied based on the type of good and country of origin.⁷⁶ This classification system is based on the internationally developed classification system that expert agencies then implement for the collection of tariffs.⁷⁷ While the independent U.S. International Trade Commission maintains the classification of goods, Customs and Border Protection implements and enforces this system at the border.⁷⁸ The tariff schedule and classification system allow for the movement of goods into the U.S. on a large scale and rapid timeline.⁷⁹ This system also makes tariff determinations

76. U.S. INT'L TRADE COMM'N, Harmonized Tariff Schedule, <https://hts.usitc.gov> [<https://perma.cc/MP9J-ZATX>].

77. *Id.*

78. CATHLEEN D. CIMINO-ISAACS, CONG. RSCH. SERV., R45148, U.S. TRADE POLICY PRIMER 10 (2018).

79. *See* U.S. CUSTOMS & BORDER PROT., WHAT EVERY MEMBER OF THE TRADE COMMUNITY SHOULD KNOW ABOUT: TARIFF CLASSIFICATION 9 (2004), https://www.cbp.gov/sites/default/files/documents/icp017r2_3.pdf [<https://perma.cc/25SS-M6K8>] (explaining how classifying merchandise under different systems “would be very slow and costly”).

consistent across importers and goods.⁸⁰ It provides an apt comparison in its domestic implementation of international law and in the cross-border nature of these determinations.

Within the realm of immigration law, the U.S. refugee program already utilizes group-based designations on a small scale, underscoring that group-based immigration-related adjudication is feasible.⁸¹ In addition to making refugee determinations on an individual basis, the U.S. Refugee Admissions Program (USRAP) also designates “specific groups whose members warrant resettlement as identified by the Department of State in consultation with USCIS, NGOs, UNHCR, and other experts.”⁸² These groups, known as Priority-2 or “P-2” designations, “reflect the determination that a group is of special humanitarian concern to the United States and that individual members of the group will likely qualify for admission as refugees under U.S. law.”⁸³ The State Department historically defined and identified P-2 groups in its yearly report to Congress:

P-2 designations are made based on shared characteristics that define the group. In general, these characteristics are the reason that members of the group have been persecuted or have a well-founded fear of persecution in the future. A predefined group designation is usually based on a UNHCR recommendation that lays out eligibility criteria for individuals in a specific location.⁸⁴

Once a group is designated, UNHCR provides person-specific information to U.S. authorities who can then quickly process these individuals as refugees.⁸⁵ U.S. officials still screen and interview these individuals; however, the interviews are much less intensive than in the case of asylum seekers and focus on confirming identity

80. *Id.* (describing that the harmonized systems avoided the need to classify merchandise under “differing tariff systems of various countries”).

81. This author has not found any justification of the fact that there is a group-based system of adjudication for refugees but not asylees. This author suspects that one reason for the difference may be that refugees have historically been more politically attractive than asylees, incentivizing more efficient adjudication procedures.

82. U.S. DEP’T OF STATE, REPORT TO CONGRESS ON PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2024, at 22 (2023) [hereinafter U.S. DEP’T OF STATE, 2024 Report], <https://www.state.gov/bureau-of-population-refugees-and-migration/releases/2023/11/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2024> [https://perma.cc/WFN9-8KNT].

83. *Id.*

84. *Id.*

85. *Id.* at 20.

rather than determining past harm and future fear of harm in the home country. The most recently published list of P-2 designations covers groups of refugees based on shared location, religious persecution, identification as U.S. allies in conflict zones, and certain familial ties to U.S. based asylum seekers.⁸⁶ Thus, the concept of group-based determinations is not foreign to U.S. immigration law, although it is used on a small scale.⁸⁷

86. *Id.* at 22–27. The full list for FY2025 included: Ethnic Minorities from Burma in Malaysia; Rohingya Refugees in Bangladesh; Registered Refugees Residing in the Nine Temporary Shelters in Thailand; Congolese in the Great Lakes (Congolese refugees in Rwanda, Tanzania, & Burundi within certain years); Refugees “Twice Displaced” in Ethiopia (Eritrean, Sudanese, & South Sudanese refugees in Ethiopia who were displaced from refugee camps in Ethiopia because of violence in Tigray, Afar, Benishangul-Gumuz regions); Certain Afghan Nationals (individuals who worked as employees of contractors, locally employed staff, interpreters/translators or USG funded program/project or U.S.-based media organization or NGO employees); Cubans, Haitians, Nicaraguans, & Venezuelans in Mexico (physically present before a certain date); Lautenberg Program for Certain Members of Religious Minority Groups in Eurasia, the Baltics, and Iran; Certain Iraqis Associated with the U.S. (employees of the USG, USG contractor, U.S. media, U.S. NGO in Iraq & certain family members of these employees, Iraqi beneficiaries of approved I-130s in Iraq, Jordan, Egypt, & Lebanon); Syrian Beneficiaries of Approved I-130 petitions; Central American Minors with qualifying parents/guardians in U.S.; Certain Cubans (human rights activists, members of persecuted religious minorities, former political prisoners, persons deprived of their professional credentials or other harsh/discriminatory treatment from their perceived/actual political or religious beliefs [SUSPENDED]). U.S. DEP’T OF STATE, REPORT TO CONGRESS ON PROPOSED REFUGEE ADMISSION FOR FISCAL YEAR 2025, at 18–21 (2025), <https://www.state.gov/wp-content/uploads/2024/10/Report-Proposed-Refugee-Admissions-for-FY25.pdf> [https://perma.cc/J9N8-D6QQ]. The Department of State’s report for FY2026 did not include this list and simply stated the proposed “ceiling of 7,500 refugee admissions in Fiscal Year 2026. Those admitted shall primarily be Afrikaners from South Africa.” U.S. DEP’T OF STATE, REPORT TO CONGRESS ON PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2026, at 1 (2025), <https://www.state.gov/wp-content/uploads/2025/12/Report-to-Congress-on-Proposed-Refugee-Admissions-Accessible-11-28-2025.pdf> [https://perma.cc/RP8M-ZBR2].

87. Interestingly, in 2010 Senator Patrick Leahy introduced the Refugee Protection Act of 2010 in Congress. This bill included a Temporary Protected Status-like proposal for group-based designations of refugees “justified by humanitarian concerns or . . . otherwise in the national interest.” Refugee Protection Act of 2010, S. 3113, 111th Cong. § 20(a)(2)(B)(i). The proposed bill would have allowed the Secretary of Homeland Security to designate groups of refugees for consideration. However, the bill specifically limited its application to refugees and not asylees. *Id.*

Similarly, for migrants already within the U.S., the most comparable example is Temporary Protected Status (TPS).⁸⁸ The Secretary of Homeland Security may determine to grant this temporary humanitarian relief from removal and an accompanying work authorization to individuals of countries suffering from armed conflict, natural disaster, or other unsafe conditions.⁸⁹ These determinations are usually made based on political and foreign policy considerations, and have also been withdrawn on this basis.⁹⁰ Notably, this protection is much less robust than the permanent protection and pathway to citizenship that asylum affords. However, the administrative framework and political feasibility of TPS provides a useful framework for a group-based asylum mechanism.

In sum, group-based designations are not unheard of in the existing U.S. immigration system and other areas of law. In addition to the above examples, Congress also, on occasion, passes nationality-specific immigration legislation as additional protection for certain groups of migrants.⁹¹ The political considerations involved in these examples provide useful insight into what the design of a group-based asylum mechanism may need to account for.

II. COMPARATIVE GROUP-BASED ASYLUM DETERMINATIONS BEYOND THE U.S. BORDER

As mentioned above, group-based asylum and refugee determinations are not new in the international system. However,

88. Deferred enforced departure, a lesser form of protection from deportation, operates in a similar manner, but is less often used.

89. Temporary Protected Status, 8 U.S.C. § 1254a.

90. See, e.g., *Nat'l TPS All. v. Noem*, 773 F.Supp. 3d 807, 815 (N.D. Cal. 2025) (finding that in removing TPS protections for Venezuelan beneficiaries, the government failed to show “any real countervailing harm”), *stay granted*, 145 S. Ct. 2728 (2025); Termination of the Designation of Afghanistan for Temporary Protected Status, 90 Fed. Reg. 20309 (May 13, 2025), <https://www.federalregister.gov/documents/2025/05/13/2025-08201/termination-of-the-designation-of-afghanistan-for-temporary-protected-status> [<https://perma.cc/H8HY-F67E>]; *TPS Holders and Lawyers Respond to DHS Announcement Rescinding Trump TPS Terminations*, ACLU OF S. CAL., (June 13, 2023), <https://www.aclusocal.org/en/press-releases/tps-holders-and-lawyers-respond-dhs-announcement-rescinding-trump-tps-terminations> [<https://perma.cc/G2M5-FXEM>].

91. Examples include the Nicaraguan Adjustment and Central American Relief Act, Pub. L. 105-100, Title II, 111 Stat. 2160, 2193 (Nov. 19, 1997), and the Cuban Adjustment Act, Pub. L. 89-732, 80 Stat. 1161 (Nov. 2, 1966). Similar relief was proposed for Afghan evacuees following the Taliban’s takeover. Afghan Adjustment Act, H.R. 4895, 119th Cong. (1st Sess. 2025).

group-based determination mechanisms take varying shapes depending on the legal system and political context. In fact, as explained below, there is disagreement around what “group-based” mechanisms even are. This Part begins by defining “group-based” asylum adjudication as it is understood in the context of international refugee law to identify useful points of comparison. It then examines group-based mechanisms from the Organization for African Unity (OAU), the European Union, Canada, and Brazil.

By looking to foreign States facing similar influxes of asylum seekers and asylum adjudication backlogs, we can better understand whether a similar proposal would effectively address the backlog in the U.S., and whether the U.S. asylum system shares some of the stated goals of these foreign asylum systems.⁹² This Part employs a functionalist approach to comparative legal analysis.⁹³ Rather than comparing only the formal asylum laws of each country, it identifies comparisons based on the systems’ goals and how they operate in practice. This Part primarily looks to systems that: 1) have been strained by the rising number of asylum seekers; and 2) have implemented a wider group-based mechanism into its asylum adjudication system, rather than simply using *prima facie* determinations on an *ad hoc* basis or provide temporary protections that do not lead to permanent resettlement. The examples identified include some European Union member states as well as Canada and Brazil. This Part also briefly explores foundational group-based asylum in the Organization of African Unity. It examines these group-based systems with the purpose of demonstrating the benefits, viability, and well-established precedent for the U.S. to adopt a similar system within its existing asylum infrastructure.

92. See Kevin Cope, *Methods for Comparative Migration Law: Insights From the Social Sciences*, 7 INT’L J. MIGRATION & BORDER STUD. 166, 169 (2022) <https://www.law.virginia.edu/scholarship/publication/kevin-cope/1572571> [<https://perma.cc/58QF-LZVZ>] (“For example, countries’ immigration laws vary significantly in the qualities they value in short-term and long-term migrants. . . . What explains these differences?”).

93. See, e.g., *id.* at 175 (describing how “[t]he functionalist method ‘relies on the notion that there are similar problems that can be compared, even though these might involve distinct doctrines of legal institutions in different legal systems, by tackling the same functional question’ and thus clarifying that a ‘functionalist comparison therefore considers to what extent the laws of two countries affect their subjects similarly or differently.’”).

A. What are Group-Based Asylum Mechanisms?

Even before a unified international refugee system existed, states, including the U.S., identified certain populations as refugees on a group basis. Since the adoption of the 1951 Refugee Convention, group-based determinations have mainly been used in response to many individuals fleeing their home country when individual adjudication is not practicable, usually on an ad hoc basis to address a temporary situation.⁹⁴ Historically these group-based determinations have been the exception to the rule of individual asylum adjudication systems.⁹⁵ Under the strain of increased refugee and asylee flows in recent years, some states are now formally integrating group-based asylum determinations into their domestic asylum systems—an effort encouraged by UNHCR.⁹⁶ UNHCR cites efficiency and faster processing as reasons for states to adopt a *prima facie* or group-based approach to asylum adjudication.⁹⁷

Descriptions and categorization of “group-based” asylum mechanisms vary.⁹⁸ Because the Refugee Convention and other international instruments generally do not dictate the type of procedures a state should follow in making refugee determinations,⁹⁹ a variety of procedures exist across states. The term “*prima facie* determinations” is sometimes used to describe group-based asylum mechanisms, but this term is not found in any international instruments.¹⁰⁰ Prior to the publication of UNHCR’s 2015 guidance on *prima facie* refugee status determinations, there was no uniform, authoritative definition of either of these terms. Previously, scholars lamented the ambiguous and confused state of what *prima facie* or group-based determinations were.¹⁰¹ Even senior leaders at the United Nations disagreed about whether so called “group-based”

94. Rutinwa, *supra* note 18.

95. *See id.* at 3.

96. U.N. HIGH COMM’R FOR REFUGEES, POLICY BRIEF: PROTECTION OF PERSONS DISPLACED ACROSS BORDERS IN THE CONTEXT OF DISASTERS & THE ADVERSE EFFECTS OF CLIMATE CHANGE 13 (2023).

97. UNHCR Guidelines, *supra* note 29, at ¶ 41.

98. Albert, *supra* note 9.

99. *See* UNHCR Introductory Note, *supra* note 12 (stating that the Convention does not prevent States from taking temporary steps “pending a determination that [a] person is in fact a refugee [when] the continuance of such [provisional] measures is necessary [] in the interests of national security.”); Durieux & Hurwitz, *supra* note 13, at 108.

100. *See* UNHCR Introductory Note, *supra* note 12, at ¶ 5.

101. Albert, *supra* note 9, at 61.

asylum mechanisms are truly group-based or are merely evidentiary burden shifting within an individual-based asylum system.¹⁰²

In its 2015 guidance, UNHCR provided a minimal definition of prima facie determinations as “the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their country of former habitual residence.”¹⁰³ The 2024 guidance on implementing different asylum processing models from UNHCR provided generalized guidance for states on when and how to implement group based asylum mechanisms.¹⁰⁴ As acknowledged by UNHCR, there are a variety of approaches to using prima facie or group-based asylum adjudication, including temporary uses in response to an event, as a permanent part of an asylum adjudication system, or as one “part of simplified or accelerated processes based on the manifestly founded nature of a class of claims or on a presumption of inclusion.”¹⁰⁵ In fact, some confusion lingers today, as UNHCR’s 2015 guidelines explain that a prima facie determination may be made on a group or individual basis and that group identification could be made on the basis of similarly situated individuals.¹⁰⁶ In Canada, government officials dispute whether the asylum mechanism described below is group-based at all, despite using identified groups as a basis for streamlining asylum determinations.¹⁰⁷ Assuming that each group member would individually meet the definition of a refugee (which is what makes group-based determinations appropriate in the first place), these

102. See Rutinwa, *supra* note 18 (describing the disagreement between Assistant Secretary-General of the High-Level Panel on Internal Displacement George Okoth-Obbo and UNHCR’s Ivor C. Jackson regarding the nature of group-based asylum determinations). See also Albert, *supra* note 9 (concluding that prima facie determinations are “a form of individual determination and it does not require a group as such” and that they are “as much about the strength of the individual claim as [they are] about the processing capacity of the State that receives them.”).

103. UNHCR Guidelines, *supra* note 29, at ¶ 1 (citing U.N. High Comm’r for Refugees, Protection of Refugees in Mass Influx Situations: Overall Protection Framework, ¶ 6, U.N. Doc. EC/GC/01/4 (Feb. 19, 2001)).

104. UNHCR, *Differentiated Asylum Case Processing*, *supra* note 35.

105. *Id.* ¶ 40.

106. UNHCR Handbook, *supra* note 17, at 205, 212.

107. STANDING COMM. ON CITIZENSHIP & IMMIGR., HOUSE OF COMMONS, SAFE HAVEN IN CANADA: SPECIAL IMMIGRATION AND REFUGEE MEASURES ARE URGENTLY NEEDED FOR THE PEOPLE OF HONG KONG 19–25 (2d Sess. 2021) (Can.), https://publications.gc.ca/collections/collection_2021/parl/x64-1/XC64-1-1-432-7-eng.pdf, (on file with the *Columbia Human Rights Law Review*).

quibbles are largely academic. After all, a group is simply a collection of individuals.

One study of state practices involving group based and prima facie asylum determinations found that “the distinction between group and individual determinations is blurred. It is more of a spectrum than a dichotomy.”¹⁰⁸ Generally, domestic legal mechanisms for group-based determinations can be categorized as: 1) ad hoc executive designation of groups; 2) administrative guidance regarding groups for asylum adjudicators; 3) binding decisions from courts or reviewing administrative bodies; or 4) involving pattern or practice analysis in an individual adjudication.¹⁰⁹ By comparison, systems that require each individual to carry the entire burden of proof, like the U.S. asylum adjudication system, are not group-based systems even though a respondent or adjudicator may point to certain shared characteristics with other refugees as a reason that an individual should be granted asylum.¹¹⁰ Instead, a “group-based” asylum system is one in which the government offering protection makes its own preliminary determination about the likelihood of certain groups to meet the refugee definition.¹¹¹

Thus, prima facie or group-based asylum mechanisms should “provide an ‘evidentiary benefit’ to the applicant in the form of accepting certain objective facts.”¹¹² Under the 2015 guidelines, states using these group-based presumptions should grant asylum to group members, “unless [the presumption] is dislodged by evidence that either any person was wrongly recognised as a refugee or was liable to exclusion under the provisions of refugee law.”¹¹³ In this way, a group-based adjudication system retains individualized analysis, but the burden of establishing the existence of individualized fear moves from the asylum seeker to the receiving government. The applicant

108. Albert, *supra* note 9.

109. See Durieux, *supra* note 14, at 155–56.

110. See 8 C.F.R. § 1208.13(b)(2)(iii)(A) (describing asylum eligibility based on a pattern or practice of persecution of similarly situated individuals).

111. Rutinwa, *supra* note 18, at 1–2.

112. UNHCR, *Differentiated Asylum Case Processing*, *supra* note 35, at ¶ 40; see also Albert, *supra* note 9 (“The use of the term “prima facie” is an indicator that [prima facie refugee status determination] requires a lower standard of proof than other [refugee status determinations].”).

113. Rutinwa, *supra* note 18.

retains the burden of proving they are a member of that group and should be designated a refugee on that basis.¹¹⁴

Using the history of group-based adjudications and the UNHCR guidelines, this Part next identifies and analyzes several comparative examples based on their identification of potential asylees in relation to a shared nationality or country of origin, sometimes paired with additional specific identifying characteristics, such as gender, religious affiliation, sexual orientation, or certain political affiliation. While many countries have temporary forms of protection inferior to a grant of asylum for large groups of migrants, this Article does not address these forms of protection.¹¹⁵ This

114. See Henrick Zahle, *Competing Patterns for Evidentiary Assessments*, in PROOF, EVIDENTIARY ASSESSMENT AND CREDIBILITY IN ASYLUM PROCEDURES 13, 21 (Gregor Noll ed. 2005) (explaining the two-step process for group-based asylum determinations as: 1) identifying a group at risk of persecution and 2) an individual assessment of the applicant's membership in the identified group).

115. Some of these temporary protections use group-based determinations. See ANDREW SELEE, ET AL., MIGRATION POL'Y INST., EXPANDING PROTECTION OPTIONS? FLEXIBLE APPROACHES TO STATUS FOR DISPLACED SYRIANS, VENEZUELAN, AND UKRAINIANS, at 17–18 (2024), <https://www.migrationpolicy.org/research/protection-options-flexible-approaches> (on file with the *Columbia Human Rights Law Review*) (describing how governments responding to large displacement crises increasingly grant displaced populations temporary legal status on a group basis rather than adjudicating individual asylum claims). However, temporary protections that do not provide permanent resettlement do nothing to offer long-term solutions for asylum seekers and do not relieve asylum backlogs because often migrants are eligible for temporary protection and asylum protections simultaneously. For criticism of these temporary protection mechanisms, see SERGIO CARRERA ET AL., ASYLUM GOVERNANCE INSTRUMENTS IN CANADA, BRAZIL, SOUTH AFRICA AND TURKEY: STATUS DETERMINATION, STRUCTURAL VULNERABILITY AND THE RIGHT TO WORK 3–4 (2023), <https://cdn.ceps.eu/wp-content/uploads/2023/10/ASILE-Report-Asylum-Governance-Instruments.pdf> [<https://perma.cc/4T8Y-H6T7>] (arguing that many contemporary “protection” instruments substitute temporary or alternative legal statuses for asylum recognition, producing protracted temporariness and limiting access to durable solutions such as long-term residence or citizenship); *What's Wrong with Temporary Protected Status and How to Fix It*, HUM. RTS. WATCH (Mar. 1, 2020), <https://www.hrw.org/news/2020/03/01/whats-wrong-temporary-protected-status-and-how-fix-it> [<https://perma.cc/5237-837B>] (criticizing certain temporary protection regimes for leaving beneficiaries in prolonged legal limbo without a clear pathway to permanent status or full integration); James C. Hathaway, *Temporary Protection of Refugees: Threat or Solution*, in PERSPECTIVE ON REFUGEE PROTECTION IN SOUTH AFRICA 41 (J. Handmaker et al. eds., 2001) (critiquing existing temporary protection practices for functioning less as genuine protection and more as mechanisms that warehouse refugees indefinitely while denying them durable legal status); Rebecca Buxton, *Justice in Waiting: The Harms and Wrongs of Temporary Refugee Protection*, 22 EUR. J. POL. THEORY 51,

discussion also does not address the practice of government provided country conditions information or guidance in asylum adjudications.¹¹⁶ In short, the following examples include embedded group-based asylum determinations that lessen the evidentiary burden traditionally placed on asylum seekers.

B. Organization of African Unity: The Home of Group-Based Asylum

As the number of refugees rises around the globe, the international community would be remiss to not take lessons from the African states that have for decades handled situations of large influxes of refugees. Examples of group-based asylum by executive decree abound, particularly among the OAU states, which adopted refugee laws after the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.¹¹⁷ The OAU Convention, like the Cartagena Declaration described below, accommodates a wider refugee definition than the 1951 Refugee Convention definition by including migrants fleeing conditions of generalized violence and other human rights abuses.¹¹⁸ Because these laws are used on an ad hoc basis by executive decree, they provide a less useful example to this project of proposing an administrative law based mechanism for

53–54 (2023) (arguing that temporary refugee protection keeps refugees in prolonged legal and social limbo, disrupting their ability to rebuild stable lives and compounding the harms of displacement).

116. For example, Canada, the UK Home Office, and the EU asylum agency also maintain country-specific guidance and country condition information that is provided to asylum adjudicators. *See generally* Robert Thomas, *Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom*, 20 INT'L J. REFUGEE L. 489 (2008). In the U.S., immigration courts have also done this, the Asylum Office provides guidance on types of claims, and the Department of State publishes annual human rights reports for each country. Practices involving the compilation of country conditions are also not analyzed here because those are often guidance regarding particular groups and conditions, without going so far as to make a determination or recommendation that a certain group should presumably be considered refugees. While these mechanisms may serve some of the same goals as group-based determinations, such as efficiency and consistency, they still primarily exist within an individual determination system requiring the asylum applicant to carry the burden of proof that the protected ground they identify will cause their persecution in their home country.

117. Rutinwa, *supra* note 18, at 7–8 (identifying Tanzania, Uganda, Zambia, Swaziland, Lesotho, and Zimbabwe as African states with group-based asylum mechanisms via ministerial decree enacted into their domestic law).

118. U.N. HIGH COMM'R FOR REFUGEES, *supra* note 96, at 5; ALEINIKOFF & ZAMORE, *supra* note 21, at 21.

group-based asylum adjudications. They nevertheless warrant brief examination as an important stepping stone in the development of group-based asylum mechanisms.

Through ministerial decrees granting asylum to groups of refugees in a receiving state, some African states use group-based considerations to make asylum determinations. For example, when confronted with mass arrivals of Rwandan migrants, Tanzanian officials, through a designated refugee body, interviewed individuals and families seeking asylum not by “personal circumstances, but on whether the objective situation in the country of origin is such that it would make persons from there refugees within the recognised definitions.”¹¹⁹ Similar processes were used in Guinea and Liberia in response to large groups of Sierra Leoneans entering those countries.¹²⁰ In other instances of mass migration, states delegated asylee status determinations to UNHCR to handle on a group basis rather than using the domestic individual asylum mechanism.¹²¹ More recently, Kenya and Ethiopia used group-based mechanisms to make asylum determinations for Somalis fleeing famine.¹²² Highlighting the blur between individual and group determinations, these states made group determinations while often requiring individual interviews to identify group members. However, for many individuals, the interviews were brief because of the burden shifting presumption of asylum applied by these receiving states. These examples served as a foundation for Europe’s more recent adoption of group-based asylum determinations in asylee adjudication systems.¹²³

C. Prioritized Cases and Accelerated Procedures in the European Union: Clusters and Tracks

In 2013, the European Union amended a 2005 Directive regarding standards for special asylum procedures allowing member states to prioritize or accelerate asylum adjudication under certain circumstances.¹²⁴ The amended directive provides procedural requirements for deciding cases on an expedited basis and applying

119. Rutinwa, *supra* note 18, at 10.

120. *Id.*

121. *Id.* at 11 (citing Kenya and the Gambia as such examples).

122. U.N. HIGH COMM’R FOR REFUGEES, *supra* note 96, at 5.

123. Durieux & Hurwitz, *supra* note 13, at 108.

124. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, 2013 O.J. (L 180) 77–79, <https://eur-lex.europa.eu/eli/dir/2013/32/oj/eng> [<https://perma.cc/4UF7-6KG3>].

further “accelerated procedures”¹²⁵ for “manifestly unfounded” claims, i.e., claims likely to be denied by domestic asylum adjudicators.¹²⁶ and “manifestly well-founded claims,” i.e., claims that are likely to be granted.¹²⁷ Thus, the change allowed EU member states to expedite both positive and negative asylum decisions by categorizing asylum claims. The Directive did not define manifestly well- or unfounded other than to say that “a key consideration . . . is the safety of the applicant” in their home country, but provided criteria for member states to use to identify these claims for accelerated procedures: including the designation of safe third countries, fraud or seriously inconsistent information, maliciously destroyed identification documents, inexcusably delayed requests for protection, and failure to comply with or pass national security checks.¹²⁸

While accelerated asylum procedures alone would not fall within the group-based or *prima facie* asylum mechanisms discussed above, several European states used or use fast track and accelerated procedures to triage asylum backlogs by screening pending claims and routing them into various tracks or clusters based on procedural or substantive complexity, at least in part based on country-of-origin assessments.¹²⁹ For example, applicants coming from countries

125. THOMAS MONIZ, SHIVANGI TALWAR & CECILIA VINDROLA-PADROS, *METHODS USED BY FRANCE, GERMANY, ITALY AND SWEDEN TO STREAMLINE ASYLUM PROCEDURES. RAPID EVIDENCE BRIEF 11* (2023), https://www.cape.ac.uk/wp-content/uploads/2023/07/Dated-POST_RREAL-Asylum-review.pdf [<https://perma.cc/84U2-S33Q>] (“Under EU legislation accelerated procedures involve shorter time limits for appeals and often do not include (automatic) suspensive effect regarding removal decisions, thereby exposing asylum seekers to the risk of being deported before their appeal is decided.”).

126. *See generally* Directive 2005/85/EC, of the European Parliament and of the Council of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 2005 O.J. (L 326) 13 (establishing minimum procedural standards that allow Member States to decide certain asylum applications through expedited or “accelerated” procedures, including for claims deemed manifestly unfounded).

127. ASYLUM INFORMATION DATABASE, ACCELERATED, PRIORITIZED AND FAST-TRACK ASYLUM PROCEDURES: LEGAL FRAMEWORKS AND PRACTICE IN EUROPE (May 2017) [hereinafter FAST-TRACK ASYLUM PROCEDURES], https://ecre.org/wp-content/uploads/2017/05/AIDA-Brief_AcceleratedProcedures.pdf (on file with the *Columbia Human Rights Law Review*).

128. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013 O.J. (L 180) 60.

129. FAST-TRACK ASYLUM PROCEDURES, *supra* note 127.

deemed safe may be routed into one track for interviews, decisions, and appeals on a timeline shorter than normal processing.¹³⁰

Around 2015, Europe began receiving increased numbers of asylum seekers, many from Syria.¹³¹ Several countries implemented both priority and accelerated procedures in order to triage their overwhelmed asylum systems. Germany, the Netherlands, and Sweden created procedures to both expedite cases with a high likelihood of denial and a high likelihood of a positive asylum determination.¹³² Thus, the EU special procedures provided a rough framework for both group-based presumptive asylum grants and group-based presumptive asylum denials. These examples were the first adoption of systematic country of origin-based asylum determination systems.¹³³

Germany implemented the first such system in 2015, which included four “clusters”:

- **Cluster A.**¹³⁴ “Countries of origin with a high protection rate from 50% upwards”;
- **Cluster B.** “Countries of origin with a low protection rate up to 20%”,¹³⁵
- **Cluster C.** Complex cases;¹³⁶ and
- **Cluster D.** Dublin Agreement cases, i.e., asylum seekers who arrived to Germany via another EU country.¹³⁷

The cluster system was designed “to improve the efficiency and speed of asylum procedures in order to guarantee legal certainty for asylum seekers at an early stage.”¹³⁸ While estimates of the

130. *Id.* at 2.

131. William Spindler, *2015: The year of Europe’s refugee crisis*, U.N. HIGH COMM’R FOR REFUGEES (Dec. 2015), <https://www.unhcr.org/us/news/stories/2015-year-europes-refugee-crisis> (on file with the *Columbia Human Rights Law Review*).

132. FAST-TRACK ASYLUM PROCEDURES, *supra* note 127, at 5.

133. *See id.*

134. Cluster A countries included Eritrea, Iran, Iraq, Syria, and Somalia. HERBERT BRÜCKER, PHILIPP JASCHKE & YULIYA KOSYAKOVA, MIGRATION POL’Y INST., INTEGRATING REFUGEES AND ASYLUM SEEKERS INTO THE GERMAN ECONOMY AND SOCIETY: EMPIRICAL EVIDENCE AND POLICY OBJECTIVES 20 (2019), https://www.migrationpolicy.org/sites/default/files/publications/TCM_2019_Germany-FINAL.pdf [<https://perma.cc/NFD8-HB9D>].

135. FAST-TRACK ASYLUM PROCEDURES, *supra* note 127, at 7.

136. *Id.*

137. *Id.*

138. BRÜCKER, JASCHKE & KOSYAKOVA, *supra* note 134, at 20.

impact of the cluster system are mixed due to a lack of transparent data, some report that “[t]he cluster procedure reduced waiting times overall by processing the easy cases first, but it also led to more variation: asylum seekers from some clusters faced even longer procedures.”¹³⁹ In 2017, Germany ceased the use of this cluster system to fast-track positive asylum determinations.¹⁴⁰ However, Germany began prioritizing the adjudication of certain Afghan asylum applications starting in December 2021, indicating that it perhaps continues to use group-based positive asylum determinations on an ad hoc basis if not through the application of the cluster system for special processing.¹⁴¹

Germany continues to use a list of safe countries of origin to apply accelerated procedures to Cluster B asylum applications likely to be denied for applicants in certain immigration “reception” centers.¹⁴² German law defines safe-countries of origin as countries in which, “on the basis of the democratic system and of the general political situation[,] no state persecution is to be feared there as a rule, and that the State in question can provide protection against non-state persecution as a matter of principle.”¹⁴³ As with

139. *Id.*

140. See FAST-TRACK ASYLUM PROCEDURES: *supra* note 127, at 4 (“No figures have been provided by the authorities as to how many accelerated procedures had been carried out . . . By and large, it can be concluded that introduction of the accelerated procedure has only had little impact on asylum procedures in general at the end of 2016.”).

141. LENA RIEMER, LEA RAU, & RONITH SCHALAST, DIFFERENTIAL TREATMENT OF SPECIFIC NATIONALITIES IN THE PROCEDURE, ASYLUM INFO. DATABASE (2025) [hereinafter DIFFERENTIAL TREATMENT OF SPECIFIC NATIONALITIES IN THE PROCEDURE], https://asylumineurope.org/reports/country/germany/asylum-procedure/differential-treatment-specific-nationalities-procedure/#_ftnref59 [https://perma.cc/Q56S-KUXY] (discussing emergency procedures for Afghan asylees since the Taliban takeover in 2021); see also LENA RIEMER, LEA RAU, & RONITH SCHALAST, ACCELERATED PROCEDURE: GERMANY, ASYLUM INFO. DATABASE (2025) [hereinafter ACCELERATED PROCEDURE: GERMANY], <https://asylumineurope.org/reports/country/germany/asylum-procedure/procedures/accelerated-procedure/> [https://perma.cc/C2LT-U5XH] (discussing Germany’s prioritization and accelerated procedure programs for vulnerable asylees).

142. See ACCELERATED PROCEDURE: GERMANY, *supra* note 141 (noting that reception centers are not quite akin to U.S. immigration detention because “asylum seekers may leave the premises and are free to move around in the local area”).

143. *Safe Countries of Origin*, FED. OFF. OF MIGRATION & REFUGEES (Ger.) (Jan. 15, 2024), <https://www.bamf.de/EN/Themen/AsylFluechtlingsschutz/>

presumptively approved cases, Cluster B applicants are still afforded an interview and an opportunity to be heard, but on an expedited timeline.¹⁴⁴ After receiving a Cluster B asylum application, an interview must be conducted and a decision issued within seven days.¹⁴⁵ However, accelerated procedures under Cluster B cannot be used in certain circumstances in which the adjudicator identifies complicating factors, such as a lack of factual information or where an individual is vulnerable due to age, mental health, or medical considerations.¹⁴⁶ Data on asylum wait times in 2023 reveals that wait times continue to vary by country of origin, not necessarily in line with the safe country of origin system. For example, asylum applicants from Senegal wait on average 12.8 months and applicants from Ghana wait on average 8.9 months despite both being listed as safe countries of origin.¹⁴⁷ The overall average wait time was 6.6 months.¹⁴⁸ This shows that, at least when focusing on fast-tracked denials of asylum, the implementation of Germany's group-based adjudication systems is inconsistent.

In 2016, Sweden also created a classification system for its asylum claims that routes claims onto different procedural tracks based on initial information from the applicant.¹⁴⁹ The current system includes eight tracks, with certain tracks designative for presumptively positive outcomes (Track 1) and for presumptively negative outcomes and from countries with high rates of rejection (Tracks 2 and 4).¹⁵⁰ For asylum claims placed on Track 1, "there is no need to appoint public counsel, the identity of the claimant must be ascertainable based on the documents submitted and there must be no other major processing stages needed other than an oral

Sonderverfahren/SichereHerkunftsstaaten/sichereherkunftsstaaten-node.html [https://perma.cc/X2XE-U4NT].

144. *Id.* (listing Cluster B countries as including: all Member States of the European Union, Albania, Bosnia and Herzegovina, Georgia, Ghana, Kosovo, North Macedonia, Montenegro, Republic of Moldova, Senegal, and Serbia).

145. ACCELERATED PROCEDURE: GERMANY, *supra* note 141.

146. INT'L CTR. FOR MIGRATION POL'Y DEV., THE ASYLUM APPEALS PROCEDURE IN RELATION TO THE AIMS OF EUROPEAN ASYLUM SYSTEMS AND POLICIES: FINAL REPORT 65–66 (2020).

147. DIFFERENTIAL TREATMENT OF SPECIFIC NATIONALITIES IN THE PROCEDURE, *supra* note 140.

148. *Germany: Asylum procedure slightly faster*, INFOMIGRANTS (Oct. 20, 2023), <https://www.infomigrants.net/en/post/52723/germany-asylum-procedure-slightly-faster> [https://perma.cc/J7LW-322Z].

149. MONIZ, TALWAR & VINDROLA-PADROS, *supra* note 125, at 25.

150. *Id.* at 26, tbl. 7.

interview.”¹⁵¹ Track 4 claims include applications from individuals whose country of origin has a less than 15% positive outcome rate.¹⁵² Notably, several of these countries designated for presumptive denials, such as Ukraine, are refugee producing countries for which other forms of temporary relief less than full asylum protections are available.¹⁵³ As of 2019, the average wait time for asylum adjudication in Sweden was 288 days, where “cases with a high likelihood of receiving international protection, such as those submitted by Eritreans (with a 73 per cent recognition rate in Sweden), wait 230 days [and] complex cases, such as those of Afghans (with a 37 per cent recognition rate), wait on average 581 days.”¹⁵⁴

Also in 2016, the Netherlands created a five track system for processing asylum claims, including for safe country of origin cases (Track 2)¹⁵⁵ and for applications likely to be granted (Track 3).¹⁵⁶ Although the country has undertaken separate accelerated processing of Syrian and Yemeni claims, to date, Track 3 processing has never been utilized,¹⁵⁷ reportedly “to deter new arrivals in the Netherlands

151. *Id.* at 25.

152. *Id.* These countries include Albania, Algeria, Angola, Armenia, Belarus, Bosnia and Herzegovina, Brazil, Chile, Colombia, Cuba, Georgia, Ghana, Honduras, India, Israel, Kazakhstan, Kyrgyzstan, Kosovo, North Macedonia, Mexico, Mozambique, Morocco, Moldavia, Mongolia, Montenegro, Nepal, Peru, Philippines, Serbia, Sri Lanka, South Africa, Thailand, Tunisia, Ukraine, United States, Uzbekistan, Venezuela, and Vietnam. *Id.*

153. *See id.*; *If you wish to apply for protection under the Temporary Protection Directive*, INFORMATIONSVERIGE (Swed.) (Feb. 18, 2026), <https://www.informationsverige.se/en/jag-har-flytt-fran-kriget-i-ukraina/om-du-vill-ansoka-om-skydd-enligt-massflyktsdirektivet.html> [<https://perma.cc/F924-D6VK>].

154. BEIRENS, *supra* note 50, at 27.

155. The current safe country of origin list includes all EU Member states, Albania, Armenia, Bosnia and Herzegovina, Brazil, Ghana, Jamaica, Kosovo, Mongolia, Montenegro, Morocco, North Macedonia, Senegal, Serbia, Tunisia, and the United States. *See* ASYLUM INFORMATION DATABASE, *Short Overview of the Asylum Procedure: Netherlands* (June 4, 2025), <https://asylumineurope.org/reports/country/netherlands/asylum-procedure/general/short-overview-asylum-procedure> [<https://perma.cc/ZM4L-WHVH>] (listing Track 2 as safe countries of origin); ASYLUM INFORMATION DATABASE, *Safe Country of Origin: Netherlands* (June 4, 2025), <https://asylumineurope.org/reports/country/netherlands/asylum-procedure/the-safe-country-concepts/safe-country-origin> [<https://perma.cc/M5P3-SVEG>] (listing current safe countries of origin designated by the Dutch government).

156. FAST-TRACK ASYLUM PROCEDURES, *supra* note 127, at 6.

157. INT’L CTR. FOR MIGRATION POL’Y DEV., *THE ASYLUM APPEALS PROCEDURE IN RELATION TO THE AIMS OF EUROPEAN ASYLUM SYSTEMS AND POLICIES: FINAL REPORT 89* (2020), <https://www.icmpd.org/file/download/48402/>

that would be encouraged to apply for asylum and obtain a quick positive decision.”¹⁵⁸ With the use of these tracks, the Netherlands’ processing times for asylum claims vary from 2 to 8 months.¹⁵⁹

Clustering and track-based systems present several downsides. First, these systems require that immigration officials identify the appropriate track or cluster, which they can only do if they “are able to pick up and record information on the applicant’s relevant personal history, identification, and journey details.”¹⁶⁰ These systems have also been characterized as a punishment for asylees with more complex cases who are forced to wait longer for a decision under normal procedures.¹⁶¹ Another critique is that these fast tracked and accelerated procedures place increased emphasis on time, efficiency, and administrative paperwork at the expense of a big picture understanding of individual claims that can be revealed through face-to-face interactions.¹⁶²

Nevertheless, in current negotiations on uniform asylum procedures across the EU, *prima facie* determinations for “large-scale arrival of refugees” to the EU are under discussion.¹⁶³ Most recently, the European Court of Justice addressed this question in the context of asylum claims of Afghan women.¹⁶⁴ In considering whether conditions rise to the level of persecution of women in Afghanistan, the Court concluded that the requirement that asylum applications

file/The0Asylum0Appeals0Procedure0in0Relation0to0the0aims0of0European0Asylum0Systems0and0Policies.pdf%20at%2065-66 [https://perma.cc/3RZT-8LFX].

158. FAST-TRACK ASYLUM PROCEDURES, *supra* note 127, at 6.

159. INT’L CTR. FOR MIGRATION POL’Y DEV., *supra* note 131, at 16. *Asylum and family reunification: latest developments*, GOV’T OF THE NETHERLANDS IMMIGR. & NATURALIZATION SERV. (Neth.), <https://ind.nl/en/asylum-and-family-reunification-latest-developments> [https://perma.cc/GK5U-QDNG] (last visited Apr. 10, 2026).

160. BEIRENS, *supra* note 50, at 33.

161. *Id.* at 29–30 (listing criticisms from UNHCR and civil society of accelerated procedures, including lowering protection standards and emerging backlogs in all types of claims). See generally Marcelle Reneman & Martijn Stronks, *What are they waiting for? The use of acceleration and deceleration in asylum procedures by the Dutch government*, 30 TIME & SOC’Y 302 (2021) (describing the effect of delay for complex asylum cases with the implementation of accelerated asylum procedures in the Netherlands).

162. MONIZ, TALWAR & VINDROLA-PADROS, *supra* note 125, at 25.

163. Nikolas Feith Tan & Meltem Ineli-Ciger, *Group-Based Protection of Afghan Women and Girls Under the 1951 Refugee Convention*, 72 INT’L & COMPAR. L. Q. 793, 815 (2023).

164. See Case C-608/22, AH v. Bundesamt für Fremdenwesen und Asyl, ECLI:EU:C:2024:828 (Oct. 4, 2024).

get individualized determinations does not limit a state from making determinations that certain groups were presumptively refugees.¹⁶⁵ Thus, the individualized determination could be limited to the gender and nationality of the applicant.¹⁶⁶ This decision illustrates that the minimum procedural guarantees do not prevent a state from adopting more efficient procedures when the facts of a group's persecution are clear and protection is warranted.

D. Don't Call it a "Group": Canada's "Streaming of Less Complex Claims" Procedures

In 2018, the Immigration and Refugee Board (IRB) of Canada, recognizing the need to address its growing backlog of asylum claims, created the Inventory Reduction Task Force for Less Complex Claims ("Task Force") within its Refugee Protection Division.¹⁶⁷ This Task Force essentially triages the asylum backlog by identifying and processing claims that can be resolved without the full expenditure of time and resources at a full hearing.¹⁶⁸ Accordingly, in 2019 the IRB adopted formal procedures by which this Task Force expeditiously processes certain cases, including through a group-based asylum mechanism.¹⁶⁹ This process is pithily titled the "Instructions Governing the Streaming of Less Complex Claims."¹⁷⁰ Under these expedited procedures, claims identified by the Task Force can be processed either by: 1) File Review, in which claims are adjudicated without a hearing; or 2) Short Hearing Review, in which

165. *Id.* ¶ 56.

166. *Id.* ¶ 58.

167. IRCC Minister Transition Binder 2023: Overview – Immigr. and Refugee Bd. of Can., GOV'T OF CAN. (Can.), <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/transition-binders/minister-2023/irb-overview.html> [https://perma.cc/7PCS-NYHV] (last visited Apr. 10, 2026); *Less Complex Claims: The short-hearing and file-review processes*, IMMIGR. & REFUGEE BD. OF CAN. (Can.), <https://www.irb-cisr.gc.ca/en/information-sheets/Pages/less-complex-claims.aspx> [https://perma.cc/QZ5W-7XDL] (last visited Apr. 10, 2026).

168. See Hilary Evans Cameron & Talia Joundi, *Procedures for claiming asylum from within Canada, acceptance and rejection*, in *ASYLUM AND RESETTLEMENT IN CANADA* 101, 104 (Ervis Martani & Denise Helly eds., 2022) (a full hearing averages 3.5 hours).

169. *IRB Issues New Instructions Governing the Streaming of Less Complex Claims at the Refugee Protection Division*, IMMIGR. & REFUGEE BD. OF CAN. (Can.), <https://irb-cisr.gc.ca/en/news/2019/Pages/less-complex-claims-rpd.aspx> [https://perma.cc/XP2W-4M3Y] (last visited Apr. 10, 2026).

170. *Id.*

claims are adjudicated with a hearing of less than two hours.¹⁷¹ However, an asylum claim cannot be denied based only upon a File Review.¹⁷² As part of this streamlined processing, the Refugee Protection Division also announced it would begin publishing a list of countries and claims to be processed on this expedited timeline.¹⁷³ The IRB described the purpose of this new policy as “allow[ing] the IRB to use its resources as effectively as possible while maintaining high-quality administrative justice” and allowing asylees to “benefit from a more efficient resolution of their case.”¹⁷⁴

Thus, the Refugee Protection Division’s list of countries and claims allows entire types of cases to be adjudicated on an expedited timeline.¹⁷⁵ Because this system also includes guidelines on how the Refugee Protection Division will determine groups, IRB claims that this system is designed to promote consistency and transparency.¹⁷⁶ The Canadian group-based approach provides a useful model for the U.S. because of the inherent procedural guarantees against expedited denial of asylum claims, and similarities with the U.S. asylum system.

To implement this expedited procedure, the Task Force, comprised of employees of the Refugee Protection Division, relies on “its knowledge of country conditions and claim types, and its experience in how claims are decided in a hearing.”¹⁷⁷ The Refugee Protection Division dedicates about ten percent of its members to the

171. *Instructions governing the streaming of less complex claims at the Refugee Protection Division*, IMMIGR. & REFUGEE BD. OF CAN. (Can.), <https://www.irb-cisr.gc.ca/en/legal-policy/policies/Pages/instructions-less-complex-claims.aspx> [https://perma.cc/3ARQ-AGTL] (last visited Apr. 10, 2026).

172. *Id.*

173. *Id.*

174. IMMIGR. & REFUGEE BD. OF CAN., *supra* note 171; *see also* Letter from Richard Wex, Chairperson of the Immigr. and Refugee Bd. of Can. to John Williamson, M.P., Chair, Standing Comm. on Pub. Accts., House of Commons (May 12, 2022) (Can.) [hereinafter Letter from Richard Wex] (“Its objectives were and remain two-fold: (1) to reduce the inventory of refugee claims from what it would otherwise be without such a fast track mechanism and (2) to reduce claimant wait times, while maintaining quality decision-making and overall system integrity.”).

175. IMMIGR. & REFUGEE BD. OF CAN., *supra* note 169.

176. *Country and Claim-type Criteria - Instructions Governing the Streaming of Less Complex Claims*, IMMIGR. & REFUGEE BD. OF CAN. (Can.), <https://irb-cisr.gc.ca/en/legal-policy/procedures/Pages/countries-claim-types-criteria.aspx> [https://perma.cc/GH7E-3K24] (last visited Apr. 10, 2026).

177. IMMIGR. & REFUGEE BD. OF CAN., *supra* note 169.

task force.¹⁷⁸ “Over the past four years or so, since this group was established, they have finalized about 20% of” asylum adjudication hearings.¹⁷⁹ In creating and maintaining the list of designated countries and claims, the task force generally considers the following criteria:¹⁸⁰

- Countries or claim types that have an acceptance rate of 80% or higher.
- Countries or claim types where identity is generally established by reliable documents.
- Countries or claim types where the evidence is not ambiguous regarding the risk generally faced by claimants.
- Countries or claim types where complex legal or factual issues do not often arise at the hearing.¹⁸¹

At least on the face of this policy, there is no requirement that all or certain of these criteria be present for the task force to make a designation. Furthermore, where countries and claims do not fall within this first set of criteria, the Task Force may nonetheless refer them to the short hearing process based on the following criteria:¹⁸²

- Countries or claim types that have an acceptance rate of 80% or higher or an acceptance rate of 20% or lower.

178. Canada, House of Commons, Standing Committee on Citizenship and Immigration, *Minutes of Proceedings and Evidence*, 44th Parl, 1st Sess, No. 44 (Nov. 25, 2022) (Can.) [hereinafter Standing Comm. on Citizenship and Immigr., 44th Parl] (statement of Roula Eatrdes Deputy Chairperson, Refugee Protection Div., Immigr. & Refugee Bd. of Can.) (statement of Richard Wex, Chairperson of the Immigr. & Refugee Bd. of Can.), https://publications.gc.ca/collections/collection_2022/parl/x64-1/XC64-1-2-441-44-eng.pdf [https://perma.cc/HY2G-N87Q].

179. *Id.* For reference, Canada finalized 45,444 asylum claims in 2022. *Claims by Country of Alleged Persecution – 2022*, IMMIGR. AND REFUGEE BD. OF CAN. (Can.), <https://www.irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2022.aspx> [https://perma.cc/N9TK-FWZL]. That would mean that, in 2022, roughly 9,000 of those claims may have been processed by the Task Force. However, the IRB statistics do not break out the number of claims finalized by type of procedure.

180. IMMIGR. & REFUGEE BD. OF CAN., *supra* note 174.

181. *Id.*

182. “Any country or claim type which is selected for processing under the file-review process is automatically selected for processing under the short-hearing process, in the event a hearing is needed.” *Id.*

- Countries or claim types which typically require the resolution of just one or two determinative issues.
- Countries or claim types where complex legal or factual issues do not often arise at the hearing.¹⁸³

The task force may decide to remove a country or claim at any time from its list. Additionally, upon identification by the Refugee Protection Division or by advocates, an individual case can also be subject to these procedures on a case-by-case basis.¹⁸⁴

For cases that “appear to be manifestly founded upon initial review and can be fairly determined without the allocation of the resources,” no hearing is held or only a limited hearing is held.¹⁸⁵ Individual applicants who may be eligible for refugee protection under the “Less Complex Claims” system are still subjected to security vetting by the Canada Border Services Agency.¹⁸⁶ Individuals subject to criminal or other inadmissibility issues are not eligible to have their case decided under this process.¹⁸⁷ “If there are more complicated questions of credibility or identity, then such cases will not be able to be addressed as less complex but will be decided with a regular hearing.”¹⁸⁸ This means that cases without other legal issues that would further complicate the refugee determination are eligible to be fast-tracked without requiring individualized file review by the IRB, thus saving resources and allowing for expedited decisions for certain swaths of refugees in Canada. The RPD identifies credibility, identity, and “claim[s] inconsistent with country information” as among issues that would not be suitable to a streamlined process.¹⁸⁹

183. *Id.*

184. IMMIGR. & REFUGEE BD. OF CAN., *supra* note 171 (explaining the streaming process for less complex claims); Request for File-Review Processing Form (Can.), IMMIGR. & REFUGEE BD. OF CAN., <https://irb.gc.ca/en/forms/Documents/Request%20for%20File-Review%20Processing%20Form.pdf> [<https://perma.cc/2PFT-T7Z5>] (Canadian form for file-review requests).

185. IMMIGR. & REFUGEE BD. OF CAN., *supra* note 171.

186. *Id.*

187. *Id.*

188. Canada, House of Commons, Standing Committee on Citizenship and Immigration, *Minutes of Proceedings and Evidence*, 43rd Parl, 2nd Sess, No. 17 (Feb. 22, 2021) (Can.) (statement of Roula Eatrides Deputy Chairperson, Refugee Protection Div., Immigr. & Refugee Bd. of Can.) [hereinafter Standing Comm. on Citizenship and Immigr., 43rd Parl], <https://www.ourcommons.ca/DocumentViewer/en/43-2/CIMM/meeting-17/evidence> [<https://perma.cc/2C35-39M6>].

189. *Less Complex Claims: The Short-Hearing and File-Review Processes*, IMMIGR. & REFUGEE BD. OF CAN. (Can.), <https://www.irb-cisr.gc.ca/en/information->

When the expedited procedures debuted in early 2019, the list of claims and countries included

“gender- and aged-based claims from Iran, extortion and kidnapping cases from Libya, religious-based claims from Pakistan and cases of political or military opposition from Sudan[,] [a]ny women from Saudi Arabia who are at risk because they are ‘female’ . . . [and] certain types of cases from countries such as Venezuela, Turkey, Egypt, Afghanistan, Syria, Iraq and Yemen.”¹⁹⁰

As of 2024, Canada used these procedures for claims from Iran, Turkey, Afghanistan,¹⁹¹ Venezuela, and Pakistan.¹⁹² Previously, the Task Force also identified Hong Kong for expediting claims.¹⁹³ This shift in listed countries demonstrates the ability of the system to respond to changing country conditions and refugee flows.

While the Chairperson of the IRB, Manon Brassard, declined to classify this system as “group-based” asylum adjudication while

sheets/Pages/less-complex-claims.aspx [https://perma.cc/94A4-T3AE] (last visited Apr. 10, 2026).

190. Brian Hill, *Canada launches new fast-track system for processing refugee claims*, GLOBAL NEWS (Jan. 31, 2019) (Can.), <https://globalnews.ca/news/4912186/canada-launches-fast-track-system-for-processing-refugee-claims> [https://perma.cc/8F5U-QQTF] (reporting on the implementation of a fast-track process for certain refugee claims); Robert Falconer, *Slow, Subjective and Stressful: A Guide to Canada’s Asylum System*, UNIV. CALGARY SCH. PUB. POL’Y, Vol. 12:2, Aug. 2019, at 12–13 tbls. 3–4, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3449528 (on file with the *Columbia Human Rights Law Review*) (indicating eligibility for certain review processes).

191. *Refugee Claims from Afghanistan*, GOV. OF CAN. (Can.), <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-february-8-2023/refugee.html> (on file with the *Columbia Human Rights Law Review*) (detailing the processing of refugee claims following the Taliban takeover).

192. Canada, Senate, Standing Committee on Human Rights, *Minutes of Proceedings and Evidence*, 44th Parl, 1st Sess, No. 17 (June 3, 2024) (Can.) (statement of Manon Brassard, Chairperson and Chief Exec. Off., Immigr. & Refugee Bd. of Can.) [hereinafter Standing Comm. on Hum. Rts.], <https://sencanada.ca/en/Content/Sen/Committee/441/RIDR/53EV-56820-E> [https://perma.cc/ZS67-DMTK].

193. *Hong Kong*, IMMIGR. & REFUGEE BD. OF CAN. (Can.), <https://www.irb-cisr.gc.ca/en/transparency/pac-binder-nov-2020/Pages/pac19.aspx> [https://perma.cc/8XFR-7Z72]; Standing Comm. on Citizenship and Immigr., *supra* note 188.

testifying before a Canadian senate committee,¹⁹⁴ the “Less Complex Claims” procedure is an important model for a proposed U.S. group-based asylum mechanism because of its structural similarities with the U.S. asylum system. IRB officials repeatedly point to the Task Force as an effective tool for reducing backlog and processing claims in an efficient manner.¹⁹⁵ In 2022, the former Chairperson of the IRB, explained, “This is an initiative that tries to best allocate our resources based on the complexity of the claims in question. . . . That is one example of many where we have tried to instill and initiate new ideas and new approaches to expedite processing times with good effect.”¹⁹⁶ Chairperson Brassard explained,

There are countries . . . where we know the country, we know the country conditions and we know the profile of the claimants, and we will process those a lot faster without a hearing, or if there is a hearing, it will be a much shorter one, focused on one or two determinative issues. . . . About a third of the claims that we hear go through that process. It’s not a group per se, like a predetermination, but it goes a lot faster.¹⁹⁷

Indeed, the IRB reported to the House of Commons in 2022 that “[a] less complex claim referred in April 2022 has a projected processing time of 6 to 8 months. Hearings identified as less complex last an average of approximately 1.5 hours, compared with over 2.0 hours for other claims.”¹⁹⁸ Of the 48,000 claims processed in fiscal year 2021, 6,725 were finalized through the Less Complex Claims procedures, of which “72% . . . were finalized without a hearing, and 28% were decided with a short hearing. The IRB issued a positive decision in 88% of less complex claims, compared with 53% for other claims.”¹⁹⁹ Despite the creation of this program, the Canadian asylum

194. Standing Comm. on Hum. Rts., *supra* note 192 (“Senator Omidvar: Can you tell us whether you’re using group-based assessment to facilitate hearings? Ms. Brassard: We don’t call it ‘group’ because we don’t go out and say to everybody or a thousand people in front of us, ‘You are all in.’ But we do have a task force.”) (internal quotations revised).

195. *See, e.g.*, Standing Comm. on Hum. Rts., *supra* note 192; Standing Comm. on Citizenship and Immigr., 43rd Parl, *supra* note 188 (statement of Ms. Roula Eatrides, Deputy Chairperson, Refugee Prot. Div., Immigr. & Refugee Bd. of Can.).

196. Standing Comm. on Citizenship and Immigr., 44th Parl, *supra* note 178, at 7 (statement of Richard Wex).

197. Standing Comm. on Hum. Rts., *supra* note 192.

198. Letter from Richard Wex, *supra* note 174, at 3.

199. *Id.*

backlog continues to grow, largely because the number of new applications continues to increase year over year.²⁰⁰

E. The Spirit of Cartagena: Group-Based Asylum in Brazil

In 1984, civil war and mass human rights violations in several Central American countries resulted in the displacement of Central Americans due to both specific persecution and conditions of generalized violence not otherwise covered by the 1951 Refugee Convention definition.²⁰¹ In response, a group of Latin American states through the Colloquium on International Protection of Refugees met to develop what would become the Cartagena Declaration, later adopted by the Organization of American States.²⁰² The Cartagena Declaration is a non-binding instrument that expands the definition of a refugee to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”²⁰³

In adopting this language, the Cartagena Declaration shifted the refugee definition from one focused on the individual to one that accounts for conditions in the migrant’s home state affecting groups and communities.²⁰⁴ Some scholars call this shift the “spirit of Cartagena,” which allows for *prima facie* or group-based asylum

200. Nicholas Keung, *Canada’s refugee system is overwhelmed by skyrocketing claims. What can Ottawa do to reduce backlogs?*, *Toronto Star* (Aug. 1, 2024) (Can.), https://www.thestar.com/news/gta/canadas-refugee-system-is-overwhelmed-by-skyrocketing-claims-what-can-ottawa-do-to-reduce-backlogs/article_9d6c7c28-4b83-11ef-8ced-83f07793a559.html [https://perma.cc/5YE9-77CB] (noting that some attorneys report that “[t]he less complex file review process is also somewhat unclear, which discourages counsel from even making an attempt because it requires substantial resources to make a case.”); Standing Comm. on Hum. Rts., *supra* note 192 (“We saw a surge of intake last fiscal year, and we received 156,700 new claims. Mexico, India, Nigeria, Haiti and Türkiye represented last year’s top countries of intake.”).

201. See Luisa Feline Freier, Isabel Berganza, & Cécile Blouin, *The Cartagena Refugee Definition and Venezuelan Displacement in Latin America*, 60 INT’L MIGRATION 18, 20 (2020).

202. *Id.*

203. Cartagena Declaration on Refugees, Nov. 22, 1984, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, <https://www.refworld.org/legal/resolution/rri/1984/en/64184> (on file with the *Columbia Human Rights Law Review*).

204. See Freier, Berganza, & Blouin, *supra* note 201, at 20.

determinations due to conditions of “people in similar circumstances [as other asylees] fleeing from the same country (or area/region within that country).”²⁰⁵ The Cartagena Declaration has not been uniformly implemented within domestic legal systems, despite sometimes being used on a case-by-case basis or with the assistance of UNHCR.²⁰⁶ Nevertheless, both Brazil and Mexico have used this concept to extend asylum to groups of migrants.²⁰⁷

In recent years, the mass migration of Venezuelans throughout the Americas renewed the need for the spirit of Cartagena as an efficient way for receiving countries to process Venezuelan refugees and migrants.²⁰⁸ Specifically, in 2019, UNHCR issued an updated Guidance Note on International Protection Considerations for Venezuelans to “highlight[] the critical importance of ensuring access to asylum procedures or to group-based protection arrangements with adequate safeguards” for Venezuelans in the region.²⁰⁹

The Brazilian refugee agency, the National Committee for Refugees (CONARE), following the election of Jair Bolsonaro,²¹⁰ took up this guidance and applied the Cartagena Declaration to determine that Venezuelan migrants qualified as refugees.²¹¹ CONARE is a deliberative body charged with making refugee and asylee

205. *Id.*

206. *Id.* at 21.

207. See Natalia Cintra de Oliveira Tavares & Vinicus Pureza Cabral, *The application of the Cartagena Declaration on Refugees to Venezuelans in Brazil: An analysis of the decision-making process by the National Committee for Refugees*, 5 LAT. AM. L. REV. 121 (2020); Rachel Schmidtke & Daniela Gutiérrez Escobedo, *Mexico’s Use of Differentiated Asylum Procedures: An Innovative Approach to Asylum Processing*, REFUGEES INT’L (July 20, 2021), <https://www.refugeesinternational.org/reports-briefs/mexicos-use-of-differentiated-asylum-procedures-an-innovative-approach-to-asylum-processing> [<https://perma.cc/FDZ2-5MBD>].

208. See Freier, Berganza, & Blouin, *supra* note 201, at 21-25.

209. U.N. HIGH COMM’R FOR REFUGEES, GUIDANCE NOTE ON INTERNATIONAL PROTECTION CONSIDERATIONS FOR VENEZUELANOS – UPDATE I, ¶ 1 (2019) [hereinafter UNHCR GUIDANCE FOR VENEZUELANOS] <https://www.refworld.org/policy/countrypos/unhcr/2019/122601> [<https://perma.cc/Y2UN-ZCY5>].

210. Luiz Leomil, *Displaced Venezuelans and the Politics of Asylum: The case of Brazil’s Group Recognition Policy*, 17 REV. CARTA INT’L 1, at ps. 14–22 to 16–22 (2022).

211. See generally Natalia Cintra de Oliveira Tavares & Vinicus Pureza Cabral, *The application of the Cartagena Declaration on Refugees to Venezuelans in Brazil: An analysis of the decision-making process by the National Committee for Refugees*, 5 LAT. AM. L. REV. 121 (2020) (detailing and analyzing CONARE’s decision-making process to recognize Venezuelans asylees in Brazil).

determinations and is comprised of seven voting representatives from various government agencies and a civil society representative.²¹² A number of non-voting observing members, including a UNHCR representative, also participate in decision making through non-voting advocacy as part of the tripartite structure of the committee.²¹³

In 2019, CONARE conducted a study on conditions in Venezuela and simultaneously issued procedures for uniformly applying the Cartagena definition in Brazilian refugee determinations.²¹⁴ After developing the technical capacity to process a large group of asylees, in December 2019, CONARE recognized as asylees in Brazil approximately 21,000 Venezuelan asylum seekers who did “not hold any other residence permit in the country, [were] over 18, possess[ed] a Venezuelan identity document, and ha[d] no criminal record in Brazil.”²¹⁵ These individuals were affirmatively identified by CONARE using biometric data run through the Brazilian migratory records database.²¹⁶ The basis for their refugee determination was the “serious and widespread human rights violations” in Venezuela, which is the Cartagena Declaration’s separate ground for asylum in addition to the five grounds listed in the Refugee Convention.²¹⁷ Subsequently, CONARE continued to

212. *Id.*; *Estrutura Organizacional [Organizational Structure]*, GOVERNO DO BRASIL, MINISTÉRIO DA JUSTIÇA E SEGURANÇA PÚBLICA [GOV’T OF BRAZIL, MINISTRY OF JUSTICE AND PUBLIC SECURITY] (Braz.), <https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/institucional> [https://perma.cc/6K5G-EUDM] (last visited Apr. 10, 2026).

213. GOV’T OF BRAZIL, *supra* note 212; see also Leiza Brumat & Andrew Geddes, *Refugee recognition in Brazil under Bolsonaro: the domestic impact of international norms and standards*, 44 *THIRD WORLD Q.* 478 (2023), <https://www.tandfonline.com/doi/full/10.1080/01436597.2022.2153664> [https://perma.cc/9RGK-MD5H] (describing CONARE as “a ‘tripartite enterprise’ involving the state, International Organisations (IOs) and civil society” and noting that “[s]ignificantly, CONARE is the only South American national refugee council that relies on this tripartite procedure”).

214. Leomil, *supra* note 210, at 15–22. These procedures served as a formal implementation measure of the adoption of the Cartagena definition that was incorporated into Brazilian law through its 1997 Refugee Act. *Id.*

215. *UNHCR welcomes Brazil’s decision to recognize thousands of Venezuelans as refugees*, U.N. HIGH COMM’R FOR REFUGEES (Dec. 6, 2019), <https://www.unhcr.org/news/briefing-notes/unhcr-welcomes-brazils-decision-recognize-thousands-venezuelans-refugees> [https://perma.cc/4MVX-J6EA].

216. Liliana Lyra Jubilut & João Carlos Jarochinski Silva, *Group recognition of Venezuelans in Brazil: an adequate new model?*, 65 *FORCED MIGRATION REV.* 42, 43 (2020).

217. See, e.g., INT’L MIGRATION OBSERVATORY, *ASYLUM STATISTICS* 33 (7th ed. 2022) (Braz.), https://portaldeimigracao.mj.gov.br/images/Obmigra_2020/OB

process asylum claims from eligible Venezuelans in Brazil through an expedited process that did not require an individual interview.²¹⁸ As of 2023, Brazil recognized over 128,000 Venezuelan asylees under these new group-based procedures, which continues to be one of the largest nationalities of new asylum applicants and new asylees in Brazil.²¹⁹

Within a year of its implementation, asylum decision wait times were reduced by two years.²²⁰ Critiques of this system included the lack of transparency about whether this type of group-based procedure would be continued for Venezuelans or other groups, and the lack of clarity around the inclusion of indigenous individuals from Venezuela in this group-based determination, thus causing speculation about the potential for particularly vulnerable groups to be excluded from this process.²²¹ The Brazilian example may also reflect a foreign policy shift in its relations with the Maduro government in Venezuela rather than a targeted response to a backlog of asylum applications.²²² There is also an argument that the UNHCR's explicit guidance to states to recognize Venezuelan migrants as refugees under the Cartagena Declaration had sway, particularly because a UNHCR representative was able to have a non-voting voice in the decision making process.²²³

Migra_2022/REF%C3%9AGIO_EM_N%C3%9AMEROS/Refu%CC%81gio_em_Nu%CC%81meros_-_ingle%CC%82s.pdf [https://perma.cc/R7W2-2HD4] (listing the grounds CONARE employed for granting refugee status in 2021, including “[p]olitical opinion,” “[s]erious and widespread human rights violation,” “[m]embership,” “[r]eligion,” “[r]ace and [n]ationality”).

218. U.N. HIGH COMM’R FOR REFUGEES, *supra* note 215.

219. INTERNATIONAL MIGRATION OBSERVATORY, *supra* note 217; Venezuela Situation, U.N. HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/emergencies/venezuela-situation> [https://perma.cc/L7WX-S9VK].

220. Jubilit & Silva, *supra* note 216, at 44 (“as CONARE claims, the group recognition practice has shortened the RSD process by two years”).

221. *Id.*

222. See Leomil, *supra* note 210, at 14–22 (hypothesizing that Brazil beginning to recognize Venezuelans as refugees in 2019 despite Brazil’s historical “reluctance to overtly discredit” the Venezuelan government by doing so could be attributed to the Brazilian politicians appointed to office who openly accused the Venezuelan government of human rights violations and aimed to “delegitimi[z]e” the Venezuelan government). Notably, Brazil faced a similar situation as a receiving country for Haitians fleeing the aftermath of the 2010 earthquake. CONARE declined to use the spirit of Cartagena to extend the same protection to Haitians, but UNHCR was not supportive of such an effort at that time either. *Id.*

223. See *id.*; Brumat & Geddes, *supra* note 213, at 482–83.

Nevertheless, some scholars have suggested that Latin American countries with overwhelmed asylum systems would do well to embrace the spirit of Cartagena to reduce backlogs caused by individual asylum adjudications.²²⁴ The Inter-American Commission on Human Rights has also encouraged states to adopt *prima facie* or group-based asylum determinations to address the continuing mass migration of Venezuelans throughout the region.²²⁵

III. HURDLES AND OPPORTUNITIES FOR GROUP-BASED ASYLUM

The previous examination of existing group-based asylum mechanisms provides possible models for the adoption of such a system in the U.S. However, this discussion would be incomplete without also examining whether such a system would be practically and politically feasible within the U.S. context. For nearly two decades, immigration policy and border enforcement priorities have been politically contentious in national debate.²²⁶ Each administration brings new policy goals, often not favorable to asylum seekers regardless of party.²²⁷ However, both Republicans and Democrats purport to enact policies that increase the efficiency of the immigration system and more quickly process asylum claims, despite differing policy goals and means for attempting to achieve efficiency and speed. For example, the Biden administration enacted several major regulatory changes limiting access to asylum based on the manner of entry and implementing several accelerated asylum

224. See Freier, Berganza, & Blouin, *supra* note 201, at 26 (“It is precisely a group application that would take the pressure off of collapsing asylum systems, like that of Peru, which would take years to process all pending asylum applications on an individual basis.”).

225. Inter-American Comm’n H.R., *Resolution 2/18 Forced Migration of Venezuelans*, ¶ 2 (Mar. 2, 2018), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf> [<https://perma.cc/574F-G2RW>].

226. See ANDREW I. SCHOENHOLTZ, JAYA RAMJI-NOGALES & PHILIP G. SCHRAG, *THE END OF ASYLUM 27–35* (2021) (tracing the immigration policy and border enforcement priorities under the administrations of Presidents Bill Clinton, George W. Bush, and Barack Obama).

227. See, e.g., Justo Robles, *Title 42 migration restrictions have ended, but Biden’s new policy is tougher* (May 13, 2023), <https://www.theguardian.com/us-news/2023/may/13/title-42-migration-biden-new-policy-tougher> [<https://perma.cc/9FBH-LT6J>]; AM. IMM. COUNCIL, *Challenging the Shutdown of Asylum Access at Ports of Entry* (June 11, 2025), <https://www.americanimmigrationcouncil.org/litigation/challenging-shutdown-asylum-access-ports-entry> [<https://perma.cc/9FBH-LT6J>].

procedures, although none made on a group-wide basis.²²⁸ The second Trump administration is the latest to take up this goal, although within the broader goal of mass deportation.²²⁹

As the examples from Part II suggest, a group-based asylum mechanism would enhance the justness and expediency of the U.S. asylum system.²³⁰ In the hypothetical case described in this Article's Introduction, Fareeda is an asylum applicant seeking protection based on her fear of gender-based harm in Afghanistan, her country of origin.²³¹ If the United States had a mechanism for group-based asylum adjudication, she could carry her statutory burden of proof by testifying before an immigration judge or asylum officer, providing evidence of her identity and nationality via her Afghan nationality documents, and submitting to biometrics screening by DHS. If DHS designated women from Afghanistan as a presumptive group of asylees, and if Fareeda had no other criminal or national security related bars to asylum, the immigration judge could rely on the group designation and grant Fareeda asylum as an Afghan woman after a 20-minute hearing.

Below, this Part examines some reasons for concluding that a group-based asylum mechanism is politically and legally feasible within existing asylum law. As described above, the United States utilizes groups in other areas of administrative and immigration law.²³² Thus, the adoption of a group-based asylum mechanism would

228. See, e.g., Heidi Altman, *How the Biden Administration's Expanded Asylum Ban Put Lives at Risk and Contradicts American Values*, NAT'L IMMIGR. L. CTR. (Sept. 30, 2024), <https://www.nilc.org/resources/how-the-biden-administrations-expanded-asylum-ban-puts-lives-at-risk-and-contradicts-american-values/> [<https://perma.cc/MMP6-6BJW>] (summarizing Biden administration regulations limiting access to asylum based on time and manner of entry to U.S.); Quinn Owen, *Biden administration aims to expedite migrant asylum claims from years to months*, ABC NEWS (May 16, 2024), <https://abcnews.com/Politics/biden-administration-aims-expedite-migrant-asylum-claims-years/story?id=110321945> [<https://perma.cc/QN8D-ZM57>] (reporting on expansion of dedicated docket for expedited processing of certain removal cases).

229. See, e.g., Muzaffar Chishti & Kathleen Bush-Joseph, *Trump Administration's Expansion of Fast-Track Deportation Powers Is Transforming Immigration Enforcement*, MIGRATION POLY INST. (Sept. 25, 2025), <https://www.migrationpolicy.org/article/trump-expedited-removal> [<https://perma.cc/SQ8X-9BAA>] (explaining that expanded expedited removal allows unauthorized immigrants to be deported in as little as a few hours and is being used as a tool to reduce the immigration court backlog).

230. See *supra* Part II.

231. See *supra* Introduction.

232. See *supra* Section I.C.

be an extension of what DHS and other agencies already do in other contexts. This Part raises and addresses likely critiques and downsides to the adoption of a group-based asylum mechanism. This Article concludes that despite the potential downsides, the United States should nevertheless implement such a system to combat the strikingly unjust backlog that currently exists for asylees in the United States.

A. Fairness and Equity in Group-Based Asylum Determinations

Critics of group-based asylum determinations may argue that the designation of certain groups as presumptively eligible for asylum could create a bias towards these groups to the detriment of those outside that designation.²³³ Similarly, critics also accuse group-based mechanisms of creating unequal access to asylum based on nationality or ethnicity.²³⁴ This critique is akin to a critique of the refugee system at large that questions why some individuals are deserving of protection while others are not.²³⁵

Scholars, advocates, and legislators must continue to reflect on how the refugee definition, in both international and U.S. law, can be reformed to include individuals exposed to conditions of generalized violence, climate crises, and other forms of violence and persecution not currently covered by the Refugee Convention or U.S. definition of refugees. While those conversations are outside the scope of this Article,²³⁶ there are related concerns specific to the proposal of a group-based asylum mechanism. There is a material risk that adjudicators would interpret the exclusion of certain groups in the group-based designations as supporting a presumption that those

233. See also U.S. CITIZENSHIP & IMMIGR. SERV. OMBUDSMAN, *supra* note 7, at 45 (2022) (“Asylum law is meant to be neutral and any efforts to prioritize certain categories of cases may be harmful to maintaining impartiality.”).

234. CARRERA ET AL., *supra* note 115, at 7.

235. See Kevin Cope, *Rethinking Responsibility for Refugees*, JOTWELL (July 1, 2021), <https://intl.jotwell.com/rethinking-responsibility-for-refugees/> [<https://perma.cc/D7MG-792X>] (describing the refugee regime as drawing an artificial and unjust line between those deemed eligible for protection and those who fall just short).

236. See, e.g., T. ALEXANDER ALEINKOFF & LEAH ZAMORE, *THE ARC OF PROTECTION: REFORMING THE INTERNATIONAL REFUGEE REGIME* 97 (2019) (“Andrew Shacknove has argued that the concept of refugee should apply ‘to persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible’”); *id.* at 105–39 (outlining other proposed reforms to international refugee law).

individuals are not eligible for asylum. However, the requirements for individualized procedures already built into our asylum system should guard against such speculative or baseless conclusions.²³⁷ This would also be in line with the UNHCR guidance on group-based or prima facie asylum mechanisms.²³⁸ A group-based asylum mechanism should be seen as a prioritization of certain asylum claims rather than a negative statement against other types of claims, as is the case in the Canadian system.²³⁹ This promotes “a balanced approach, one that avoids both the temptation of excessive emphasis on individual circumstances and the dangers of exclusive reliance on group characteristics.”²⁴⁰

This proposal could promote other important fairness and equity considerations in administrative adjudication beyond efficiency, such as uniformity and procedural legitimacy.²⁴¹ By providing clear presumptive outcomes in asylum adjudications for certain individuals, group-based asylum determinations could also reduce some of the concerning levels of inconsistency and opacity in the current asylum system described above.²⁴² It would also reduce the power of smugglers and cartels at the border who exploit and spread misinformation to keep and consolidate their exploitation of

237. See Ramji-Nogales, Schoenholtz & Schrag, *supra* note 40, at 379 (“[W]hile a more detailed codification could theoretically reduce disparity in decision making, neither this study nor any other study that we know of offers evidence that disagreements about substantive law account for the disparities in grant rates.”).

238. See UNHCR Guidelines, *supra* note 29, at ¶ 6 (“A prima facie approach operates only to recognize refugee status. Decisions to reject require an individual assessment.”).

239. See generally HILARY EVANS CAMERON, REFUGEE LAW’S FACT-FINDING CRISIS: TRUTH, RISK, AND THE WRONG MISTAKE (2018) (describing the Canadian system of prioritization); *Instructions Governing the Streaming of Less Complex Claims at the Refugee Protection Division*, IMMIGR. & REFUGEE BD. OF CAN. (Can.), <https://www.irb-cisr.gc.ca/en/legal-policy/policies/Pages/instructions-less-complex-claims.aspx> [<https://perma.cc/3ARQ-AGTL>] (last visited Apr. 10, 2026) (describing that the Canadian adjudications “must proceed both fairly and efficiently” and give all applicants “reasonable opportunity to be heard”).

240. Durieux, *supra* note 14, at 160.

241. See Jennifer Lee Koh, *Barricading the Immigration Courts*, 69 DUKE L.J. ONLINE 48, 72 (2020) (“Values like accuracy, predictability, uniformity, fairness, the rule of law, and legitimacy have long been central to administrative adjudication, and take on particular importance in evaluating the role of the executive branch in setting immigration policy.”); Durieux, *supra* note 14, at 160 (“To admit group-based evidence in RSD is also advantageous in that it is bound to increase decisional consistency.”).

242. See discussion *supra* Section I.B.

asylum seekers.²⁴³ Perhaps most importantly, this proposal would further the United States' moral and legal responsibility to offer protection to individuals fleeing death and persecution.²⁴⁴ At a normative level, the United States should welcome refugees to fulfill its commitments to the international community following the atrocities of World War II. Group-based asylum would aid in this aim by providing clear and expedient procedures for individuals in the United States who fear return to their home country.

B. Balancing the Competing Interests of Efficiency and Security

Skeptics of group-based asylum may worry about over-inclusion, such as group designations granting asylum to either individuals who do not have a genuine fear of return or who are ineligible for asylum for unrelated reasons.²⁴⁵ Others may argue that

243. See, e.g., Rebecca G, *Remain in Mexico: Unlawful, Ineffective, and Must Never Return*, HUM. RTS. FIRST (Jan. 10, 2025), <https://humanrightsfirst.org/library/remain-in-mexico-unlawful-and-ineffective/> [<https://perma.cc/4X3X-D3BS>] (detailing the risks to asylum seekers by cartel violence and increased control over border crossings when the right to seek asylum is limited).

244. The moral imperative of offering protection to refugees embraced by the United States public following the horrors of World War II was summarized by then Assistant Secretary of the Bureau of Population, Refugees, and Migration in 2006 as: "Americans want to help as individuals, we respond with empathy and concern. Those of us so blessed as to have been born and raised in the United States, and to have lived our lives in freedom, can only imagine the plight of a refugee. Even so, perhaps our parents or grandparents fled to this country, escaping tyranny and oppression in the lands of their birth. The stories of refugees today have echoes in many stories of the founding and growth of our nation. . . . This history, compassion and dedication to upholding human dignity make up our humanitarian imperative." Ellen R. Sauerbrey, Assistant Secretary of the Bureau of Population, Refugees, and Migration, Remarks to Heritage Foundation: The U.S. Commitment to Refugee Protection and Assistance; Humanitarian and Strategic Imperative (June 20, 2006), U.S. DEPT OF STATE ARCHIVE, <https://2001-2009.state.gov/g/prm/rls/2006/68116.htm> [<https://perma.cc/8A8X-HXLG>]. The U.S. undertook these moral commitments as legal obligations in the signing and ratification of the 1951 Refugee Convention and its subsequent 1967 Protocol. U.N. High Comm'r for Refugees, Convention and Protocol Relating to the Status of Refugees, <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees> (on file with the *Columbia Human Rights Law Review*); *Senate Consideration of Treaty Document 90-27*, U.S. CONGRESS (Oct. 4, 1968), <https://www.congress.gov/treaty-document/90th-congress/27> (on file with the *Columbia Human Rights Law Review*).

245. This has been an apparent concern in other legal systems that adopted some form of group-based presumption for asylees. See, e.g., Standing Comm. on

a group-based asylum mechanism could encourage irregular migration to the United States, as was the fear in the Netherlands.²⁴⁶ Putting aside the moral justification to extend asylum protections on an over-inclusive basis given the serious consequences of an under-inclusive system, there is little evidence to conclude that a group-based asylum mechanism results in additional migrant arrivals or that these systems result in more fraud.²⁴⁷

Ample evidence supports that group-based asylum systems are generally more efficient, faster, and less resource-intensive (i.e., cheaper to administer) than individual asylum adjudications.²⁴⁸ There is, at least by looking at the stated justifications for these policies, a basis to conclude that a group-based asylum mechanism would align with the goals of recent administrations of reducing the asylum backlog and increasing efficiency by identifying the strongest claims quickly, thus allowing immigration agencies to devote limited resources to more complex cases.²⁴⁹ Furthermore, advocacy groups acknowledge the importance of quickly identifying individuals who are eligible for humanitarian protection, such as asylum, while criticizing recent policy changes that accelerate the timeline for

Hum. Rts., *supra* note 192 (statement of Canadian IRB official addressing concern of granting asylum to a broad group); Jubilut & Silva, *supra* note 216 (discussing Brazil's use of biometric analysis to narrow the group of Venezuelans granted asylum on a group basis). The 2022 USCIS Ombudsman Report recommending a process for group-based asylum assessment also seems to implicitly acknowledge this concern in highlighting the need to narrow and clearly define group characteristics. U.S. CITIZENSHIP & IMMIGR. SERV. OMBUDSMAN, *supra* note 7, at 45.

246. FAST-TRACK ASYLUM PROCEDURES, *supra* note 127, at 6 (describing a fear that using group-based designations to expedite asylum decisions would incentivize migration and “encourage [migrants] to apply for asylum and obtain a quick positive decision”).

247. To the contrary, Germany's example shows that by using group-based designations only for likely denials, the backlog of asylum cases only continues to grow. *See id.* at 4.

248. UNHCR *Refugee Status Determination*, *supra* note 29, at ¶ 8 (describing how countries like Germany, Canada, and several countries in South and East Africa have adapted their RSD procedures to become more efficient); Albert, *supra* note 9, at 68 (2010) (“[Prima facie determination] is ‘much simpler’, expeditious, and cost-effective than other [refugee status determinations (‘RSD’)]. This, in turn, allows for up to half of refugee support funds to be diverted from administering the RSD process to material assistance for refugees.”).

249. AM. IMMIGR. LAWS. ASS'N, *supra* note 3, at 4–5 (2023) (stating that the immigration system must be able to quickly identify legitimate claims to improve efficiency and reduce backlog).

asylum without reducing or streamlining any of the evidentiary burdens on asylum seekers.²⁵⁰

Critics may claim increased fraud would follow from such a system by decreasing the vetting each asylum applicant must go through or by over-generalizing the category of individuals who are identified as eligible for asylum. As one scholar explains, “[t]here is no reason, however, why efficiency and certainty cannot be reconciled, especially in those states where resources are available to be applied to the regular updating and distillation of country information, and to the monitoring and control of asylum decisions.”²⁵¹ Rather, as the European, Canadian, and Brazilian systems discussed above illustrate,²⁵² the existing national security vetting systems would remain a required aspect of a group-based asylum mechanism. As in those examples, a presumptive asylee would still be required to prove their identity,²⁵³ submit to biometrics and background checks,²⁵⁴ and still be subject to asylum bars that prohibit individuals with certain criminal or national security bars from receiving asylum.²⁵⁵

Finally, skeptics may also claim that it would be too cumbersome to monitor and update the designations of groups of asylees given changing conditions in other countries. However, there is no need for such a proposal to scour the entire globe to categorize populations into “refugees” and “non-refugees.” As discussed below, many reasons, such as political priorities and foreign policy considerations would prevent that from occurring. The proposal described in the next section will address this concern in more detail.

C. Potential for Political Manipulation

Another potential drawback of a group-based asylum mechanism is possible politicization and manipulation from one administration to the next. It is true that an effective group-based asylum system could be undermined by an administration that seeks to limit the designation of certain groups for asylum eligibility or limit the number of asylees in the U.S., which could add to the

250. *Id.* at 4.
 251. Durieux, *supra* note 14, at 160.
 252. *See supra* Part II.C.–E.
 253. *See* 8 U.S.C. § 1229a(c)(4)(B).
 254. *See* 8 C.F.R. 103.2 (b)(9).
 255. *See* 8 U.S.C. § 1158(a)(2).

backlog or unpredictability of adjudications.²⁵⁶ Because a group-based mechanism supplements rather than replaces individual adjudication, a new administration could mandate case-by-case for applicants it deems ineligible for group designation. However, this politicization is unfortunately already the norm,²⁵⁷ given that asylum policy is set and enforced by executive agencies.

Administrations might abuse the group-based mechanism for political ends by designating certain groups who are aligned with the foreign policy goals of a given administration (e.g., conservative Presidents may favor religious minority group designations), as was perhaps a factor in the example of Brazil's group-designation of Venezuelan asylees.²⁵⁸ In the U.S. context, despite overwhelmingly barring new refugees from resettling in the United States, the Trump administration has nevertheless resettled white Afrikaners from South Africa.²⁵⁹ This move undermines the Trump administration's stated justifications for eliminating other refugee resettlement for security and economic reasons and highlights the racial and political factors at play in the administration's wider immigration policy.²⁶⁰ It also demonstrates that even anti-immigration administrations recognize the benefit of using group-based determinations to offer protection to certain politically-favored groups.

256. Ramji-Nogales, Schoenholtz & Schrag, *supra* note 40, at 299 (noting concerns that efforts to standardize adjudication could reduce overall asylum grant rates).

257. See, e.g., *Asylum Protection for Survivors of Gender-Based Violence*, CTR. FOR GENDER & REFUGEE STUD. (last updated 2025), <https://cgrs.uclawsf.edu/en/our-work/policy-and-advocacy/asylum-protection-survivors-gender-based-violence> [<https://perma.cc/A27C-H736>] (detailing the political fight over recognition of gender as a protected ground in asylum claims).

258. See Leomil, *supra* note 210, at 14–22 (analyzing how foreign policy and domestic political considerations influenced Brazil's group recognition decision).

259. See U.S. Mission S. Afr., *Refugee Admissions Program for South Africans*, U.S. EMBASSY & CONSULATES IN S. AFR. (Nov. 4, 2025), <https://za.usembassy.gov/refugee-admissions-program-for-south-africans/> [<https://perma.cc/EU2E-ZAP9>] (stating that individuals of Afrikaner ethnicity or racial minorities may be considered for U.S. refugee resettlement).

260. See Kimahli Powell & Jean Freedberg, *The Afrikaner Exception: Race and Strategic Dismantling of U.S. Refugee Protection under the Trump Administration*, CARR-RYAN CTR. FOR HUM. RTS. (May 19, 2025), <https://www.hks.harvard.edu/centers/carr-ryan/our-work/carr-ryan-commentary/afrikaner-exception-race-and-strategic-dismantling> [<https://perma.cc/SB9U-3YKZ>] (arguing that the selective admission of white Afrikaans-speaking South Africans undermines the administration's stated capacity-based justifications and reflects political and racial priorities).

Importantly, the anti-asylum effects of politicization would be mitigated by the fact that group-based *denials* do not comply with the procedural guarantees provided by statute, because denials of asylum and other forms of relief from removal must still be adjudicated on a case-by-case basis, as explained in further detail below.²⁶¹ Thus, at worst, politicization of a group-based asylum policy would leave us with the same broken system that currently exists, absent Congressional action.

The group-based mechanism's potential for adjustment according to changing political goals also creates the potential for a zealous administration to *benefit* asylum seekers. A group-based system would allow an administration committed to protecting refugees to provide more rapid protection to groups identified as vulnerable, freeing up resources to adjudicate more complex asylum claims such that the so-called "migrant crisis" could be resolved rather than band-aided with ineffective deterrence mechanisms. The group-based mechanism would add legitimacy to the asylum system by creating more uniform and just outcomes for asylum seekers, while sparing them from the burdens of finding lawyers, experts, and voluminous corroborative evidence, on top of the non-legal barriers to accessing the asylum system.

In the author's view, the benefits of such a mechanism outweigh potential problems. Providing for even some reduction in backlog would benefit the asylum system as a whole. Furthermore, a group-based system would allow representatives to assist more applicants, thus reducing backlog at an increasing rate.²⁶² While not a comprehensive solution to transparency and inconsistency issues, a group-based system would provide clear guidelines for asylum officers and immigration judges to identify when a claim is presumptively meritorious. This would limit the variation in outcomes between different officers and immigration judges, and across the asylum offices and immigration courts, as described above. The State Department itself, in describing the P-2 group-based refugee category, explains that group-based designations "enable[] efficient processing because [they] identify[] groups of people with very similar persecution claims, can avoid labor-intensive individual referrals, and

261. See *infra* Part IV.B.

262. *Too Few Immigration Attorneys: Average Representation Rates Fall from 65% to 30%*, TRACIMMIGRATION (Jan. 24, 2024), <https://tracreports.org/reports/736> [<https://perma.cc/27EA-EYHC>] (reporting that representation rates have dropped from 65% to 30% amid a backlog of over 3.2 million cases and emphasizing the role of attorneys in facilitating more efficient court proceedings).

prevent[] delays to applicants.”²⁶³ Finally, a group-based asylum designation would also aid efforts to address the root causes of migration by naming specific problems or conditions in need of remedy.

IV. A PATH TOWARDS GROUP-BASED ASYLUM IN THE U.S.

Based on this examination of comparative examples and the overall benefits of a group-based asylum mechanism, this Part concludes that it is both politically feasible and advisable for the U.S. to adopt such a mechanism within its existing asylum system in order to reduce backlog and increase fairness and efficiency.²⁶⁴ This Article joins other scholars and advocates who propose that the U.S. adopt such a system in response to the current issues with the U.S. asylum system described above.

Critically, in 2022, the USCIS Ombudsman in its Annual Report to Congress acknowledged the need for a group-based approach to asylum adjudication.²⁶⁵ The report specifically recognized the need for group-based determinations and screenings to address the existing asylum backlog.²⁶⁶ The report proposed that USCIS “analyze the characteristics of the applicants in its asylum backlog,” then “identify a set of variables” that it can reliably gather using biometric data, including “nationality, race, ethnicity, tribal group, religion, date of entry into the United States, and gender identity.”²⁶⁷

263. U.S. DEP’T OF STATE, 2024 Report, *supra* note 82, at 23.

264. See Schrag, Ramji-Nogales & Schoenholtz, *supra* note 6, at 637–38 (proposing that the Asylum Office identify groups with *prima facie* claims to simplify and speed up adjudication); Gilman, *supra* note 6, at 1 (proposing group-based asylum eligibility for applicants from designated nations sending significant refugee flows, noting precedents in existing U.S. regulations and international practice); see generally Michael Kagan, *A Faster Way to Yes: Re-Balancing American Asylum Procedures*, 113 GEO. L. J. 1001 (2025) (arguing that expedited approval mechanisms and group-based status recognition can rebalance the asylum system by making efficient grants as accessible as efficient denials).

265. U.S. CITIZENSHIP & IMMIGR. SERVS. OMBUDSMAN, *supra* note 7, at ix.

266. *Id.* (urging discussion of new operational approaches, including identifying or grouping cases to increase efficiencies in interviews and adjudications).

267. *Id.* at 45–46 (proposing USCIS “analyze the characteristics” of the asylum backlog and “identify a set of variables” it can reliably gather, including “nationality, race, ethnicity, tribal group, religion, date of entry into the United States, and gender identity”).

This would allow USCIS to organize and triage its backlog by prioritizing cases for more “efficient interviews and adjudications.”²⁶⁸

In fact, the United States, like comparable asylee-receiving countries, recently dabbled in the group-based asylum space on a small scale. After the evacuation of many U.S. allies from Afghanistan in the lead up to the Taliban’s takeover, Congress passed legislation requiring that USCIS interview these individuals within 45 days of receiving their applications and issue decisions on these asylum applications within 150 days.²⁶⁹ While not a group-based determination per se, the implication was that these Afghan asylum seekers were likely eligible for asylum and should have their applications expedited.²⁷⁰ While this does provide a positive example of the United States identifying a group of asylum seekers who were likely to be granted asylum, it also illustrates why simply expediting certain cases without making a more explicit determination about that group is an insufficient group-based solution. In passing the expedited requirement, Congress did not direct additional resources to the Asylum Office to comply with this expedited timeline and did nothing to change the evidentiary burden for these asylum seekers.²⁷¹ Thus, it was only after class action federal litigation that USCIS began devoting the necessary resources to comply with the new

268. *Id.* at 46 (explaining that identifying combinations of variables could enable “more efficient interviews and adjudications” and allow USCIS to set protection priorities or triage).

269. Afghanistan Supplemental Appropriations Act of 2022, Pub. L. No. 117-43, div. C, tit. V, § 2502(c)(1)–(2) (requiring USCIS to conduct the initial asylum interview within 45 days of filing and, absent exceptional circumstances, issue a final administrative adjudication within 150 days); DEP’T OF HOMELAND SEC., OFF. OF INSPECTOR GEN., USCIS HAS GENERALLY MET STATUTORY REQUIREMENTS TO ADJUDICATE ASYLUM APPLICATIONS FROM PAROLED AFGHAN EVACUEES 7 (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-08/OIG-23-40-Aug23.pdf> [<https://perma.cc/MD5V-GYJ5>].

270. As of the August 15, 2024, status update to the court enforcing these deadlines, USCIS has granted 96% of the nearly 20,000 asylum applications it adjudicated in this category. U.S. CITIZENSHIP & IMMIGR. SERV., AHMED V. DHS PUBLIC STATUS REPORT TABLE 1: CLASS MEMBER ASYLUM DATA (2024), <https://www.uscis.gov/sites/default/files/document/legal-docs/Ahmed-v-DHS-Public-Status-Report-Class-Member-Asylum-Data-8112024.pdf> [<https://perma.cc/2J4J-GZN2>].

271. See Afghanistan Supplemental Appropriations Act of 2022, Pub. L. No. 117-43, div. C, tit. V, § 2501-02 (appropriating additional funds to USCIS generally for processing all related benefits for Afghan nationals, but not providing funds directed at the Asylum Office to accompany the expedited asylum processing provision).

timeline.²⁷² However, this has also contributed to further delays for non-Afghan applicants while USCIS prioritizes these designated applications.²⁷³

A functional group-based asylum adjudication mechanism requires more than simply expediting claims. Immigration agencies must also lessen the evidentiary and procedural burden on applicants falling within designated groups to achieve the cost- and time-saving purpose of group-based asylum. Below, I also contrast this proposal with recent administrations' imprudent attempts to expedite asylum processing through merits-blind policies and regulations.

A. How U.S. Group-Based Asylum Mechanism Would Work

At a high level, a group-based asylum mechanism would operate as follows. First, an immigration agency would make a legal determination that certain demographic groups meet the definition of refugees under U.S. law and thus, qualify as presumptive asylees. This determination would apply both in the Asylum Office and in immigration court contexts within the existing procedural mechanisms for requesting asylum. Presumptive asylees would continue to bear the burden of providing testimony and documents specific to themselves. But they would not bear the same factual burden regarding the conditions in their home country, including the repeated harm committed by persecutors, the motives of known persecutors, the inability of certain groups to evade harm in any part of their home country, or the ongoing existence of those conditions. For example, a presumptive asylee would still be expected to produce documents verifying their identity, including any relevant characteristics such as their religious affiliation, racial or ethnic group, or sexuality. However, that applicant would not need to submit evidence of the general treatment of similarly situated persons in their country of origin, such as human rights reports or expert testimony.

Asylum adjudications for presumptive asylees would become much simpler and less resource-intensive for the applicant, their counsel, and adjudicators. For a presumptive asylee, a short interview or hearing in which the individual testifies to their identity

272. See *Ahmed v. DHS*, Case No. 4:23-CV-01892 (N.D. Cal. Apr. 19, 2023) (resulting in a settlement agreement in which USCIS was required to complete a certain number of adjudications for class members on a specified timeline); see Nat'l Immigr. Just. Ctr., *supra* note 70 (describing the settlement agreement).

273. See DHS Memo to USCIS, *supra* note 42, at 6–7.

and their membership in a designated group, and perhaps also provides corroborating evidence of their identity, would be enough to satisfy the statutory requirements of applicant-provided evidence showing that they meet the refugee definition.²⁷⁴

In this way, a group-based asylum mechanism should both lessen the burden of proof for certain asylum applicants and create an expedited process by which those applicants' claims could be decided. Furthermore, asylum seekers apprehended at the border who fall within pre-determined groups should be categorically exempt from expedited removal or presumed to have a credible fear of return to also streamline that initial step towards asylum adjudication. Each presumptive asylee would still be required to comply with biometrics collection, be subject to background checks, and be required to testify under oath to their identity and the lack of bars to their asylum eligibility.

B. Legal Authority for Group-Based Asylum

The proposed group-based asylum mechanism is consistent with the statutory mandate of the Immigration and Nationality Act ("INA") because the INA clearly contemplates at least some level of individual assessment. The statutory language setting forth asylum protection refers to "an alien" (in the singular) when prohibiting removal to a country where that individual's "life or freedom would be threatened."²⁷⁵ Similarly, the statutory bars to asylum, i.e., the criminal and national security conditions which prevent an individual from being granted asylum, also refer to "the alien" in the singular.²⁷⁶ Furthermore, while fairly brief, the statutory language describing the procedures for asylum determinations requires that the noncitizen asylum seeker: 1) apply for asylum and 2) bear the burden of proof "that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason

274. These adjudications would be similar to immigration court hearings in which an applicant's written testimony is accepted as credible and is otherwise uncontested by a Department of Homeland Security trial attorney. Pursuant to the Board of Immigration Appeals' decision in *Fefe*, 20 B.I.A. Immigr. and Nat'y Decision 116 (1989), the minimum requirements for an asylum hearing require the applicant to "take the stand, be placed under oath, and be questioned as to whether the information in the written application is complete and correct." *Id.* *But see* H-A-A-V-, 29 B.I.A. Immigr. & Nat'y Decision 233, 237 (2025) (concluding that the holding in *Fefe* is non-binding).

275. 8 U.S.C. § 1231(b)(3)(A).

276. 8 U.S.C. § 1231(b)(3)(B).

for persecuting the applicant.”²⁷⁷ Furthermore, the Real ID Act of 2005 requires that respondents in immigration court proceedings “submit information or documentation in support of the applicant’s application for relief or protection as provided by law or by regulation or in the instructions for the application form.”²⁷⁸ The Board of Immigration Appeals interpreted this language to require applicants to provide documentary support for material and easily verifiable facts.²⁷⁹

Given this language and the development of individual asylum mechanisms internationally, it follows that the asylum adjudication system has developed around individualized procedures and evidentiary requirements. Nevertheless, neither the statute nor the enacting regulations preclude adopting a group-based mechanism through evidentiary burden-shifting of certain fact criteria for asylum eligibility.

A U.S. group-based asylum mechanism would still require presumptive asylees to apply for asylum and bear the burden of proving their identity and membership in a designated group, thus satisfying the statutory requirements for individualized determinations.²⁸⁰ While the statute requires that the asylum applicant bear the burden of proof, seemingly counter to the group-based asylum mechanisms described above, the statute also states that this burden can be met by “credible,” “persuasive” testimony that “refers to specific facts sufficient to demonstrate that the applicant is a refugee.”²⁸¹ This language indicates that there is room to lighten the evidentiary load on asylum seekers where appropriate by relying exclusively on limited individualized information where other evidence supports the core elements of asylum.²⁸² This is also supported by the shift, ever since 2005 when the Real ID Act added additional documentary burdens to asylum applications in immigration court, towards more corroborative evidence and complex legal arguments in asylum hearings.²⁸³ If the statute required the

277. 8 U.S.C. §§ 1158(b)(1)(A)–(B).

278. 8 U.S.C. § 1229a(c)(4)(B).

279. J-Y-C-, 24 B.I.A. *Immigr. & Nat’y Decision* 260, 263 (2007) (quoting S-M-J, 21 B.I.A. *Immigr. & Nat’y Decision* 722, 725–26 (1997)).

280. 8 U.S.C. § 1158(b).

281. 8 U.S.C. § 1158(b)(1)(B)(ii).

282. Conceptually, this would be akin to the justification for multi-district litigation and class actions.

283. See generally Ardalan, *supra* note 51, at 1001, 1014 (suggesting that the Real ID Act of 2005 enables adjudicators to “increasingly demand[] extensive

current large evidentiary submissions for each asylum hearing, then these evidentiary expectations would have existed decades ago. The historical absence of these expectations suggests that they developed in response to external pressures on the asylum system,²⁸⁴ and thus can be lightened.

Finally, existing regulations allow asylum applicants to establish their asylum eligibility based on evidence of “a pattern or practice . . . of persecution of a group of persons similarly situated.”²⁸⁵ While this regulation is not widely or efficiently used by U.S. asylum practitioners and adjudicators, it shows that adjudicators already have the authority to grant asylum without relying on highly-individualized evidence of past and future fear of persecution, while still assessing the credibility and other eligibility factors required by statute.

These statutory requirements also explain why the European model of identifying claims for presumptive denial is unlikely to work well in the U.S. context. Because the statute does contain certain individual screening requirements, an applicant who presents a claim that many other individuals have presented with little success would still be entitled to a full adjudication of their case and have the ability to present evidence in support of their claim before being deported.²⁸⁶

proof” from asylum applicants that is “extraordinarily difficult to obtain without legal representation”).

284. *Id.*

285. 8 C.F.R. § 1208.13(b)(2)(iii)(A).

286. *But see* H-A-A-V-, 29 B.I.A. Immigr. & Nat’y Decision 233 (2025) (holding that that an Immigration Judge may pretermitt (dismiss) an asylum application where the applicant has not established prima facie eligibility for relief); EXEC. OFF. FOR IMMIGR. REV., U.S. DEPT OF JUST. PRETERMISSION OF LEGALLY INSUFFICIENT APPLICATIONS FOR ASYLUM 1–2 (2025), <https://www.justice.gov/eoir/media/1396411/dl?inline> [<https://perma.cc/8T7P-5PZ8>] (encouraging adjudicators to pretermitt or reject asylum applications that detail legally insufficient facts for an asylum claim). Both this Board of Immigration Appeals decision and this Executive Office for Immigration Review guidance document are likely unlawful under INA § 240(b)(4)(B)’s guarantees of the right of asylum seekers to present evidence in support of their claim, under the INA § 240(b)(1)’s requirement that Immigration Judges “interrogate, examine, and cross-examine” the applicant, and under well-developed due process requirements. *See* 8 U.S.C. §§ 1229a(b)(1), 1229a(b)(4)(B); *Colmenar v. Immigr. & Naturalization Serv.*, 210 F.3d 967, 971 (9th Cir. 2000) (recognizing that “alien[s]” facing deportation are entitled to both “full and fair hearing[s]” of their claims and “reasonable opportunit[ies] to present evidence on [their] behalf” under the Fifth Amendment’s Due Process clause); *see also* *Santos-Alvarado v. Barr*, 967 F.3d 428, 439 (5th Cir. 2020) (holding that 8 U.S.C. § 1229a(b)(1)’s “administer oaths, receive evidence, and interrogate, examine, and cross-examine” provision requires

However, the permanent bar to immigration benefits for those filing frivolous asylum applications would still apply to discourage unfounded asylum claims. While the government could attempt to make legal determinations about certain groups not meeting the refugee definition, this would likely fail as undermining the case-by-case analysis fundamental to U.S. asylum adjudication. Some courts, in reviewing the first Trump administration's asylum regulations that limited asylum claims made by certain groups,²⁸⁷ concluded that these categorical asylum denials were impermissible in our individual adjudication system.²⁸⁸ As one scholar has argued, "the nature of the thing being adjudicated" determines the permissibility of a categorical determination in asylum claims.²⁸⁹ That is because, while legal determinations can be made on a categorical basis as with any precedent in common law systems, factual determinations must be made on a case-by-case basis,²⁹⁰ which would undermine any

immigration judges to develop records in immigration court proceedings); *see, e.g.*, *Arevalo Quintero v. Garland*, 998 F.3d 612, 623–24 (4th Cir. 2021) (holding that immigration judges have a duty to develop the record under the INA); *Arteaga-Ramirez v. Barr*, 954 F.3d 812, 813 (5th Cir. 2020) (recognizing that immigration judges are responsible for facilitating testimony development in removal proceedings, "particularly where an alien appears *pro se*"); *Mendoza-Garcia v. Barr*, 918 F.3d 498, 504–05 (6th Cir. 2019) (requiring immigration judges to "help *pro se* [noncitizens in removal proceedings] develop the record" to uphold due process); *Alhuay v. U.S. Att'y Gen.*, 661 F.3d 534, 548 (11th Cir. 2011) (recognizing that the Fifth Amendment's Due Process protections apply in removal proceedings); *Al Khouri v. Ashcroft*, 362 F.3d 461, 464–65 (8th Cir. 2004) (recognizing both that "aliens . . . are entitled to the Fifth Amendment's guarantee of due process" and that immigration judges are required to fully develop records in immigration proceedings "where an alien appears *pro se*"); *Agyeman v. Immigr. & Naturalization Serv.*, 296 F.3d 871, 877 (9th Cir. 2002) (recognizing that parties facing deportation are entitled to "full and fair hearing" of their claims and "reasonable opportunit[ies] to present evidence" on their behalf in deportation proceedings under the Fifth Amendment's Due Process protections, that those parties must be afforded opportunities to present evidence under 8 U.S.C. § 1229a(b)(4), and that "immigration judge[s] must receive evidence" under 8 U.S.C. § 1229a(b)(1)).

287. Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 36264-01 (proposed June 15, 2020). These regulations were enjoined by *Pangea Legal Servs. v. DHS*, 512 F. Supp. 3d 966, 969–70 (N.D. Cal. 2021).

288. *See Grace v. Whitaker*, 344 F. Supp. 3d 96, 126 n.14 (D.C. Cir. 2018), *aff'd in part, rev'd in part sub nom.*, *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020) (requiring "case-specific factually intensive analysis" of asylum claims); *Diaz Reynoso v. Barr*, 968 F.3d 1070, 1078–80 (9th Cir. 2020).

289. Brian Soucek, *Categorical Confusion in Asylum Law*, 73 FLA. L. REV. 473, 507 (2021).

290. *Id.*

efficiency and resource goals of presumptively denying asylum for certain groups. Thus, these case-by-case guarantees serve to protect the due process floor for asylum seekers but do not impose a ceiling on the use of group-based determinations to the benefit of asylum seekers.²⁹¹

C. The Criteria for Determining Groups

This Section provides some guidance for decisionmakers to identify the specific groups warranting designation as presumptive asylees. Following the Canadian and European models,²⁹² the Department of Homeland Security should set forth objective criteria by which decisionmakers could make group determinations. These criteria should be flexible enough to allow for future adaptation to changing situations. Criteria that are flexible and that can be quickly adapted will be good for both protecting newly affected groups and for responding to changed country conditions, such as when a conflict ends. Flexible criteria also allow the agency to correct course if a group determination was too broad or too narrow. The Canadian criteria of “[c]ountries or claim types where identity is generally established by reliable documents” and “[c]ountries or claim types where the evidence is not ambiguous regarding the risk generally faced by claimants”²⁹³ would likely be good models for these criteria as they speak to the evidentiary conditions making certain groups appropriate for designation, but do not limit the decisionmakers in any substantive way as to which groups should be designated.

The description of designated groups will likely be the most important feature of this system because “the degree of precision in the definition of the group . . . will determine the evidential burden to be discharged by the individual claimant” regarding proof of membership in that group.²⁹⁴ The criteria should require that

291. UNHCR Handbook, *supra* note 17, at ¶ 205 (noting that while a “prima facie approach” can be used for group recognition, any decision to “reject require[s] an individual assessment”). See *Joined Cases C-608/22 & C-609/22, AH, FN v. Bundesamt für Fremdenwesen und Asyl*, ECLI:EU:C:2024:828 (Oct. 4, 2024) (holding that the cumulative effect of discriminatory measures imposed on women by the Taliban regime constitutes “acts of persecution” and that national authorities may conclude a well-founded fear of persecution exists based solely on an applicant’s gender and nationality, without requiring further individual assessment).

292. See *supra* Part II.C.D.

293. IMMIGR. & REFUGEE BD. OF CAN., *supra* note 174.

294. Durieux, *supra* note 14, at 158.

determinations be made for groups with clearly defined boundaries and well-documented country conditions. Groups should also be crafted so as to accommodate the most vulnerable groups, including children and marginalized populations within larger groups, without being overly broad.²⁹⁵ This is likely to be most easily achieved when broad swaths of a society face conditions of persecution, such as religious or ethnic minorities, or in the case of Afghanistan, an entire gender. The 2022 USCIS Ombudsman’s report similarly suggested that USCIS “identify particular combinations of variables (such as nationality and gender, or nationality and membership in a religious or ethnic minority)” for group-based prioritization.²⁹⁶ Additional groups could be identified based on political affiliation or sexual orientation. However, these groups would also likely require additional corroborating evidence for the applicant to prove their membership. These groups may be similar to those identified by the Canadian Task Force, which included “gender- and aged-based claims from Iran, extortion and kidnapping cases from Libya, religious-based claims from Pakistan and cases of political or military opposition from Sudan[,] [and a]ny women from Saudi Arabia who are at risk because they are ‘female.’”²⁹⁷ The agency could also incorporate the groups identified for P-2 refugee status, which focuses on minority religious, ethnic, and political groups within certain nationalities.²⁹⁸

The designation of a particular group should be followed by pre-screening of asylum applications by a centralized office, such as the Asylum Vetting Center that currently processes all affirmative applications, to triage or streamline cases, as in the European and Canadian examples.²⁹⁹ There should be simple and clear guidelines to avoid the issues of flawed screening processes highlighted by critics of the European system.³⁰⁰ Such pre-screening could also be done on the applicant side, by adding an option to the asylum application form to indicate that the claim falls within one of the pre-determined groups,

295. See JULIA KIENAST ET. AL., REFUGEE AND HUMAN RIGHTS LAW STANDARDS APPLICABLE TO ASYLUM GOVERNANCE AND THE RIGHT OF ASYLUM 109 (2023) (arguing that precise group definitions are essential to calibrate the evidentiary burden placed on individual refugee claimants).

296. U.S. CITIZENSHIP & IMMIGR. SERVICES OMBUDSMAN, *supra* note 7, at 45.

297. Hill, *supra* note 190; see Falconer, *supra* note 190, at 12–13.

298. U.S. DEP’T OF STATE, 2024 REPORT, *supra* note 82, at 24–27.

299. See *supra* Part II.C.D.

300. BEIRENS, *supra* note 50, at 27.

similar to the current TPS application process.³⁰¹ Additionally, the affirmative identification of eligible individual presumptive asylees through the use of biometric data already collected for asylum seekers would improve the efficiency of such a procedure by identifying eligible individuals who already have asylum applications pending.³⁰² Unlike the Canadian system, an in-person interview or immigration court hearing may be required for each case because of requirements embedded in current asylum laws.³⁰³ However, these hearings and interviews could be much shorter and involve much less preparation than what is currently required, thus allowing the adjudicators and applicant to save time and effort in knowing the intensity of the hearing they should prepare for. As suggested by the UNHCR guidelines and the 2022 USCIS Ombudsman Report, when there are indications that an individual has credibility, identity, or other issues affecting their eligibility for asylum, the applicant should be referred for full individual proceedings.³⁰⁴ Thus, unlike administrative policies that limit or accelerate the asylum process based on when or how someone entered the United States,³⁰⁵ this proposal would be based on the characteristics relevant to asylum eligibility rather than manner of entry, while still achieving the same or better efficiency results.

301. See U.S. CITIZENSHIP & IMMIGR. SERVS., FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS at Part 1, Item Number 4 (listing space for applicants to name the designated country pursuant to which they are applying).

302. Although the use of this data was criticized by some civil society groups in Brazil, in the U.S. system, this data is already known to be collected and used for such purposes as confirming asylum eligibility by screening for criminal and other public safety related issues. However, these systems come with their own problems. See, e.g., Suzanne Smalley, *CBP, ICE Sued for Information About Sharing of Noncitizens' Biometrics*, RECORD (May 24, 2024), <https://therecord.media/ice-cbp-foia-lawsuit-access-now-harvard-biometrics> [<https://perma.cc/3QBC-GKVD>] (reporting lawsuit against DHS related to the sharing of noncitizen data with Latin American governments).

303. See *Matter of Fefe*, 20 I. & N. Dec. 116 (BIA 1989); 8 C.F.R. § 208.9 (2023). But see U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 67, at 8 (allowing the Asylum Office to waive an interview for certain cases).

304. UNHCR Guidelines, *supra* note 29, at ¶ 35; U.S. CITIZENSHIP & IMMIGR. SERVICES OMBUDSMAN, *supra* note 7, at 45.

305. See, e.g., Press Release, U.S. Dep't of Justice, DHS and DOJ Announce Dedicated Docket Process for More Efficient Immigration Hearings (May 28, 2021), <https://www.justice.gov/archives/opa/pr/dhs-and-doj-announce-dedicated-docket-process-more-efficient-immigration-hearings> (on file with the *Columbia Human Rights Law Review*) (creating expedited hearing timeline for cases of recently arrived families).

Another important factor in the group determinations should be transparency and participation. Identifying groups for designation should include input from all interested parties, such as immigrant and refugee interest groups and the State Department. The example provided by CONARE in Brazil for including the input of international and civil society stakeholders and conducting a country specific analysis for group-based determinations provides a useful model for how decisions can be made.³⁰⁶ Like in the Canadian system, allowing practitioners to identify relevant cases may assist the agency in making group determinations.³⁰⁷ Political considerations and expertise would be accommodated by the input of relevant interested groups. The European examples show that little transparency in the uniformity or use of a group-based determination may lead to less efficiency and inconsistent use of group-based procedures.³⁰⁸

Finally, the criteria should include a mechanism by which decisionmakers review, renew, or end designations, or include automatic sunseting dates.³⁰⁹ Allowing for the periodic review of group-based determinations would combat the risk of over-inclusivity and the pull effect of an indefinite designation. As the Canadian example illustrates, this is possible with agency decisionmakers with expertise in country conditions and asylum claims.³¹⁰ Importantly, the termination of the group designation would not end the asylee status

306. GOV'T OF BRAZIL, *supra* note 212 (describing Brazil's refugee council that incorporates input from the Brazilian government, UNHCR, and civil society). *See also* Brumat & Geddes, *supra* note 213.

307. *See* IMMIGR. & REFUGEE BD. OF CAN., *supra* note 171 (explaining the streaming process for less complex claims which allows advocates to identify cases); Request for File-Review Processing Form, IMMIGR. & REFUGEE BD. OF CAN., *supra* note 184 (Canadian form for file-review requests).

308. *See also* U.S. CITIZENSHIP & IMMIGR. SERVICES OMBUDSMAN, *supra* note 7, at 47 ("Opaque triage criteria may prevent a sense of agency for asylum seekers and their legal representatives.")

309. *See* UNHCR Guidelines, *supra* note 29, at ¶ 36-37 (noting that decisions to grant prima facie status should be kept under periodic review to ensure the underlying country conditions still justify the approach); Durieux, *supra* note 14, at 157 (explaining that, given the delay in asylum adjudications from flight from the home country, "determination[s] should be supported by time-specific country information, as well as regularly and systematically updated").

310. *See supra* Part II.D. (describing the IRB of Canada's Inventory Reduction Task Force for Less Complex Claims).

already granted to individuals under a group-based determination.³¹¹ Rather, DHS would need to go through normal procedures to end asylum status as it does in individual adjudications.³¹²

Unlike the Canadian and German mechanisms, the United States should not rely on grant rates as an indicator for the designation of certain groups.³¹³ An identification of groups tied to percentage-based outcomes would likely be ineffective and under-inclusive of groups that would otherwise fit the criteria discussed above. The vast inconsistencies by adjudicators, the lack of clarity in the law, and the varying levels of record development by applicants previously described mean that there is not sufficient reliable data on the rate at which certain claims are granted to be useful to the assessment of whether a particular group should be designated under a group-based asylum system. As noted by the 2022 USCIS Ombudsman report, reviewing historical data to identify trends and sub-groups among particular nationalities granted asylum would assist with group designations.³¹⁴ This type of targeted analysis, not linked to a particular percentage grant rate and in combination with other factors, would likely be a useful starting place for identifying groups for designation. However, even USCIS noted the risk of relying on this data because “previous policies made it exceedingly difficult for certain populations to receive asylum.”³¹⁵

311. *But see* Durieux & Hurwitz, *supra* note 13, at 131; UNHCR Handbook, *supra* note 17, at 76 (discussing voluntary repatriation as one solution to refugee situations).

312. 8 U.S.C. § 1158 (describing procedures for terminating asylee status).

313. Studies show that grant and referral rates vary widely by jurisdiction and among individual asylum officers. Schrag, Ramji-Nogales & Schoenholtz, *supra* note 6, at 372–74 (“[O]ur data also showed some dramatic differences across geographic territory. Among regional asylum offices, overall grant rates for applications from nationals of eleven APCs varied between 26% in one region and 62% in another region.”); SAFE HARBOR CLINIC AT BROOKLYN L. SCHOOL, A FIEFDOM ON LONG ISLAND: AN INVESTIGATION INTO THE CULTURE AND PRACTICES OF THE NEW YORK ASYLUM OFFICE 8 (2023) (investigating the New York Asylum Office’s notoriously low grant rate of 5 to 7% of applications adjudicated); UNIVERSITY OF MAINE SCHOOL OF LAW’S REFUGEE AND HUMAN RIGHTS CLINIC ET AL., LIVES IN LIMBO: HOW THE BOSTON ASYLUM OFFICE FAILS ASYLUM SEEKERS 1 (2022) (reporting that the grant rate for the Boston Asylum Office was 15% between 2015 and 2020).

314. U.S. CITIZENSHIP & IMMIGR. SERVICES OMBUDSMAN, *supra* note 7, at 47.

315. *Id.*

D. Suggestions for Implementing Group-Based Asylum

Having laid out some criteria for group determinations, I also conceive of administrative options for the adoption of a group-based asylum mechanism by DHS. I also identify some potential downsides for these suggested administrative proposals.

The quickest tool DHS has to implement a group-based asylum mechanism is a policy memo directed at the discretion exercised by asylum officers and the trial attorneys who represent the government in removal proceedings against asylum seekers.³¹⁶ A policy memo could identify relevant criteria and announce the designation of certain groups meeting those criteria. The memo could be periodically updated to alter the group designations. Because DHS houses and directs the Asylum Office,³¹⁷ the application of these designations for affirmative asylum claims would be relatively straightforward because the Asylum Office would have to implement any policy memo handed down from DHS. USCIS may also decide to issue such a memo that is limited to the Asylum Office, which could also direct offices to expedite interviews for individuals falling within a designated group. For cases before the immigration courts, a DHS policy memo would be directed at their trial attorneys. Such a policy memo would likely take the form of guidelines for exercising prosecutorial discretion in asylum cases, which could direct trial attorneys to concede to asylum eligibility pending the results of background checks and the presence of any other asylum bars for individuals falling within the designated groups. However, expedited processing of these cases would be more difficult via a DHS policy memo since that would also require the participation of the immigration courts, housed under the Department of Justice.

A policy memo could be devised by or through consultation with the Refugee and Asylum International Operations Directorate (RAIO), which could identify the criteria and specific groups to be designated based on their subject area expertise and familiarity with refugee group-based determinations. As the office within USCIS already dedicated to adjudicating refugee and asylum applications, RAIO would also be well suited to consult relevant stakeholders, such as UNHCR, the Office of Refugee Resettlement and their partner organizations, and the Department of State.

316. See STRAUT-EPPSTEINER, *supra* note 37.

317. *Id.*

Because a policy memo would be directed at the discretion of agency officials, it would be most likely to withstand attack through litigation.³¹⁸ A policy memo would also be effective as a nimble tool by which the agency could act quickly to include or terminate the designation of certain groups as conditions change or new refugee producing situations emerge. However, a policy memo would be more susceptible to changing political tides and could lack transparency if the agency decides not to include detailed reasoning or make public its deliberations on group designations.

A more permanent and transparent mechanism for the adoption of group-based determinations would be through administrative rulemaking. Drawing on the comparative examples described above,³¹⁹ DHS could create a new system for the designation of certain groups as presumptively eligible for asylum, thereby drawing on aspects of evidentiary burden shifting from the examples of the OAU and Canada.³²⁰ By using rulemaking, DHS could create a regular process by which groups are designated, address the evidentiary burden shifting that would result from a designation, and issue guidelines on the expedited processing of those cases.

Using the Administrative Procedure Act (APA) rulemaking process³²¹ to implement a group-based asylum mechanism would provide the necessary protections to ensure the transparency and participation by interested parties for an unbiased, well-reasoned determination. The notice and comment procedures would ensure that UNHCR, the Department of State, the Department of Homeland Security, and civil society groups such as refugee and immigrant groups and the immigration bar, would be able to weigh in on proposed mechanism.³²² The APA's basis and purpose requirement would obligate the agency rule maker to explain the factual basis for its determinations and respond to significant comments raised by interested parties, including the provision of relevant sources of

318. *See* U.S. v. Texas, 599 U.S. 670, 674 (2023) (recognizing the longstanding and essential function of the Executive Branch to set enforcement priorities and concluding that courts generally lack the authority to order the Executive to make more arrests).

319. *See supra* Part II.

320. *See supra* Part II.B., D.

321. 5 U.S.C. § 553.

322. *See id.*

information for its determination.³²³ Furthermore, the APA's prohibition on arbitrary and capricious agency actions would further guarantee that the agency in making group determinations "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"³²⁴ Thus, rulemaking would provide more stakeholder input and greater transparency for the adoption of group-based determinations.

However, as evidenced by other proposed regulations that have languished within DHS,³²⁵ rulemaking would likely take many years and would require the consultation and agreement of the various DHS sub-agencies, including Customs and Border Protection, Immigration and Customs Enforcement, USCIS, and the Office of Principal Legal Advisor, each of which play a role in the asylum system. Because each of these agencies have varying political and policy priorities, it would likely be difficult if not impossible for leadership of those various sub-agencies to agree to the appropriate criteria for a group-based asylum mechanism. Furthermore, any proposed or final rule would likely be subject to years-long litigation, as we have seen in recent years with almost any agency action on immigration or asylum.³²⁶

323. See 5 U.S.C. § 553(c) (requiring an agency to "incorporate in the rules adopted a concise general statement of their basis and purpose."); *Sec. Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 94 (1943).

324. *Motor Vehicles Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

325. See, e.g., Unaccompanied Children Program Foundational Rule, 89 Fed. Reg. 34384 (Apr. 30, 2024) (proposing regulations to implement the 1997 Flores Settlement Agreement); TAHIRIH JUST. CTR., TAHIRIH EXPLAINS: GENDER-BASED ASYLUM 2-3 (2020) (discussing regulations on gender based asylum claims requested by AG Janet Reno in 1999 that have to date not been promulgated); CTR. FOR GENDER & REFUGEE STUD., DEADLY INERTIA: NEEDLESS DELAY OF "PARTICULAR SOCIAL GROUP" REGULATIONS PUTS ASYLUM SEEKERS AT RISK 1, 3 (2022) (describing regulations promised by the Biden administration in February 2021 that were never promulgated).

326. See, e.g., *Timeline: DACA in the Courts*, NAT'L IMMIGR. L. CTR. (Nov. 17, 2025), <https://www.nilc.org/resources/timeline-daca-in-the-courts> (on file with the *Columbia Human Rights Law Review*); *Court Blocks Remain in Mexico Reimplementation*, IMMIGRANT DEFENDERS (Apr. 17, 2025), <https://www.immdef.org/blog/emergency-stay-remain-in-mexico> [<https://perma.cc/597R-VZQ7>].

CONCLUSION

There is a growing consensus that group-based asylum designations would provide a partial solution to the U.S. asylum system's dysfunction. Immigration agencies can act now to implement reforms that would increase the efficiency of the present asylum system to reduce the current backlog of cases by quickly identifying and adjudicating the claims of presumptive asylees within identifiable groups who are eligible for asylum. Group-based asylum is a common-sense, cost-effective solution to modern challenges within asylum adjudication. The United States would do well to learn from other countries and implement a group-based asylum mechanism to streamline asylum adjudications in a time of increasing numbers of refugees around the globe.

This proposal is one among numerous reforms needed to achieve a just system of asylum adjudication in the United States.³²⁷ While this proposal offers a reform to the existing asylum adjudication system, that cannot be done without acknowledging the fundamental flaws within that system. Additionally, despite looking to other refugee receiving countries for a comparative approach, this article also acknowledges the trend among these states to limit the ability of refugees to reach their borders or to claim protection there.³²⁸ This is part of a wider debate about the international refugee protection system writ large. Nevertheless, I hope this comparative solution provides a starting point to reduce the agonizing wait for an asylum determination for those in need of protection in the United States.

327. See, e.g., Gilman, *supra* note 6, at 37–65 (arguing that the U.S. asylum system's emphasis on exceptionality has produced an exclusionary process that endangers asylum seekers and embeds bias in adjudication); James C. Hathaway, *The Global Cop-Out on Refugees*, 30 INT'L J. REFUGEE L. 591, 603–04 (2019) (arguing that the current ad hoc state-by-state refugee regime forces refugees into dangerous journeys while often denying them meaningful protection even after arrival).

328. See, e.g., HELEN O'NIONS, *ASYLUM – A RIGHT DENIED: A CRITICAL ANALYSIS OF EUROPEAN ASYLUM POLICY* 58–71, 165–90 (2014) (questioning the legality of European countries undermining access to refugee protections); AZADEH ERFANI ET AL., NAT'L IMMIGRANT JUST. CTR., *PUSHING BACK PROTECTION: HOW OFFSHORING AND EXTERNALIZATION IMPERIL THE RIGHT TO ASYLUM* 17–30 (2021) (discussing increased efforts by the European Union to disallow asylum claims for border arrivals).