



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**REFRAMING CREDIBLE FEAR IN AN AGE OF
RESTRICTIONISM: AN ANALYSIS OF THE SURGE
IN ASYLUM SEEKERS AT THE U.S./MEXICO BORDER**

by

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March 2023

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| REPORT DOCUMENTATION PAGE | | | <i>Form Approved OMB No. 0704-0188</i> | |
| Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC, 20503. | | | | |
| 1. AGENCY USE ONLY (Leave blank) | | 2. REPORT DATE March 2023 | 3. REPORT TYPE AND DATES COVERED Master's thesis | |
| 4. TITLE AND SUBTITLE REFRAMING CREDIBLE FEAR IN AN AGE OF RESTRICTIONISM: AN ANALYSIS OF THE SURGE IN ASYLUM SEEKERS AT THE U.S./MEXICO BORDER | | | 5. FUNDING NUMBERS | |
| 6. AUTHOR(S) Nathan B. Szabados | | | | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000 | | | 8. PERFORMING ORGANIZATION REPORT NUMBER | |
| 9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A | | | 10. SPONSORING / MONITORING AGENCY REPORT NUMBER | |
| 11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. | | | | |
| 12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release. Distribution is unlimited. | | | 12b. DISTRIBUTION CODE A | |
| 13. ABSTRACT (maximum 200 words) Starting in 2013, the number of people requesting asylum via the credible fear program at the border between the United States and Mexico began to rapidly increase. Congress held a series of hearings during which politicians and other witnesses claimed that the surge was due to asylum seekers committing fraud en masse. This thesis reviews the literature and available data regarding asylum fraud to determine whether the claims of fraud in the credible fear program hold merit. This thesis also employs bivariate correlations and regression analyses to estimate the relationships between the number of credible fear receipts from El Salvador, Guatemala, Honduras, and Mexico and a selection of independent variables that measure conditions in those countries, U.S. and Mexican policy decisions, and other migration and benefit types. The review and statistical analyses suggest that the generalized claim of fraud does not satisfactorily explain the surge in credible fear receipts over the previous 10 years. Instead, the results suggest that the surge consisted of people genuinely seeking protection and that each country in this study has a unique set of variables that best explain credible fear receipts from that country alone. This thesis recommends that the U.S. government rely on statistical modeling to prepare for the fluctuations in the number of asylum seekers and to identify and help resolve the underlying factors that cause increases in people fleeing their countries. | | | | |
| 14. SUBJECT TERMS credible fear of persecution or torture, expedited removal, asylum, asylee, refugee, border, immigration, migration, fraud, security, crime, poverty, data analysis, regression analysis, bivariate correlation | | | 15. NUMBER OF PAGES 183 | |
| | | | 16. PRICE CODE | |
| 17. SECURITY CLASSIFICATION OF REPORT Unclassified | 18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified | 19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified | 20. LIMITATION OF ABSTRACT UU | |

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)
Prescribed by ANSI Std. Z39-18

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AN ANALYSIS OF THE SURGE IN ASYLUM SEEKERS AT THE
U.S./MEXICO BORDER**

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL
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ABSTRACT

Starting in 2013, the number of people requesting asylum via the credible fear program at the border between the United States and Mexico began to rapidly increase. Congress held a series of hearings during which politicians and other witnesses claimed that the surge was due to asylum seekers committing fraud en masse. This thesis reviews the literature and available data regarding asylum fraud to determine whether the claims of fraud in the credible fear program hold merit. This thesis also employs bivariate correlations and regression analyses to estimate the relationships between the number of credible fear receipts from El Salvador, Guatemala, Honduras, and Mexico and a selection of independent variables that measure conditions in those countries, U.S. and Mexican policy decisions, and other migration and benefit types. The review and statistical analyses suggest that the generalized claim of fraud does not satisfactorily explain the surge in credible fear receipts over the previous 10 years. Instead, the results suggest that the surge consisted of people genuinely seeking protection and that each country in this study has a unique set of variables that best explain credible fear receipts from that country alone. This thesis recommends that the U.S. government rely on statistical modeling to prepare for the fluctuations in the number of asylum seekers and to identify and help resolve the underlying factors that cause increases in people fleeing their countries.

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LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|--------|--|
| AEDPA | Antiterrorism and Effective Death Penalty Act |
| AMI | Asylum Merits Interview |
| AUSA | Assistant United States Attorney |
| BFCA | Benefit Fraud and Compliance Assessment Program |
| BIA | Board off Immigration Appeals |
| BP | Border Patrol |
| C.F.R. | Code of Federal Regulations |
| CAT | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CBP | Customs and Border Protection |
| CHDS | Center for Homeland Defense and Security |
| CPI | Corruption Perception Index |
| CRS | Congressional Research Service |
| DHS | Department of Homeland Security |
| DOJ | Department of Justice |
| DRO | Office of Detention and Removal Operations |
| EOIR | Executive Office for Immigration Review |
| ERO | Enforcement and Removal Operations |
| FBI | Federal Bureau of Investigation |
| FDNS | Fraud Detection and National Security Directorate |
| GAO | Government Accountability Office |
| GDP | Gross Domestic Product |
| GNI | Gross National Income |
| GNP | Gross National Product |
| HDI | Human Development Index |
| ICE | Immigration and Customs Enforcement |
| IDEA | Office of Innovation and Design for Enhanced Adjudication |

| | |
|--------|---|
| IIRIRA | Illegal Immigration Reform and Immigrant Responsibility Act of 1996 |
| IJ | Immigration Judge |
| INA | Immigration and Nationality Act |
| INM | Instituto Nacional de Migración (National Institute of Migration) |
| INS | Immigration and Naturalization Service |
| MPP | Migrant Protection Protocols |
| OFO | Office of Field Operations |
| OFW | Operation Fiction Writer |
| PCC | Pearson Correlation Coefficient |
| U.S.C. | United States Code |
| UAC | Unaccompanied Alien Child |
| UNHCR | United Nations High Commissioner for Refugees |
| UNODC | United Nations Office on Drugs and Crime |
| USCIRF | United States Commission on International Religious Freedom |
| USCIS | United States Citizenship and Immigration Services |
| USSG | United States Sentencing Guidelines |

EXECUTIVE SUMMARY

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress created the credible fear program to screen in potentially meritorious asylum seekers who had arrived at a port of entry or were otherwise apprehended soon after crossing the border into the United States. For the first 16 years the credible fear program existed, receipts averaged below 8,000 each fiscal year.¹ Then, in 2013, credible fear receipts more than doubled from the previous year, continued to increase over the next seven years, and ultimately averaged over 73,000 per year from 2013–2019.² Restrictionists in Congress, academia, and think tanks swiftly condemned the surge in asylum seekers as evidence of a massive conspiracy of fraud in the asylum system. During two congressional hearings held in 2013 and 2014, restrictionists drew upon anecdotal evidence and a faulty, outdated study to argue that the United States is too credulous and welcoming to fraudsters fleeing their counties.³ This thesis seeks to assess the merit of the explanation that fraud is the reason for the surge in credible fear receipts over the past 10 years. In light of the rich literature providing statistical analyses of asylum flows, this thesis then explores other potential explanations for the fluctuations in credible fear receipts.

Starting in 2014, restrictionist politicians and researchers began advancing a narrative that 70 percent of credible fear claims are fraudulent.⁴ A Center for Homeland

¹ Andorra Bruno, *Immigration: U.S. Asylum Policy*, CRS Report No. R45539 (Washington, DC: Congressional Research Service, 2019), 37, <https://crsreports.congress.gov/product/pdf/R/R45539>.

² Bruno, 37; U.S. Citizenship and Immigration Services, *Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security* (Washington, DC: U.S. Citizenship and Immigration Services, 2020), 12, <https://www.uscis.gov/sites/default/files/document/reports/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf>.

³ *Asylum Abuse: Is It Overwhelming Our Borders?: Hearing before the Committee on the Judiciary, House of Representatives*, 113th Cong. 1 (2013), <https://www.govinfo.gov/content/pkg/CHRG-113hhrg85905/pdf/CHRG-113hhrg85905.pdf>; *Asylum Fraud: Abusing America's Compassion?: Hearing before the Subcommittee on Immigration and Border Security of the Judiciary Committee, House of Representatives*, 113th Cong. 2 (2014), <https://www.govinfo.gov/content/pkg/CHRG-113hhrg86648/pdf/CHRG-113hhrg86648.pdf>.

⁴ H.R., *Asylum Fraud*, 5.

Defense and Security (CHDS) student even predicated their entire thesis on this claim.⁵ However, a review of the Congressional Record reveals that during the 2014 hearing, restrictionists misconstrued the preliminary findings of an unfinished, internal U.S. Citizenship and Immigration Services (USCIS) study of affirmative asylum cases filed in 2005 in order to arrive at the claim that 70 percent of credible fear cases are fraudulent. Restrictionists' reliance on the study of affirmative asylum cases filed in 2005 to assert that there is fraud in the credible fear program almost 10 years later violates the federal government's own guidance on fraud risk management. The Government Accountability Office (GAO) advises federal agencies to conduct studies assessing fraud risks on a regular basis and to tailor the studies to the specific program.⁶ A review of federal immigration fraud criminal cases further weakens the narrative that there is massive fraud in the credible fear program. While credible fear receipts were on an upward trajectory from 2009–2019, federal criminal cases for trafficking in immigration documents and making fraudulent statements (USSG §2L2.1) and for acquiring fraudulent immigration documents (USSG §2L2.2) were decreasing precipitously over the same time period.⁷ The available evidence therefore fails to support the claim that 70 percent of credible fear claims are fraudulent or that the surge in credible fear cases is indicative of an increase in fraudulent activity over time.

Several researchers have explored the topic of fraud as it relates to asylum flows by employing statistical analysis to analyze the factors that may contribute to a person's decision to flee their country. The factors are often simplistically framed as those that generate "real" refugees, such as poor human rights conditions and persecution in their countries, and those that attract "bogus" refugees, such as economic opportunities in the

⁵ Anja Freudenthal, "Reducing Homeland Insecurities: Ending Abuse of the Asylum and Credible Fear Program" (master's thesis, Naval Postgraduate School, 2015), <https://calhoun.nps.edu/handle/10945/45188>.

⁶ Stephen M. Lord, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, DC: Government Accountability Office, 2015), 6, <https://www.gao.gov/assets/680/671664.pdf>.

⁷ "Sourcebook Archives," U.S. Sentencing Commission, accessed October 2, 2022, <https://www.ussc.gov/research/sourcebook/archive>.

destination country.⁸ The overwhelming consensus in academia is that the real-bogus categorization of people seeking protection is a false dichotomy.⁹ Before fleeing their countries, people weigh a complex set of factors, including levels of violence, opportunity, chance of successful flight, and community ties, among others.¹⁰ As difficult as it is to separate out economic factors from factors relating to violence and safety, studies tend to show that the latter are more strongly associated with refugee flows.

This thesis builds upon the body of involuntary migration literature by conducting bivariate correlations and regression analyses to investigate how twenty-two different independent variables relate to and the degree to which they accurately explain the recent increase in the USCIS credible fear caseload from Mexico and the Northern Triangle countries of El Salvador, Guatemala, and Honduras. These variables are organized into four categories of conditions in Northern Triangle countries and Mexico, U.S. and Mexican government policy and enforcement decisions, U.S. humanitarian immigration benefits, and other migration types. In addition to the primary data model, the statistical analysis in this thesis includes a secondary model that attempts to assess how the two-year rolling average of each independent variable relates to and impacts the dependent variable of credible fear receipts.

Two overarching themes emerge from the statistical tests. First, there exists a unique set of variables for each country that are most strongly correlated with the credible fear receipts from that country and the results of the statistical tests for individual countries are more reliable than the tests that group countries together. Next, the secondary model outperformed the primary model, indicating that the accumulative impact of conditions and events from previous years has a strong influence on an

⁸ Eric Neumayer, “Bogus Refugees? The Determinants of Asylum Migration to Western Europe,” *International Studies Quarterly* 49, no. 3 (September 2005): 389–90, <https://www.jstor.org/stable/3693600>.

⁹ David Scott FitzGerald and Rawan Arar, “The Sociology of Refugee Migration,” *Annual Review of Sociology* 44, no. 1 (July 2018): 393, <https://doi.org/10.1146/annurev-soc-073117-041204>.

¹⁰ Will H. Moore and Stephen M. Shellman, “Whither Will They Go? A Global Study of Refugees’ Destinations, 1965–1995,” *International Studies Quarterly* 51, no. 4 (December 2007): 815, <https://doi.org/10.1111/j.1468-2478.2007.00478.x>.

individual's decision to flee their country. Across all bivariate tests conducted for the four countries in this study, the variables in the U.S. humanitarian immigration benefits category produced the strongest and most consistent results, suggesting that there are substantial similarities between the group of people granted protection through the full asylum process and the group of people who request protection through the credible fear program. In addition, the results suggest that credible fear receipts are strongly correlated with both the number of people who enter the United States on visas and the number of people who seek admission at an official border crossing. These results are consistent with the literature suggesting that refugee flows are complicated by the means individuals may have to secure their flight, that those fleeing their country seek out destinations with community ties, and that those in the credible fear program tend to request protection at an official port of entry rather than cross the border without inspection.¹¹ Perhaps most fascinating is that the bivariate analyses appear to reject the claim that poor economic conditions in the home country contribute to the flight of people who ultimately enter the credible fear program. On the contrary, the results show that as measures for development improve in the home country, more individuals enter the credible fear program in the United States.

Until the U.S. government conducts a fraud analysis for the credible fear program consistent with the GAO's recommendations and releases the data from such a study, researchers will not be able to directly assess what factors cause or relate to fraud rates. However, the results from this thesis suggest that fraud does not adequately explain the increase in credible fear receipts over the past 10 years. Rather, the explanations are complex and unique for each country. This study shows that there are valid methods for the U.S. government to predict the size of the credible fear caseload in a given year. Relying on predictive models can allow the government to better prepare for fluctuations in the credible fear caseload, thereby carrying out more organized and efficient adjudication of those cases. Future research conducted both within the government and in academia should further explore the impact of risk accumulation on the decision to flee

¹¹ Moore and Shellman, 831.

and lead to development of data models that are more particularized to the regional and municipality levels.

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I. INTRODUCTION

A. PROBLEM STATEMENT

Asylum officers who conduct credible fear screenings are required to assess the credibility of each applicant and determine whether there is a significant possibility that the asylum claim would be successful in court. From 2009 to 2019, the number of immigrants in the credible fear process increased by a factor of almost twenty, from 5,369 per year in 2009 to 105,439 in 2019.¹ In 2009, the countries of El Salvador, Guatemala, and Honduras, collectively referred to as the Northern Triangle, represented 36 percent of the credible fear caseload.² By 2019, citizens from the Northern Triangle countries made up 51 percent of credible fear cases.³ Around the same time that the credible fear caseload was surging, the Northern Triangle countries were experiencing such interconnected human security challenges as significant economic problems, violence, and crime.⁴

¹ Andorra Bruno, *Immigration: U.S. Asylum Policy*, CRS Report No. R45539 (Washington, DC: Congressional Research Service, 2019), 37, <https://crsreports.congress.gov/product/pdf/R/R45539>; U.S. Citizenship and Immigration Services, *Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security* (Washington, DC: U.S. Citizenship and Immigration Services, 2020), 12, <https://www.uscis.gov/sites/default/files/document/reports/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf>. The data set for this thesis is focused on the years 1997–2019. As discussed in detail in later chapters, the credible fear program began in 1997 and was greatly impacted by a variety of factors after 2019. Among these factors was the Migrant Protection Protocols (MPP), COVID-19, and Title 42. Statistics outside of this primary range are referenced when relevant.

² Ruth Ellen Wasem, *Asylum and “Credible Fear” Issues in U.S. Immigration Policy*, CRS Report No. R41753 (Washington, DC: Congressional Research Service, 2011), 14, <https://crsreports.congress.gov/product/pdf/R/R41753>.

³ “Credible Fear Workload Report Summary: FY 2018 Total Caseload,” U.S. Citizenship and Immigration Services, accessed October 13, 2019, https://www.uscis.gov/sites/default/files/document/data/PED_CFandRFstats09302018.pdf.

⁴ These three countries have experienced extremely high rates of poverty since the 2000s. In 2014, El Salvador, Guatemala, and Honduras, each had national poverty rates of 45 percent, 51 percent, and 55 percent, respectively. Also, the murder rates in all three countries generally rose throughout the early 2000s. By 2013, the Northern Triangle countries had three of the four highest murder rates in the world. “CEPALSTAT: Databases and Statistical Publications,” Economic Commission for Latin America and the Caribbean, accessed June 15, 2020, https://estadisticas.cepal.org/cepalstat/web_cepalstat/estadisticas/Indicadores.asp; “Victims of Intentional Homicide, 1990–2018,” United Nations Office on Drugs and Crime, accessed June 4, 2020, <https://dataunodc.un.org/content/data/homicide/homicide-rate>.

This seemingly drastic increase of credible fear cases instigated two congressional hearings in late 2013 and early 2014 relating to concerns about fraud in asylum applications, specifically the credible fear process.⁵ Members of Congress, the media, and former President Trump (2016–2020) continue to claim that the only explanation for the increased caseload is that asylum applicants are committing fraud. Since the hearings in 2013 and 2014, no government agency or officials—or even academics—have conducted thorough research and analysis on the credible fear caseload to identify other possible explanations for the increase. Unsurprisingly, then, in her 2015 thesis for the Center for Homeland Defense and Security (CHDS), Anja Freudenthal relied on an unsubstantiated claim from the hearings that 70 percent of asylum cases are fraudulent to argue that “the entire [credible fear] process may be riddled with fraud.”⁶ These hearings and Freudenthal’s thesis are indicative of three main problems in the discussion of the increase in the credible fear caseload—jumping to conclusions, fundamentally misunderstanding fraud in the context of asylum, and ignoring or failing to explore other possible explanations.

Also in 2015, the Government Accountability Office (GAO) sought an explanation for why an increasing number of unaccompanied minors were fleeing the Northern Triangle and migrating to the United States. After interviewing U.S. government officials stationed in the Northern Triangle countries, the GAO identified a number of socioeconomic factors, including crime, violence, and poverty, as some of the leading causes of the increased migration of unaccompanied minors from the Northern Triangle to the United States.⁷ While this report from the GAO is relevant to the discussion of the increase in the credible fear caseload, it only examined the migration of unaccompanied children and did not address the populations (single adults and family

⁵ Sara Campos and Joan Friedland, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context* (Washington, DC: American Immigration Council, 2014), 4, https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_and_credible_fear_claims_final_0.pdf.

⁶ Anja Freudenthal, “Reducing Homeland Insecurities: Ending Abuse of the Asylum and Credible Fear Program” (master’s thesis, Naval Postgraduate School, 2015), 3, <https://calhoun.nps.edu/handle/10945/45188>.

⁷ David Gootnick, *Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras* (Washington, DC: Government Accountability Office, 2015), 4, <https://www.gao.gov/assets/670/668749.pdf>.

units) that make up the credible fear caseload. In addition, the GAO took a qualitative approach, rather than a rigorous quantitative one, in its search for the factors that cause migration from the Northern Triangle.

Further research has not yet been conducted on the credible fear caseload to quantitatively assess the relationship between crime, violence, and poverty in the Northern Triangle and Mexico and migration from these countries to the United States. Nor has research been conducted to assess the relationship between the number of citizens of the Northern Triangle countries and Mexico in the credible fear process and other factors, such as U.S. and Mexican government policy, enforcement decisions, and humanitarian immigration benefits.

B. RESEARCH QUESTIONS

What is the relationship between the rates of Salvadoran, Guatemalan, Honduran, and Mexican citizens in the U.S. Citizenship and Immigration Services (USCIS) credible fear caseload and conditions in each country, U.S. and Mexican government policy and enforcement decisions, other migration types, and U.S. humanitarian immigration benefits? How effective are these factors in explaining the recent increase in the USCIS credible fear caseload?

C. LITERATURE REVIEW

The purpose of the first part of this literature review is to examine the varying perspectives regarding the prevalence of and solutions to fraud in asylum and more specifically credible fear adjudications. Because members of Congress, the media, and former President Trump have repeatedly cited fraud as the primary factor that explains the increase in the credible fear caseload, it is necessary to first review the literature

relating to fraud.⁸ Significant gaps in the academic literature relating to asylum fraud necessitate a turn to broader, more relevant information. This review looks to the GAO's Framework for Managing Fraud Risks in Federal Programs (the Framework) to assess what is missing in the existing literature, including a common understanding of what fraud is, the scope of the problem, and the best solutions to address this problem. Four objectives make up the Framework:

1. Commit—Commit to combating fraud by creating an organizational culture and structure conducive to fraud risk management.
2. Assess—Plan regular fraud risk assessments and assess risks to determine a fraud risk profile.
3. Design and Implement—Design and implement a strategy with specific control activities to mitigate assessed fraud risks and collaborate to help ensure effective implementation.
4. Evaluate and Adapt—Evaluate outcomes using a risk-based approach and adapt activities to improve fraud risk management.⁹

Later sections of this literature review turn towards the most relevant studies that attempt to employ rigorous quantitative, and in some cases qualitative, analyses to explore the root causes of migration across the world.

1. Definition of Fraud in the Asylum Context

The Framework asserts that conveying the definition of fraud is an essential element in managing fraud risk.¹⁰ The definition of fraud is provided by the Immigration and Nationality Act (INA) and the Code of Federal Regulations (C.F.R.). The INA holds that if “an alien has knowingly made a frivolous application for asylum . . . the alien shall

⁸ *Asylum Fraud: Abusing America's Compassion?: Hearing before the Subcommittee on Immigration and Border Security of the Judiciary Committee, House of Representatives*, 113th Cong., 2 (2014), 5, <https://www.govinfo.gov/content/pkg/CHRG-113hhrg86648/html/CHRG-113hhrg86648.htm>; Stephen Dinan, “Audit Finds Asylum System Rife with Fraud; Approval Laws Broken with Surge of Immigrants,” *Washington Times*, February 5, 2014, <https://www.washingtontimes.com/news/2014/feb/5/audit-finds-asylum-system-rife-with-fraud/>; Donald J. Trump, *Remarks by President Trump in Roundtable on Immigration and Border Security: Calexico, California* (Washington, DC: White House, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-roundtable-immigration-border-security-calexico-california/>.

⁹ Stephen M. Lord, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, DC: Government Accountability Office, 2015), 6, <https://www.gao.gov/assets/680/671664.pdf>.

¹⁰ Lord, 43.

be permanently ineligible for any [immigration] benefits.”¹¹ To understand what is meant by a frivolous application, one must look to 8 C.F.R. 208, which states that “an asylum application is frivolous if any of its material elements is deliberately fabricated.”¹² It goes on to explain, “Such finding shall only be made if the immigration judge or the Board [of Immigration Appeals] is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.”¹³ The specific legal understanding of frivolous applications used by the INA and C.F.R. is commonly understood as fraud. However, the specificity of the legal definition is very important.

The politicians, scholars, and experts who favor a more restrictive immigration system, particularly relating to the asylum program and the related credible fear process, generalize and broadly mislabel as fraud circumstances that do not meet the legal definition of a frivolous application. As mentioned previously, in her 2015 CHDS master’s thesis, Freudenthal argues that an applicant commits fraud when one’s credible fear claim is rejected. Arguing that “the current system was not . . . designed to identify frivolous [applications],” she explains that applicants unknowingly “defraud the asylum system” when they seek protection from harm that is not on account of one of the five protected grounds.¹⁴ This is a misunderstanding of what it means to file a frivolous application, which, as discussed previously, requires the applicant to deliberately fabricate a material element of one’s claim.

¹¹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, § 110 Stat. 3009–694 (1996). <http://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>.

¹² Immigration and Naturalization Service, “Regulations Concerning the Convention Against Torture,” *Federal Register* 64, no. 33 (February 1999): 8492, <https://www.federalregister.gov/d/99-4140>.

¹³ Immigration and Naturalization Service, “Regulations Concerning the Convention Against Torture,” 8492.

¹⁴ Freudenthal, “Reducing Homeland Insecurities,” 12. The 1951 Convention Relating to the Status of Refugees laid the legal framework for refugee determinations. The Convention defined refugees as people who have a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” These five reasons are colloquially called the “five protected grounds.” Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 152.

Freudenthal's and others' misunderstanding of fraud may stem from the fact that the term *credible* has two distinct meanings in the credible fear process. First, credible fear is simply the name given to the overall screening process, to distinguish it from other immigration processes such as affirmative asylum or refugee screening interviews.¹⁵ Second, an applicant in any USCIS interview is deemed credible if one's claim is detailed, plausible, and consistent, both internally and with information about country conditions.¹⁶ The asylum officer conducts this credibility analysis when making a credible fear determination.¹⁷ For example, during an interview, an applicant can provide credible testimony, that is, testimony that is detailed, plausible, and consistent, yet still have one's case rejected because the harm and fears one describes are insufficient to meet the legal definition of asylum in U.S. law. In other words, the applicant has not committed fraud if the asylum officer applies the threshold-screening standard and determines the case is not a potentially meritorious claim for asylum.¹⁸ Freudenthal's conflation of a negative credible fear determination with fraud shows how the dual use of the term credible is problematic. Her argument at best assumes—and at worst requires—that applicants understand the intricacies of asylum law before telling a government official that they have a fear of returning to their country.¹⁹

In a 2002 report about immigration fraud writ large, the GAO succinctly states that an application could be denied asylum “for reasons other than fraud (e.g., the alien

¹⁵ IIRIRA states, “The term ‘credible fear of persecution’ means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum.” Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–582.

¹⁶ REAL ID Act of 2005, Pub. L. No. 109–13, § 119 Stat. 303 (2005).
<https://www.govinfo.gov/content/pkg/STATUTE-119/pdf/STATUTE-119-Pg231.pdf>.

¹⁷ U.S. Citizenship and Immigration Services, *Credible Fear of Persecution and Torture Determinations: Lesson Plan Overview* (Washington, DC: U.S. Citizenship and Immigration Services, 2017), 18, <https://www.aila.org/infonet/raio-and-asylum-division-officer-training-course>.

¹⁸ Immigration and Naturalization Service, “Regulations Concerning the Convention Against Torture,” 8479.

¹⁹ Taken to its logical conclusion, this line of thinking espoused by Freudenthal and others would paradoxically mean that the only fraud-free asylum program or credible fear process would be one with a 100 percent approval rate (due to approvable applicants being the only ones who self-select into filing an application).

does not meet the eligibility requirements for the requested benefit).”²⁰ While this statement may seem fairly obvious, others have similarly erred in their labeling of what constitutes fraud. Nayla Rush of the Center for Immigration Studies argues that most asylum applicants in Europe and the United States are committing fraud.²¹ Like Freudenthal, Rush conflates the rejection of an application with a commission of fraud. In doing so, Rush ignores the possibility that an asylum claim can be rejected simply because the applicant’s past harm and future fears are not on account of one of the five protected grounds, as discussed above. Rush’s claim that Central Americans seeking asylum in the United States are committing fraud is not based on rigorous research or fact finding. She bases this assertion instead on former acting director of Immigration and Customs Enforcement (ICE) and current Fox News contributor Thomas Homan’s similarly baseless remark that “there’s a lot of asylum fraud going on.”²² Claims such as those made by Freudenthal and the Center for Immigration Studies are invalid. In their writing, they misunderstand and misidentify fraud and further their claims through assertion rather than evidence.

2. The Scope of the Problem

One of the four elements of the Framework calls managers to “plan regular fraud risk assessments and assess risks to determine a fraud risk profile.”²³ Regular assessments are necessary, especially when changes occur in policies that affect specific programs.²⁴ To create a fraud risk profile, the GAO encourages managers to rely on “statisticians and subject-matter experts to contribute expertise and guidance when

²⁰ Richard M. Stana and James M. Blume, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems*, GAO-02-66 (Washington, DC: General Accounting Office, 2002), 4, <https://www.gao.gov/assets/240/233515.pdf>.

²¹ Nayla Rush, “This World Refugee Day, Let’s Address Fraudulent Asylum Claims That Are Detrimental to Legitimate Asylum Seekers,” Center for Immigration Studies, last modified June 20, 2018, <https://cis.org/Rush/World-Refugee-Day-Lets-Address-Fraudulent-Asylum-Claims-Are-Detrimental-Legitimate-Asylum>.

²² Rush, “World Refugee Day”; Jonathan Blitzer, “ICE Agents Are Losing Patience with Trump’s Chaotic Immigration Policy,” *New Yorker*, June 24, 2019, <https://www.newyorker.com/news/news-desk/ice-agents-are-losing-patience-with-trumps-chaotic-immigration-policy>.

²³ Lord, *Framework for Managing Fraud*, 6.

²⁴ Lord, 11.

employing techniques like analyzing statistically valid samples to estimate fraud losses and frequency.”²⁵ This stage of the Framework represents the most significant gap in the literature. Throughout a 2015 GAO report, Rebecca Gambler explains that the Fraud Detection and National Security Directorate (FDNS) within USCIS has insufficient data on the fraud referrals it receives or investigates.²⁶ In addition, since the release of the report in 2015, USCIS had not conducted a fraud risk assessment as suggested by the Framework.²⁷ However, Gambler reports that USCIS plans to conduct research to assess the rate of fraud in some application types.²⁸ A thorough review of the literature fails to indicate whether such a study has been initiated or completed.

Other researchers outside of USCIS and the GAO have failed to conduct a serious accounting of fraud in asylum and credible fear applications as well. As noted above, the foundation of Freudenthal’s entire thesis is an unsubstantiated claim that 70 percent of asylum claims are fraudulent. This claim can be traced back to two congressional hearings held in late 2013 and early 2014: *Asylum Abuse: Is It Overwhelming Our Borders?* and *Asylum Fraud: Abusing America’s Compassion?*²⁹ The premise of the second hearing was based in part on a Washington Times article published just six days prior to the hearing that described alleged rampant fraud in asylum applications.³⁰ The article, which claimed a secret report had revealed that “at least 70 percent of asylum applications showed signs of fraud,” quoted Judiciary Committee Chairman Bob Goodlatte as saying, “Because our immigration laws are so loosely enforced by the Obama administration, we should not be surprised to see so much fraud in the system.”³¹ Dan Cadman of the Center for Immigration Studies relies on this claimed rate of fraud to argue against the asylum program as it exists in the United States. He further alleges,

²⁵ Lord, 11.

²⁶ Rebecca Gambler, *Asylum: Additional Actions Needed to Assess and Address Fraud*, GAO-16-50 (Washington, DC: Government Accountability Office, 2015), 30.

²⁷ Gambler, 31.

²⁸ Gambler, 34.

²⁹ Campos and Friedland, *Mexican and Central American Asylum and Credible Fear Claims*, 4.

³⁰ Dinan, “Audit Finds.”

³¹ Dinan, “Audit Finds.”

“This report was suppressed by the Obama administration, which . . . discontinued the fraud finding audits.”³² During the second hearing in 2014, the 70 percent fraud figure from the Washington Times article was cited twice by Chairman Goodlatte and once each by Congressman Steve King, Chairman Gowdy, and Michael Comfort, a former USCIS official who provided witness testimony. In the course of this hearing, it became clear that this figure was inferred from an unfinished 2009 USCIS study that reviewed 239 of the nearly 9,000 affirmative asylum applications submitted in the United States in 2005.³³ Of the 239 cases, 29 were labeled fraudulent, 138 were said to contain “indicators of possible fraud,” and 72 did not contain fraud indicators.³⁴ The USCIS official overseeing the study’s completion described it as an “internal tool not used for public dissemination . . . [to] assist in the preparation of field guidance.”³⁵ In the 2015 GAO report discussing the USCIS’s actions to address fraud, Gambler explained that this study was withheld from public release at the advice of an independent contractor, which called into question the “validity and soundness of the methodology used.”³⁶

As the report was never finished, many of the reviews of cases containing possible fraud indicators were never completed. In its proper context, this unfinished study does not support the claim that 70 percent of asylum cases are fraudulent. Instead, this information about the study undercuts the validity of claims made by Freudenthal, the Center for Immigration Studies, and members of Congress regarding the rate of asylum fraud.

3. Properly Addressing Fraud in the Future

The Framework calls for managers to “design and implement a strategy with specific control activities to mitigate assessed fraud risks and collaborate to help ensure

³² Dan Cadman, *Asylum in the United States: How a Finely Tuned System of Checks and Balances Has Been Effectively Dismantled* (Washington, DC: Center for Immigration Studies, 2014), 2, <https://cis.org/sites/cis.org/files/cadman-asylum.pdf>.

³³ H.R., *Asylum Fraud*, 16. As a percentage, this study reviewed fewer than three percent of the affirmative asylum claims filed in 2005. This study is discussed in greater depth in Chapter III.

³⁴ H.R., *Asylum Fraud*, 17.

³⁵ H.R., *Asylum Fraud*, 14.

³⁶ Gambler, *Asylum*, 34.

effective implementation.”³⁷ Freudenthal recommends four solutions to address potential asylum fraud:

1. Create an entity that would be tasked with reviewing and, if necessary, terminating the asylum status of asylees who no longer meet the statutory definition of a refugee.
2. Allow USCIS to retain jurisdiction of credible fear applicants who receive positive determinations from asylum officers and immediately adjudicate their affirmative asylum claims.
3. Restrict immigration judges’ authority by allowing them only to review cases the Asylum Division denies for proper application of the law.
4. Make grants of asylum conditional and place an additional burden on the asylees to re-prove their claims at least two years after the initial approval.³⁸

While Freudenthal’s recommendations are creative, they do not follow the Framework’s guidance, which prioritizes solutions that prevent fraud in the first place. Freudenthal’s solutions more closely fit the inefficient “pay-and-chase” model, in which the government responds after the alleged fraud has already been committed.³⁹ While Freudenthal fails to provide citations for the sources of her recommendations, her first and fourth recommendations closely mirror the recommendations made a year earlier by Dan Cadman in his 2014 report for the Center for Immigration Studies. For example, Cadman writes, “DHS . . . must immediately institute a mandatory program of routine audits . . . of both credible fear findings, and formal asylum grants.”⁴⁰ Similar to Freudenthal, Cadman focuses on travel back to one’s home country as the primary evidence that USCIS should reconsider its grant of asylum.⁴¹ Finally, Freudenthal’s

³⁷ Lord, *Framework for Managing Fraud*, 11.

³⁸ Freudenthal, “Reducing Homeland Insecurities,” 77–84.

³⁹ Lord, *Framework for Managing Fraud*, 17.

⁴⁰ Cadman, *Asylum in the United States*, 15.

⁴¹ Cadman, 16; Freudenthal, “Reducing Homeland Insecurities,” 78.

fourth recommendation mirrors Cadman’s call for asylum to be a conditional benefit: “Congress should amend the INA to provide that refugees and asylees will only be entitled to apply for conditional residence after a year in status, and not eligible to apply for adjustment to full lawful permanent resident status until after three years.”⁴² In sum, serious and effective recommendations must include the development of a program-specific fraud risk profile, allowing the agency to identify fraud trends and distinguish them from trends that are instigated by other non-fraud factors.⁴³

In reports released over the last 20 years, the GAO has recognized the difficult task the USCIS faces in attempting to assess and address fraud in asylum. The fact that the law allows asylum claims to be granted on credible testimony alone, without the requirement of documentary evidence and that confidentiality requirements restrict the sharing of information relating to an asylee’s claim makes such a task complicated.⁴⁴ The GAO has made some recommendations over the years, mainly relating to process improvements such as clarifying the balance between quality and quantity of case completion, improving internal communication, collecting and recording accurate data on fraud referrals and investigations, improving training, and leveraging technology to assist in fraud detection across multiple files.⁴⁵ These recommendations relate more to the assessment stage of the Framework rather than the design and implementation stages. A thorough inquiry failed to uncover serious recommendations for addressing asylum fraud. In order to fill this gap in the literature, future researchers must apply the GAO’s Framework as recommended by Gambler.

4. Alternatives to the Fraud Explanation

Because USCIS has not conducted a reliable fraud study in line with the Framework, and the Department of Homeland Security (DHS) does not release reliable statistics on charges and convictions of fraud in asylum and the credible fear populations,

⁴² Cadman, *Asylum in the United States*, 16.

⁴³ Lord, *Framework for Managing Fraud*, 11.

⁴⁴ Stana and Blume, *Immigration Benefit Fraud*, 7; Gambler, *Asylum*, 35.

⁴⁵ Stana and Blume, *Immigration Benefit Fraud*, 33–34; Gambler, *Asylum*, 75–76.

this thesis must instead explore other possible factors that may help explain the recent increase in credible fear receipts.⁴⁶ A review of the literature relating to the history of migration and asylum-seeking reveals that the conditions in a particular country of origin, U.S. and Mexican government policy and enforcement decisions, and U.S. humanitarian immigration benefits and other migration types may provide better explanations for the increase in credible fear receipts compared to the blanket accusation of fraud.

David Scott FitzGerald and Rawan Arar break open the construct of the imaginary refugee who flees only because of persecution and for no other reasons. They argue not only that people who consider fleeing their homes fall on a broad spectrum of means and options, but also that those who do flee and ultimately seek refuge in a new country fall on yet another spectrum of mixed reasons for having done so.⁴⁷ Despite this complexity of human decision making, both the asylum decision maker and the layperson are too often lulled by the oversimplified dichotomy of the genuine asylum seeker and the fraudster, the persecuted and the economic migrant.⁴⁸

Much of the literature simplifies the complex decision-making process people make when deciding to flee into categories of push and pull factors. Generally, push factors are framed as those that generate “real” refugees—poor human rights conditions and persecution in their countries. Whereas pull factors include those that attract “bogus” refugees—economic opportunities in the destination country.⁴⁹ Like FitzGerald and Arar, Will H. Moore and Stephen M. Shellman complicate this simplistic narrative by recognizing that those fleeing are people with agency who make “choices under *highly constrained circumstances*.”⁵⁰ These circumstances force asylum seekers to weigh many

⁴⁶ Gambler, 31; “Yearbook of Immigration Statistics,” Department of Homeland Security, accessed July 3, 2022, <https://www.dhs.gov/immigration-statistics/yearbook>. The lack of specific fraud data, and the analysis of the available data, is discussed in depth in Chapter III.

⁴⁷ David Scott FitzGerald and Rawan Arar, “The Sociology of Refugee Migration,” *Annual Review of Sociology* 44, no. 1 (July 2018): 393, <https://doi.org/10.1146/annurev-soc-073117-041204>.

⁴⁸ FitzGerald and Arar, 393.

⁴⁹ Eric Neumayer, “Bogus Refugees? The Determinants of Asylum Migration to Western Europe,” *International Studies Quarterly* 49, no. 3 (September 2005): 389, <https://www.jstor.org/stable/3693600>.

⁵⁰ Will H. Moore and Stephen M. Shellman, “Whither Will They Go? A Global Study of Refugees’ Destinations, 1965–1995,” *International Studies Quarterly* 51, no. 4 (December 2007): 812, <https://doi.org/10.1111/j.1468-2478.2007.00478.x>. Emphasis in the original.

factors, including those that do not neatly fit the push-pull, real-bogus dichotomy. For example, Moore and Shellman highlight costs of relocation, proximity to the destination country, and colonial ties as factors that may not fit the push-pull dichotomy. The authors also find that wages in the destination country, the oft-cited pull factor, “is mediated by proximity such that higher average wages are associated with fewer refugees, except among bordering countries.”⁵¹

U.S. law has also struggled with this false dichotomy and has at times attempted to draw a line between these two poles. While the 1951 Convention Relating to the Status of Refugees defines refugees as those with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,” (i.e., the five “protected grounds”) the INA requires that a protected ground is “at least one central reason” why the individual was or would be persecuted.⁵² This focusing clause was added to the INA via the REAL ID Act of 2005 in an attempt to bring consistency to the case law that had developed in the absence of unambiguous congressional intent regarding how to adjudicate a claim in which a persecutor was motivated to harm an individual for several, or mixed, reasons.⁵³

Prior to 2005, courts had relied on a variety of tests to address mixed motivation cases. The Ninth Circuit Court of Appeals, for example, held in 1998 that a persecutor must be motivated “at least in part” by the individual’s protected ground.⁵⁴ And the Fifth Circuit held in 2002 that the harm suffered by the applicant must “in meaningful part” be motivated by a protected ground.⁵⁵ After the REAL ID Act, the Ninth Circuit held in 2008 that in order to be granted asylum, one’s harm “cannot be incidental, tangential,

⁵¹ Moore and Shellman, 811.

⁵² Convention Relating to the Status of Refugees, 152; REAL ID Act of 2005, 303.

⁵³ Hillel R Smith, *The Application of the “One Central Reason” Standard in Asylum and Withholding of Removal Cases*, CRS Report No. LSB10046 (Washington, DC: Congressional Research Service, 2017), 2, <https://sgp.fas.org/crs/homesec/LSB10046.pdf>.

⁵⁴ *Borja v. Immigration and Naturalization Service*, 139 F.3d 1251 (9th Cir. 1998), <https://caselaw.findlaw.com/us-9th-circuit/1420288.html>.

⁵⁵ *Girma v. Immigration and Naturalization Service*, 283 F.3d 664 (5th Cir. 2002), <https://caselaw.findlaw.com/us-5th-circuit/1018921.html>.

superficial, or subordinate to another reason for harm.”⁵⁶ This evolution of both case and public law demonstrates the difficulty even the most contemplative, legal minds have when attempting to draw a fine line between the fear and harm fear suffered on account of a protected ground and that suffered for other unprotected, albeit no less lethal or fearsome, reasons.

In an attempt to test this narrative, several researchers have conducted quantitative studies to analyze an array of factors that may influence people to flee their country and seek asylum. In a study published in 1987, William Deane Stanley focused on the number of Salvadorans apprehended in the United States between 1979 and 1984. While acknowledging that economic factors and political violence are often intertwined, Stanley finds that political violence is the factor that best explains the number of Salvadorans who fled to the United States in the study’s time period.⁵⁷ Andrew R. Morrison came to a similar conclusion in a study published in 1993 in which he analyzed internal migration in Guatemala from 1976–1981. However, he found that there is quite a dynamic relationship between the level of violence in an area and the migration trends, such that “the effect of violence on migration tends to increase as the level of violence escalates.”⁵⁸

Several larger studies have explored this question by analyzing more than 100 countries each. In perhaps the foremost such study, Susanne Schmeidl looked at United Nations High Commissioner for Refugees (UNHCR) data of asylum seekers who fled 109 countries from 1971–1990. She found that economic factors have little impact on refugee migration, instead, violence has stronger predictive power.⁵⁹ In addition, she

⁵⁶ *Parussimova v. Mukasey*, 555 F.3d 734 (9th Cir. 2008), <https://caselaw.findlaw.com/us-9th-circuit/1375580.html>.

⁵⁷ William Deane Stanley, “Economic Migrants or Refugees from Violence? A Time-Series Analysis of Salvadoran Migration to the United States,” *Latin American Research Review* 22, no. 1 (1987): 147, <http://www.jstor.org/stable/2503545>.

⁵⁸ Andrew R. Morrison, “Violence or Economics: What Drives Internal Migration in Guatemala?,” *Economic Development and Cultural Change* 41, no. 4 (July 1993): 828, <https://doi.org/10.1086/452049>.

⁵⁹ Susanne Schmeidl, “Exploring the Causes of Forced Migration: A Pooled Time-Series Analysis, 1971–1990,” *Social Science Quarterly* 78, no. 2 (June 1997): 284, <https://www.jstor.org/stable/42864338>.

argues that generalized violence and “civil wars with foreign military interventions” have the greatest impact on refugee migration.⁶⁰

In 2003, Christina Davenport, Will Moore, and Steven Poe published a study analyzing refugee data from 129 countries for the years 1964 through 1989. Unlike other studies, they attempted to analyze refugees who were hosted in a country, refugees who fled a country, and internally displaced people within a country all in a single metric.⁶¹ Their main finding is consistent with Schmeidl’s—economic factors do not have a statistically significant impact on the number of people who flee a country. Rather, “threats to personal integrity are of primary importance in leading people to abandon their homes.”⁶² Interestingly, through their statistical analysis, Davenport et al. were able to argue similarly to Roberto Suro (who did so qualitatively) that people who flee make their decisions in a broader context that includes insight and examples from others who may be or have been in a similar situation.⁶³

In 2005, Eric Neumayer analyzed a UNHCR dataset that included asylum seekers from 127 developing countries who fled to Western Europe between 1982 and 1999. The level of autocracy, the distance the developing country is from Western Europe, and existing asylum networks were the factors that had the greatest influence on the number of asylum seekers.⁶⁴ He found that Gross Domestic Product (GDP) per capita in the developing country had a strong negative correlation with the number of asylum seekers. He also found that human rights violations, war, and violence were also important factors.⁶⁵ Ultimately, he acknowledges the difficulty in separating out the mixed

⁶⁰ Schmeidl, 284.

⁶¹ Christina Davenport, Will Moore, and Steven Poe, “Sometimes You Just Have to Leave: Domestic Threats and Forced Migration, 1964–1989,” *International Interactions* 29, no. 1 (2003): 38, <https://doi.org/10.1080/03050620304597>.

⁶² Davenport, Moore, and Poe, 27.

⁶³ Davenport, Moore, and Poe, 43; Roberto Suro, “A Migration Becomes an Emergency: The Flight of Women and Children from the Northern Triangle and Its Antecedents,” in *Humanitarianism and Mass Migration: Confronting the World Crisis*, ed. Marcelo M Suárez-Orozco (Berkeley, CA: University of California Press, 2019), 60–80.

⁶⁴ Neumayer, “Bogus Refugees?,” 404.

⁶⁵ Neumayer, 404.

motivations people have for fleeing a country as well as the confounding nature of the refugee definition itself and the inconsistency with which countries in his study may dole out this benefit.⁶⁶

Moore and Shellman respond to Neumayer in 2007 by analyzing the number of refugees who fled countries between 1965 and 1995 and criticize him for only looking at the small percentage who successfully entered Western Europe.⁶⁷ When looking at countries that do not border each other, Moore and Shellman find a negative correlation between Gross National Product (GNP) per capita in the destination country and the number of asylees.⁶⁸ However, when the countries do share a border, the reverse is true. They explain that this difference is due to the complex decision-making process as well as obstacles such as distance to the first safe country and cost of relocation.⁶⁹

Rigorous, recent studies that focus on the increase in Northern Triangle nationals seeking asylum in the United States over the past 10 years are rare. In 2016, David Androff published a qualitative assessment of what was at the root of the 2014 surge of Central American children at the southwest border. He highlights three historical realities that shaped this 21st century migration: the destabilizing history of U.S. imperialism and interventionism in Central America, family ties across the U.S.-Mexico border that predate the international boundary itself, and economic factors relating to power imbalance and varying labor/trade policies.⁷⁰ With that background, Androff cites the child-specific push and pull factors of gang recruitment, violence, and family reunification as the likely roots of the 2014 surge.⁷¹ Finally, he argues that increased enforcement at the border serves to criminalize today forms of labor immigration that have existed for decades. Androff's broad overview of the potentially impactful factors

⁶⁶ Neumayer, 406.

⁶⁷ Moore and Shellman, "Whither Will They Go?," 813.

⁶⁸ Moore and Shellman, 828.

⁶⁹ Moore and Shellman, 828, 839.

⁷⁰ David Androff, "The Human Rights of Unaccompanied Minors in the USA from Central America," *Journal of Human Rights and Social Work* 1, no. 2 (May 2016): 72, <https://doi.org/10.1007/s41134-016-0011-2>.

⁷¹ Androff, 73.

behind the increase in children reaching the southern border inform this thesis's selection of independent variables.

Finally, in 2017, Richard C. Jones published his assessment of the factors most responsible for the influx of Unaccompanied Alien Children (UACs) from the Northern Triangle from 2008 through 2014. He acknowledges that the generally agreed upon categories of “violence, economic conditions, and U.S. policies” are central to any answer to this question, however his assumptions, analytical methods, and, consequently, his conclusions are less than convincing.⁷² He denigrates surveys of migrants as unreliable sources of data due to the potential for bias from both the researcher and the subject, and makes this assertion for the express purpose of invalidating studies that found violence to be a primary factor in migrants' flight from Central America. He goes so far as to accuse, without any evidence, children interviewed by the UNHCR (in addition to other researchers) of lying about why they fled their countries.⁷³ Perhaps not surprisingly, Jones reserves judgement on the validity of survey data when it serves his predetermined conclusions. He relies on demographic survey data from a Catholic Relief Services study to claim that the thousands of children who fled to the United States between 2008–2011 “were not vulnerable, dependent children as much as they were young adults capable of entering the labor force upon arrival in the U.S.”⁷⁴ Jones elides the truth by overstating the findings of Catholic Relief Services. While the latter claims that 75 percent of the minors they surveyed were boys, Jones cites this as “four-fifths,” or 80 percent.⁷⁵ Catholic Relief Services indicates that 62.5 percent of the children surveyed reported working in their home country and 59 percent indicated they were “migrating

⁷² Richard C. Jones, “The Central American Child Migration Surge: A Temporal and Spatial Investigation of Its Causes,” *The Latin Americanist* 61, no. 3 (September 2017): 334, <https://doi.org/10.1111/tla.12133>.

⁷³ Jones, 337.

⁷⁴ Jones, 334; Catholic Relief Services, *Child Migration: The Detention and Repatriation of Unaccompanied Central American Children from Mexico* (Baltimore, MD: United States Conference of Catholic Bishops, 2010), 4, <https://www.crs.org/sites/default/files/tools-research/child-migration.pdf>. In order to make his point that the surge in UACs was one of adults and not children, Jones claims that sixteen- and seventeen-year-old children are actually adults.

⁷⁵ Jones, “The Central American Child Migration Surge,” 334; Catholic Relief Services, *Child Migration*, 4.

primarily for economic reasons.”⁷⁶ While Catholic Relief Services’ survey data clearly shows employment is a significant factor that colors child migration from Central America, both the data and the analysis contained in the Catholic Relief Services report do not support Jones’s reckless presuppositions.

Jones identifies information sharing, migration networks, and U.S. policies as variables important for this analysis, yet he again makes several fatal assumptions when attempting to test his hypothesis. He creates an independent variable that purportedly captures the ratio of congressional bills that are favorable to immigrants to those that are unfavorable to immigrants.⁷⁷ Through his discussion, it becomes clear that he assumes this variable serves as a proxy for national sentiment and policies across the country and at every level of government but fails to sufficiently explain why that should be so and why that matters. This variable ultimately serves his main purpose, which is to argue that criminal smuggling networks parlay U.S. legislation that could be considered welcoming to immigrants into a sales pitch that successfully convinced tens of thousands of children, who would not have otherwise done so, to make the dangerous journey to the United States.⁷⁸ This assumption, however, fails to consider the well-reported manner in which criminal smugglers can spin any U.S. policy, welcoming or not, into a rationale for people to purchase their services.⁷⁹

Jones does not attempt to explore potential disparity in awareness of the favorable or unfavorable bills and assumes that migrant children have perfect information of the welcoming nature of immigration bills introduced in U.S. Congress and act immediately based on that information. While other researchers have included variables that attempt to

⁷⁶ Catholic Relief Services, *Child Migration*, 4.

⁷⁷ Jones, “The Central American Child Migration Surge,” 345.

⁷⁸ Jones, 354.

⁷⁹ For example, from the author’s own experience interviewing individuals in the relevant population, explanations for what smugglers told them ranged from “the United States is welcoming everyone, let me smuggle you there” to “the United States is building a wall, let me smuggle you there before it gets too difficult.” For a deeper analysis into the quality, or lack thereof, of information migrants are presented with, see “Inside the World of Misinformation Targeting Migrants on Social Media,” Tech Transparency Project, July 26, 2022, <https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media>.

account for information sharing and migrant networks in their analytical models, Jones does so haphazardly. Rigorous quantitative studies acknowledge that migration data are often time lagged and that apprehensions are a product of both the number of people attempting to cross the border (who are influenced by push and pull factors) and the level of enforcement as decided by the governments of the pass-through and destination countries.⁸⁰ Perhaps most startling about this study is that Jones reached the main conclusions cited above not through a robust statistical analysis but through a “visual inspection of trends over time.”⁸¹ While visual inspection of data is a normal part of designing and honing a statistical model, using it as the primary analytical tool may lead to unreliable conclusions.

Jones separately conducts a Pearson correlation between “migration, unemployment, and homicides for the 18 departments of origin in Honduras in 2012–14.”⁸² Here, he finds that the murder rate in Honduran departments have a significantly stronger positive correlation with child migration rate compared to the weak positive relationship between unemployment rates and migration.⁸³ Moreover, similar to Morrison’s study of Guatemala, Jones observed that after a threshold point of fifty-five murders per 100,000 population, child migrations increase significantly.⁸⁴ The fact that the results from Jones’s statistical analysis of Honduras counter those from his visual one of the Northern Triangle countries not only show the value of robust statistical analysis, but also instruct the researcher to analyze each country in the Northern Triangle separately rather than simply view the entire region as a monolith. This lesson helps inform the trajectory of this thesis.

⁸⁰ See Schmeidl, “Exploring the Causes of Forced Migration,” 293 (lagged economic and population variables); Stanley, “Economic Migrants or Refugees from Violence?,” 142 (lagged murder variables); Davenport, Moore, and Poe, “Sometimes You Just Have to Leave,” 40 (lagged dependent variable); Neumayer, “Bogus Refugees?,” 394 (lagged stock of refugees variable); Androff, “Human Rights,” 73–74; David Scott FitzGerald, *Refuge Beyond Reach: How Rich Democracies Repel Asylum Seekers* (New York, NY: Oxford University Press, 2019), 136.

⁸¹ Jones, “The Central American Child Migration Surge,” 345.

⁸² Jones, 345.

⁸³ Jones, 351.

⁸⁴ Jones, 352.

D. RESEARCH DESIGN

The central purpose of this thesis is to apply quantitative research methods to explore an alternative, and potentially more reliable, explanation for the increasing number of credible fear applicants. This study begins by exploring how and why researchers, government officials, and others have tried to rely on allegations of fraud to explain the increased caseload. This thesis explores how the definition and understanding of fraud has evolved in federal immigration law over time and shows how it is being applied in the current specific example of the credible fear process. Security concerns relating to immigration violations or crimes are often used interchangeably with fraud concerns to explain the recent increasing trends in credible fear. Therefore, this study also explores how understandings of immigration violations other than fraud have changed over time.

The main focus of this thesis is investigating how conditions in Northern Triangle countries and Mexico, U.S. and Mexican government policy and enforcement decisions, U.S. humanitarian immigration benefits, and other migration types relate to and the degree to which they accurately explain the recent increase in the USCIS credible fear caseload. To do so, this study analyzes the rates of crime, violence, and economic indicators in the Northern Triangle countries to assess what, if any, impact these factors have had on the rates of migration from these countries to the United States each year. This study relies on three primary sources for this quantitative data—the U.S. government, such as the DHS Yearbook of Immigration Statistics and Congressional Research Service (CRS) reports on Central America and the Northern Triangle; intergovernmental agencies, such as the United Nations Office on Drugs and Crime (UNODC) and the World Bank; and reports and data released by the government of Mexico. Using multiple sources allows for validation of the data to ensure the accuracy of the analysis.

These criteria for research were chosen because previous academic, political, and journalistic attempts to explain the changes in the credible fear program have either relied on baseless assertions or qualitative descriptions rather than a robust exploration of facts and an analysis of trends. In addition, the broader body of research reviewed above

validate the criteria selected for this thesis. Reviewing the history of the twin concerns of fraud and security in immigration programs provides context to understand the current state of the failed attempts to assess the credible fear program. A quantitative analysis of other factors such as crime, violence, and economic indicators in four of the countries whose citizens are highly represented in the credible fear applicant dataset complicates and enriches the understanding of the trends in the credible fear program.

This thesis focuses on the overarching assertion that fraud is the primary factor that explains the recent increase of credible fear cases and reveals how other factors may be better suited to explain this increase in cases. This thesis does not focus on judging the merits or demerits of the multiple policy changes that have occurred over the last several years, rather, it is a higher-level discussion and analysis that can inform policy decisions going forward.

This thesis relies on public sources of immigration data released by DHS. It also employs primary sources in the exploration of immigration law relating to fraud and crime in addition to secondary sources that have provided useful analysis of the law. Finally, this thesis uses secondary sources from the governmental, academic, political, and journalistic fields in the analysis of the current trends in critique of the credible fear program.

E. CHAPTER OVERVIEW

This thesis provides a factual context for understanding the recent trends in the credible fear program, including how to evaluate assertions about the program and what other factors to consider in explaining the recent trends in the program. For the government practitioner, it also provides a recommendation for how to analyze credible fear receipt trends and predict future receipts. The ultimate goal is to build the “early warning capacity” that Davenport, Moore, and Poe recommended almost 20 years ago.⁸⁵

This thesis continues with Chapter II, which provides an overview of the creation of the expedited removal process and credible fear program. Particular attention is paid to

⁸⁵ Davenport, Moore, and Poe, “Sometimes You Just Have to Leave,” 46.

how U.S. government policy and enforcement decisions for expedited removal shape and change the size and makeup of the credible fear population. Chapter III returns to the subject of fraud in the U.S. immigration system to show how the definition of fraud has evolved over time. Chapter III also explores the challenges faced when attempting to quantify fraud and assess security concerns in the credible fear process. Chapter IV turns to statistical analysis to seek sound explanations for the increase in credible fear receipts. The fourth chapter details the dataset and methodology used for the analysis and breaks down the results by country and analyzes and discusses the results of the statistical analysis. Chapter V summarizes the thesis and provides recommendations for the U.S. government practitioner as well as the researcher.

II. EVOLUTION OF EXPEDITED REMOVAL AND CREDIBLE FEAR IN THE UNITED STATES

Following the two world wars and the related genocides, persecution, and displacement that characterized the first half of the 20th century, the international community codified the definition and rights of refugees. First, in 1951, came the Convention Relating to the Status of Refugees (the 1951 Convention), which laid the legal framework for refugee determinations but demarcated refugees by time and place. The 1951 Convention limited refugee protection to those who became refugees due to “events occurring in Europe before 1 January 1951.”⁸⁶ The Protocol Relating to the Status of Refugees followed in 1967, which removed the time and place restrictions in the 1951 Convention, making the definition of refugees applicable to people in any time or place.⁸⁷ The 1951 Convention established the five protected grounds and prohibited signatory states from returning refugees to a place where they would be threatened or harmed on account of one of the protected grounds (known as *non-refoulment*).⁸⁸ Having been a party to these international agreements, the United States codified both the definition of refugee and the principle of non-refoulment into U.S. law.⁸⁹

In December 1984, the UN General Assembly adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the United States later ratified in October 1994.⁹⁰ With CAT, the definition of torture was codified into U.S. law as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her

⁸⁶ Convention Relating to the Status of Refugees, 154.

⁸⁷ Protocol Relating to the Status of Refugees, January 31, 1967, 606 U.N.T.S. 269–70.

⁸⁸ Convention Relating to the Status of Refugees, 154, 176.

⁸⁹ Refugee Act of 1980, Pub. L. No. 96–212 § 94 Stat. 102–107 (1980).
<https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>

⁹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85; Treaty Series: Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations, October 21, 1994, 1830 U.N.T.S. 320.

for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁹¹

Similar to the 1951 Convention discussed above, CAT includes a prohibition of returning “a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁹² This chapter examines the U.S. government’s efforts to abide by its obligations under CAT while simultaneously addressing migration across its borders. This chapter starts with a review of how the expedited removal and credible fear processes began then focuses on select trends in the processes over time. The foundation built in this chapter supports the analysis of immigration fraud presented in Chapter III.

A. THE CREATION OF EXPEDITED REMOVAL

President Clinton clearly communicated his administration’s position on illegal immigration in a memorandum released to his cabinet officials in February 1995. He stated that his administration “shall stand firm against illegal immigration and the continued abuse of our immigration laws.”⁹³ He highlighted recent efforts to increase Border Patrol staffing, combat asylum fraud, and quicken removal of criminal aliens and called on Congress and the Department of Justice (DOJ) to “develop a streamlined, fair, and effective procedure to expedite removal of deportable aliens.”⁹⁴

The legislation that followed, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), expanded who was subject to and how the government executes deportation. Before IIRIRA went into effect in April 1997, there were two primary methods of what is colloquially known as deportation: deportation

⁹¹ Convention Against Torture, 113–14.

⁹² Convention Against Torture, 114.

⁹³ William J. Clinton, “Deterring Illegal Immigration” (official memorandum, Washington, DC: Executive Office of the President, 1995), 7885, <https://www.govinfo.gov/content/pkg/FR-1995-02-10/pdf/95-3554.pdf>.

⁹⁴ Clinton, “Deterring Illegal Immigration,” 7885 and 7887.

proceedings and exclusion proceedings. The former related to people who were already in the United States, while the latter related to those who were applying for admission, both of which were civil proceedings administered by immigration judges (IJs).⁹⁵ Lawmakers saw the need for a more nimble and effective method of “identifying and removing the illegal aliens once they entered [the United States].”⁹⁶ IIRIRA combined deportation and exclusion proceedings into one process, expedited removal proceedings, which limited “immigrants’ right of due process” in order to accelerate deportation.⁹⁷ Speeding up deportation by implementing this new process for removal was intended to relieve the strain on the Executive Office for Immigration Review (EOIR), which was overwhelmed by slow processing times and a large backlog of asylum applications that had been growing in the preceding years.⁹⁸

Instead of a judge ruling on the removability of an individual, with IIRIRA, individual immigration officers were empowered to initiate expedited removal proceedings (or reinstatement of removal proceedings for those who were previously ordered removed). The expressed purpose of expedited removal was to deal “with aliens who attempt to enter the United States by engaging in fraud or misrepresentation (e.g., falsely claiming to be a U.S. citizen or misrepresenting a material fact) or who arrive with fraudulent, improper, or no documents (e.g., visa or passport).”⁹⁹ With this adjustment of deportation authorities, IJs lost their discretion to grant “suspension of deportation” to

⁹⁵ Eleanor Acer and Olga Byrne, “How the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Has Undermined U.S. Refugee Protection Obligations and Wasted Government Resources,” *Journal on Migration and Human Security* 5, no. 2 (June 2017): 360, <https://doi.org/10.1177/233150241700500207>.

⁹⁶ Richard M. Stana, *Illegal Aliens: Changes in the Process of Denying Aliens Entry into the United States*, GAO/GGD-98-81 (Washington, DC: General Accounting Office, 1998), 2, <https://www.gao.gov/assets/ggd-98-81.pdf>.

⁹⁷ Leisy Abrego et al., “Making Immigrants into Criminals: Legal Processes of Criminalization in the Post-IIRIRA Era,” *Journal on Migration and Human Security* 5, no. 3 (September 2017): 697, <https://doi.org/10.1177/233150241700500308>.

⁹⁸ “Former INS Commissioner Doris Meissner on Challenges Facing Asylum Seekers Coming to the United States,” June 7, 2018, CBS News, video, 11:14, <https://www.cbsnews.com/video/former-ins-commissioner-doris-meissner-on-challenges-facing-asylum-seekers-coming-to-the-united-states/>. EOIR is an administrative court that adjudicates immigration cases. It is not a part of the federal court system, and instead falls within the DOJ.

⁹⁹ Stana, *Illegal Aliens*, 2.

individuals. This common resolution to deportation proceedings was replaced with “cancellation of removal,” which had a much higher burden of proof for applicants and was therefore more difficult to obtain.¹⁰⁰

B. THE CREATION OF CREDIBLE FEAR

Individuals who are in expedited removal proceedings do not have the right to apply for asylum directly. Instead, if they claim fear of returning to their country while in expedited removal, the law dictates that immigration enforcement officers refer them to an asylum officer for a credible fear interview. The credible fear process was created to honor the non-refoulment obligations required by the 1951 Convention and the Convention Against Torture.¹⁰¹ U.S. law states that credible fear means that:

there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum.¹⁰²

In other words, the credible fear process was created to be a screening mechanism to determine if an individual claiming fear of persecution or torture in their country could be successful in a full asylum hearing before an IJ.¹⁰³ If the asylum officer makes a positive determination (i.e., the individual does have a chance at being successful in a full asylum hearing), the individual is no longer in expedited removal proceedings and instead begins their full asylum hearing before an IJ.¹⁰⁴ If the asylum officer makes a negative determination, the individual has the opportunity to request that the IJ conduct a limited

¹⁰⁰ Donald Kerwin, “From IIRIRA to Trump: Connecting the Dots to the Current U.S. Immigration Policy Crisis,” *Journal on Migration and Human Security* 6, no. 3 (September 2018): 194, <https://doi.org/10.1177/2331502418786718>.

¹⁰¹ Prior to IIRIRA’s passage in 1997, IJs were responsible for ensuring the United States adhered to its non-refoulment obligations. After IIRIRA, individuals, even those who expressed fear of returning to their countries, were being diverted from courts and judges so asylum officers filled the gap in ensuring the United States met its treaty obligations. Acer and Byrne, “Wasted Government Resources,” 360.

¹⁰² Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–582.

¹⁰³ Hillel R Smith, *Expedited Removal of Aliens: Legal Framework*, CRS Report No. R45314 (Washington, DC: Congressional Research Service, 2019), 17, <https://crsreports.congress.gov/product/pdf/R/R45314>.

¹⁰⁴ Smith, 18–19.

review of the officer's determination. If the IJ determines that the asylum officer erred in applying the law, they overturn the asylum officer's determination and refer the individual back to the EOIR for a full asylum hearing. If, after review, the IJ concurs with the asylum officer's negative determination, the individual continues in expedited removal proceedings and is removed from the United States.¹⁰⁵

IIRIRA introduced another update to the asylum process that impacts both affirmative and defensive filings.¹⁰⁶ Even after going through this credible fear screening process and being formally referred to the immigration court for a full asylum hearing, the individual is not considered to have filed for asylum. IIRIRA requires them to file an asylum application (Form I-589) within one year of their arrival in the United States.¹⁰⁷ One intention for this new technical requirement was to prevent fraud in asylum applications.¹⁰⁸ Few technical exceptions are allowed for "extraordinary circumstances" that prevented the individual from submitting the application and "changed circumstances," which fundamentally altered the individual's eligibility for asylum.¹⁰⁹

¹⁰⁵ Smith, 19–20.

¹⁰⁶ A person files an asylum application affirmatively when they enter the United States legally or otherwise without being apprehended, then subsequently file Form I-589, *Application for Asylum and for Withholding of Removal*, with USCIS, which has jurisdiction over the case. A defensive asylum filing is one that is filed while the applicant is in removal proceedings. EOIR has jurisdiction over defensive filings.

¹⁰⁷ It should be noted that the Biden administration implemented a rule in March 2022 that created an additional pathway in this expedited removal/credible fear process. With this rule, USCIS now has the option to retain a case that received a positive credible fear determination, treat the positive credible fear finding as an application for asylum, and conduct a subsequent interview (Asylum Merits Interview, or AMI) to determine if the individual is eligible for asylum or other protections. This new AMI process is an alternative to the referral to the IJ described above. Department of Homeland Security and Executive Office for Immigration Review, "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers," *Federal Register* 87, no. 60 (March 2022): 18095, <https://www.federalregister.gov/d/2022-06148>.

¹⁰⁸ Acer and Byrne, "Wasted Government Resources," 358. See also Eleanor Acer et al., *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency* (New York, NY: Human Rights First, 2010), 25. Earlier drafts of and debates surrounding IIRIRA indicate that Congress originally intended to apply the one year filing deadline only to defensive filings to prevent people who are put into removal proceedings from claiming asylum solely as a way to avoid removal.

¹⁰⁹ An example of an "extraordinary circumstance" could be a devastating illness or accident that physically prevented the individual from submitting the application on time. An example of a "changed circumstance" could be a war breaking out in the individual's home country before which they would not have been eligible for asylum but after which, they are. Acer and Byrne, "Wasted Government Resources," 359.

Figures 1 and 2 offer a visual explanation of how the exclusion process and expedited removal process differ in complexity, both in the number of government entities involved and in the number of steps each process may require.

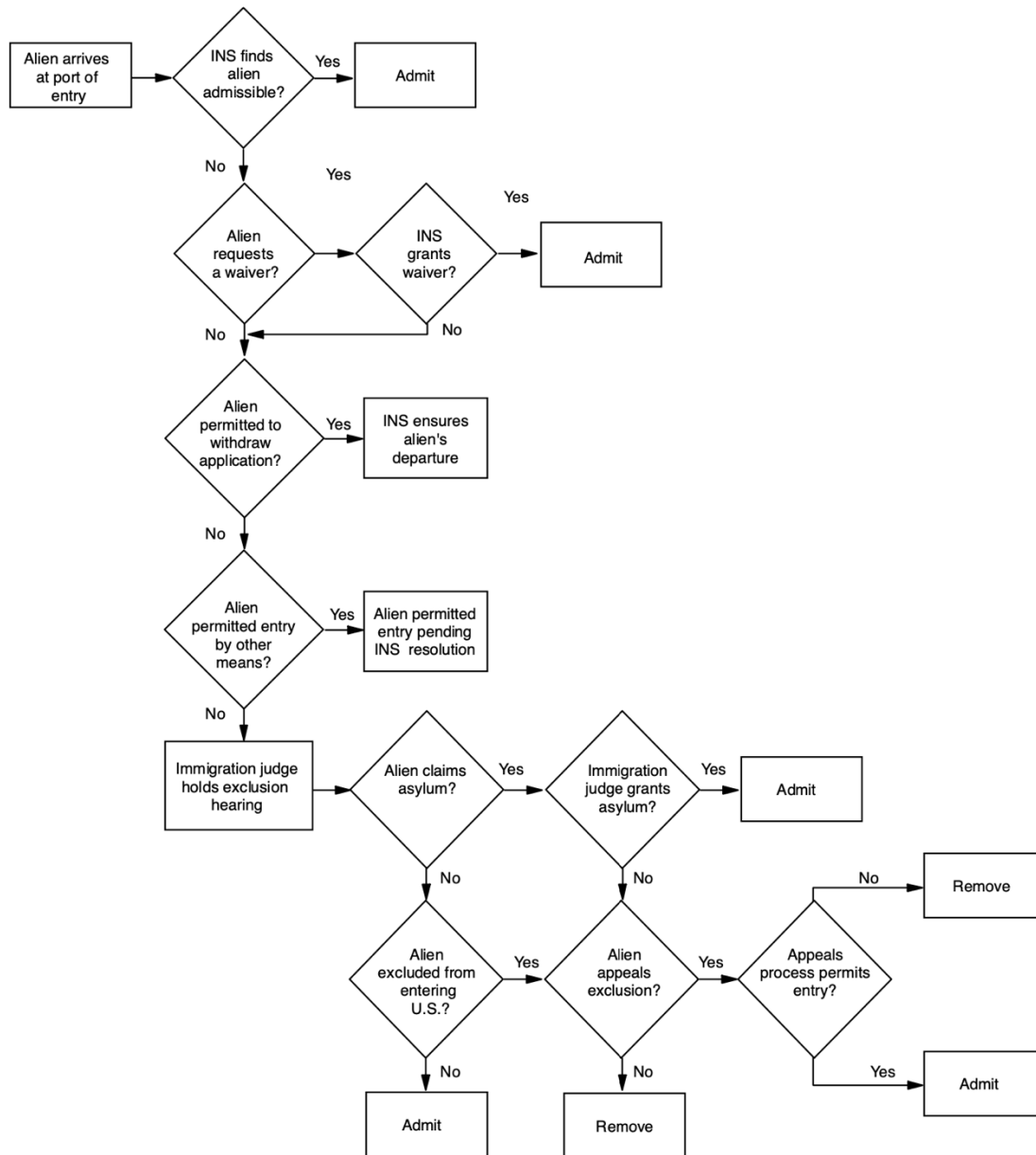


Figure 1. Flowchart of the Exclusion Process Used before April 1, 1997¹¹⁰

¹¹⁰ Source: Stana, *Illegal Aliens*, 25.

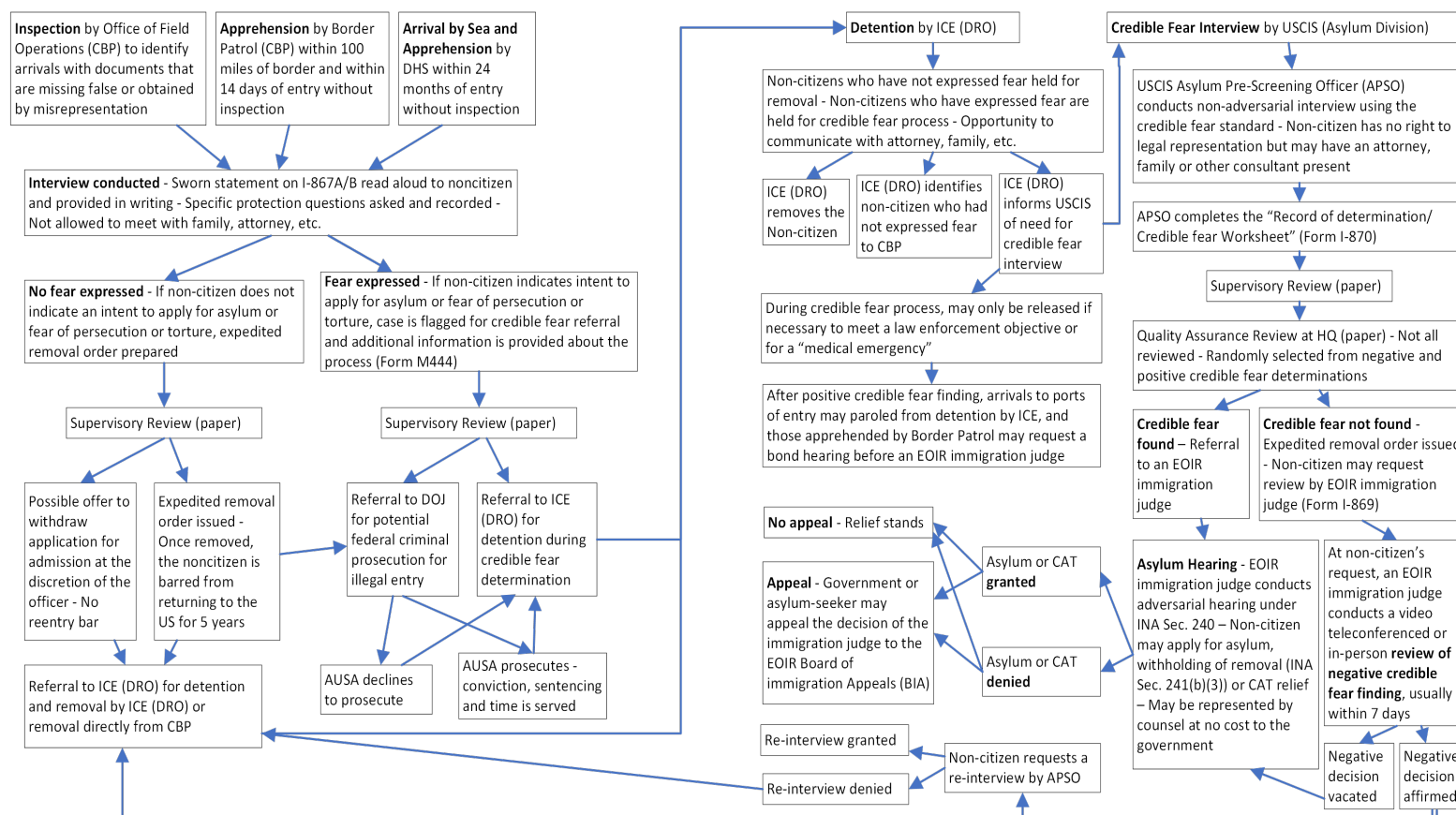


Figure 2. Expedited Removal Flowchart¹²²

¹²² Adapted from Elizabeth Cassidy and Tiffany Lynch, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (Washington, DC: U.S. Commission on International Religious Freedom, 2016), vii, <https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf>.

In the former exclusion process outlined in Figure 1, there are four steps between an individual arriving at a port of entry and having a full exclusion hearing before an IJ. As seen in that flowchart, those four steps leading up the exclusion hearing were all internal Immigration and Naturalization Service (INS) processes, and every step in the entire flowchart were all within the DOJ.

The increase in complexity with the current expedited removal process is immediately apparent when viewing Figure 2.¹²³ The purpose of these additional layers of bureaucracy was to increase the number of steps between the individual arriving in the United States and having a full hearing before a judge.¹²⁴ As seen in the flowchart, the departments and agencies involved in the expedited removal process include:

- Department of Homeland Security (DHS)
 - Customs and Border Protection (CBP)
 - Border Patrol (BP)
 - Office of Field Operations (OFO)
 - Immigration and Customs Enforcement (ICE)
 - Office of Detention and Removal Operations (DRO)
 - Enforcement and Removal Operations (ERO)
- United States Citizenship and Immigration Services (USCIS)
 - Asylum Division

¹²³ For the sake of simplicity, Figure 2 does not include the AMI process which was introduced in March 2022. Select individuals are placed into the AMI process immediately following the Credible Fear Found step (see the right side of the flowchart). While the intention of the AMI process is to retain cases within USCIS, individuals in AMI would still be referred to an Asylum Hearing before an IJ if their AMI case is not approved by USCIS. “Asylum Merits Interview with USCIS: Processing After a Positive Credible Fear Determination,” U.S. Citizenship and Immigration Services, May 31, 2022, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-merits-interview-with-uscis-processing-after-a-positive-credible-fear-determination>.

¹²⁴ Stana, *Illegal Aliens*, 2.

- Department of Justice (DOJ)
 - Executive Office for Immigration Review (EOIR)
 - Board of Immigration Appeals (BIA)
 - Assistant United States Attorney (AUSA)

One interesting aspect of the expedited removal process noticeable in Figure 2 is that contrary to the exclusion process, an individual could potentially have two separate hearings before an IJ: if they receive a negative credible fear determination from the asylum officer, they could request an IJ review hearing; then, if the judge overturns, or vacates, the asylum officer's decision, the individual has a second, full hearing before a judge. Assessing the impact of the IJ review hearing on EOIR's and USCIS's backlogs is beyond the scope of this thesis.

C. TRENDS OVER TIME

Credible fear interviews joined the suite of immigration interviews conducted by asylum officers in the legacy INS when expedited removal began on April 1, 1997. In the first seven months, 29,170 individuals were placed into expedited removal.¹²⁵ Because, in its infancy, expedited removal was only applied at ports of entry, this number only reflects the individuals who applied to enter the United States at an official port of entry but were deemed inadmissible by an INS inspector. In these first seven months, inspectors referred 1,396, or just under five percent, of the individuals in expedited removal to asylum officers for credible fear interviews.¹²⁶ IIRIRA contained a requirement for the GAO to conduct and submit a review of the effectiveness and cost and resource savings of expedited removal and credible fear eighteen months after the law was enacted.¹²⁷ The report stated that asylum officers made positive credible fear determinations for 79 percent of the individuals interviewed. IJs overturned the asylum

¹²⁵ Stana, 4.

¹²⁶ Stana, 4.

¹²⁷ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–584.

officer's negative determination in 17 percent of cases EOIR received.¹²⁸ It can be inferred from this data that in the first seven months that expedited removal was enforced, approximately 82 percent of those individuals whose credible fear claims were processed by asylum officers ultimately entered full asylum proceedings before an IJ.¹²⁹ Therefore, in 1997 approximately four percent of all individuals who entered expedited removal proceedings eventually entered full asylum proceedings.¹³⁰

While record-keeping has changed since 1997, this thesis attempts to assess if and how the expedited removal and credible fear process have changed since their inception. Today, DHS does not consistently report the number of individuals placed in expedited removal.¹³¹ However, CBP reports on enforcement actions, which are the number of individuals who are deemed inadmissible by OFO in addition to the number who are apprehended by BP.¹³² Not all individuals who are deemed inadmissible or apprehended are placed in expedited removal proceedings, however using these statistics can provide insight into the percentages of individuals who are entering full asylum hearings before an IJ after being encountered by CBP.¹³³

¹²⁸ Stana, *Illegal Aliens*, 5.

¹²⁹ Stana, 7.

¹³⁰ See Figure 5 below for a visual representation of the rates at which asylum officers and IJs refer credible fear applicants for full asylum proceedings.

¹³¹ The 1998 GAO study required by IIRIRA provides a statistic for the number of people placed into expedited removal from April 1, 1997, through October 31, 1997. Stana, *Illegal Aliens*, 4. However, there are no other complete, publicly available sources of this data from 1997 to the present day. DHS does, for example, report that approximately 300,000 individuals were removed in 2017, 35 percent of whom were removed through the expedited removal process. Because individuals “leave” the expedited removal process when they pass their credible fear screening interview, the 35 percent figure does not account for all who are initially placed into the expedited removal process. Katherine Witsman, *Annual Report: Immigration Enforcement Actions: 2017* (Washington, DC: Department of Homeland Security, 2019), 9, https://www.dhs.gov/sites/default/files/publications/enforcement_actions_2017.pdf.

¹³² OFO and BP are constituent agencies within CBP and operate at ports of entry and between ports of entry, respectively.

¹³³ Individuals deemed inadmissible by OFO may be “permitted to voluntarily withdraw their application for admission and return to their home country, processed for expedited removal, referred to an immigration judge for removal proceedings, processed for a visa waiver refusal, or paroled into the United States.” While those apprehended by BP may be “permitted to voluntarily return to their country of origin, removed administratively, or referred to an asylum officer for a credible fear interview or to an IJ for removal proceedings (i.e., issued an NTA [notice to appear]).” Witsman, *Annual Report*, 2–3.

1. Increase of Credible Fear Cases

After the launch of expedited removal, the number of individuals referred to USCIS for credible fear interviews fluctuated year-to-year but generally grew. Figure 3 charts the number of credible fear cases that are referred to USCIS each year from 1997 through 2019, the last year included in this thesis.

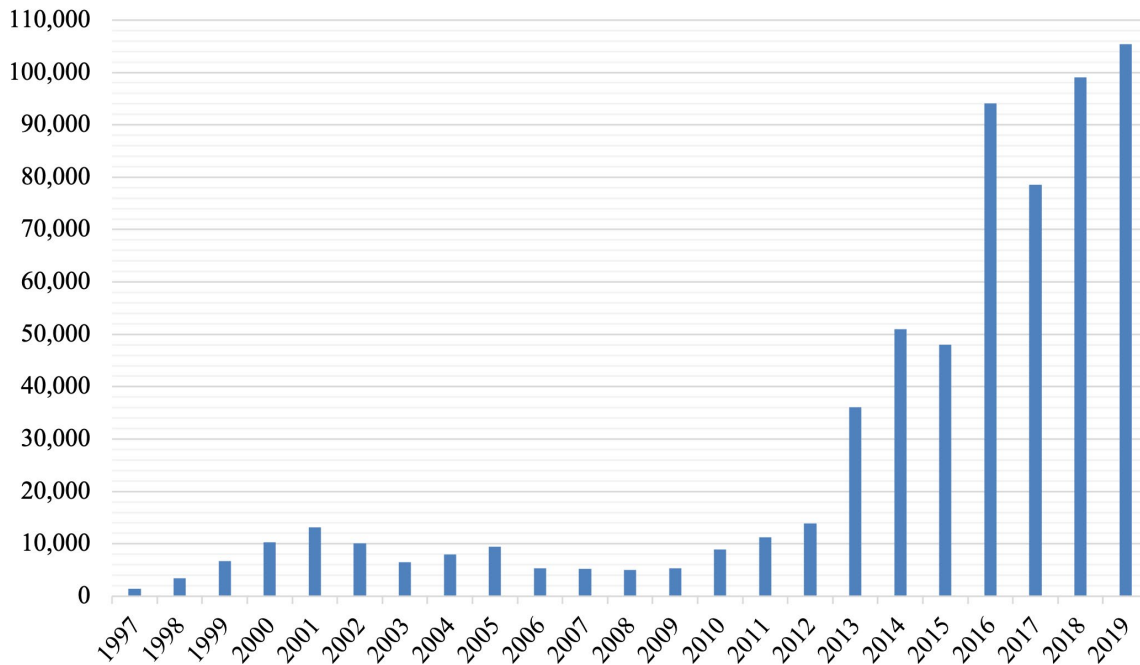


Figure 3. Number of Credible Fear Receipts, FY1997–FY2019¹³⁴

The rapid increase in cases starting in 2013 is colloquially referred to as “the surge” of credible fear cases. This surge is also apparent in Table 1, which highlights the credible fear receipts from Mexico and the Northern Triangle countries of El Salvador, Guatemala, and Honduras.

¹³⁴ Adapted from Bruno, *Immigration: U.S. Asylum Policy*, 37.

Table 1. Credible Fear Receipts from Select Countries, FY1997–2019¹³⁵

| Fiscal Year | El Salvador | Guatemala | Honduras | Mexico |
|--------------------|--------------------|------------------|-----------------|---------------|
| 1997 | 26 | 33 | 9 | 40 |
| 1998 | 83 | 83 | 12 | 109 |
| 1999 | 116 | 88 | 60 | 87 |
| 2000 | 104 | 115 | 36 | 73 |
| 2001 | 216 | 104 | 32 | 61 |
| 2002 | 172 | 68 | 22 | 48 |
| 2003 | 90 | 62 | 50 | 54 |
| 2004 | 59 | 65 | 50 | 68 |
| 2005 | 71 | 265 | 335 | 100 |
| 2006 | 65 | 671 | 1,088 | 151 |
| 2007 | 817 | 472 | 563 | 175 |
| 2008 | 816 | 440 | 561 | 297 |
| 2009 | 921 | 441 | 571 | 321 |
| 2010 | 1,876 | 610 | 819 | 610 |
| 2011 | 1,976 | 1,144 | 956 | 1,179 |
| 2012 | 3,999 | 1,973 | 2,365 | 1,261 |
| 2013 | 10,736 | 5,503 | 6,760 | 2,560 |
| 2014 | 18,845 | 6,613 | 8,090 | 4,796 |
| 2015 | 14,146 | 7,146 | 7,503 | 7,027 |
| 2016 | 32,680 | 15,691 | 19,774 | 7,763 |
| 2017 | 20,118 | 15,960 | 16,756 | 4,997 |
| 2018 | 13,511 | 24,952 | 25,960 | 6,691 |
| 2019 | 12,902 | 14,754 | 25,971 | 4,574 |

This increase prompted Congress to raise concerns regarding fraud and abuse of the asylum system in 2013 and 2014, as discussed in Chapter I. In 2018, President Trump called attention to the statistical significance of this increase, stating at a business association celebration, “There’s been a 1,700 percent increase in asylum claims over the last 10 years. Think of that. Think of that. We’re a great country but you can’t do

¹³⁵ Citizenship and Immigration Services, unpublished data, October 21, 2020.

that.”¹³⁶ While this figure is relatively accurate, it does not account for the U.S. government policy and enforcement decisions that may have contributed to this uptick in credible fear cases. Factors that can impact this increase include the manner in which expedited removal has been expanded, how thoroughly CBP follows procedures in referring people who claim fear to USCIS for credible fear, which process CBP decides to use for various groups and individuals, and other factors such as migration trends and safety in the countries from which credible fear applicants come.¹³⁷ Chapter IV employs a multivariate regression analysis and Pearson correlations to assess how some of these factors and proxies actually impact the number of credible fear receipts USCIS receives from citizens of the Northern Triangle countries and Mexico.

With urgency similar to President Trump’s, CBP stated in a 2018 press release that the “dramatic increase in initial fear claims by those encountered on the border . . . is straining border security.”¹³⁸ Instead of looking at longer trends, CBP focused only on comparing the number of credible fear cases in 2017 and 2018, highlighting the 121 percent increase in the number of people who claimed fear at a port of entry and an overall 67 percent increase in all credible fear claims.¹³⁹ Referring back to Figure 3, when one takes into consideration the number of receipts in 2016, the increase in this

¹³⁶ Donald J. Trump, *Remarks by President Trump at the National Federation of Independent Businesses 75th Anniversary Celebration* (Washington, DC: White House, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-national-federation-independent-businesses-75th-anniversary-celebration/>. In the context of the remarks, when President Trump said asylum claims, he was referring only to credible fear referrals to USCIS, not to affirmative or defensive asylum applications. President Trump gave these remarks before the end of FY2018. In the 10 years between and inclusive of FY2008 and FY2017, credible fear receipts rose 1,573 percent. Over the same period, affirmative filings rose 555 percent. From FY2009 to FY2017 (FY2008 unavailable), defensive filings rose 401 percent. Bruno, *Immigration: U.S. Asylum Policy*, 33–39.

¹³⁷ For example, the United States Commission on International Religious Freedom (USCIRF) raised concerns in their 2015 report that CBP sometimes failed to follow the law by referring to USCIS people who expressed fear of returning to their countries. Cassidy and Lynch, *Barriers to Protection*, 21–22. Although USCIRF has not yet released a follow up report, it is possible that some amount of the increase in credible fear receipts after 2015 can be attributed to CBP following the recommendations of USCIRF and improving their procedures for credible fear referrals.

¹³⁸ “Claims of Credible Fear Increase in Fiscal Year 2018,” U.S. Customs and Border Protection, December 10, 2018, <https://www.cbp.gov/newsroom/national-media-release/claims-credible-fear-increase-fiscal-year-2018>.

¹³⁹ U.S. Customs and Border Protection, “Claims of Credible Fear Increase in Fiscal Year 2018.”

three-year snapshot (from FY2016 to FY2018) is less dramatic.¹⁴⁰ Still, there is a marked increase starting in 2013, which requires further contextualization.

2. Credible Fear Cases as a Subset of CBP Enforcement Actions

One way to provide that context is by moving further up the metaphorical case pipeline to analyze the larger set of CBP enforcement actions from which credible fear cases come. Table 2 shows the number of CBP enforcement actions, credible fear receipts, and the percent of enforcement actions that result in a credible fear referral each fiscal year from FY1997–FY2019.

Table 2 shows that in FY2019 (October 1, 2018, to September 30, 2019), CBP’s enforcement actions totaled 1,148,024 and USCIS received 105,439 credible fear referrals. Both CBP and ICE refer cases to USCIS for credible fear interviews, however, regardless of the referring agency, all credible fear referrals originate from a CBP enforcement action. Approximately nine percent of CBP enforcement actions resulted in a credible fear referral to USCIS in FY2019. This rate represents a meaningful decrease from the three years immediately prior. While the numbers of enforcement actions and credible fear receipts differed from FY2016 to FY2019, the percentages of CBP enforcement actions that resulted in a credible fear referral remained steady—approximately 14 percent in FY2018, 15 percent in FY2017, and 14 percent in FY2016—before decreasing in FY2019. With a holistic view of encounters at the border, the drama of the surge in credible fear receipts begins to fade, calling into question the validity of fraud concerns raised by political actors such as President Trump and Homan, as well as researchers such as Freudenthal.

¹⁴⁰ After CBP made this press release, Human Rights First published a succinct report analyzing the statistical significance of the increase from 2016–2018. While it may not be possible to draw conclusions from only three years of data, it helps to contextualize the claims made by CBP. “CBP’s Figures on Credible Fear Claims – Out of Context and Inaccurate,” Human Rights First, 2018, https://humanrightsfirst.org/wp-content/uploads/2018/12/Credible_Fear_Claims_CBP.pdf.

Table 2. Enforcement Actions and Credible Fear Receipts
FY1997–FY2019¹⁴¹

| Fiscal Year | CBP Enforcement Actions | Credible Fear Receipts | Percent Credible Fear |
|--------------------|------------------------------------|-----------------------------------|----------------------------------|
| 1997 | 1,412,953 | 1,438 | 0.1% |
| 1998 | 1,555,776 | 3,427 | 0.2% |
| 1999 | 1,579,010 | 6,690 | 0.4% |
| 2000 | 1,676,438 | 10,315 | 0.6% |
| 2001 | 1,266,214 | 13,140 | 1.0% |
| 2002 | 955,310 | 10,042 | 1.1% |
| 2003 | 931,557 | 6,447 | 0.7% |
| 2004 | 1,160,395 | 7,917 | 0.7% |
| 2005 | 1,442,116 | 9,465 | 0.7% |
| 2006 | 1,298,529 | 5,338 | 0.4% |
| 2007 | 1,080,017 | 5,252 | 0.5% |
| 2008 | 948,530 | 4,995 | 0.5% |
| 2009 | 781,114 | 5,369 | 0.7% |
| 2010 | 694,427 | 8,959 | 1.3% |
| 2011 | 555,500 | 11,217 | 2.0% |
| 2012 | 560,572 | 13,880 | 2.5% |
| 2013 | 626,412 | 36,035 | 5.8% |
| 2014 | 711,667 | 51,001 | 7.2% |
| 2015 | 591,831 | 48,052 | 8.1% |
| 2016 | 690,637 | 94,048 | 13.6% |
| 2017 | 526,788 | 78,564 | 14.9% |
| 2018 | 686,023 | 99,035 | 14.4% |
| 2019 | 1,148,024 | 105,439 | 9.2% |

¹⁴¹ Department of Homeland Security, “Yearbook of Immigration Statistics”; Bruno, *Immigration: U.S. Asylum Policy*, 37; “Credible Fear Workload Report Summary: FY 2019 Total Caseload,” U.S. Citizenship and Immigration Services, accessed August 23, 2022, https://www.uscis.gov/sites/default/files/document/data/Credible_Fear_Stats_FY19.pdf. Notes: Data represent individuals; Percent Credible Fear is found by dividing Credible Fear Receipts by CBP Enforcement Actions for each Fiscal Year; Enforcement actions include both determinations of inadmissibilities by OFO at official ports of entry and apprehensions made by BP between official ports of entry.

Figure 4 provides a visual reference for this holistic view of border encounters by comparing CBP enforcement actions with USCIS’s credible fear referrals to EOIR from 1997 through 2019.¹⁴²

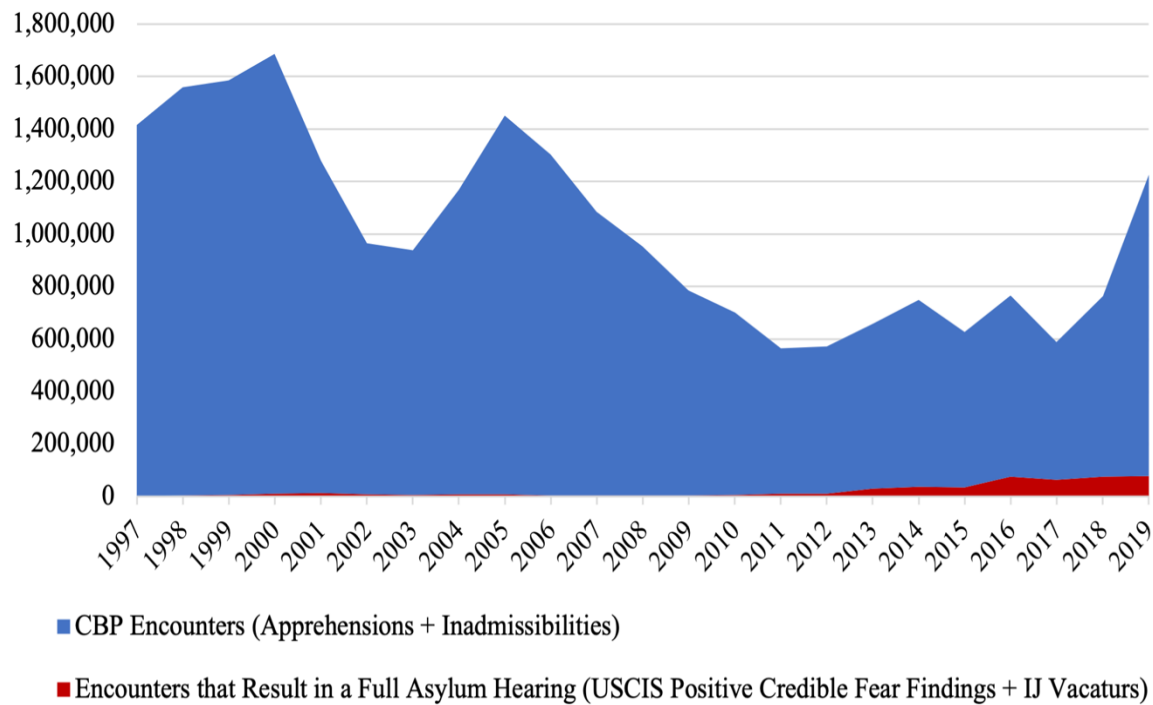


Figure 4. Share of People Encountered by CBP and Referred for a Full Asylum Hearing¹⁴³

¹⁴² In this context, a referral from USCIS to EOIR includes both credible fear cases for which USCIS made a positive determination in the first instance as well as cases for which USCIS initially made a negative determination that was later vacated by an IJ (i.e., IJ vacatur). When an IJ vacates a negative credible fear determination, USCIS is tasked with referring that individual to EOIR for defensive asylum proceedings, just as would have been done if USCIS made a positive determination in the first instance.

¹⁴³ Adapted from Bruno, *Immigration: U.S. Asylum Policy*, 38; U.S. Citizenship and Immigration Services, “FY 2019 Total Caseload”; “Credible Fear Review and Reasonable Fear Review Decisions,” Executive Office for Immigration Review, October 13, 2022, <https://www.justice.gov/eoir/page/file/1104856/download>; Department of Homeland Security, “Yearbook of Immigration Statistics.” Note that the number of IJ vacatur for FY1998-1999 are unavailable.

Table 2 shows that in the time credible fear has existed, the number of individuals apprehended and deemed inadmissible peaked in 2000 at 1,676,438. The lowest occurred in 2017 with 526,788 apprehensions and inadmissibilities, after which time the following two years showed a rapid increase in the number of border encounters. While Figure 3 shows that the number of credible fear cases has undeniably increased over time, Figure 4 shows that this increase, and the number of individuals who enter defensive asylum proceedings following credible fear, is far outstripped by the total number of individuals CBP apprehends and determines to be inadmissible each year. While a visual inspection of Figure 4 fails to reveal an obvious correlation, either positive or negative, the Pearson correlations in Chapter IV explore similar data for the Northern Triangle and Mexico more closely. Such an analysis provides much needed insight into the fluctuations of and potential relationships between the broad array of border encounters and migration types.

3. Comparing Asylum Officer and IJ Determinations

As explained above, when an IJ vacates an asylum officer's negative decision, the applicant is referred for a full asylum hearing just as they would have been if the asylum officer had made a positive decision during the credible fear interview. Because of this inherent difference in the applicant pool that asylum officers and IJs adjudicate at this stage (i.e., IJs are only receiving those cases where the asylum officer already made a negative decision), the positive rates given by these two groups are not directly comparable. However, information can be gleaned when the trends are charted and compared.

Table 3 charts the rate at which asylum officers make positive decisions for credible fear applicants each year. Similarly, Table 4 shows the rate at which IJs vacate, or overturn, asylum officers' negative decisions.

Table 3. Rates at which Credible Fear Is Found by USCIS¹⁴⁴

| Fiscal Year | Total Completions | Positive Credible Fear | % Completions with Positive Credible Fear |
|--------------------|--------------------------|-------------------------------|--|
| 1997 | 1,206 | 922 | 76.5% |
| 1998 | 3,304 | 2,747 | 83.1% |
| 1999 | 6,463 | 5,762 | 89.2% |
| 2000 | 9,971 | 9,285 | 93.1% |
| 2001 | 13,689 | 12,932 | 94.5% |
| 2002 | 9,961 | 9,179 | 92.1% |
| 2003 | 6,357 | 5,715 | 89.9% |
| 2004 | 7,754 | 7,282 | 93.9% |
| 2005 | 9,581 | 8,469 | 88.4% |
| 2006 | 5,241 | 3,320 | 63.3% |
| 2007 | 5,286 | 3,182 | 60.2% |
| 2008 | 4,828 | 3,097 | 64.1% |
| 2009 | 5,222 | 3,411 | 65.3% |
| 2010 | 8,777 | 6,293 | 71.7% |
| 2011 | 11,529 | 9,423 | 81.7% |
| 2012 | 13,579 | 10,838 | 79.8% |
| 2013 | 36,174 | 30,393 | 84.0% |
| 2014 | 48,637 | 35,456 | 72.9% |
| 2015 | 48,415 | 33,988 | 70.2% |
| 2016 | 92,990 | 73,081 | 78.6% |
| 2017 | 79,710 | 60,566 | 76.0% |
| 2018 | 97,728 | 74,677 | 76.4% |
| 2019 | 102,204 | 75,252 | 73.6% |

¹⁴⁴ Bruno, *Immigration: U.S. Asylum Policy*, 38; U.S. Citizenship and Immigration Services, “FY 2019 Total Caseload.”

Table 4. Rates at which Credible Fear Is Found by IJs¹⁴⁵

| Fiscal Year | Negative Credible Fear Findings by USCIS Who Requested IJ Review | Vacated USCIS Decision and Found Credible Fear | IJ Vacatur Rate |
|--------------------|---|---|------------------------|
| 1997 | 198 | 34 | 17.2% |
| 1998 | - | - | - |
| 1999 | - | - | - |
| 2000 | 105 | 21 | 20.0% |
| 2001 | 77 | 9 | 11.7% |
| 2002 | 79 | 6 | 7.6% |
| 2003 | 40 | 2 | 5.0% |
| 2004 | 33 | 9 | 27.3% |
| 2005 | 98 | 4 | 4.1% |
| 2006 | 400 | 50 | 12.5% |
| 2007 | 792 | 120 | 15.2% |
| 2008 | 667 | 84 | 12.6% |
| 2009 | 852 | 169 | 19.8% |
| 2010 | 1,111 | 203 | 18.3% |
| 2011 | 884 | 110 | 12.4% |
| 2012 | 698 | 81 | 11.6% |
| 2013 | 1,710 | 207 | 12.1% |
| 2014 | 6,287 | 1,055 | 16.8% |
| 2015 | 6,567 | 1,348 | 20.5% |
| 2016 | 7,421 | 2,088 | 28.1% |
| 2017 | 6,504 | 1,649 | 25.4% |
| 2018 | 6,595 | 1,387 | 21.0% |
| 2019 | 12,002 | 3,196 | 26.6% |

The data in Tables 3 and 4 reveal that the percentage of individuals who enter full defensive asylum proceedings via the credible fear process has not increased since the implementation of IIRIRA; in fact, the data show that the rate of positive determinations by asylum officers is on a downward trend. Figure 5 also provides a visualization of this trend.

¹⁴⁵ Executive Office for Immigration Review, “Review Decisions.” Note that data for IJs’ vacatur rate is unavailable for 1998–1999.

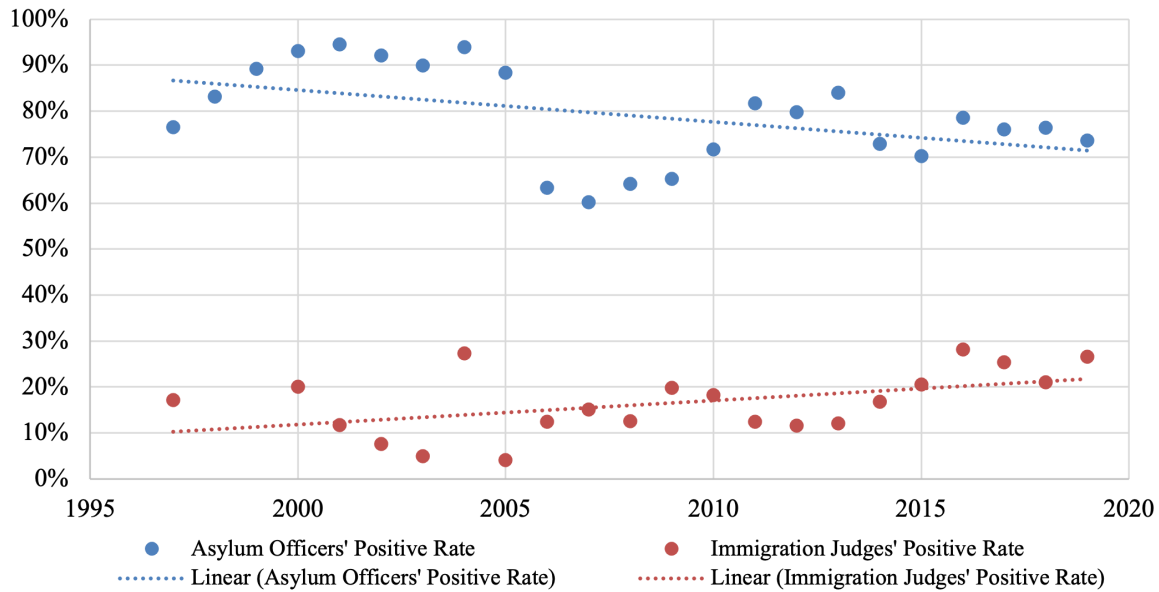


Figure 5. Relation between Asylum Officers' and IJs' Positive Rates¹⁴⁶

The data contained in Tables 3 and 4 reveal several notable trends:

- In FY2019, asylum officers made 75,252 positive credible fear determinations, which accounted for 74 percent of decided cases. The preceding four years from FY2015-2018 were similar, with positive rates ranging from 70 to 79 percent each year.
- In FY2019, IJs overturned the asylum officer's negative credible fear determinations in 27 percent of cases the former received. Each year between FY2015-2018, IJs overturned between 21 and 28 percent of the negative cases they received from USCIS.
- It can be inferred from the data that 77 percent of those individuals whose credible fear claims were processed by asylum officers in FY2019 ultimately entered full defensive asylum proceedings before an IJ. Again, the rates from FY2015-2018 are similar, ranging from 73 to 81 percent.

¹⁴⁶ Adapted from Bruno, *Immigration: U.S. Asylum Policy*, 38; U.S. Citizenship and Immigration Services, "FY 2019 Total Caseload"; Executive Office for Immigration Review, "Review Decisions." Note that data for IJs' vacatur rate is unavailable for 1998–1999.

- Despite the fluctuation in the number of individuals in the credible fear process each year, both asylum officers and IJs have proven to make decisions relatively consistently over the past two decades.

The visual presentation of these data provided by Figure 5 shows noticeable undulations as the asylum officers' positive rate increases and decreases over time. Visual analysis appears to reveal a positive correlation between asylum officers' negative determinations and IJs' vacatur: in years when asylum officers increase the rate of negative determinations (i.e., when the asylum officers' positive rate dips), IJs increase their rate of overturning those negatives. In this way, it appears that IJs may serve as a regulating force to ensure that potentially meritorious asylum claims are not erroneously dismissed by USCIS. A fascinating area of future research will be a thorough analysis into the factors that cause the slope in Figure 5 to change from increasing to decreasing and vice versa.

4. Expanding the Scope of Expedited Removal

There are many possible factors that could explain the increase in the amount of people entering the credible fear process. Since those individuals who are in credible fear are a subset of people in expedited removal, this section looks at how the scope of expedited removal has changed since its introduction in 1997. Each administration from Clinton through Trump has expanded expedited removal via regulation at least once. As mentioned above, when expedited removal came into practice, it was only applied to people seeking admission at official ports of entry. The Bush administration first expanded expedited removal in November 2002 to include those who arrived by sea, were not admitted or paroled, and were present in the United States for less than two years.¹⁴⁷ Next, in August 2004, the Bush administration expanded expedited removal to

¹⁴⁷ Immigration and Naturalization Service, "Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act," *Federal Register* 67, no. 219 (November 2002): 68924, <https://www.federalregister.gov/d/02-29038>.

include individuals who were not admitted or paroled and were apprehended within 100 air miles of the land borders and within fourteen days of arrival.¹⁴⁸

Figure 6 provides a visualization of the cities and metropolitan areas that fall within the 100-mile zone within which CBP agents are authorized to conduct warrantless searches for undocumented immigrants.¹⁴⁹ According to an analysis of the 2010 census, approximately 200 million people, or nearly two thirds of the U.S. population, live within this 100-mile zone.¹⁵⁰ Civil rights organizations argue that the broad scope of this 2004 expansion in expedited removal has profound impacts on the Fourth Amendment right against unreasonable searches and seizures.¹⁵¹



Figure 6. The Scope of the 100-Mile Border Zone¹⁵²

¹⁴⁸ U.S. Customs and Border Protection, “Designating Aliens for Expedited Removal,” *Federal Register* 69, no. 154 (August 2004): 48877, <https://www.federalregister.gov/d/04-18469>.

¹⁴⁹ “Know Your Rights: 100 Mile Border Zone,” American Civil Liberties Union, accessed November 27, 2019, <https://www.aclu.org/know-your-rights/border-zone>.

¹⁵⁰ American Civil Liberties Union.

¹⁵¹ American Civil Liberties Union.

¹⁵² Source: American Civil Liberties Union.

For almost 13 years, expedited removal was not expanded again. Then, on January 17, 2017, the Obama administration issued two regulations eliminating the expedited removal exception for Cuban nationals that had been in place since the process began.¹⁵³ This exception was eliminated due to the restoration of formal diplomatic ties between the United States and Cuba in July 2015 and “Cuba’s agreement to facilitate the return of Cuban nationals ordered removed from the United States.”¹⁵⁴ Finally, on July 23, 2019, the Trump administration expanded expedited removal to include anyone who was not admitted or paroled and was apprehended anywhere in the United States within two years of arrival.¹⁵⁵

This most recent and extensive expansion represents “DHS exercise [ing] its authority to employ expedited removal to the full degree authorized by INA Section 235(b)(1).”¹⁵⁶ On September 27, 2019, the United States District Court for the District of Columbia enjoined DHS from enforcing the expansion pending the outcome of ongoing litigation concerning this policy change.¹⁵⁷ Then, nine months later on June 23, 2020, the United States Court of Appeals for the District of Columbia Circuit held that the expansion of expedited removal could go into effect.¹⁵⁸ Unlike his predecessors,

¹⁵³ Department of Homeland Security, “Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air,” *Federal Register* 82, no. 10 (January 2017), <https://www.federalregister.gov/d/2017-00915>; Department of Homeland Security, “Eliminating Exception to Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea,” *Federal Register* 82, no. 10 (January 2017), <https://www.federalregister.gov/d/2017-00914>.

¹⁵⁴ Smith, *Expedited Removal of Aliens*, 52.

¹⁵⁵ Department of Homeland Security, “Designating Aliens for Expedited Removal,” *Federal Register* 84, no. 141 (July 2019): 35409, <https://www.federalregister.gov/d/2019-15710>.

¹⁵⁶ Smith, *Expedited Removal of Aliens*, 9. This expansion was more significant because the physical area where expedited removal is enforceable increased from the 100-mile border zone visualized in Figure 6 to the entire landmass of the United States. The timeframe in which expedited removal is applicable also increased from no more than fourteen days after crossing the border to no more than two years after crossing the border. While this was a significant change, other factors such as this policy’s legal limbo discussed in this section as well as the implementation of Title 42 during the COVID-19 pandemic (which largely prevented people from entering expedited removal) prevented this expansion from being as disruptive as it could have been.

¹⁵⁷ *Make the Road New York et al. v. Kevin McAleenan* (D.DC 2019), <https://www.aclu.org/cases/make-road-new-york-v-mcaleenan>.

¹⁵⁸ *Make the Road New York et al. v. Chad F. Wolf*, 962 F.3d 612 (DC Cir. 2020), [https://www.cadc.uscourts.gov/internet/opinions.nsf/F398C868A41E007D85258590004E10B3/\\$file/19-5298-1848499.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/F398C868A41E007D85258590004E10B3/$file/19-5298-1848499.pdf).

President Biden has thus far not expanded the scope of expedited removal. Instead, he became the first president to scale back expedited removal by reversing President Trump’s expansion.¹⁵⁹ Therefore, at the time of this writing, the August 2004 expansion marks the time and geographical extent of expedited removal (i.e., inadmissibility determination at a port of entry or apprehension within fourteen days and 100 miles of the border).

5. Changing Who Is Subject to Expedited Removal

Next, one must look at how, independent of definitional changes of expedited removal, different programs and policies have impacted the number of individuals entering the expedited removal process.

a. IIRIRA

First, it is necessary to put the impact of IIRIRA into context. Just a few months before Clinton signed IIRIRA into law, he also signed the Antiterrorism and Effective Death Penalty Act (AEDPA) into law in early 1996, which “expanded the criminal grounds for deportation, limited relief from removal, restricted judicial review, and expanded mandatory detention.”¹⁶⁰ Both IIRIRA and AEDPA expanded the definition of an “aggravated felony” for which someone could be deported. The 1988 Anti-Drug Abuse Act had created this crime, “which was intended to facilitate the deportation of drug kingpins under murder, drug trafficking, and arms trafficking charges.”¹⁶¹ These subsequent laws expanded the definition of aggravated felony to include “a range of misdemeanors and minor offenses.”¹⁶² While “prior to the 1990s, crime-centered

¹⁵⁹ Department of Homeland Security, “Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal,” *Federal Register* 87, no. 54 (March 2022): 16022, <https://www.federalregister.gov/d/2022-05961>.

¹⁶⁰ Kerwin, “From IIRIRA to Trump,” 193.

¹⁶¹ Abrego et al., “Making Immigrants into Criminals,” 697.

¹⁶² Abrego et al., 698.

rhetoric did not dominate the public narrative on immigration,” AEDPA and IIRIRA, along with other late 1980s and early 1990s legislation, criminalized immigration.¹⁶³

In the wake of this new focus on the criminalization of unlawful immigration, the law enforcement aspects of INS, and later DHS, were given priority over the adjudicative functions of DOJ and DHS. In 2014, the Migration Policy Institute reported that “EOIR appropriations grew about 70 percent between FY 2002–13 (from \$175 million to \$304 million), while enforcement operations rose approximately 300 percent (from \$4.5 billion to \$18.0 billion) over the same period.”¹⁶⁴ In addition to this disparate funding, IIRIRA “authorizes the Director of ICE to enter into agreements with state and local law enforcement agencies, that permit designated officers to perform limited immigration law enforcement functions.”¹⁶⁵ IIRIRA deputizes local law enforcement agencies to investigate, apprehend, and detain aliens under the auspices of the 287(g) Program, so named because of its section in the INA.¹⁶⁶ ICE reported that as of 2016, 400,000 deportable individuals had been identified through the 287(g) Program. Research suggests that the immigration violators apprehended via this program “skewed towards non-serious and ultimately noncriminal cases.”¹⁶⁷

Before backing away from this program, the Obama administration had agreements with a high (for his administration) of seventy law enforcement agencies in 2010.¹⁶⁸ The Trump administration brought renewed focus to and expanded the 287(g) Program via the “Border Security and Immigration Enforcement Improvements”

¹⁶³ Patrisia Macías-Rojas, “Immigration and the War on Crime: Law and Order Politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” *Journal on Migration and Human Security* 6, no. 1 (November 2018): 7, <https://doi.org/10.1177/233150241800600101>.

¹⁶⁴ Marc R Rosenblum et al., *The Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: Migration Policy Institute, 2014), 18, <https://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>. Migration Policy Institute is a nonpartisan think tank that provides research and analysis of United States and international immigration topics. The director of the U.S. Immigration Policy Program at MPI is Doris Meissner, who was the Commissioner of INS from 1993–2000.

¹⁶⁵ “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” U.S. Immigration and Customs Enforcement, accessed October 14, 2019, <https://www.ice.gov/287g>.

¹⁶⁶ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–563.

¹⁶⁷ Abrego et al., “Making Immigrants into Criminals,” 703–4.

¹⁶⁸ Abrego et al., 703.

Executive Order issued on January 25, 2017.¹⁶⁹ By the end of FY2019, ICE had ninety-five 287(g) Memorandums of Agreement (MOAs).¹⁷⁰ As of the writing of this thesis, the Biden administration had 142 MOAs law enforcement agencies in twenty-four states.¹⁷¹

On January 25, 2017, President Trump issued another Executive Order titled “Enhancing Public Safety in the Interior of the United States.” Among other things, this executive order ended the Priority Enforcement Program (PEP) and reinstituted the Secure Communities program.¹⁷² PEP was a program started on July 1, 2015, that allowed “DHS supervisors and officers to exercise prosecutorial discretion not to remove certain people even if they fell within one of the ‘enforcement priority categories.’”¹⁷³ Secure Communities is a program similar to 287(g) in that it allows ICE to cooperate with local, state, and federal law enforcement agencies who may have encountered a person who violated immigration law. ICE reports that it has removed more than 400,000 individuals through Secure Communities from 2008–2014 and 2017–present.¹⁷⁴ However, on his first day in office, President Biden revoked Trump’s Executive Order relating to Secure Communities.¹⁷⁵ The dramatic fluctuations in policy over the last several years meaningfully altered the size and makeup of the populations that could enter expedited removal and ultimately the credible fear process.

¹⁶⁹ Exec. Order No. 13767, 3 C.F.R. 263 (2017), <https://www.govinfo.gov/content/pkg/CFR-2018-title3-vol1/pdf/CFR-2018-title3-vol1-eo13767.pdf>.

¹⁷⁰ DHS’s data sharing for this program is irregular after 2016, however in FY2018 and FY2019, the 287(g) program encountered another 25,622 and 24,865 individuals, respectively. Matthew T. Albence, *287(g) End-of-Year Annual Report: Fiscal Year 2018 Report to Congress* (Washington, DC: U.S. Immigration and Customs Enforcement, 2020), https://www.dhs.gov/sites/default/files/publications/ice_-_287g_end-of-year_annual_report.pdf; Matthew T. Albence, *287(g) End-of-Year Report: Fiscal Year 2019 Report to Congress* (Washington, DC: U.S. Immigration and Customs Enforcement, 2020), https://www.dhs.gov/sites/default/files/publications/ice_-_287g_end-of-year_report.pdf.

¹⁷¹ “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” U.S. Immigration and Customs Enforcement, accessed August 25, 2022, <https://www.ice.gov/identify-and-arrest/287g>.

¹⁷² Exec. Order No. 13768, 3 C.F.R. 268 (2017), <https://www.govinfo.gov/content/pkg/CFR-2018-title3-vol1/pdf/CFR-2018-title3-vol1-eo13768.pdf>.

¹⁷³ Abrego et al., “Making Immigrants into Criminals,” 709.

¹⁷⁴ “Secure Communities,” U.S. Immigration and Customs Enforcement, accessed October 15, 2019, <https://www.ice.gov/secure-communities>.

¹⁷⁵ Exec. Order No. 13993, 3 C.F.R. 439 (2021), <https://www.govinfo.gov/content/pkg/CFR-2022-title3-vol1/pdf/CFR-2022-title3-vol1-eo13993.pdf>.

b. *Migrant Protection Protocols*

Thus far, this section has discussed some of the more significant policies and programs that have explicitly resulted in an increase in the number of individuals who may be processed through expedited removal and reinstatement of removal.¹⁷⁶ The Trump administration also introduced policies that prevented people from entering expedited removal, requesting asylum, and entering credible fear proceedings. One such program was the Migrant Protection Protocols (MPP). Introduced by DHS Secretary Kirstjen Nielsen in December 2018 and implemented by the administration the following month, MPP required individuals who arrived at ports of entry or entered without inspection between ports of entry along the southern border and claimed fear of returning to their home country to return to Mexico while they waited for a full asylum hearing before an IJ.¹⁷⁷

DHS claimed that MPP would decrease “illegal immigration and false asylum claims” and allow resources to be “freed up to focus on...clearing the massive asylum backlog.”¹⁷⁸ DHS implied that this program would benefit both asylum officers and IJs. Despite these claims, asylum officers did not receive any reprieve. In FY2019, asylum officers conducted 6,345 MPP interviews in addition to the 105,439 credible fear receipts received by USCIS.¹⁷⁹ Asylum officers went on to conduct another 12,352 MPP

¹⁷⁶ While not the subject of this paper, reinstatement of removal is a process similar to expedited removal in which certain individuals who were previously ordered removed or who committed certain crimes are removed from the United States. People in the reinstatement of removal process similarly have the right to express their fear of return to their country and have an interview with an asylum officer. Trina Realmuto et al., *Reinstatement of Removal: Practice Advisory*, (Washington, DC: American Immigration Council and National Immigration Project of the National Lawyers Guild, 2019), 1–3, https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/reinstatement_of_removal.pdf.

¹⁷⁷ Ben Harrington and Hillel R. Smith, “*Migrant Protection Protocols*”: *Legal Issues Related to DHS’s Plan to Require Arriving Asylum Seekers to Wait in Mexico*, CRS Report No. LSB10251 (Washington, DC: Congressional Research Service, 2019), 2, <https://crsreports.congress.gov/product/pdf/LSB/LSB10251>.

¹⁷⁸ “Secretary Nielsen Announces Historic Action to Confront Illegal Immigration,” Department of Homeland Security, December 20, 2018, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.

¹⁷⁹ “Migrant Protection Protocols FY 2020,” U.S. Customs and Border Protection, accessed August 25, 2022, <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy-2020>; U.S. Citizenship and Immigration Services, “FY 2019 Total Caseload.”

interviews in FY2020.¹⁸⁰ In MPP, asylum officers conduct interviews with non-Mexican individuals who express a fear of waiting in Mexico for their full asylum hearings.¹⁸¹ These are people who would have otherwise been referred to USCIS for credible fear interviews via the expedited removal process, so when MPP was active, USCIS theoretically conducted an equivalent number of interviews in MPP and credible fear as it would have if MPP was never implemented. However, the MPP interviews are often more time consuming than credible fear interviews. In some cases, when an individual passed their MPP interview with USCIS (that is, they demonstrate that they are “more likely than not to face persecution or torture in Mexico”), CBP placed them into expedited removal instead of referring them to a full asylum hearing before EOIR, effectively referring the individual back to USCIS for an additional interview that would not have been conducted if MPP did not exist.¹⁸²

From the moment they came into power, the Biden administration fought a legal battle to revoke MPP. In June 2022, after more than two years, the administration succeeded in ending the MPP program.¹⁸³ An assessment of the full impact of MPP on expedited removal and credible fear is beyond the scope of this thesis. However, future research would do well to include MPP in any analysis of fear claims made at the southern border.

c. Title 42

Even more effective than MPP at diverting individuals from expedited removal and credible fear has been Title 42. Title 42 expulsions are derived from a public health order that permits the president to prohibit the entry into the United States of people from a country where there is a dangerous communicable disease.¹⁸⁴ With the onset of the COVID-19 pandemic, the Trump administration invoked Title 42 in March 2020 and

¹⁸⁰ U.S. Customs and Border Protection, “Migrant Protection Protocols FY 2020.”

¹⁸¹ Department of Homeland Security, “Secretary Nielsen.”

¹⁸² Bruno, *Immigration: U.S. Asylum Policy*, 22.

¹⁸³ *Biden v. Texas*, 597 U.S. 1 (2022).

¹⁸⁴ Public Health Service Act of 1944, 42 U.S.C. § 265 (1944).

began expelling individuals who would have previously been subject to expedited removal.¹⁸⁵ In FY2020, BP performed 197,043 expulsions using Title 42 and in FY2021, this grew to 1,040,220 expulsions.¹⁸⁶

While Title 42 is ostensibly a public health order, the Trump administration was transparent in leveraging it as tool to prevent people from accessing the United States' asylum program.¹⁸⁷ The order exempts noncitizens who "hold valid travel documents and arrive at a POE" and those from visa waiver program countries, which are largely European countries, including those where COVID-19 was highly prevalent early in the pandemic.¹⁸⁸ This strategy appears to have paid dividends for the Trump administration. In the first year Title 42 was in force, credible fear receipts fell more than 70 percent, to 30,800 in FY2020. Receipts increased in FY2021 to 59,200 but were only 56 percent of the FY2019 receipts.¹⁸⁹ At the time of this writing, the Biden administration is engaged in a legal battle to end Title 42 expulsions.¹⁹⁰

While the statistical analysis in Chapter IV does not address years after FY2019, due to the anomalous impact that MPP, COVID-19, and Title 42 had on expedited

¹⁸⁵ Centers for Disease Control and Prevention and Department of Health and Human Services, "Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists," *Federal Register* 85, no. 59 (March 2020): 17060, <https://www.federalregister.gov/d/2020-06327>.

¹⁸⁶ Audrey Singer, *U.S. Border Patrol Encounters at the Southwest Border: Titles 8 & 42*, CRS Report No. IG10031 (Washington, DC: Congressional Research Service, 2022), <https://crsreports.congress.gov/product/pdf/IG/IG10031>. Note that these numbers refer to expulsions, not unique individuals. It is likely that a significant portion of these expulsions can be attributed to people attempting to enter the United States multiple times. "A Guide to Title 42 Expulsions at the Border," American Immigration Council, 2022, https://www.americanimmigrationcouncil.org/sites/default/files/research/title_42_expulsions_at_the_border_0.pdf.

¹⁸⁷ Ben Harrington and Kelsey Y. Santamaria, *COVID-19: Restrictions on Noncitizen Travel*, CRS Report No. LSB10659 (Washington, DC: Congressional Research Service, 2021), 4, <https://crsreports.congress.gov/product/pdf/LSB/LSB10659>.

¹⁸⁸ Centers for Disease Control and Prevention and Department of Health and Human Services, "Notice of Order Under Sections 362 and 365," 17061; "Visa Waiver Program Requirements," Department of Homeland Security, accessed August 26, 2022, <https://www.dhs.gov/visa-waiver-program-requirements>.

¹⁸⁹ U.S. Citizenship and Immigration Services, *Annual Statistical Report: FY2021* (Washington, DC: U.S. Citizenship and Immigration Services, 2021), 26, <https://www.uscis.gov/sites/default/files/document/reports/2021%20USCIS%20Statistical%20Annual%20Report.pdf>.

¹⁹⁰ American Immigration Council, "A Guide to Title 42."

removal and credible fear, this section has shown how U.S. government policy decisions shape who is able to seek asylum, just as push and pull factors shape who is forced to flee their country and seek asylum.

6. Workforce Decisions

While most of this section has focused on the changes in who is subject to expedited removal, who is referred for a credible fear interview, and who is ultimately given the opportunity to request asylum before an IJ, it is important to briefly address trends in the workforce decisions of DHS. Chapter I showed how claims that fraud is rampant in the asylum program generally, and credible fear process specifically, are based on frivolous speculation rather than facts and evidence. The relatively rapid increase in the number of individuals who seek asylum since 2013 created the atmosphere of uncertainty that politicians, scholars, and experts who favor a more restrictive immigration system needed to gain traction with their unfounded fraud claims. Poor workforce decisions by DHS, and especially USCIS, may also contribute to the perception that the credible fear process is in crisis and is being abused.

Together, President Trump's two January 2017 executive orders called for the hiring of an additional 5,000 BP agents and 10,000 ICE agents.¹⁹¹ While the Trump administration did not see these increases through, BP has grown nearly fivefold from 4,028 agents in FY1993 to 19,648 agents in FY2019.¹⁹² The budget for BP far surpassed its staffing increase over the same period, going from \$326 million in FY1993 to \$4.678 billion in FY2019, a nearly thirteenfold increase.¹⁹³ At the same time that BP was enjoying this year-on-year increase of funding and workforce, the number of apprehensions they made each year was consistently decreasing. In FY1993, BP made

¹⁹¹ Exec. Order No. 13768; Exec. Order No. 13767.

¹⁹² "Border Patrol Agent Nationwide Staffing by Fiscal Year," U.S. Border Patrol, January 2020, https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202019%29_0.pdf.

¹⁹³ "The Cost of Immigration Enforcement and Border Security," American Immigration Council, 2021, 2, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf.

1,263,490 apprehensions, but dropped to only 310,531 apprehensions in FY2017 before picking back up to 859,501 in FY2019.¹⁹⁴ When analyzing the reduction in apprehensions between 2000 and 2003, the CRS raised three possible explanations: BP reached a “critical mass” of resources that led to its success in preventing illegal immigration, the recession discouraged labor-related immigration, or “increased staffing does not increase the USBP’s effectiveness.”¹⁹⁵ While the exact explanation for the decrease in apprehensions over time is beyond the scope of this thesis, the theories floated by the CRS provide insights that may be applicable to the two-decade range of apprehensions and inadmissibilities shown in Figure 4.

USCIS has not shared the staffing and funding fortunes of BP. Precise budget figures are difficult to find for the Asylum Division, one of the many subdivisions of USCIS, due in part to the fee-funded nature of USCIS which does not rely on congressional appropriations.¹⁹⁶ However, the fiscal troubles USCIS faced in FY2020 are instructive of the agency’s fragile finances. That year, USCIS threatened to furlough 80 percent of its staff if Congress was not able to fill the \$1.2 billion gap in the USCIS budget.¹⁹⁷ Contrasted with BP’s downward trend in encounters, Figure 3 shows that USCIS saw their credible fear receipts increase by a factor of seventy-three from a low of 1,438 in FY1997 to a high of 105,439 in FY2019. While consistent data on the number of asylum officers is difficult to find, the trend is clear; USCIS employed 215 asylum officers in FY2002, and only began meaningfully increasing staff in FY2016 when they had 500 asylum officers on board. However, hiring has not kept pace with the increase of credible fear receipts, not to mention other adjudications for which the Asylum Division is responsible, and by FY2019, USCIS only had 552 asylum officers. Asylum officers on

¹⁹⁴ Department of Homeland Security, “Yearbook of Immigration Statistics.”

¹⁹⁵ Alison Siskin et al., *Immigration Enforcement Within the United States*, CRS Report No. RL33351 (Washington, DC: Congressional Research Service, 2006), 48, https://www.everycrsreport.com/files/20060406_RL33351_5f1e666cfcb8415ab1ecaa7eb201264b8d8fd6df.pdf.

¹⁹⁶ “Budget, Planning and Performance,” U.S. Citizenship and Immigration Services, March 29, 2022, <https://www.uscis.gov/about-us/budget-planning-and-performance>.

¹⁹⁷ Sarah Pierce and Doris Meissner, *USCIS Budget Implosion Owes to Far More than the Pandemic* (Washington, DC: Migration Policy Institute, 2020), <https://www.migrationpolicy.org/news/uscis-severe-budget-shortfall>.

board has only increased by a factor of 2.5 from FY2002-2019, while credible fear receipts have increased by a factor of 10.5 over the same period.¹⁹⁸

The maldistribution of work among individual BP agents and asylum officers is well beyond the scope of this thesis. However, the contrasting trends is instructive. Over the past 20-plus years, massive investments have consistently been made to the immigration enforcement infrastructure in BP while the U.S. government has failed to make similar investments in the humanitarian and adjudication infrastructure of USCIS. Some political actors and researchers exploit the confluence of USCIS's relative increase in workload and chronic underfunding to force a narrative that USCIS is besieged by a crisis of illegitimate asylum seekers. During the 2013 congressional hearing *Asylum Abuse: Is It Overwhelming our Borders?*, Congressman Jason Chaffetz argued without evidence that the increase in credible fear claims was due to "bogus credible fear claims [being] rubberstamped."¹⁹⁹ In the 2014 congressional hearing *Asylum Fraud: Abusing America's Compassion?*, Congressman Bob Goodlatte characterized the increase in credible fear claims by asserting that asylum officers and applicants were ignoring the rule of law.²⁰⁰ While Freudenthal briefly acknowledges that an increase in Asylum Division staffing could help address the increase in credible fear workload, her overwhelming argument is that an increase of credible fear claims is in itself evidence of fraud and the cause of the crisis.²⁰¹ The alternative hypothesis that DHS's misplaced priorities between enforcement and adjudication led to a dysfunctional response is never seriously entertained.

¹⁹⁸ Richard M. Stana, *U.S. Asylum System: Agencies Have Taken Actions to Help Ensure Quality in the Asylum Adjudication Process, but Challenges Remain*, GAO-08-935 (Washington, DC: Government Accountability Office, 2008), 150, <https://www.gao.gov/assets/gao-08-935.pdf>; Tracy Renaud, "USCIS Asylum Officers – Representative Biggs," U.S. Citizenship and Immigration Services, last modified March 26, 2021, https://www.uscis.gov/sites/default/files/document/foia/USCIS_asylum_officers-Representative_Biggs.pdf.

¹⁹⁹ *Asylum Abuse: Is It Overwhelming Our Borders?: Hearing before the Committee on the Judiciary, House of Representatives*, 113th Cong. 1 (2013), 7, <https://www.govinfo.gov/content/pkg/CHRG-113hhrg85905/pdf/CHRG-113hhrg85905.pdf>.

²⁰⁰ H.R., *Asylum Fraud*, 6.

²⁰¹ Freudenthal, "Reducing Homeland Insecurities," 85, 42.

D. CONCLUSION

While the large numbers of individuals entering the credible fear process has created challenges for USCIS in the last decade, the data reviewed in this section show that the total number of individuals encountered at the southern border over the same period is not only trending down but is actually at an historic low compared with the past 50 years.²⁰² Since credible fear receipts have consistently been a small percentage of border encounters, the argument that USCIS is overwhelmed by fraud is less convincing than the explanation that USCIS and DHS suffer from a maldistribution of resources and poor workforce planning. With resources appropriately allocated between its enforcement and adjudication missions, DHS may have been able to manage the credible fear influx more effectively and thereby avoid spurious allegations that the program is riddled with fraud.

This thesis continues with Chapter III, which explores how the definition of fraud in the U.S. immigration system has evolved over time. Chapter III explores the challenges faced when attempting to quantify fraud and assess security concerns in the credible fear process.

²⁰² “Nationwide Illegal Alien Apprehensions Fiscal Years 1925–2019,” U.S. Border Patrol, January 2020, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Total%20Apprehensions%20%28FY%201925%20-%20FY%202019%29.pdf>.

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III. FRAUD AND SECURITY IN THE CREDIBLE FEAR PROCESS

Chapter I provides a basic definition of fraud in the asylum context. In 1996, IIRIRA amended the INA to include the consequence of permanent ineligibility for any immigration benefit if an individual makes a frivolous asylum application.²⁰³ The following year, the Clinton administration issued a rule that, among other things, provided guidelines for determining if an asylum application is frivolous.²⁰⁴ Chapter I briefly touches on the popular misunderstandings about immigration fraud that are espoused by some researchers, institutions, and politicians, and looks to the literature for guidance on how to address fraud in the future. In the section on IIRIRA, Chapter II provides initial insight into how discussions of fraud and other acts considered crimes can begin to overlap. Juliet Stumpf refers to the blurring of immigration law and criminal law as *crimmigration* and highlights three aspects of this process:

1. [Over time, there has been] an increase in the number and type of crimes that resulted in deportation,
2. Violations of immigration law are now criminal when they were previously civil, or carry greater criminal consequences than ever before, [and]
3. Recent changes in immigration law have focused on detaining and deporting those deemed likely to commit crimes that pose a threat to national security.²⁰⁵

This chapter further explores concerns of fraud in the credible fear process. First, the chapter assesses how the federal government currently categorizes fraud in the

²⁰³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–694.

²⁰⁴ Immigration and Naturalization Service and Executive Office for Immigration Review, “Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,” *Federal Register* 62, no. 44 (March 1997): 10344, <https://www.federalregister.gov/d/97-5250>.

²⁰⁵ Juliet P Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,” *American University Law Review* 56, no. 2 (2006): 382–84, <http://ssrn.com/abstract=935547>.

immigration context and explores how the law evolved to its current state. Next, the chapter analyzes the testimony and findings of the 2013 *Asylum Abuse: Is It Overwhelming Our Borders?* and 2014 *Asylum Fraud: Abusing America's Compassion?* congressional hearings considering the available data for the relevant populations as well as the data relating to immigration crime sentencing. Finally, the chapter considers the recent human consequences of crimmigration.

A. DEFINITION OF FRAUD IN FEDERAL IMMIGRATION LAW

This section provides a brief overview of how immigration fraud is understood and categorized in federal law. Next, this section reviews the development of federal law related to immigration fraud, beginning at the start of the 20th century and progressing to the present day. Finally, this section examines how USCIS applies the law to analyze fraud and misrepresentation in immigration applications.

1. Current Categorization of Fraud in Federal Immigration Law

The U.S. Sentencing Guidelines (USSG) Manual breaks immigration-related offenses into three main categories. Alien smuggling is sentenced under USSG §2L1.1, unlawfully entering or remaining in the United States is sentenced under USSG §2L1.2, and immigration fraud is sentenced under USSG §2L2.1 and §2L2.2.²⁰⁶ Specifically, USSG §2L2.1 relates to trafficking in immigration documents and making fraudulent statements, while USSG §2L2.2 relates to acquiring fraudulent documents.²⁰⁷ In addition to criminal consequences, the INA contains civil penalties for fraud and misrepresentation, including inadmissibility, denial of benefits, fines, and removal.²⁰⁸

²⁰⁶ U.S. Sentencing Commission, *Guidelines Manual* (Washington, DC: U.S. Sentencing Commission, 2021), <https://guidelines.usc.gov/chapters/2/parts/L/sections>; Kelsey Y Santamaria, *Immigration-Related Criminal Offenses*, CRS Report No. IF11410 (Washington, DC: Congressional Research Service, 2020), 1, <https://crsreports.congress.gov/product/pdf/IF/IF11410>.

²⁰⁷ U.S. Sentencing Commission, *Guidelines Manual*, §2L2.1 (Washington, DC: U.S. Sentencing Commission, 2021), <https://guidelines.usc.gov/gl/§2L2.1>; U.S. Sentencing Commission, *Guidelines Manual*, §2L2.2 (Washington, DC: U.S. Sentencing Commission, 2021), <https://guidelines.usc.gov/gl/§2L2.2>.

²⁰⁸ Siskin et al., *Immigration Enforcement Within the United States*, 29.

Conceptually, immigration fraud can also be broken down into document fraud (i.e., creating and using identity documents to break the law) and benefit fraud (i.e., misrepresenting facts to qualify for immigration benefits).²⁰⁹ Document and benefit fraud are not always mutually exclusive (e.g., one can use a fraudulent document in order to obtain a benefit for which they would not otherwise be qualified), and these two categories of immigration fraud are at the core of the federal government’s approach to understanding and addressing fraud.²¹⁰

2. Evolution of the Definition of Fraud

One of the earliest references to consequences for immigration fraud in U.S. law can be found in the Immigration Act of 1917. This act gave immigration inspectors the authority to interview people under oath when conducting investigations of individuals seeking to enter or remain in the United States.²¹¹ Making “any false statement in any way affecting or in relation to the right of any alien to admission, or readmission to, or to pass through, or to reside in the United States” was considered perjury and, according to a 1909 law, was punishable by up to \$2,000 and up to five years in prison.²¹² Document fraud became a punishable offense with the Immigration Act of 1924. This law codified new federal crimes relating to use of counterfeit visas, impersonating another to avoid immigration laws, and making false statements on immigration applications.²¹³ The punishment for each of these crimes was up to \$10,000 in fines and up to five years in prison. This part of the Immigration Act of 1924 served as the foundation of what is now

²⁰⁹ Ruth Ellen Wasem, *Immigration Fraud: Policies, Investigations, and Issues*, CRS Report No. RL34007 (Washington, DC: Congressional Research Service, 2008), 1–2, https://www.everycrsreport.com/files/20080403_RL34007_7a6deaa0c4195d6f4a73a12cb17449cf37d4fc26.pdf.

²¹⁰ Wasem, 2.

²¹¹ Immigration Act of 1917, Pub. L. No. 64–301, § 39 Stat. 886 (1917). <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/39/STATUTE-39-Pg874a.pdf>.

²¹² Immigration Act of 1917; An Act to Codify, Revise, and Amend the Penal Laws of the United States, Pub. L. No. 60–350, § 35 Stat. 1088 (1909). https://congressional-proquest-com.libproxy.nps.edu/congressional/docview/t41.d42.60_pl_350?accountid=12702.

²¹³ Immigration Act of 1924, Pub. L. No. 68–139, § 43 Stat. 165 (1924). <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/43/STATUTE-43-Pg153a.pdf>.

18 U.S.C. §1546, which is one of the key statutory provisions that undergirds USSG §2L2.1 and §2L2.2.

The following quarter century did not see any congressional action on immigration fraud, which forced the courts to repeatedly weigh in on matters of fraud due to a lack of clarity in the 1924 law. Just months apart in 1938, the Seventh and Second Circuit Courts of Appeal came to differing conclusions regarding whether misrepresentation to obtain a visa was grounds for deportation according to the Immigration Act of 1924. In *United States ex rel. Leibowitz v. Schlotfeldt*, the Seventh Circuit found that if an individual who committed fraud in obtaining a visa could have legitimately obtained the visa, then “the misrepresentations . . . were irrelevant and do not constitute grounds for deportation.”²¹⁴ The facts of the Second Circuit’s case, *United States ex rel. Fink v. Reimer*, were slightly different and led to the opposite outcome. However, the Second Circuit made a point to highlight the contradiction in *Leibowitz* by stating, “While it is true that the statute does not expressly exclude those who get their papers by fraud, fraud thwarts their very purpose.”²¹⁵ Almost a decade later, in 1947, U.S. Attorney General Thomas Clark sought to correct the dissonance between the federal appellate courts by issuing an opinion titled *Matter of B- and P-*. The Attorney General observed that the Immigration Act of 1924 makes impersonation to obtain a visa a crime and determined that use of such a visa is a deportable offense because the visa cannot be considered valid.²¹⁶

The next significant piece of immigration legislation came in the form of the Immigration and Nationality Act of 1952. As an initial matter, this act codified the Attorney General’s opinion in *Matter of B- and P-* by amending INA §212 to include, but not define, willful misrepresentation and fraud as grounds for inadmissibility.²¹⁷ This act

²¹⁴ *United States ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263 (7th Cir. 1938), <https://law.justia.com/cases/federal/appellate-courts/F2/94/263/1505822/>.

²¹⁵ *United States ex rel. Fink v. Reimer*, 96 F.2d 217 (2nd Cir. 1938), <https://casetext.com/case/united-states-v-reimer-14>.

²¹⁶ *Matter of B- and P-*, 2 I&N Dec. 638 (A.G. 1947), <https://casetext.com/admin-law/in-the-matter-of-b-and-p>.

²¹⁷ Immigration and Nationality Act of 1952, Pub. L. No. 82–414, § 66 Stat. 183 (1952). <https://www.govinfo.gov/content/pkg/STATUTE-66/pdf/STATUTE-66-Pg163.pdf>.

also amended 8 U.S.C. §1546, reducing the fines from \$10,000 to \$2,000 for use of counterfeit visas, impersonating another to avoid immigration laws, and making false statements on immigration applications.²¹⁸ Finally, the Immigration and Nationality Act of 1952 criminalized making fraudulent statements on alien registration applications. To this day, such an act is considered a misdemeanor punishable by up to \$1,000 in fines, six months in prison, and removal.²¹⁹

In 1956, the BIA sought to provide definitions for the willful misrepresentation and fraud bars to admission found in INA §212. In *Matter of G-G-*, the BIA made two core determinations:

1. [Fraud] consists of a false representation of a material fact made with knowledge of its falsity and with intent to deceive the other party. The representation must be believed and acted upon by the party deceived to his disadvantage, [and]
2. [Willful misrepresentation] must be made with knowledge of its falsity and with actual intent to deceive so that an advantage under the immigration laws might be gained to which the alien would not have otherwise been entitled. However, as distinguished from “fraud,” proof would not be necessary to show that the person to whom the misrepresentation was made was motivated to action because of the misrepresentation.²²⁰

The Immigration Marriage Fraud Amendments of 1986 further amended INA §212 such that fraud and willful misrepresentation would cause an individual to be ineligible for any immigration benefit, not just ineligible for admission.²²¹ In 1994, the BIA took on *Matter of Y-G-*, a case in which a Haitian man flew to the United States with a fraudulent passport, but during customs inspection admitted that the passport was false, provided his true name, and requested asylum.²²² In this case, the BIA found that an individual is not inadmissible under INA §212 if they did not “present fraudulent documents to a United

²¹⁸ Immigration and Nationality Act of 1952, 275–76.

²¹⁹ Immigration and Nationality Act of 1952, 225–26.

²²⁰ *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956), <https://casetext.com/admin-law/in-the-matter-of-g-g>.

²²¹ Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99–639, § 100 Stat. 3543–44 (1986). <https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg3537.pdf>.

²²² *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994), <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3219.pdf>.

States Government official in an attempt to enter on those documents.”²²³ Stated differently, for an act to be considered fraud or willful misrepresentation, an individual must actually make such false representations to a U.S. official.²²⁴ *Matter of Tijam* followed in 1998, reaffirming both *G-G-* and *Y-G-*.²²⁵

The Immigration Act of 1990 codified new civil penalties for document fraud. The penalties included a fine between \$250 and \$2,000 for each fraudulent document and/or instance of use, and between \$2,000 and \$5,000 for repeat offenders.²²⁶ Whereas the Acts of 1924 and 1952 dealt with fraudulent activity associated with visas and other entry documents, the 1990 Act more broadly prohibited fraudulent activity related to any document used for immigration purposes.²²⁷ As noted above, the penalties for document fraud involving visas introduced by the 1924 and 1952 Acts are currently codified in 18 U.S.C. §1546, while the broader penalties for document fraud introduced by the 1990 Act are codified in INA §274c.

As noted in the previous two chapters, IIRIRA brought significant changes to the asylum system when passed in 1996. This act made several noteworthy amendments to the INA with respect to fraud. First, IIRIRA added new criminal penalties to INA §274c targeting application preparers who knowingly prepare applications that contain fraudulent statements or misrepresentations.²²⁸ The first offense carries a fine and up to five years in prison, while repeat offenders can be imprisoned for up to 15 years.²²⁹ Second, IIRIRA added to INA §212 a new bar to admission: anyone who falsely claims that they are a U.S. citizen to gain an immigration, federal, or state benefit is considered

²²³ *Matter of Y-G-*, 20 I&N Dec. 794.

²²⁴ U.S. Citizenship and Immigration Services, *Policy Manual* (Washington, DC: U.S. Citizenship and Immigration Services, 2022), <https://www.uscis.gov/policy-manual>.

²²⁵ *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3372.pdf>.

²²⁶ Immigration Act of 1990, Pub. L. No. 101–649, § 104 Stat. 5061 (1990). <https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg4978.pdf>.

²²⁷ Immigration Act of 1990, 5059–60.

²²⁸ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–571.

²²⁹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–572.

inadmissible.²³⁰ Finally, IIRIRA reformed asylum law to include consequences for frivolous asylum applications. The updated INA §208 requires the government to inform asylum applicants about the consequences of filing a frivolous application.²³¹ If an applicant makes a frivolous application after receiving this warning, they “shall be permanently ineligible for any benefits under” the INA.²³²

In its updating of INA §208, IIRIRA failed to include a definition for a frivolous application. While final rules from 1980 and 1990 mentioned frivolous asylum applications in the context of whether government officials should approve employment authorization, they offer no working definition of a frivolous application for the purposes of barring an applicant from asylum or other benefits.²³³ Over the ensuing 25 years since IIRIRA’s passage, the Clinton and Trump administrations made efforts to clarify what constitutes a frivolous application. These efforts are currently codified in INA §208.20. First, just three months after the passage of IIRIRA, the Clinton administration initiated the rulemaking process to aid in the execution of IIRIRA’s asylum reforms. The Department of Justice explained in its proposed rule that by defining the meaning of a frivolous application, “the Department is carrying out one of the central principles of the asylum reform process begun in 1993; to discourage applicants from making patently false claims.”²³⁴ According to the final rule issued in March 1997, “an asylum application is frivolous if any of its material elements is deliberately fabricated.”²³⁵ The

²³⁰ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–637.

²³¹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–693.

²³² Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–694.

²³³ Department of Justice, “Aliens and Nationality; Refugee and Asylum Procedures,” *Federal Register* 45, no. 107 (June 1980): 37392, <https://www.govinfo.gov/content/pkg/FR-1980-06-02/pdf/FR-1980-06-02.pdf>; Department of Justice, “Aliens and Nationality; Asylum and Withholding of Deportation Procedures,” *Federal Register* 55, no. 145 (July 1990): 30682, https://archives.federalregister.gov/issue_slice/1990/7/27/30673-30688.pdf. The 1990 final rule stated that asylum officers must deny employment authorization applications if the asylum application is frivolous, or “manifestly unfounded or abusive.” The rule contains no further explanation on which factors the officer may rely to reach such a conclusion.

²³⁴ Department of Justice, “Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,” *Federal Register* 62, no. 2 (January 1997): 447, <https://www.federalregister.gov/d/96-33166>.

²³⁵ Immigration and Naturalization Service and Executive Office for Immigration Review, “Inspection and Expedited Removal of Aliens,” 10344.

rule also included a few conditions that must be met if an applicant is to be deemed permanently ineligible for immigration benefits due to a frivolous finding:

1. The asylum application must have been filed on or after April 1, 1997,
2. The immigration judge or the BIA must be “satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim,” and
3. The immigration judge or the BIA must issue a final order in which they “specifically find that the alien knowingly filed a frivolous asylum application.”²³⁶

Although asylum officers conduct affirmatively filed asylum interviews, this rule only gave immigration judges and the BIA in the defensive asylum process the authority to deem a filing frivolous. In a rule issued two years later, in February 1999, the Clinton administration updated the frivolous filing guidelines by stating, “A finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal.”²³⁷ This addendum was necessary for the United States to uphold treaty obligations to prevent the removal of individuals who are barred from asylum to countries where they would nonetheless be persecuted.²³⁸

After losing the 2020 Presidential Election, but before leaving office, President Trump issued a rule that sought to drastically change the asylum system in general, and the understanding of a frivolous application specifically. The final rule entitled “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review” (herein after called the 2020 rule) granted asylum officers the authority to make frivolous determinations and deny affirmative asylum claims on that basis; however, the power to permanently render an applicant ineligible for all immigration

²³⁶ Immigration and Naturalization Service and Executive Office for Immigration Review, 10344.

²³⁷ Immigration and Naturalization Service, “Regulations Concerning the Convention Against Torture,” 8492.

²³⁸ Bruno, *Immigration: U.S. Asylum Policy*, 16–18. Withholding of Removal is a lesser form of relief that differs from asylum in that the former has no filing deadline but also no path to citizenship.

benefits would still reside with an immigration judge or the BIA.²³⁹ In addition, while the 2020 rule retained the definition of a frivolous application codified by the Clinton administration for applications filed between April 1, 1997 and January 11, 2021, the 2020 rule created a new definition of frivolousness for applications filed after January 11, 2021. According to this new definition, an asylum application can be rejected as frivolous if it:

1. Contains a fabricated material element,
2. Is premised upon false or fabricated evidence unless the application would have been granted without the false or fabricated evidence,
3. Is filed without regard to the merits of the claim, or
4. Is clearly foreclosed by applicable law.²⁴⁰

The 2020 rule misunderstands that which has already been clearly explained in administrative case law. Decided in 2007, *Matter of Y-L-* decided that the use of the term “frivolous” in this section of the INA is misleading and inexact. Instead, the BIA suggested the appropriate term for “questionable asylum applications” is “fraudulent.”²⁴¹ The last two points in the new frivolous definition above do not describe cases that are fraudulent; instead, they include cases in which an applicant may simply not understand what particular elements of their experience are relevant for asylum or may not be knowledgeable about the vast body of asylum case law and precedents. Referencing *Scheerer v. United States Attorney General*, the BIA in *Matter of Y-L-* explained, “Obvious legal insufficiency of a claim does not support a frivolousness finding.”²⁴² With this section of the 2020 rule, DHS and DOJ made the same elementary error that

²³⁹ Department of Homeland Security and Executive Office for Immigration Review, “Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review,” *Federal Register* 85, no. 239 (December 2020): 80389, <https://www.federalregister.gov/d/2020-26875>.

²⁴⁰ Department of Homeland Security and Executive Office for Immigration Review, “Procedures for Asylum and Withholding of Removal,” 80389.

²⁴¹ *Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007), <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/25/3563.pdf>.

²⁴² *Matter of Y-L-*, 24 I&N Dec. 151; *Scheerer v. United States Attorney General*, 445 F.3d 1311 (11th Cir. 2006), <https://casetext.com/case/scheerer-v-us-atty-gen>. Overruling the immigration judge in *Scheerer*, the Eleventh Circuit elegantly writes, “The IJ thus considered the legal insufficiency of Scheerer’s claim and an adverse credibility determination to be coextensive with a finding of frivolousness without examining what specific, material aspects of Scheerer’s application were knowingly false. These findings were insufficient to support a finding of frivolousness.”

researchers like Freudenthal and the Center for Immigration Studies made; they incorrectly conflate lack of qualification for asylum with fraud.²⁴³

In addition to the definitional changes, the 2020 rule further defied binding precedent by relieving asylum officers and immigration judges of their duty to give the applicant “sufficient opportunity to account for any discrepancies or implausible aspects of the claim.”²⁴⁴ Essentially, with the 2020 rule, DHS declared that the warnings against filing a frivolous application found in the twenty-six pages of instructions and asylum application form serve as sufficient notice as required by the INA.²⁴⁵ It is not surprising, then, that the 2020 rule contains a clause that specifically overrules *Matter of Y-L-*, which explains that there is a “shared responsibility of parties and the Immigration Judge to assure that relevant evidence is included [in] the record.”²⁴⁶ Not only has the 2020 rule drastically changed and expanded the common understanding of the term frivolous that had been operational for a quarter century, but it has fundamentally stripped asylum applicants of the ability to clarify themselves or explain potential misunderstandings.

Contrary to DHS and DOJ’s claims that these changes regarding frivolous applications would make asylum processing more efficient, clauses in the 2020 rule would clearly have the opposite effect. The rule allows adjudicators to deem as frivolous asylum applications that are barred due to the one-year filing deadline as well as applications that are withdrawn by the applicant.²⁴⁷ Effectively, the 2020 rule creates a

²⁴³ See Chapter I for this discussion.

²⁴⁴ Department of Homeland Security and Executive Office for Immigration Review, “Procedures for Asylum and Withholding of Removal,” 80389.

²⁴⁵ Department of Homeland Security and Executive Office for Immigration Review, 80279; “I-589, Application for Asylum and for Withholding of Removal,” U.S. Citizenship and Immigration Services, September 19, 2022, <https://www.uscis.gov/i-589>. Form I-589 is twelve pages long, while the Instructions for Form I-589 run fourteen pages. Both are produced only in English.

²⁴⁶ Department of Homeland Security and Executive Office for Immigration Review, “Procedures for Asylum and Withholding of Removal,” 80280; *Matter of Y-L-*, 24 I&N Dec. 151.

²⁴⁷ Department of Homeland Security and Executive Office for Immigration Review, “Procedures for Asylum and Withholding of Removal,” 80389; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 3009–3691. IIRIRA states that only an individual who “demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien’s arrival in the United States” is eligible to apply for asylum. Because this is a bar on applying for asylum, in practice interviews and adjudications where this issue arises are significantly quicker than interviews and adjudications that are decided on the merits of the case.

new layer of adjudication and analysis for cases that were previously dispatched with haste (one-year filing deadline cases), and adds multiple immigration interviews and hearings for cases that would previously not have even taken up space on USCIS or EOIR's already full calendars (withdrawn cases).²⁴⁸

Less than two weeks after the Trump administration published "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review," two non-profit organizations, Pangea Legal Services and Immigration Equality, sued the administration.²⁴⁹ Then, on January 8, 2021, the U.S. District Court for the Northern District of California granted a preliminary injunction, preventing the government from implementing the 2020 rule. The decision was based both on the well-litigated fact that Chad Wolf "was not a duly authorized Acting Secretary [at the time he issued the 2020 rule], and that his actions were a legal nullity," and that the plaintiffs would face irreparable harm due in part to "the potential double threat of pretermission and the expanded frivolousness bar."²⁵⁰ Due to this injunction, the new frivolous definition introduced by the Trump administration is on hold. USCIS and EOIR currently apply the definition that was last updated by the Clinton administration in 1999.

3. How USCIS Analyzes Fraud and Misrepresentation

Although asylum officers do not make final fraud, misrepresentation, or, while the 2020 rule is under preliminary injunction, frivolous findings, USCIS provides guidance to its staff who do make fraud and misrepresentation findings. Reviewing this formula

²⁴⁸ Department of Homeland Security and Executive Office for Immigration Review, "Procedures for Asylum and Withholding of Removal," 80279. Prior to this rule, if an applicant withdrew his or her affirmative asylum application, the Asylum Division would not conduct an interview and would refer the case to the IJ for removal proceedings (if the applicant was out of status), or simply administratively close the case (if the applicant had another valid status). With the 2020 rule, if an applicant withdraws his or her asylum application, the Asylum Division would be required to conduct a novel interview to discuss a menu of options the rule outlines for the applicant. Then, the asylum office would have to refer the applicant to the IJ for a similarly novel hearing in which the IJ would have to have nearly the same discussion with the applicant, since the rule still requires the IJ or the BIA to make final any frivolous finding. Additionally, at that hearing with the IJ, the asylum applicant would be able to again raise their asylum claim, albeit defensively.

²⁴⁹ Pangea Legal Services et al. v. U.S. Department of Homeland Security et al., No. 20-cv-09253-JD (N.D. Cal. 2021), https://www.govinfo.gov/content/pkg/USCOURTS-cand-3_20-cv-09253/pdf/USCOURTS-cand-3_20-cv-09253-1.pdf.

²⁵⁰ Pangea Legal Services, No. 20-cv-09253-JD.

helps to elucidate the result of the evolution of the fraud definition presented in this chapter. As noted above, the regulation concerning fraud and misrepresentation began with the Immigration and Nationality Act of 1952, was amended by the Immigration Marriage Fraud Amendments of 1986, and came into its current form with the passage of IIRIRA in 1996. INA §212(a)(6)(C)(i) reads, “Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.”²⁵¹ USCIS uses this statement as the first four of five elements that must be present for an officer to determine that misrepresentation occurred:

1. The person procured, or sought to procure, a benefit under U.S. immigration laws;
2. The person made a false representation;
3. The false representation was willfully made;
4. The false representation was material; and
5. The false representation was made to a U.S. government official, generally an immigration or consular officer.²⁵²

The fifth element of this test is derived from *Matter of Y-G-*.²⁵³ To find fraud, an officer must find all five elements of misrepresentation, as well as two additional elements below:

6. The false representation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); and
7. The U.S. government official believed and acted upon the false representation by granting the benefit.²⁵⁴

The sixth element derives from *Matter of Tijam*, citing *Matter of G-G-*, while the seventh element comes from *Matter of G-G-*.²⁵⁵ This methodical test, rooted in public and administrative law and used by experts who assess immigration fraud, provides a

²⁵¹ Immigration Marriage Fraud Amendments of 1986, 3543–44.

²⁵² U.S. Citizenship and Immigration Services, *Policy Manual*.

²⁵³ *Matter of Y-G-*, 20 I&N Dec. 794.

²⁵⁴ U.S. Citizenship and Immigration Services, *Policy Manual*.

²⁵⁵ *Matter of Tijam*, 22 I&N Dec. 408; *Matter of G-G-*, 7 I&N Dec. 161.

striking contrast to the overly generalized and sweeping claims made by the alarmists who organized the 2013 and 2014 congressional hearings about asylum fraud. Next, Part B turns to the specific claims made during these hearings and analyzes the variety of problems that arise when current, public accusations of fraud are divorced from the historical and legal origins of the term.

B. QUANTIFYING THE RATE OF FRAUD IN THE CREDIBLE FEAR PROCESS

Nonpartisan experts, such as those in the CRS, have for years employed vague language when addressing the prevalence of immigration fraud in the United States. These researchers acknowledge that immigration fraud exists but resist quantifying the level of fraud due to a lack of hard evidence.²⁵⁶ While DHS publicly releases immigration data in the Yearbooks of Immigration Statistics, the data on immigration fraud are left wanting. The Yearbooks contain tables presenting some data regarding prosecutions and convictions for immigration-related violations, and, at its broadest, the data covers the years 1987–2004.²⁵⁷ However, these data are vague (e.g., the most complete data sets are simply labeled “immigration violations” without further description or specificity as to the nature of the violation or the status or nationality of the individuals charged), incomplete (e.g., promising data sets describing fraud are reported for a variety of year ranges, often either 1987–1992 or 1993–2004), incongruous (e.g., data tables often come with a caveat that certain years or year ranges include data from sources that other years or year ranges do not contain), and ultimately are unsuitable for this study since they do not extend to the highly relevant years of 2009–2019.

1. The Premise Is Flawed

At the time the 2013 and 2014 hearings were being held, there was a surge in people claiming fear at the southern border.²⁵⁸ During the two hearings, representatives and witnesses linked the surge in credible fear cases with the assertion that 70 percent of

²⁵⁶ Wasem, *Immigration Fraud*, 1.

²⁵⁷ Department of Homeland Security, “Yearbook of Immigration Statistics.”

²⁵⁸ See Figure 3, particularly FY2013 and onward.

asylum cases were fraudulent and suggested there was a causal relationship.²⁵⁹ Hipolito Acosta, a former USCIS district director and former BP agent, provided testimony in support of the fraud narrative during the 2014 hearing.²⁶⁰ Rather than use data to support his claims, Acosta presented an anecdote about an undocumented Central American man who he claimed to have recently met and who was nearly coerced into committing fraud by an unscrupulous immigration attorney.²⁶¹ Acosta implied that people who cross the southern border without inspection have a menu of immigration options, credible fear “applications” being one of them, in order to game their way into staying in the United States under false pretenses.²⁶² Jan Ting, a law professor at Temple University, provided testimony similar to Acosta’s in that Ting relied on anecdotes rather than data to support the asylum fraud narrative. While Acosta’s anecdotes related to Central Americans, Ting focused his ire on Black immigrants, even maligning the late Amadou Diallo, who had been killed by New York City police officers, to ominously claim that “many are believed to obtain legal asylum status by lying, most go on eventually to become U.S.

²⁵⁹ The surge and fraud dominated the 2013 hearing. Representatives asked witnesses repeatedly to testify to the amount of fraud in credible fear cases. Even though the *Washington Times* article, with the claim that 70 percent of asylum claims are fraudulent, had not yet been published, this statistic still found its way into the hearing. Representative Sheila Jackson Lee asked Director of USCIS Lori Scialabba whether “70 percent of the people coming use credible fear” illegitimately. H.R., *Asylum Abuse*, 180. During the 2014 hearing, Representatives explicitly asserted that 70 percent of asylum claims are fraudulent. H.R., *Asylum Fraud*, 5–6.

²⁶⁰ H.R., *Asylum Fraud*, 24.

²⁶¹ H.R., *Asylum Fraud*, 24–25.

²⁶² H.R., *Asylum Fraud*, 25–26. Interestingly, when discussing the fraud trends that occurred throughout his career, Acosta also insinuated that Central Americans fleeing to the United States in the 1990s were not genuinely fleeing persecution or harm. This framing blatantly contradicts the consensus among historians that the United States supported repressive and murderous right-wing regimes in Central America for decades during the 20th century, and when the victims of these U.S.-backed regimes fled to the United States seeking safety, the United States made broad determinations that they could not be refugees since they were fleeing from allied countries. For an overview of these decades-long events, see Gregory Bart Weeks, *U.S. and Latin American Relations* (New York, NY: Pearson Longman, 2008); Fitzgerald, *Refuge Beyond Reach*, 125–36.

citizens and the lies they tell to get status are never uncovered.”²⁶³ Ting used these anecdotes about alleged fraud in the affirmative or defensive asylum processes to support his assertion that the credible fear process attracts fraudsters who do not have to prove that they are qualified for asylum.²⁶⁴

Despite their generally unreliable testimony, Acosta and Ting are correct that a grant of asylum provides one of the few avenues for an inadmissible individual to remain legally in the United States.²⁶⁵ The ever increasing restrictions surrounding legal employment and family immigration over the past 30 years leaves people on decades-long waitlists for immigration to the United States.²⁶⁶ As demonstrated by the witnesses in the 2014 hearing, concerns about fraud in the credible fear process stem from the notion that individuals insincerely claim fear of harm to remain in the United States, ultimately leading to vast increases in the unauthorized population.²⁶⁷ The unauthorized population consists of individuals who:

1. entered the country without inspection,
2. were admitted on the basis of fraudulent documents, or

²⁶³ H.R., *Asylum Fraud*, 20. Ting’s oral and written testimony about fraud focused almost exclusively on Guinean, Malian, Ghanaian, Nigerian, and Haitian asylum seekers. His examples appear to be largely plucked from the headlines of the *New York Times*, the *New Yorker*, the *Washington Post*, and other prominent news organizations. He only gave one example of potential fraud that involves a non-Black individual, and for this example, he only devoted sixteen words out of the nearly three thousand words (about half of one percent) he provided for the record orally and in writing. In the year before this hearing, the very same news organizations Ting cited were providing deep reporting on systematic immigration fraud (compared to the cherry-picked examples he provided) that took place primarily in New York City, particular Operation Fiction Writer (OFW). Despite this well-known and apparently relevant story of asylum fraud, neither Ting nor anyone else in the 2014 hearing referenced this case. OFW is discussed in greater detail later in Chapter III. For background on OFW, see Joseph Goldstein and Kirk Semple, “Law Firms Are Accused of Aiding Chinese Immigrants’ False Asylum Claims,” *New York Times*, December 19, 2012, <https://www.nytimes.com/2012/12/19/nyregion/law-firms-accused-of-aiding-chinese-immigrants-false-asylum-claims.html>. For a deeper look at the historical roots of racism in the Western Hemisphere’s immigration policies, see David Scott FitzGerald and David Cook-Martin, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge, MA: Harvard University Press, 2014).

²⁶⁴ H.R., *Asylum Fraud*, 23.

²⁶⁵ William A. Kandel, *Primer on U.S. Immigration Policy*, CRS Report No. R45020 (Washington, DC: Congressional Research Service, 2021), 20, https://www.everycrsreport.com/files/2021-07-01_R45020_cada7a4df22eda83975d17712f9db47d4f7b3bc4.pdf.

²⁶⁶ Roberto Suro, *Watching America’s Door: The Immigration Backlash and the New Policy Debate* (New York, NY: Twentieth Century Fund Press, 1996), 62.

²⁶⁷ H.R., *Asylum Fraud*, 20, 70.

3. violated their authorized period of stay.²⁶⁸

While many in the credible fear process ended up in expedited removal because they entered the United States without inspection and were quickly apprehended, those who overstay their visas make up most of the unauthorized population. A recent study finds that in each year from 2010 through 2017, “Visa overstays have significantly exceeded illegal border crossings.”²⁶⁹ In 2016 alone, overstays represented 62 percent of the new undocumented population, while those who entered without inspection represented 38 percent.²⁷⁰ While individuals from Northern Triangle countries made up a larger portion of the unauthorized population in 2017 compared to 2010, in context they are not significant contributors to the overall unauthorized population, which has actually decreased by approximately nine percent from 2010 to 2017.²⁷¹

The results of this study of the unauthorized population in the United States suggests that concerns about fraud in the credible fear process are misplaced. Although Ting did, in passing, mention visa overstays when listing some of the immigration statuses people have at the time they file for asylum, his testimony to Congress failed to highlight that visa overstays, and not people in the credible fear process or asylum seekers more broadly, are the largest contributors to the unauthorized population. If the representatives who led the 2014 hearing, and witnesses such as Acosta and Ting who lent support to their theories about asylum fraud, were genuinely concerned with individuals who were unauthorized remaining in the United States, they would dedicate resources and public hearings to examining the prevalence of visa overstays before doing so for credible fear and asylum.

²⁶⁸ Kandel, *Primer on U.S. Immigration Policy*, 19–20.

²⁶⁹ Robert Warren, “US Undocumented Population Continued to Fall from 2016 to 2017 and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year,” *Journal on Migration and Human Security* 7, no. 1 (March 2019): 19, <https://doi.org/10.1177/2331502419830339>.

²⁷⁰ Warren, 21.

²⁷¹ Warren, 21.

2. The Data Cited Is Inapplicable

During the 2014 hearing, Louis Crocetti, the former Associate Director of FDNS, provided testimony describing the 2009 study of fraud that his directorate conducted on the asylum program.²⁷² This study, the Asylum Benefit Fraud and Compliance Assessment Program (BFCA), appeared on the surface to support the assertion that 70 percent of asylum cases were fraudulent. However, the BFCA focused exclusively on a narrow selection of affirmative asylum cases that were filed in 2005. Although affirmative asylum and credible fear cases share some similarities, congressional representatives incorrectly applied conclusions from the BFCA about the asylum process to the credible fear process. Two significant differences exist between affirmative asylum and credible fear: the legal standards asylum officers use to adjudicate and the nationalities represented in each process.

a. Differing Legal Standards

As mentioned in Chapter I, a person making an affirmative asylum claim must show that they have a *well-founded fear* of persecution in their home country. The Supreme Court described the well-founded fear standard in its decision in *INS v. Cardoza-Fonseca*:

Let us...presume that it is known that in the applicant's country of origin every tenth adult male person is either put to death or sent to some remote labor camp.... In such a case it would be only too apparent that anyone who has managed to escape from the country in question will have 'well-founded fear of being persecuted' upon his eventual return.²⁷³

The legal standard to establish credible fear is thus the significant possibility that an applicant can establish eligibility in a full asylum hearing. At the time the credible fear process was being created in 1996, Senate Judiciary Committee Member Orrin Hatch stated that the credible fear standard was “a low screening standard for admission into the

²⁷² H.R., *Asylum Fraud*, 12–19.

²⁷³ *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

usual full asylum process.”²⁷⁴ Since credible fear is a mechanism for screening which people should move into a full asylum hearing before a judge, the significant possibility standard must, by definition, be a lower standard than the well-founded fear standard used to determine affirmative asylum. The difference in legal standards and purpose of the two processes makes any conclusions drawn from the BFCA, or any study relating only to affirmative asylum cases, inapplicable to quantifying fraud in credible fear cases.

b. Differing Populations

Affirmative asylum and credible fear also differ with respect to the countries represented in each process. The most common nationalities in the BFCA were China, Haiti, Colombia, and Mexico.²⁷⁵ In FY2013, the first year of the credible fear surge and the data upon which the representatives relied during these two hearings, the nationalities differed significantly.²⁷⁶ Figure 7 displays the most common nationalities in the credible fear process throughout FY2013. The five with the highest representation were El Salvador, Honduras, Guatemala, India, and Mexico.²⁷⁷ Figure 8 displays the most common nationalities for new affirmative asylum applicants in the same year. The five countries with the highest representation were China, Mexico, Egypt, Guatemala, and Nepal.²⁷⁸ Mexico is the only country that appears on the most represented countries lists for the BFCA, FY2013 credible fear receipts, and FY2013 affirmative asylum receipts. Besides Mexico, Guatemala is the only other country to appear in both the credible fear and affirmative lists of most represented countries for FY2013. However, as Figures 7 and 8 make clear, the share of receipts from Mexican and Guatemalan nationals varies significantly between the credible fear and affirmative asylum programs in FY2013.

²⁷⁴ 142 Cong. Rec. S11491 (daily ed. September 27, 1996) (statement of Sen. Hatch).
<https://www.govinfo.gov/content/pkg/CREC-1996-09-27/pdf/CREC-1996-09-27-senate.pdf>.

²⁷⁵ H.R., *Asylum Fraud*, 16.

²⁷⁶ H.R., *Asylum Abuse*, 60, 229–30.

²⁷⁷ It should be noted that the charts contained in *Asylum Abuse* (229-30) differ numerically from those released by USCIS. The charts are cited as being submitted by a representative, not the USCIS witnesses at the hearing. The most reliable sources of statistics are used for charts and figures presented in this thesis. In this instance, the reports released directly by USCIS are considered the most reliable source for credible fear statistics.

²⁷⁸ Bruno, *Immigration: U.S. Asylum Policy*, 35.

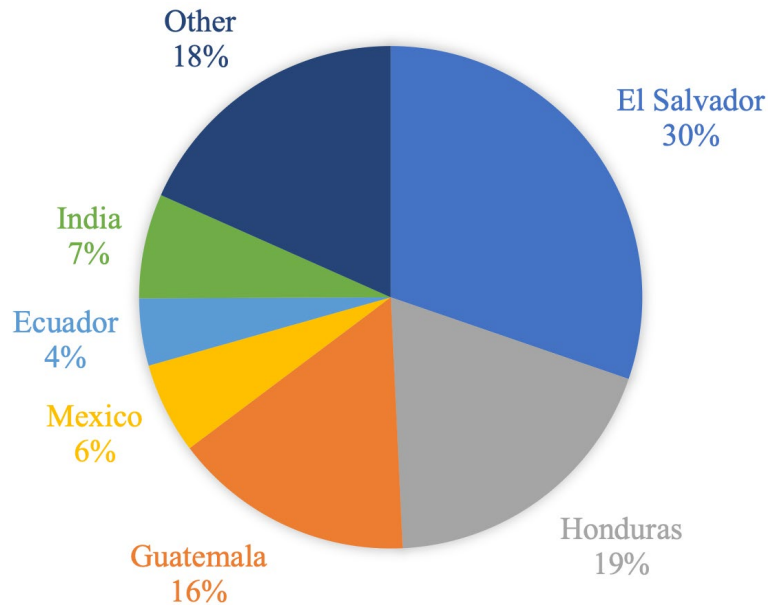


Figure 7. Most Common Nationalities in Credible Fear for FY2013²⁷⁹

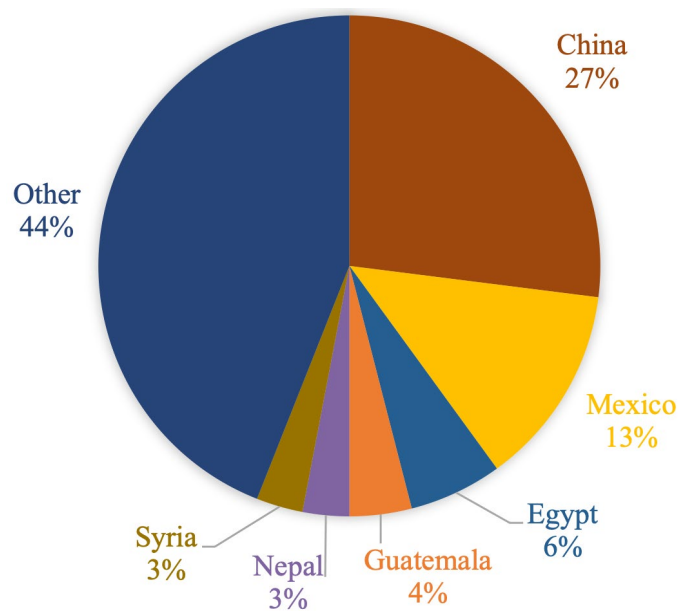


Figure 8. Most Common Nationalities in Affirmative Asylum Cases Filed in FY2013²⁸⁰

²⁷⁹ Adapted from “Credible Fear Workload Report Summary: FY 2013 Total Caseload,” U.S. Citizenship and Immigration Services, accessed November 4, 2019, <https://www.uscis.gov/sites/default/files/document/data/Asylum-CredibleFear-ReasonableFear-FY13.pdf>.

²⁸⁰ Adapted from Bruno, *Immigration: U.S. Asylum Policy*, 35.

The differences in nationalities represented in each process matter because the way fraud is perpetrated and detected relates, in part, to the connections in language and nationality groups. According to Acosta and Ting’s own testimony, false stories of persecution spread among individuals from the same country or neighboring countries with similar conditions.²⁸¹ Similarly, evidence from recent high-profile affirmative asylum fraud schemes suggests that those who commit fraud, whether applicants, attorneys, or preparers, exploit community connections. For example:

- In 2010, an ICE investigation into a law firm in Sacramento led to five convictions relating to the filing of fraudulent asylum cases.²⁸² The firm perpetrated the fraud “primarily on behalf of Indian and Romanian nationals” and the fraud was discovered when asylum officers at the San Francisco Asylum Office “noticed unusual similarities in Romanian asylum claims pursued by the firm.”²⁸³
- In 2012, Operation Fiction Writer (OFW) led to charges against thirty attorneys, application preparers, and interpreters in New York City relating to the filing of fraudulent asylum applications.²⁸⁴ The implicated law firms perpetrated their fraud by preparing false claims of persecution for Chinese applicants. The fraudulent applications were detected after asylum officers at the New York Asylum Office began “seeing similarities in many of the cases they were handling.”²⁸⁵ Officers conducted the time-intensive review, comparison, and textual analysis of cases from

²⁸¹ H.R., *Asylum Fraud*, 20–24, 30.

²⁸² “3 Sacramento Attorneys Receive Lengthy Sentences in Asylum Fraud Scheme,” U.S. Immigration and Customs Enforcement, September 24, 2010, <http://www.ice.gov/pi/nr/1009/100924sacramento.htm>.

²⁸³ U.S. Immigration and Customs Enforcement, “3 Sacramento Attorneys”; Martha Neil, “3 Lawyers Guilty in ‘Assembly-Line Fraud Factory’ Calif. Asylum Scam,” ABA Journal, last modified June 26, 2009, http://www.abajournal.com/news/article/3_lawyers_convicted_in_asylum_scam.

²⁸⁴ Gambler, *Asylum*, 33.

²⁸⁵ Goldstein and Semple, “Law Firms Are Accused.”

implicated firms to show how similarities between cases indicated possible fraud.²⁸⁶

- On a broader scale, unlicensed immigration consultants who “illegally call themselves notarios” target Spanish-speaking immigrants.²⁸⁷ Notarios falsely present themselves as attorneys to immigrants from Latin American countries, where the term notario refers to “state-appointed lawyers.”²⁸⁸ In this context, fraud is often committed when notarios instruct immigrants to lie or when they commit application fraud without the knowledge of the client.²⁸⁹

These examples should not be misconstrued to imply that any specific national or linguistic community perpetrates fraud at a higher rate than any other group or that any one group is predisposed to commit fraud. Rather, these examples highlight how the country-specific nature of asylum claims may give rise to incidence of fraud that is similarly country-specific. As the nationalities in affirmative asylum and credible fear differ and vary year-to-year, the program-wide rate of fraud may naturally vary as well. Because of this variation, studies about fraud regarding a particular year and application type are likely inapplicable to different application types in different years.

²⁸⁶ “What Is Operation Fiction Writer,” Alexandre Law Firm, February 18, 2019, <http://www.https://alexandrelaw.com/what-is-operation-fiction-writer/>.

²⁸⁷ Delaney Smith, “‘Notarios’ Scamming Immigrants at Record Numbers,” *Santa Barbara Independent*, July 30, 2019, <https://www.independent.com/2019/07/30/notarios-scamming-immigrants-at-record-numbers/>.

²⁸⁸ Bill Foster, “Foster Introduces Legislation to Crack Down on ‘Notario’ Fraud,” May 1, 2019, <https://foster.house.gov/media/press-releases/foster-introduces-legislation-to-crack-down-on-notario-fraud>. Although *notario público* translates into English as notary public, the job of a notario público in Latin America is significantly different than that of a notary public in the United States. “Stop Notario Fraud,” American Immigration Lawyers Association and American Bar Association, accessed November 19, 2022, <https://stopnotariofraud.org/>.

²⁸⁹ Smith, “‘Notarios’ Scamming Immigrants.”

3. Data Relating to Federal Criminal Prosecutions Does Not Support Claims of Widespread Fraud

Thus far, this chapter has shown that the 2013 and 2014 congressional hearings failed to produce compelling data or evidence regarding fraud in the asylum system and that DHS similarly fails to include consistent data relating to fraud in its yearly statistical reports. In the absence of discrete and comprehensive data for fraud in the asylum and credible fear processes, this thesis employs federal sentencing data for immigration-related offenses as proxy to explore the changes in immigration fraud numbers over the past quarter century. Specifically, this section focuses on cases sentenced under the USSG §2L2.1 guideline, for trafficking in immigration documents and making fraudulent statements, and USSG §2L2.2, for acquiring fraudulent immigration documents, and includes other immigration-related cases for context.²⁹⁰ While the human-introduced bias of prosecutorial and judicial discretion prevents the inclusion of this data into the statistical analysis conducted in Chapter IV, the sentencing data can help elucidate any federal government response to the claimed widespread fraud in the credible fear and asylum systems in during the last 10 years.

Table 5 shows the number of federal criminal cases that were sentenced each year from FY1997–2021. It also provides a breakdown of how many cases were sentenced under each of the four immigration criminal guidelines, the total of immigration criminal cases sentenced each year, and the total of all federal criminal cases sentenced each year.

²⁹⁰ U.S. Sentencing Commission, *Guidelines Manual*, §2L2.1, 2021; U.S. Sentencing Commission, *Guidelines Manual*, §2L2.2, 2021.

Table 5. Federal Immigration Criminal Cases by Guideline,
FY1997–FY2021²⁹¹

| Fiscal Year | §2L1.1 | §2L1.2 | §2L2.1 | §2L2.2 | Total Immigration Cases | Total All Case Types |
|------------------------|---------------|---------------|---------------|---------------|------------------------------------|---------------------------------|
| 1997 | 1,161 | 3,612 | 193 | 517 | 5,483 | 48,848 |
| 1998 | 1,384 | 4,721 | 224 | 625 | 6,954 | 50,754 |
| 1999 | 1,785 | 5,658 | 274 | 735 | 8,452 | 55,557 |
| 2000 | 2,070 | 6,513 | 302 | 730 | 9,615 | 59,846 |
| 2001 | 1,815 | 6,121 | 273 | 760 | 8,969 | 59,897 |
| 2002 | 1,769 | 7,076 | 282 | 707 | 9,834 | 64,366 |
| 2003 | 2,350 | 9,269 | 339 | 992 | 12,950 | 70,258 |
| 2004 | 2,338 | 9,719 | 309 | 924 | 13,290 | 70,068 |
| 2005 | 3,202 | 10,507 | 420 | 1,089 | 15,218 | 72,462 |
| 2006 | 3,462 | 11,363 | 364 | 1,010 | 16,199 | 72,585 |
| 2007 | 3,375 | 10,942 | 437 | 1,150 | 15,916 | 72,865 |
| 2008 | 3,536 | 13,575 | 443 | 1,727 | 19,333 | 76,478 |
| 2009 | 3,274 | 17,310 | 381 | 1,656 | 22,621 | 81,372 |
| 2010 | 2,633 | 19,910 | 338 | 1,488 | 24,370 | 83,946 |
| 2011 | 2,578 | 21,489 | 313 | 1,374 | 25,755 | 86,201 |
| 2012 | 2,283 | 19,463 | 305 | 1,199 | 23,250 | 84,173 |
| 2013 | 2,256 | 18,658 | 296 | 1,211 | 22,422 | 80,035 |
| 2014 | 2,265 | 16,674 | 210 | 1,080 | 20,229 | 75,836 |
| 2015 | 2,296 | 15,815 | 212 | 988 | 19,311 | 71,003 |
| 2016 | 2,423 | 15,813 | 130 | 769 | 19,135 | 67,742 |
| 2017 | 2,765 | 15,895 | 153 | 691 | 19,504 | 66,873 |
| 2018 | 2,843 | 18,241 | 117 | 935 | 22,136 | 69,425 |
| 2019 | 3,487 | 22,077 | 104 | 962 | 26,630 | 76,538 |
| 2020 | 3,392 | 19,654 | 71 | 642 | 23,759 | 64,565 |
| 2021 | 3,551 | 11,565 | 57 | 582 | 15,755 | 57,287 |

²⁹¹ “Sourcebook Archives,” U.S. Sentencing Commission, accessed October 2, 2022, <https://www.ussc.gov/research/sourcebook/archive>

The data in Table 5 reveal that the total of federal criminal cases rose steadily throughout this period and peaked in 2011. The total of immigration cases also rose through 2011, before dipping over the following seven years, and finally peaking in 2019. Review of Table 5 reveals that sentencing guideline §2L1.2, the sentence for unlawfully entering or remaining in the United States, is primarily responsible for the rise in immigration criminal cases. On average, §2L1.2 accounted for three quarters of immigration criminal cases each year from FY1997-2021. The other three immigration sentencing guidelines do not follow the same pattern. Cases sentenced for alien smuggling under §2L1.1 rise steadily over this 25-year period, peaking in 2008 before dipping over the following seven years and rising again. On average, alien smuggling accounts for 16 percent of immigration criminal cases each year. The two fraud-related immigration guidelines, §2L2.1, which relates to trafficking in immigration documents and making fraudulent statements, and §2L2.2, which relates to acquiring fraudulent documents, are outliers. Cases sentenced under §2L2.1 are on a downward trend, both in raw numbers and in their share of all immigration criminal cases. These cases peak in 2008 and, on average, account for less than two percent of immigration criminal cases each year. Finally, cases sentenced under §2L2.2 rise to a more prominent peak in 2008, but by 2021 fall back to the range of case numbers seen in 1997. On average, sentences for acquiring fraudulent documents account for six percent of immigration criminal cases each year.

Figure 9 presents the same data enumerated in Table 5. In this format, it becomes clearer just how much the rise in sentences for unlawfully entry (§2L1.2) drive the increase in immigration criminal cases and even have a significant impact on the rise in federal criminal cases as a whole.

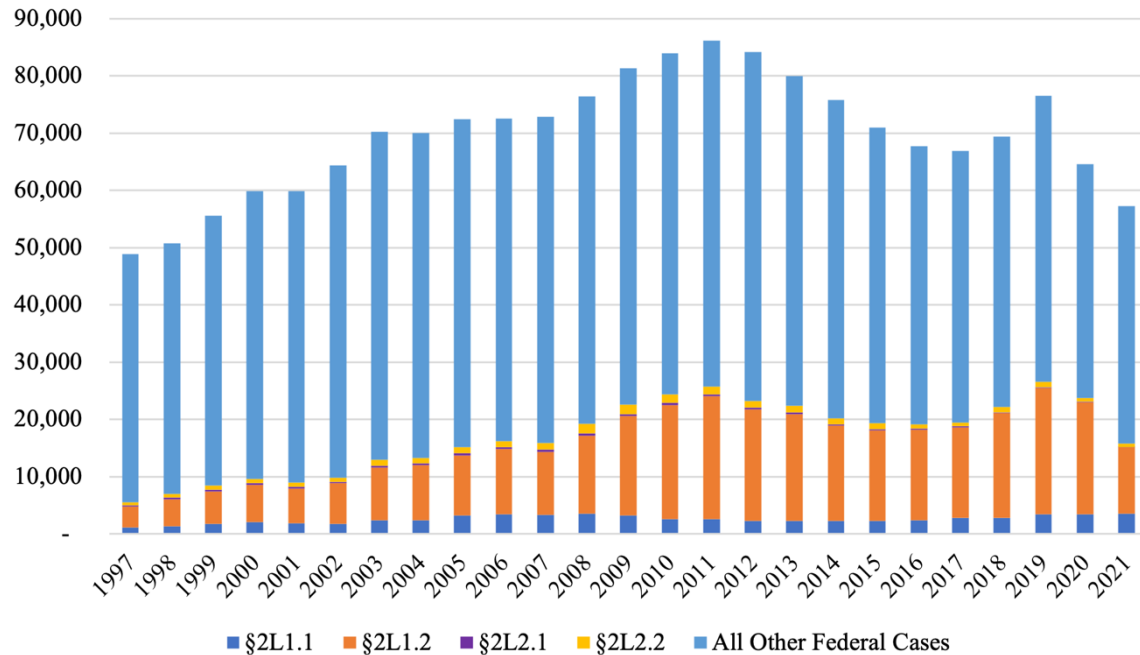


Figure 9. Federal Immigration Criminal Cases by Guideline and other Federal Cases, FY1997–FY2021²⁹²

Figure 10 charts the immigration fraud criminal guidelines against credible fear receipts from FY1997–2019. Because credible fear receipts are orders of magnitude larger than the cases sentenced under §2L2.1 and §2L2.2, credible fear receipts are plotted on a secondary axis on the right of Figure 10, while the criminal cases are charted on the primary axis at the left. This allows for a visual comparison of the change in fraud cases and credible fear receipts year-to-year.

²⁹² Adapted from U.S. Sentencing Commission.

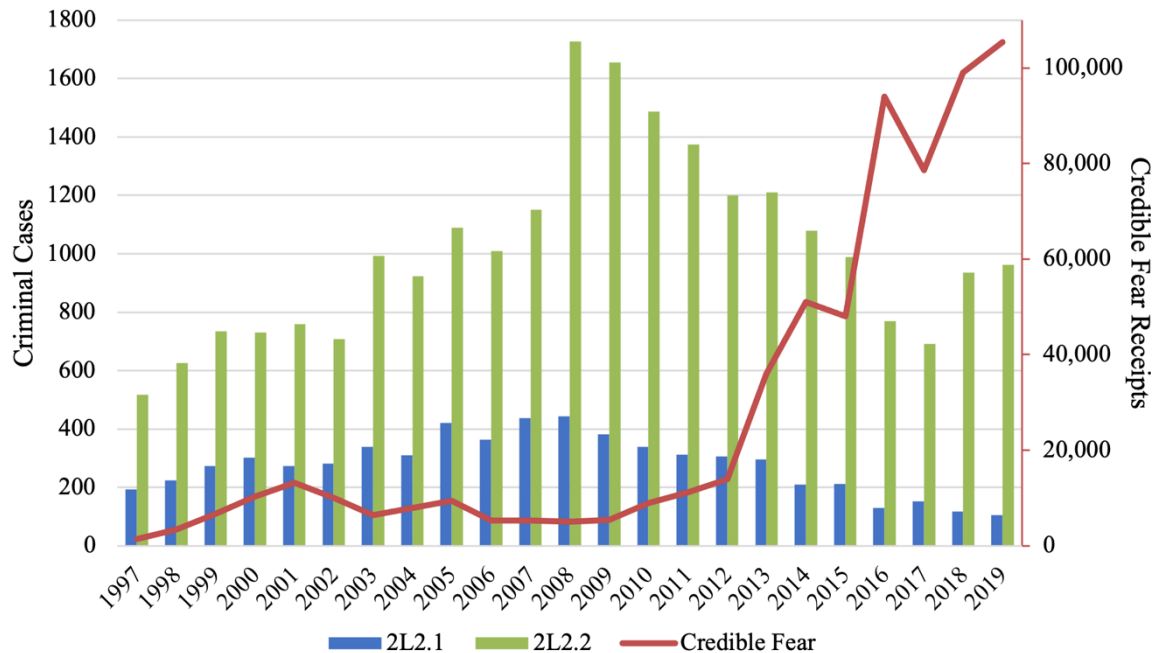


Figure 10. Federal Immigration Fraud Criminal Cases and Credible Fear Receipts, FY1997–FY2019²⁹³

Visual inspection of Figure 10 suggests that immigration fraud criminal cases and credible fear receipts are not correlated. From 1997 to 2001, both immigration fraud cases and credible fear receipts rose steadily. Immigration fraud cases continued to rise from 2001 through 2008, but credible fear cases remained steady and even decreased slightly. After 2008, immigration fraud cases steadily collapsed back to the levels before 2003, while credible fear receipts began the surge detailed in Chapter II. The lack of correlation between the number of immigration fraud cases and credible fear receipts appears to suggest that the credible fear population is not a significant source of federal prosecutors’ immigration fraud cases.

²⁹³ Adapted from U.S. Sentencing Commission; Bruno, *Immigration: U.S. Asylum Policy*, 37; U.S. Citizenship and Immigration Services, “FY 2019 Total Caseload.”

The U.S. Sentencing Commission only provides a limited set of years in which immigration case data is categorized by country. Table 6 shows the seven years for which immigration fraud case statistics are available for the countries with which this thesis is primarily concerned: Mexico and the Northern Triangle countries of El Salvador, Guatemala, and Honduras.

Table 6. Federal Immigration Fraud Criminal Cases by Country, FY2015-FY2021²⁹⁴

| Fiscal Year | El Salvador | Guatemala | Honduras | Mexico | All Others |
|--------------------|--------------------|------------------|-----------------|---------------|-------------------|
| 2015 | 20 | 74 | 29 | 552 | 525 |
| 2016 | 11 | 38 | 30 | 403 | 417 |
| 2017 | 19 | 50 | 13 | 357 | 405 |
| 2018 | 24 | 37 | 75 | 521 | 395 |
| 2019 | 28 | 72 | 54 | 586 | 326 |
| 2020 | 12 | 46 | 19 | 428 | 208 |
| 2021 | 22 | 35 | 28 | 398 | 156 |

Each of these data series (the columns in Table 6), is either trending down or nearly flat. While the limited nature of this data set prevents definitive answers, the incredibly low numbers of immigration fraud cases involving nationals of the Northern Triangle at the time when credible fear receipts were at record highs due to surges of migrants from these same countries supports the hypothesis that the credible fear population is not a significant source of federal prosecutors' immigration fraud cases. Even stronger support for this hypothesis comes from the data series regarding Mexican nationals. Table 6 clearly shows that Mexican nationals account for the most immigration fraud cases from any single country in each year from 2015–2021, and nearly outnumber all other countries combined. During each year in this six-year range, there are between seven to thirty-seven times more Mexican nationals sentenced for an immigration fraud crime as are nationals from any of the Northern Triangle countries. In contrast, referring

²⁹⁴ U.S. Sentencing Commission, "Sourcebook Archives." Note: Immigration fraud criminal cases include cases sentenced under USSG §2L2.1 and §2L2.2.

back to Table 1, it is clear that nationals from each of the Northern Triangle countries far surpass Mexican nationals when it comes to credible fear cases received over a similar range of years. In most years from 2015–2019, each Northern Triangle country had between three and five times as many nationals in the credible fear process compared to Mexico. This apparent negative correlation between a country’s credible fear receipts and immigration fraud cases for the years 2015–2019 suggests that immigration fraud cases initiate from immigration streams other than the credible fear process.

There are at least two potential explanations for the lack of positive correlation, and possible negative correlation, between the number of immigration fraud cases and credible fear receipts. One possibility is that there is a low incidence of fraud within the credible fear population. As highlighted thus far in this thesis, and this chapter specifically, an internal USCIS study on fraud within credible fear is necessary to explore this possibility. Contrary to claims made during the 2013 and 2014 congressional hearings on asylum fraud, such a study has yet to be conducted. While it is difficult to prove the lack of fraud in the credible fear process without a detailed internal study, Chapter IV relies on statistical analysis to deeply explore whether there are explanations other than fraud for the surge in credible fear receipts.

The other possible explanation for the lack of correlation between credible fear receipts and immigration fraud cases is that prosecutorial discretion and finite enforcement resources limit the federal government’s ability to fully investigate incidents of fraud that may occur among the population in credible fear. In response to the terrorist attacks on September 11, 2001, Congress restructured the federal immigration benefits and enforcement workforce with the Homeland Security Act of 2002.²⁹⁵ Immigration benefits and enforcement responsibilities, both formerly performed by the INS, were transferred to the newly created agencies of USCIS and ICE, respectively.²⁹⁶ Following this divvying up of responsibilities came the siloing of missions. Since 2002, USCIS has gained the in-house fraud investigative arm of FDNS. However, bringing FDNS-initiated

²⁹⁵ Homeland Security Act of 2002, Pub. L. No. 107–296 § 116 Stat. 2142 (2002).
<https://www.govinfo.gov/content/pkg/PLAW-107publ296/pdf/PLAW-107publ296.pdf>.

²⁹⁶ Homeland Security Act of 2002, 2192, 2195.

investigations to civil enforcement or criminal prosecution requires intricate collaboration between USCIS and ICE. ICE investigators prioritize the investigation and prosecution of large-scale fraud schemes and resist USCIS referrals of single cases of potential fraud.²⁹⁷ However, the successful investigation of large-scale fraud schemes depends on a careful review of seemingly isolated cases of potential fraud. For example, the success of Operation Fiction Writer was due to the collaboration between the U.S. Attorney's Office, the Federal Bureau of Investigation (FBI), the New York Police Department, and USCIS, but the investigation would not have been possible without the initial time consuming, case-by-case review of asylum applications that was conducted by asylum officers at the New York Asylum Office.²⁹⁸

In addition to the lack of effective collaboration between ICE and USCIS, 9/11 fundamentally changed how immigration fraud is prioritized by the federal government. The 9/11 Commission Report highlighted the various ways al Qaeda terrorists committed identity and benefit fraud and how the INS was ineffective in its efforts to deter these kinds of fraud.²⁹⁹ Experts suggest that shifting priorities after 9/11 may have diverted resources away from immigration fraud investigations in favor of investigations that had a nexus to national security.³⁰⁰ In 1992, INS dedicated 210.4 workyears to investigating fraud. This number represents 15.3 percent of INS's investigative time that year.³⁰¹ By 2003, the workyears dedicated to fraud investigations fell to 146.1, which was only 7.7

²⁹⁷ Wasem, *Immigration Fraud*, 14.

²⁹⁸ U.S. Attorney's Office for the Southern District of New York, "Twenty-Six Individuals, Including Six Lawyers, Charged in Manhattan Federal Court with Participating in Immigration Fraud Schemes Involving Hundreds of Fraudulent Asylum Applications," The Federal Bureau of Investigation, last modified December 18, 2012, <https://www.fbi.gov/newyork/press-releases/2012/twenty-six-individuals-including-six-lawyers-charged-in-manhattan-federal-court-with-participating-in-immigration-fraud-schemes-involving-hundreds-of-fraudulent-asylum-applications>; Goldstein and Semple, "Law Firms Are Accused."

²⁹⁹ National Commission on Terrorist Attacks upon the United States, Thomas H. Kean, and Lee Hamilton, eds., *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington, DC: U.S. Government Printing Office, 2004), 80, 384, <https://www.govinfo.gov/content/pkg/GPO-911REPORT/pdf/GPO-911REPORT.pdf>.

³⁰⁰ Siskin et al., *Immigration Enforcement Within the United States*, 39.

³⁰¹ Siskin et al., 52. A workyear is equivalent to 2,080 hours.

percent of ICE's investigative time that year.³⁰² However, even before 9/11, fraud investigations were decreasing in priority. In 1999, INS published an Interior Enforcement Strategy, with the following five priorities, in order:

1. Identify and remove incarcerated criminal aliens from the United States and minimize recidivism,
2. Deter, dismantle, and diminish smuggling or trafficking of aliens,
3. Respond to community reports and complaints about illegal immigration and build partnerships to solve local problems,
4. Minimize immigration benefit fraud and other document abuse, and
5. Block and remove employers' access to undocumented workers.³⁰³

With this context, it is not surprising that the number of criminal sentences for unlawful entry, remaining in the United States, and alien smuggling have consistently surpassed criminal sentences for fraud, as demonstrated in Table 5 and Figure 9.

This section shows that the low rate of sentencing on cases for immigration fraud is inconsistent with the claims of an asylum fraud crisis made by many involved in the 2013 and 2014 congressional hearings. Ultimately, the question of why there does not appear to be a correlation between the number of criminal fraud sentences and the number of credible fear cases is beyond the scope of this thesis. However, this thesis demonstrates through analysis of available data that there are a few potential explanations: there is simply a low incidence of fraud in the credible fear population, immigration fraud investigations are a low priority, and the division of investigative responsibilities between ICE and USCIS gives rise to inefficiencies. These hypotheses are not mutually exclusive; each could be part of the explanation. A focused study on fraud in the credible fear program with contributions from DHS agencies and other federal partners, rather than rank speculation, is the only solution for determining the rate of fraud in this program.

³⁰² Siskin et al., 52.

³⁰³ Siskin et al., 31.

C. CRIMMIGRATION AND CREDIBLE FEAR

Not long after the congressional hearings on asylum fraud, former President Trump picked up the mantle and continued the rhetoric the representatives and witnesses aired in those hearings. Over the past several years, Trump has frequently asserted that criminals travel with groups that come to the United States to apply for asylum.³⁰⁴ While the former President and officials in his administration have stated that there are high numbers of criminals in migrant groups, they failed to provide “information about who are considered criminals, what types of crimes were committed and whether the crimes happened in the United States or other countries.”³⁰⁵ Media figures and members of Congress have often joined the former President in the vilification of migrants and asylum seekers as criminals, framing immigration primarily as a national security issue.³⁰⁶ As highlighted in the introduction to Chapter III, this framing of the issue by Trump and his acolytes is consistent with Stumpf’s definition of crimmigration.³⁰⁷ Such rhetoric influences official policy, creating a self-fulfilling prophecy in which those entering the United States are made into criminals. The rhetoric also serves to cast doubt on the credible fear process’s ability to screen criminals and other potentially nefarious actors despite actual data.

1. Making Criminals Out of Asylum Seekers

While Chapter II briefly discussed how legislation passed in the late 1980s and early 1990s criminalized immigration, improper entry and reentry have been federal crimes for more than 90 years. The Act of March 4, 1929, made it a misdemeanor to enter or attempt “to enter the United States at any time or place other than as designated by

³⁰⁴ Annalee Monroe, “Are Criminals with Migrant Caravan? Must Migrants Enter through a Port? 3 Claims Examined,” *Arizona Republic*, December 5, 2018, <https://www.azcentral.com/story/news/politics/fact-check/2018/12/05/fact-check-migrant-caravan-criminal-claim-size-and-asylum-process/2129896002/>. See also Donald J. Trump (@realDonaldTrump), “There are a lot of CRIMINALS in the Caravan,” Twitter, November 21, 2018, 1:42 p.m., <https://twitter.com/realDonaldTrump/status/1065359825654169600>.

³⁰⁵ Monroe, “Are Criminals with Migrant Caravan?”

³⁰⁶ Anti-Defamation League, *Mainstreaming Hate: The Anti-Immigrant Movement in the U.S.* (New York, NY: Anti-Defamation League, 2018), 25, <https://www.adl.org/media/12249/download>.

³⁰⁷ Stumpf, “Crimmigration Crisis,” 382.

immigration officers,” and a felony to enter or attempt to enter the United States after having been deported.³⁰⁸ However, improper entry and reentry were seldom criminally prosecuted for the first 75 years that this law was in effect. Even though many individuals who entered the expedited removal process starting in the late 1990s were apprehended after entering without inspection, expedited removal is a civil process carried out by the administrative elements of DHS and DOJ; expedited removal is not a criminal process carried out by the federal court system.³⁰⁹ The status quo changed in 2005 when the Bush administration implemented Operation Streamline, a zero-tolerance policy in which DHS criminally prosecuted border crossers before putting them through civil removal proceedings like expedited removal and reinstatement of removal.³¹⁰

Operation Streamline followed not long after the AEDPA and IIRIRA were enacted. The rhetoric surrounding these laws “conflated ‘immigrants who commit crimes’ with unauthorized migration and violations of immigration law broadly defined.”³¹¹ This rhetorical groundwork, coupled with the surge in credible fear applicants beginning in 2013, led to the Trump administration’s iteration of a zero-tolerance policy. In April 2017, Attorney General Jeff Sessions instructed all federal prosecutors to prioritize the criminal prosecution of people who made improper entry and those who reentered after having been removed.³¹² In issuing this directive, Sessions

³⁰⁸ Act of March 4, 1929, Pub. L. No. 70–1018, § 45 Stat. 1551 (1929).
https://www.loc.gov/resource/lisalvol.lisal_045/?sp=1602&st=text.

³⁰⁹ Siskin et al., *Immigration Enforcement Within the United States*, 7–9.

³¹⁰ Kelly Lytle Hernandez, “How Crossing the US-Mexico Border Became a Crime,” *The Conversation*, last modified April 30, 2017, <http://theconversation.com/how-crossing-the-us-mexico-border-became-a-crime-74604>. Under Operation Streamline, DHS did not prosecute every border crosser. Rather, they “designate [d] target enforcement areas” along the southern border and had a number of exceptions for “persons such as juveniles, parents traveling with minor children, persons with humanitarian concerns, and those with certain health conditions.” Donald Kerwin and Kristen McCabe, *Arrested on Entry: Operation Streamline and the Prosecution of Immigration Crimes* (Washington, DC: Migration Policy Institute, 2010), <https://www.migrationpolicy.org/article/arrested-entry-operation-streamline-and-prosecution-immigration-crimes>. See Lytle Hernandez for more context on this update in immigration law, including the author of the Act’s avowed white supremacy and the U.S. government’s racist attitudes towards and discrimination of Mexican immigrants.

³¹¹ Macías-Rojas, “Immigration and the War on Crime,” 13.

³¹² Jefferson B. Sessions, “Memorandum for All Federal Prosecutors: Renewed Commitment to Criminal Immigration Enforcement” (official memorandum, Washington, DC: Department of Justice, 2017), 1–2, <https://www.justice.gov/opa/press-release/file/956841/download>.

indicated that its purpose was “detering first-time improper entrants.”³¹³ One year later, in April 2018, Sessions released another memorandum to federal prosecutors along the southern border with starker language. He told them they were “on the front lines of this battle” and that they should “adopt immediately a zero-tolerance policy for all offenses referred for prosecution” due to improper entry.³¹⁴

Inevitably, the zero-tolerance policy led to the systematic separation of children from their parents, who had crossed the border together, when the parents were criminally prosecuted pursuant to the Attorney General’s directive.³¹⁵ While the “total number of children separated from a parent or guardian by immigration authorities is unknown,” a November 2019 DHS Office of Inspector General (OIG) report concluded that DHS agents separated at least 3,014 children, 99.7 percent of whom were from Latin American countries, from their parents.³¹⁶ Just a few months later, in May 2020, OIG released a follow-up report indicating that there were sixty additional families that had been separated but were left out of the initial reports due to DHS’s poor record keeping.³¹⁷

In the first month of his presidency, Joe Biden revoked the Trump executive order that attempted to provide legal cover to Sessions and Trump’s family separation policy and created the Interagency Task Force on the Reunification of Families.³¹⁸ As of

³¹³ Sessions, 2.

³¹⁴ Jefferson B. Sessions, “Memorandum for All Federal Prosecutors Along the Southern Border: Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)” (official memorandum, Washington, DC: Department of Justice, 2018), <https://www.justice.gov/opa/press-release/file/1049751/download>.

³¹⁵ Department of Health and Human Services, *Separated Children Placed in Office of Refugee Resettlement Care*, OEI-BL-18-00511 (Washington, DC: Department of Health and Human Services, 2019), 3–4, <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>.

³¹⁶ Department of Health and Human Services, 1; Department of Homeland Security, *DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families*, OIG-20-06 (Washington, DC: Department of Homeland Security, 2019), 28, <https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf>.

³¹⁷ Department of Homeland Security, *CBP Separated More Asylum-Seeking Families at Ports of Entry Than Reported and for Reasons Other Than Those Outlined in Public Statements*, OIG-20-35 (Washington, DC: Department of Homeland Security, 2020), 2–3, <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-35-May20.pdf>.

³¹⁸ Exec. Order No. 14011, 3 C.F.R. 501 (2021), <https://www.govinfo.gov/content/pkg/CFR-2022-title3-vol1/pdf/CFR-2022-title3-vol1-eo14011.pdf>.

September 2022, the Task Force reports that at least 3,855 children were separated from their parents by DHS and only 2,766, or about 72 percent, have been reunited thus far.³¹⁹ The trauma the U.S. government caused when it separated children from their parents will undoubtedly be the focus of many future studies, including those conducted by the Department of Health and Human Services.³²⁰

There was a deeper purpose for the zero-tolerance policy beyond just the retaliatory infliction of trauma: labelling migrants and asylum seekers as criminals. Among the first-time border crossers who were criminally prosecuted under this policy and those border crossers whose only previous crime was crossing the border, were people who intended to and eventually did request asylum.³²¹ After the government prosecuted these individuals for crossing the border, DHS statistics and public rhetoric would be factually accurate in claiming that criminal aliens were asking for asylum and entering the credible fear process.³²² In the Yearbook of Immigration Statistics, DHS reports that nearly 50 percent of the people removed by ICE in 2020 were criminals, as well as approximately 45 percent of people removed in the 10 years from 2011–2020.³²³

Figure 11 shows the five most common types of crime associated with individuals who were removed from the United States from 2011–2020. Criminal immigration offenses account for nearly a third of all criminal removals. When reporting these statistics, DHS combines the crimes of “entry and reentry, false claims to citizenship, and

³¹⁹ Department of Homeland Security, *Interagency Task Force on the Reunification of Families: Interim Progress Report* (Washington, DC: Department of Homeland Security, 2022), 6, https://www.dhs.gov/sites/default/files/2022-10/22_1026_sec-frtf-interim-progress-report-september-2022-cleared.pdf.

³²⁰ Department of Health and Human Services, *Separated Children*, 13.

³²¹ Natasha Arnpriester and Olga Byrne, *Punishing Refugees and Migrants: The Trump Administration’s Misuse of Criminal Prosecutions* (New York, NY: Human Rights First, 2018), 4, <https://humanrightsfirst.org/wp-content/uploads/2022/10/2018-Report-Punishing-Refugees-Migrants.pdf>.

³²² Arnpriester and Byrne, *Punishing Refugees and Migrants*, 6.

³²³ Department of Homeland Security, “Yearbook of Immigration Statistics.” These statistics do not include individuals removed by CBP.

human smuggling” under the “immigration” umbrella and does not provide a more precise breakdown of these statistics.³²⁴

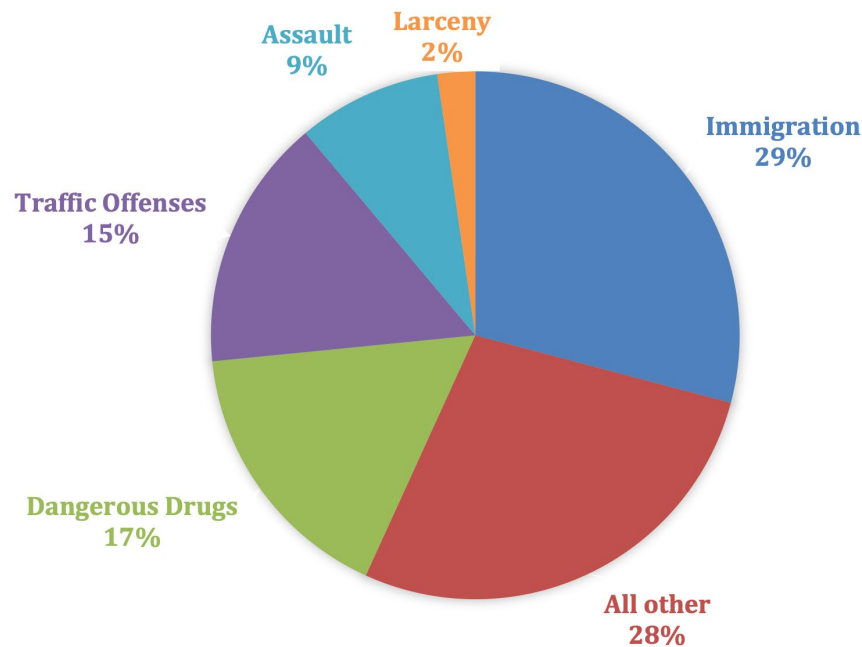


Figure 11. Criminal Removals by Crime Category, FY2011–FY2020³²⁵

Due to the limited information released by DHS, the statistics shown in Figure 11 do not necessarily reflect those who were in the credible fear process or who had affirmative or defensive asylum hearings. Regardless, when in office, former President Trump did not hesitate to cast vast groups of migrants and asylum seekers as criminals.³²⁶ In remarks at a BP Station in 2019, President Trump claimed without citing any evidence that “rough, tough people with criminal records are asking for asylum.”³²⁷

³²⁴ Alan Moskowitz and James Lee, *Annual Flow Report: Immigration Enforcement Actions* (Washington, DC: Department of Homeland Security, 2022), 12, https://www.dhs.gov/sites/default/files/2022-08/2022_0131_plcy_enforcement_actions_fy2020v2.pdf.

³²⁵ Adapted from Moskowitz and Lee, 12. “All other” includes weapons offenses, sexual assault, burglary, fraudulent activities, sex offenses, among others.

³²⁶ Donald J. Trump (@realDonaldTrump), “Mexico should move the flag waving Migrants, many of whom are stone cold criminals,” Twitter, November 26, 2018, 3:19 a.m., <https://twitter.com/realDonaldTrump/status/1067015026995879937>.

³²⁷ Trump, *Remarks by President Trump in Roundtable on Immigration and Border Security*.

The zero-tolerance policy's prioritization of prosecutions for border crossers has given many asylum seekers criminal records, making the rhetoric from the former President that "people with criminal records are asking for asylum" factually accurate, albeit very misleading.³²⁸ This thesis has shown that such rhetoric has fueled the crimmigration phenomenon not only throughout the last decade since the credible fear surge began, but certainly another century into the past since the Act of March 4, 1929.

DHS must release more detailed statistics that properly define and contextualize crime and immigration in the United States so that researchers and policymakers can make sound inferences and informed decisions. Further studies are also required to more fully describe how the self-fulfilling prophecy of asylum seeker criminalization is carried out, particularly through a lens of crimmigration.

2. Flagging Criminals in the Credible Fear Process

Fearmongering rhetoric regarding asylum seekers, like that addressed above, also serves to cast doubt on the ability of the credible fear process generally, and asylum officers specifically, to identify criminals and other potentially nefarious actors like terrorists. Freudenthal encapsulates this concern by claiming, without citation, that "the majority of credible fear applicants misrepresents or exaggerates their claim of persecution," among other reasons, "to avoid being detected as criminals or terrorists."³²⁹ Despite its harsh public rhetoric, the Trump administration did little to address how potential nefarious actors are identified in the credible fear process. Instead, it focused on introducing new bureaucratic hurdles to artificially reduce the number of people entering into and receiving positive determinations in the credible fear process. The efforts included replacing highly trained asylum officers with BP agents, who presumably would be "tougher" on asylum seekers; restricting the daily number of people who can request asylum at a border crossing; refusing asylum seekers and sending them

³²⁸ Trump.

³²⁹ Freudenthal, "Reducing Homeland Insecurities," 6–7.

to other countries like Mexico and Guatemala; and barring asylum for anyone who traveled through another country to reach the United States.³³⁰

Instead of taking such circuitous approaches to addressing any perceived criminal or security concerns in the credible fear process, DHS can rely on and bolster the existing tools that ensure the integrity of the credible fear process.³³¹ At present, USCIS conducts security and background checks for each applicant during the affirmative asylum and credible fear process. Biometrics (fingerprints and/or photos) and biographical information are cross checked with the Department of State, FBI, and other law enforcement databases including those maintained by federal agencies like ICE and CBP in addition to state and local law enforcement agencies.³³² In addition to training asylum officers how to use these databases and interviewing skills to detect fraud and criminal issues, USCIS has a division of immigration officers specifically dedicated to such issues. FDNS conducts additional security checks, follows up on leads and inquiries from asylum officers, and liaises between the asylum officers and law enforcement and investigative agencies.³³³ Efforts to ease the sharing of valuable information between FDNS officers, asylum officers, and ICE's Deportation Officers could positively benefit detection of any possible nefarious actors.

In addition, previously recommended improvements such as pre-screening of cases and additional training and calibration for officers across DHS could be more

³³⁰ Julia Ainsley, "Stephen Miller Wants Border Patrol, Not Asylum Officers, to Determine Migrant Asylum Claims," NBC News, last modified July 29, 2019, <https://www.nbcnews.com/politics/immigration/stephen-miller-wants-use-border-agents-screen-migrants-cut-number-n1035831>; Jason Kao and Denise Lu, "How Trump's Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico," *The New York Times*, August 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html>; Nicole Narea, "The Trump Administration Will Start Sending Migrants Back to Guatemala Under a New Rule," Vox, last modified November 19, 2019, <https://www.vox.com/policy-and-politics/2019/11/19/20970868/asylum-rule-agreement-guatemala-el-salvador-honduras-safe-third-deport-dhs-doj>; "DHS and DOJ Issue Third-Country Asylum Rule," Department of Homeland Security, July 15, 2019, <https://www.dhs.gov/news/2019/07/15/dhs-and-doj-issue-third-country-asylum-rule>.

³³¹ Acer and Byrne, "Wasted Government Resources," 358.

³³² H.R., *Asylum Abuse*, 41–42; "Asylum Background and Security Checks FAQ," U.S. Citizenship and Immigration Services, accessed November 27, 2019, <https://www.uscis.gov/faq-page/asylum-background-and-security-checks-faq#t12818n40251>.

³³³ Gambler, *Asylum*, 29–30.

useful than the frequent and chaotic policy changes that the Asylum Division experienced particularly during the Trump administration but also from one administration to the next.³³⁴ Further research will be necessary to compare the costs and benefits of wholesale policy changes with the considered recommendations made by GAO in 2015.

D. CONCLUSION

The first two sections in this chapter show how the understanding of immigration fraud developed in U.S. law and how politicians and experts elevate claims of widespread fraud despite dubious bases. The last section in this chapter built on the previous two and showed how politicians and other officials create policy based on the rhetoric of widespread fraud to blur public understanding of immigration fraud and crime and, in a self-fulfilling prophecy, make asylum seekers into criminals.

This thesis continues with Chapter IV, which employs statistical modeling to assess the relationship between the number of credible fear receipts received each year and a selection of independent variables, with particular focus on El Salvador, Guatemala, Honduras, and Mexico. The goal of the analysis is to provide fact-based recommendations to USCIS leadership for effectively predicting future credible fear receipts to better adapt to the changing demands on its workforce.

³³⁴ Gambler, 75.

IV. EXPLORATION OF EXPLANATIONS OTHER THAN FRAUD

The first three chapters of this thesis contend that explanations for the drastic increase in credible fear receipts have not been based on quantitative analyses. While some researchers and government agencies produce qualitative studies into the surge of credible fear cases, unsupported claims of fraud often dominate the conversation. This chapter follows in the footsteps of the work of Schmeidl, Neumayer, Stanley, and other researchers reviewed in Chapter I. However, instead of looking at a single country (Stanley), or more than 100 (Schmeidl, Neumayer, and others), this chapter focuses on El Salvador, Guatemala, Honduras, and Mexico, and employs several statistical techniques to test the influence of select variables on the number of people who enter the credible fear process from these four countries.

First, the chapter provides an overview of the dependent and independent variables selected for analysis. Next, the chapter presents the results of Pearson correlations for each of the four countries as well as two separate combinations of countries. The purpose of the Pearson correlations is to test the relationship between each independent variable and the dependent variable. Next, the chapter details the results of several multivariate regression analyses, which test how the independent variables interact to affect the dependent variable and provide some utility in predicting future credible fear caseloads. Finally, the chapter discusses the results of the statistical tests.

A. RESEARCH DESIGN

This chapter seeks to test the relationship between the rates of Salvadoran, Guatemalan, Honduran, and Mexican citizens in the credible fear program and twenty-one independent variables. Both the quantitative and qualitative literature reviewed in Chapter I influenced the variable selection for this study, however the availability of data also played a significant role in the ultimate shape of the data models. Table 7 presents descriptive statistics for both the dependent and independent variables in the primary data model.

Table 7. Descriptive Statistics for the Primary Model

| <i>Variable</i> | <i>Observations</i> | <i>Mean</i> | <i>SD</i> | <i>Minimum</i> | <i>Maximum</i> |
|---|---------------------|--------------|--------------|----------------|----------------|
| Human Development Index (HDI) | 92 | 0.65 | 0.07 | 0.53 | 0.78 |
| Corruption Perception Index (CPI) | 87 | 31.19 | 5.38 | 17 | 42 |
| Poverty | 51 | 10.88 | 7.47 | 1.50 | 28.10 |
| Homicide | 86 | 42.59 | 23.42 | 8.12 | 114.39 |
| Serious Assault | 47 | 76.62 | 71.31 | 11.15 | 239.34 |
| Robbery | 26 | 175.25 | 183.88 | 22.12 | 649.77 |
| Kidnapping | 47 | 0.75 | 0.69 | 0.07 | 3.33 |
| Sexual Violence | 43 | 30.84 | 20.45 | 2.16 | 76.96 |
| Burglary | 39 | 105.06 | 123.25 | 4.13 | 602.65 |
| Theft | 47 | 119.24 | 84.69 | 28.82 | 313.86 |
| Car Theft | 47 | 58.66 | 59.06 | 1.06 | 201.56 |
| Border Patrol Staffing | 23 | 15,402.52 | 5,350.62 | 6,895 | 21,444 |
| Apprehensions | 92 | 241,963.77 | 422,406.65 | 7,434 | 1,744,304 |
| Removals | 92 | 66,133.21 | 87,512.46 | 3,460 | 306,902 |
| Returns by Mexican Government | 69 | 39,762.83 | 21,796.69 | 8,820 | 99,315 |
| <i>Presentación</i> before Mexican Government | 57 | 41,853.04 | 23,350.11 | 9,098 | 100,948 |
| Non-Immigrant Admissions | 88 | 2,947,147.01 | 5,975,995.70 | 89,470 | 21,412,174 |
| Inadmissibilities | 60 | 21,563.93 | 31,370.77 | 850 | 92,760 |
| Returns | 44 | 35,614.16 | 92,305.31 | 435 | 465,205 |
| Affirmative Asylum Grants | 92 | 377.78 | 469.38 | 5 | 2,112 |
| Defensive Asylum Grants | 92 | 273.21 | 418.02 | 15 | 2,315 |
| Credible Fear | 92 | 4,271.55 | 7,219.43 | 9 | 32,680 |

1. The Dependent Variable

The dependent variable for the statistical analysis in this chapter is the number of credible fear receipts from citizens of El Salvador, Guatemala, Honduras, and Mexico each year from FY1997–FY2019. This data can be found in Table 1. These four countries were selected for analysis because they are consistently among the top nationalities in the credible fear program. Chapter I shows that the Northern Triangle countries of El Salvador, Guatemala, and Honduras represent an increasing share of the credible fear population and are the primary drivers behind the surge over the last 10 years. In addition, because government agencies and researchers have produced qualitative studies relating to the factors that may cause nationals of the Northern Triangle to flee, including these countries in this quantitative study creates an opportunity to compare results.³³⁵ Mexico was also included due to the similarities it shares with Northern Triangle countries, such as close proximity to and extensive history of immigration to the United States, as well as the differences, such as the level of development and crime rates.

Since 1997, INS and USCIS have not followed a consistent schedule for publishing credible fear data. While USCIS periodically publishes Credible Fear Workload Reports, the lack of regularity and consistency between the types of data provided in each report leads to a gap in publicly available data on the credible fear caseload. The Office of Innovation and Design for Enhanced Adjudication (IDEA) within USCIS provided the dependent variable data shown in Table 1 for the purpose of completing this thesis. Without IDEA’s special provision of credible fear receipt data, the statistical analysis in this thesis would not be possible.

There are some caveats with the dependent variable that could impact the results of the analysis. Because the credible fear process began on April 1, 1997, halfway through the fiscal year, the first year of data for this dependent variable does not reflect a full year of receipts.³³⁶ Each successive year does reflect the receipts for a complete fiscal year, which runs from October 1 through September 30 of the following calendar

³³⁵ Gootnick, *Central America*; Jones, “The Central American Child Migration Surge”; Androff, “Human Rights.”

³³⁶ Stana, *Illegal Aliens*, 4.

year. The last year analyzed in this chapter is FY2019. As discussed in Chapter II, programs such as MPP and Title 42 significantly reduced the number of individuals entering the expedited removal and credible fear programs after FY2019. In addition, the COVID-19 pandemic likely impacted both the dependent and independent variables in complex ways that would render anomalous any models including years after 2019. Finally, the dependent variable may be inherently depressed. A 2005 federal government study into the expedited removal and credible fear programs found “in nearly 15 percent of the cases observed...asylum seekers who expressed a fear of return were removed without referral to a USCIS asylum officer for a credible fear determination.”³³⁷ A subsequent study released in 2016 found that CBP officers continue to improperly screen individuals for fear and in some cases actively pressure individuals to withdraw their requests for asylum.³³⁸ Additionally, a 2014 report shows that CBP refers nationals from El Salvador, Guatemala, Honduras, and Mexico for credible fear interviews at incredibly low rates compared to referral rates for nationals from other countries.³³⁹ The discussion at the end of Chapter IV addresses potential ways future studies can approach the issue of undercounting fear claims by the U.S. government.

2. The Independent Variables

The twenty-one independent variables are organized into four broad categories: conditions in the country of citizenship, U.S. and Mexico government policy and enforcement decisions, other migration types, and U.S. humanitarian immigration benefits. The categories are relatively loose, and some variables may theoretically fit into multiple categories. The purpose of the categories is to ease the discussion and to start

³³⁷ Cassidy and Lynch, *Barriers to Protection*, 19.

³³⁸ Cassidy and Lynch, 20–23.

³³⁹ Clara Long, “*You Don’t Have Rights Here*”: *U.S. Border Screening and Returns of Central Americans to Risk of Serious Harm* (New York, NY: Human Rights Watch, 2014), <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>. According to Freedom of Information Act data analyzed in this report, Salvadorans in expedited removal are referred for credible fear interviews at a rate of 5.5 percent, Guatemalans at a rate of 0.8 percent, Hondurans at a rate of 1.9 percent, and Mexicans at a rate of 0.1 percent. In comparison, nationals from all other countries are, on average, referred at a rate of 21 percent.

building an organized framework that can be used in the future to explore other factors that impact the decisions to flee one's country and travel to the United States.

a. Country Conditions

The United Nations Development Programme created the Human Development Index (HDI) to capture the average health, knowledge, and standard of living of citizens within a country.³⁴⁰ HDI combines measures of life expectancy at birth, expected and mean years of education, and Gross National Income (GNI) per capita, but does not capture inequality or poverty. HDI is a valuable baseline measure to assess how development within a country relates to the number of credible fear applicants from that country. As shown in Table 7, there are ninety-two observations, meaning HDI data is available for every country in this study covering each year from 1997–2019.

Transparency International created the Corruption Perceptions Index (CPI) in 1995 to document the perceived level of corruption in a country each year.³⁴¹ CPI is currently constructed from thirteen different data sources, including the World Bank and Freedom House, and reflects how businesspeople and experts view the public sector in a country. While this variable does not provide data on individual incidents of corruption or how the average citizen views the country's leadership, it is valuable because it captures the atmosphere of corruption and lack of trust in public institutions that may contribute to an individual's decision to flee their country. Like HDI, CPI data is available for every country in this study covering nearly every year from 1997–2019.

Beginning in 1990, the World Bank has produced statistics on the level of poverty in countries across the world. The poverty indicator selected for this study is the percentage of the country's population below the international poverty line of \$1.90 per day.³⁴² The World Bank set the \$1.90 poverty line in 2015 using the 2011 purchasing power parity (PPP), which is "the number of units of a country's currency required to buy

³⁴⁰ "Human Development Index," United Nations Development Programme, accessed November 27, 2022, <https://hdr.undp.org/data-center/human-development-index>.

³⁴¹ "Corruption Perceptions Index," Transparency International, accessed November 27, 2022, <https://www.transparency.org/en/cpi/2021>.

³⁴² "Poverty," World Bank, accessed November 27, 2022, <https://data.worldbank.org/topic/11>.

the same amount of goods and services in the domestic market as a U.S. dollar would buy in the United States.”³⁴³ Because of the method the World Bank used to derive this variable, it is possible to use this poverty line to make comparisons across all the countries in this study. However, the World Bank does not publish data for each year in this study, and as a result there are only fifty-one observations. The observations are not spread evenly among the four countries: there are nineteen observations for El Salvador, three for Guatemala, eighteen for Honduras, and eleven for Mexico. The ramifications of this unideal data set are discussed in greater detail in later sections.

The remaining eight independent variables within the country conditions category, homicide, serious assault, robbery, kidnapping, sexual violence, burglary, theft, and car theft, are collated by the UNODC.³⁴⁴ Each of the variables reflects the offense rate per 100,000 population in the respective country. Table 7 shows that the homicide variable is nearly complete for each county and year, with eighty-six observations. However, the other seven variables are less complete, and the maximum extent of these variables is between 2004 and 2018. This data set is inconsistent between countries; for example, the variables of serious assault, robbery, kidnapping, sexual violence, and burglary in Honduras only span the years 2011–2017. UNODC reports that the completeness of its data sets on crime is determined by the ability and motivation of each UN member state to cooperate.³⁴⁵ Law enforcement agencies within a country may fail to collect or report crime statistics due to a lack of internal capacity and disorganization

³⁴³ “SDG Indicator Metadata,” United Nations Department of Economic and Social Affairs, September 30, 2022, <https://unstats.un.org/sdgs/metadata/files/Metadata-01-01-01a.pdf>; “The Global Health Observatory: Explore a World of Health Data,” World Health Organization, accessed November 27, 2022, <https://www.who.int/data/gho/indicator-metadata-registry/imr-details/115>. Note that in September 2022, the World Bank updated the international poverty line to \$2.15 using the 2015 PPP. Because this change was made after the analysis for this thesis was complete, the poverty variable used for this is the international poverty line of \$1.90 using the 2011 PPP.

³⁴⁴ “DataUNODC,” United Nations Office on Drugs and Crime, accessed November 27, 2022, <https://dataunodc.un.org/>.

³⁴⁵ Stefan Schweinfest, Sarah Cook, and Daniel Brombacher, *Professional Peer Review of the UNODC Research Function* (Vienna, Austria: United Nations Office on Drugs and Crime, 2018), 32–33, https://www.unodc.org/documents/data-and-analysis/PPR_Report.pdf.

or because victims do not trust the state to protect them after they report a crime.³⁴⁶ Therefore, the differing reporting capacities and conditions within the countries analyzed result in a variability of each country's data set.

b. Policy Decisions

Of the four categories used to organize the independent variables, the categories of policy decisions and other migration types contain the most similarities. Seven of the variables in these two categories document immigration encounters between individuals from the four countries in this study and U.S. or Mexican government officials. The variables included in the policy decision category are those that are most easily influenced by decisions made by U.S. or Mexico policymakers.

The recent history of BP agent staffing, discussed in depth in Chapter II, showed that an increase in BP staffing coincided with a decline in apprehensions over the last two decades. While there is no conclusive explanation for the relationship between these two variables, both are included in this study to determine if they have an influence on the number of credible fear receipts received each year. For example, even though apprehensions are generally down from historical highs, an increased number of BP agents could mean staff have more time to accurately screen migrants into the credible fear process, thereby increasing the number of individuals in credible fear.³⁴⁷ DHS publishes BP agent staffing data, and each year from 1997–2019 is included in this study.³⁴⁸ DHS also publishes the number of apprehensions, broken down by each country of citizenship, by BP and ICE each year from 1997–2019.³⁴⁹ The apprehensions variable is important to include in this study because it is likely responsive both to policy

³⁴⁶ United Nations Office on Drugs and Crime, *Thematic Programme on Research, Trend Analysis and Forensics: 2015–2016* (Vienna, Austria: United Nations, 2015), 19, https://www.unodc.org/documents/data-and-analysis/Thematic_Programme.pdf.

³⁴⁷ Cassidy and Lynch, *Barriers to Protection*, 20. See footnote twenty-five, in which a CBP agent admits that he skips required steps in the screening process because they take too long.

³⁴⁸ U.S. Border Patrol, “Border Patrol Agent Nationwide Staffing by Fiscal Year.”

³⁴⁹ Department of Homeland Security, “Yearbook of Immigration Statistics.” Note that the apprehension data used for this analysis differs slightly from the apprehension data referenced in Table 2 and visualized in Figure 4. The apprehension data used for this analysis includes both arrests made by ICE and BP, whereas the apprehensions referenced in Figure 4 included just the arrests made by BP.

decisions and to the actual number of individuals fleeing from a particular country. In other words, the amount and placement of BP and ICE agents, as well as guidance given to them, could impact how many people are apprehended. In addition, an increase in apprehensions from a particular country could indicate an overall increase in individuals fleeing from that country. The statistical tests will help determine whether surges in credible fear receipts can be explained by changes in the way the U.S. government patrols its southern border.

The removals variable refers to individuals removed from the United States by ICE or CBP.³⁵⁰ Included in this variable are individuals who were in the expedited removal process after being apprehended near the border as well as those who were arrested by ICE in the interior of the country following criminal conviction, among others.³⁵¹ Including this variable in the present analysis helps assess the relationship between the explicitly border-related credible fear process and policymaking relating to other types of immigration enforcement in the United States.

Throughout the 20th and 21st centuries, the United States has treated Mexico like a buffer preventing the successful migration of Central American asylum seekers into the United States.³⁵² In the 1980s, while the United States was spending billions of dollars propping up right-wing dictatorships in the Northern Triangle and denying the vast majority of asylum requests from victims of these regimes, the Mexican government worked to contain the flow of migrants from the Northern Triangle with campaigns of “mass deportation and forced relocation within Mexico.”³⁵³ Following the end of the civil wars in the Northern Triangle in the mid-1990s, the United States increased pressure on Mexico to prevent citizens of the Northern Triangle from reaching the United States.³⁵⁴ The U.S. government’s ever-growing political pressure and financial support

³⁵⁰ Department of Homeland Security.

³⁵¹ Alan Moskowitz and James Lee, *Immigration Enforcement Actions: 2020* (Washington, DC: Department of Homeland Security, 2022), 12, https://www.dhs.gov/sites/default/files/2022-02/22_0131_ply_immigration_enforcement_actions_fy2020.pdf.

³⁵² FitzGerald, *Refuge Beyond Reach*, 123.

³⁵³ FitzGerald, 125–26, 133.

³⁵⁴ FitzGerald, 136.

for Mexican immigration enforcement led DHS Assistant Secretary Alan Bersin to state in 2012, “The Guatemalan border with Chiapas is now our southern border.”³⁵⁵ Immigration enforcement collaboration became less popular in Mexico during the presidency of Donald Trump, due to Trump’s racist comments about Mexicans and Mexican-Americans.³⁵⁶ The complex relationship between the United States and Mexico makes immigration enforcement in Mexico an important factor to include in this study of credible fear. The returns by the Mexican government variable captures the sum of deportations, assisted returns, and assisted returns of minors carried out each year by Instituto Nacional de Migración (the National Institute of Migration, or INM).³⁵⁷ This variable is available for each year from 1997–2019 for El Salvador, Guatemala, and Honduras and may be able to shed light on the relationship between efforts in Mexico to control migration and the number of individuals from the Northern Triangle who seek asylum in the United States.

c. Other Migration Types

Similar to the policy decisions category, the other migration types category includes variables that document encounters between government officials and migrants. However, the variables in the other migration types category generally reflect individuals’ decisions of when to travel instead of the U.S. or Mexico government’s enforcement decisions at their borders. *Presentación* before the Mexican government is a variable relating to migration flows within Mexico.³⁵⁸ Mexico’s Migration Law does not use the terms apprehension or detention, and instead uses the term *presentación* when referring to the process in which non-Mexicans who cannot prove their legal status are

³⁵⁵ Steve Taylor, “Our Southern Border Is Now with Guatemala,” *Latina Lista*, last modified September 20, 2012, <http://latinalista.com/general/historic-partnership-agreements-signed>.

³⁵⁶ Fitzgerald, *Refuge Beyond Reach*, 141.

³⁵⁷ “Boletines Estadísticos,” Unidad de Política Migratoria, Registro e Identidad de Personas, accessed November 27, 2022, <http://www.politicamigratoria.gob.mx/es/PoliticaMigratoria/CuadrosBOLETIN>.

³⁵⁸ Unidad de Política Migratoria, Registro e Identidad de Personas, “Boletines Estadísticos.”

brought before the INM at a detention center.³⁵⁹ This administrative process shares some similarities with the process of apprehension in the United States.³⁶⁰ The purpose of including this variable is to capture the fluctuation in the number of Northern Triangle migrants who depart their countries and are encountered by Mexican immigration authorities regardless of whether they ultimately reach the United States. Data for this variable is available for citizens of El Salvador, Guatemala, and Honduras for each year between 2001 and 2019.

The non-immigrant admissions variable reflects the individuals who are admitted into the United States for specific periods of time.³⁶¹ Examples include tourists, businesspeople, students, and other types of temporary visitors. This variable is included for a couple reasons. First, much of the literature on refugee flows draws connections, both qualitative and quantitative, between coerced migration and legal migration, such as that for work and family reunification.³⁶² Second, Chapter III discusses how people who overstay their visas vastly outnumber the amount who cross the border without prior authorization.³⁶³ Including the non-immigrant admission variable allows this study to examine the relationship, if any, between the number of people who enter the United States with prior authorization and the number who flee to the United States requesting asylum. Data for this variable is available for each country and for every year except 1997.

³⁵⁹ Ana Paulina Ornelas Cruz and María Jesús Mora, *Institutional and Legal Migratory Framework of the United Mexican States: A Working Paper* (Washington, DC: Migration Policy Institute, 2021), 15, <https://www.migrationpolicy.org/sites/default/files/publications/mpi-institutional-legal-framework-mexico.pdf>.

³⁶⁰ Ornelas Cruz and Mora, *Institutional and Legal Migratory Framework*, 15.

³⁶¹ Department of Homeland Security, “Yearbook of Immigration Statistics.”

³⁶² Suro, *Watching America’s Door*, 56–57, 62; Ninna Nyberg Sørensen, “Central American Migration, Remittances and Transnational Development,” in *Handbook of Central American Governance*, ed. Diego Sánchez-Ancochea and Salvador Martí i Puig (New York, NY: Routledge, 2013), 45; Moore and Shellman, “Whither Will They Go?,” 818; Neumayer, “Bogus Refugees?,” 392.

³⁶³ Warren, “US Undocumented Population,” 19.

The inadmissibilities variable refers to individuals who present themselves at an official port of entry and are found inadmissible by CBP officers.³⁶⁴ People deemed inadmissible include, among others, individuals who hold valid visas but are denied admission when they request admission at an airport or land port of entry as well as individuals who approach a land port of entry with the explicit purpose to request asylum in the United States.³⁶⁵ This variable is valuable because, when considered in conjunction with the apprehensions variable, it may be possible to learn more about how asylum seekers decide to make their entry into the United States. The inadmissibilities variable is available for each country for the years from 2005 to 2019.

The returns variable is defined by DHS as “the confirmed movement of an inadmissible or deportable noncitizen out of the United States not based on an order of removal.”³⁶⁶ As a matter of discretion, an immigration officer or an IJ may give someone who was apprehended or found inadmissible the option to “voluntarily return to their home country in lieu of immigration removal proceedings.”³⁶⁷ The process is conceptually similar to a deportation, in that the person leaves the United States, but without the negative immigration ramifications that come with a deportation. This variable is available for each country from the years 2009–2019.

d. Humanitarian Benefits

The final category of variables captures grants of asylum from USCIS and EOIR. The data reflect the number of individuals (i.e., principal applicants plus any dependents) granted asylum affirmatively and defensively and is published by DHS for every country and year in this study.³⁶⁸ Although the individuals who are granted asylum in any given year may have filed years before, the decisions to grant are made in light of the country conditions and the policies and precedent in effect at the time of the grant. As Chapter III

³⁶⁴ Department of Homeland Security, “Yearbook of Immigration Statistics”; Moskowitz and Lee, *Immigration Enforcement Actions: 2020*.

³⁶⁵ Moskowitz and Lee, *Immigration Enforcement Actions: 2020*.

³⁶⁶ Department of Homeland Security, “Yearbook of Immigration Statistics.”

³⁶⁷ Moskowitz and Lee, *Immigration Enforcement Actions: 2020*, 2.

³⁶⁸ Department of Homeland Security, “Yearbook of Immigration Statistics.”

discusses, affirmative and defensive asylum have a higher standard of proof and a more robust vetting process compared to credible fear. Therefore, assessing the relationship between credible fear receipts and the asylum grant variables in the present study may lead to a better understanding of the fluctuation of credible fear receipts each year.

3. Secondary Data Model

The literature reviewed in Chapter I includes several quantitative studies in which the authors discuss the complex ways people respond to changing conditions or information. In particular, Jones, Stanley, and Davenport et al. each explore how the passage of time impacts one's decision to flee their country. In seeking explanations for the recent surge in child migration from Central America, Jones explores threshold theory, the possibility that once a tipping point of violence or other factors is reached, "a disproportionate increase in migration" follows.³⁶⁹ While the literature review in Chapter I highlights many of the significant flaws in Jones' study, he does provide a compelling description of how threshold theory may operate in Central America:

The first violence threshold is reached when civil unrest turns to violence, and normal circulation and migration behavior within a country is curtailed owing to the possibility of encountering such violence. Staying in one's home and neighborhood is safer than traveling, and this tendency continues as violence increases, exacerbated by the general breakdown of authority that often accompanies it. The tendency to stay put continues until violence has penetrated the neighborhood such that the second violence threshold is reached. At this point the risks in moving to a new destination or sending a child to such a destination are perceived to be less than those in staying at home, and migration takes place.³⁷⁰

In Jones' explanation, individuals do not tend to flee the moment violence occurs in their country or area. Instead, they make decisions to flee once a particular threshold of risk is reached. Stanley similarly argues that individuals undergo an accumulation of risk, and at a certain point can tolerate the risk no longer at which point they flee. Stanley uses this framing to explain that sometimes significant amounts of time may pass "between an incidence of violence and the arrival at the U.S. border of a person fleeing that

³⁶⁹ Jones, "The Central American Child Migration Surge," 335.

³⁷⁰ Jones, 342–43.

violence.”³⁷¹ Davenport et al. describe how people who decide to flee often make the decision after gathering information from others who made a successful journey.³⁷² A truly robust quantitative analysis thus must reflect how people respond to violence and other changes in conditions and information over time, rather than simply comparing data points for discrete years.

This thesis employs a secondary model to capture how the dependent variable of credible fear receipts may have a lagged response to the independent variables described in this chapter. In the secondary model, the dependent variable does not change, but the independent variables are updated to reflect two-year rolling averages (i.e., the average of year n and year $n-1$). The two-year rolling average was selected for several reasons: to capture how the variables for both the previous year and the present year may impact the number of people who enter the credible fear process in the present year, to smooth out any single-year spikes in data points present in the independent variables, and to avoid losing too many data points (the process of taking the two-year average forces the model to, at a minimum, dispose of the first year’s data point for each country). In addition to taking the two-year averages of each independent variable, the secondary model introduces an additional independent variable called previous year credible fear. This independent variable is simply the credible fear receipts from year $n-1$. Introduction of this variable attempts to address Davenport et al.’s theory that individuals learn from others who have made successful journeys before making their own journey.³⁷³ Table 8 shows the descriptive statistics for the secondary model.

³⁷¹ Stanley, “Economic Migrants or Refugees from Violence?,” 142.

³⁷² Davenport, Moore, and Poe, “Sometimes You Just Have to Leave,” 42–43.

³⁷³ Davenport, Moore, and Poe, 42–43.

Table 8. Descriptive Statistics for the Secondary Model

| <i>Variable</i> | <i>Observations</i> | <i>Mean</i> | <i>SD</i> | <i>Minimum</i> | <i>Maximum</i> |
|---|---------------------|--------------|--------------|----------------|----------------|
| Human Development Index (HDI) | 88 | 0.65 | 0.07 | 0.53 | 0.78 |
| Corruption Perception Index (CPI) | 81 | 31.45 | 5.12 | 17.50 | 42 |
| Poverty | 37 | 12.44 | 7.68 | 1.70 | 27.65 |
| Homicide | 82 | 42.55 | 22.59 | 8.92 | 105.35 |
| Serious Assault | 43 | 77.45 | 70.40 | 12.85 | 233.80 |
| Robbery | 22 | 174.53 | 172.44 | 22.47 | 648.37 |
| Kidnapping | 43 | 0.77 | 0.63 | 0.10 | 3.08 |
| Sexual Violence | 39 | 30.42 | 19.21 | 2.24 | 71.40 |
| Burglary | 35 | 104.94 | 113.22 | 6.63 | 472.64 |
| Theft | 43 | 117.70 | 79.73 | 29.54 | 299.73 |
| Car Theft | 43 | 59.82 | 59.44 | 1.32 | 200.36 |
| Border Patrol Staffing | 22 | 15,499.39 | 5,245.50 | 7,438.50 | 21,419 |
| Apprehensions | 88 | 239,260.61 | 418,566.38 | 7,591 | 1,689,179.50 |
| Removals | 88 | 66,725.21 | 88,003.50 | 3,997 | 303,699 |
| Returns by Mexican Government | 66 | 39,869.30 | 20,739.28 | 9,661 | 96,491 |
| <i>Presentación</i> before Mexican Government | 54 | 41,448.83 | 22,472.91 | 9,835.50 | 97,676 |
| Non-Immigrant Admissions | 84 | 2,932,136.29 | 5,906,472.40 | 90,144 | 21,297,43 |
| Inadmissibilities | 56 | 21,367.39 | 30,930.52 | 851.50 | 91,484.50 |
| Returns | 40 | 32,619.40 | 81,558.52 | 453 | 408,770.50 |
| Affirmative Asylum Grants | 88 | 372.90 | 442.99 | 7 | 1,758 |
| Defensive Asylum Grants | 88 | 249.60 | 367.34 | 18.50 | 2,043 |
| Previous Year Credible Fear | 88 | 3,804.34 | 6,838.37 | 9 | 32,680 |

Note that the dependent variable of credible fear is not shown in Table 8, as the dependent variable is the same for the primary and secondary models and is already listed in Table 7. Immediately apparent in Table 8 is the reduction of observations for each variable. The variables with more complete data sets only suffer a loss of one data point per country, exemplified by the observations for apprehensions going from ninety-two in Table 7 to eighty-eight in Table 8. However, variables that are already lacking observations in the primary model shown in Table 7 are significantly impacted in Table 8. The variable of poverty is a good example, as it loses fourteen observations from Table 7 to Table 8. The implication of these and other data limitations are discussed later in this chapter and in Chapter V.

B. RESULTS OF THE PEARSON CORRELATIONS

The statistical analysis portion of this thesis begins with the Pearson Correlation Coefficient (PCC). The purpose of this test is to determine the presence and strength of a linear correlation between two sets of variables. PCC produces *r*-values between -1 and 1. *R*-values close to -1 indicate a negative correlation and *r*-values close to 1 indicate a positive correlation. *R*-values closer to 0 indicate a weak linear relationship. PCC also produces a *p*-value for each *r*-value. Low *p*-values indicate that the null hypothesis, that the variable pairs are not correlated, should be rejected in favor of the alternative hypothesis, that the variable pairs are correlated. PCC does not distinguish between dependent and independent variables, nor does it indicate cause and effect. Instead, PCC simply demonstrates whether the pairs of variables are correlated with each other.

The results of six sets of PCCs are shown and explained in this section. The first four sets are for individual countries, the fifth set combines the variables for the three Northern Triangle countries, and the sixth set combines the variables for all four countries in this study. When analyzing which factors were correlated with migration from the Northern Triangle, Jones found that his results differed meaningfully when analyzing the Northern Triangle as a single set and when analyzing Honduras

individually.³⁷⁴ Employing a similar strategy in this thesis allows for a nuanced analysis and discussion of how each country and region differ with respect to why citizens from each country may flee to seek protection in the United States.

1. El Salvador

Table 9 shows the strength or weakness of the relationship between the bivariate data for El Salvador. The primary column reflects the results of the PCC for the primary data model introduced in Table 7. The secondary column reflects the results of the PCC for the secondary data model introduced in Table 8. In other words, the primary column pairs the credible fear variable for year n with the listed variable for year n , while the secondary column pairs the credible fear variable for year n with the listed variable for year $(n+n-1)/2$.

Within the country conditions category of variables, HDI, poverty, robbery, and theft have the strongest, statistically significant linear relationships with credible fear receipts for both the primary and secondary models. The relationship between HDI and credible fear receipts is positive, such that these two variables increase together. Poverty, robbery, and theft each share a negative relationship with credible fear receipts, such that credible fear receipts tend to decrease when one of these variables increases, and vice versa. While most of the statistically significant results in the PCC for El Salvador remain consistent between the primary and secondary model, the robbery variable stands out. For the primary model, robbery and credible fear receipts have the strongest correlation. However, in the secondary model, both the statistical significance and the strength of this relationship decreases.

³⁷⁴ Jones, “The Central American Child Migration Surge,” 335. Jones found that when looking at the Northern Triangle as a whole, pull factors like a favorable immigration policy was the most important factor explaining migration from the region. When looking at just Honduras, Jones found that push factors such as homicides and unemployment were more important factors.

Table 9. PCC for Credible Fear and Other Variables—El Salvador

| <i>Variable</i> | <i>Primary</i> | <i>Secondary</i> |
|---|----------------|------------------|
| Human Development Index (HDI) | .61** | .62** |
| Corruption Perception Index (CPI) | -.29 | -.25 |
| Poverty | -.67** | -.69** |
| Homicide | .10 | .24 |
| Serious Assault | -.30 | .05 |
| Robbery | -.94** | -.78* |
| Kidnapping | .25 | .23 |
| Sexual Violence | .25 | .67 |
| Burglary | -.22 | .03 |
| Theft | -.74** | -.74* |
| Car Theft | .25 | .08 |
| Border Patrol Staffing | .59** | .62** |
| Apprehensions | .80** | .84** |
| Removals | .58** | .61** |
| Returns by Mexican Government | -.02 | -.02 |
| <i>Presentación</i> before Mexican Government | .05 | .10 |
| Non-Immigrant Admissions | .23 | .08 |
| Inadmissibilities | .90** | .76** |
| Returns | -.73* | -.82** |
| Affirmative Asylum Grants | .72** | .76** |
| Defensive Asylum Grants | .57** | .51* |
| Previous Year Credible Fear | - | .80** |

Note: * $p < .05$; ** $p < .01$.

Nearly every variable pair in the policy decisions category is statistically significant and has a positive r -value. The r -value increases from the primary to the secondary model for Border Patrol staffing, apprehensions, and removals, with apprehensions having the strongest relationship with credible fear receipts in this category. The returns by Mexican government and credible fear receipts variables have low r -values and statistical insignificant p -values, indicating that there is no linear relationship between these two variables.

In the other migration types category, inadmissibilities and returns have strong, statistically significant relationships with credible fear receipts. The strength of the relationship between inadmissibilities and credible fear receipts decreases from the primary to the secondary model, while the opposite is true for returns. However, inadmissibilities is positively correlated with credible fear receipts while the returns variable is negatively correlated. The strong, positive correlation between inadmissibilities and credible fear receipts could indicate that Salvadoran individuals are more likely to request protection at official ports of entry. The strong, negative correlation between returns and credible fear receipts indicates that as credible fear receipts from El Salvador increase, voluntary returns of Salvadorans decrease. Explaining the reasons for the correlation between returns and credible fear receipts is complicated by the fact that voluntary returns are regulated not only by the number of people who are considered for removal but also by how often immigration officials and IJs offer voluntary return instead of other types of removal. However, the strong, negative correlation between returns and credible fear receipts for Salvadorans suggests that the Salvadorans who enter the credible fear process and those who are voluntarily returned are similarly situated.

The relationship between asylum grants and credible fear receipts is statistically significant and positive in both models. However, the relationship strengthens from the primary to the secondary model for affirmative asylum grants, while the relationship weakens slightly for defensive asylum grants. In the secondary model, there is a strong, positive correlation between the previous year's credible fear receipts and the current year's credible fear receipts.

2. Guatemala

Table 10 shows the strength or weakness of the relationship between the bivariate data for Guatemala. Note that the poverty variable was removed from the secondary model due to the low number of observations.

Table 10. PCC for Credible Fear and Other Variables—Guatemala

| <i>Variable</i> | <i>Primary</i> | <i>Secondary</i> |
|---|----------------|------------------|
| Human Development Index (HDI) | .78** | .80** |
| Corruption Perception Index (CPI) | -.11 | -.03 |
| Poverty | -.60 | - |
| Homicide | -.51* | -.47* |
| Serious Assault | -.88** | -.90** |
| Robbery | .99 | 1.00 |
| Kidnapping | .88** | .91** |
| Sexual Violence | .83** | .85** |
| Burglary | .67* | .76** |
| Theft | .85** | .88** |
| Car Theft | -.45 | -.41 |
| Border Patrol Staffing | .51* | .54* |
| Apprehensions | .74** | .78** |
| Removals | .66** | .64** |
| Returns by Mexican Government | -.16 | -.17 |
| <i>Presentación</i> before Mexican Government | -.23 | -.22 |
| Non-Immigrant Admissions | .92** | .92** |
| Inadmissibilities | .97** | .97** |
| Returns | -.15 | -.39 |
| Affirmative Asylum Grants | .79** | .92** |
| Defensive Asylum Grants | .85** | .86** |
| Previous Year Credible Fear | - | .87** |

Note: * $p < .05$; ** $p < .01$.

Within the country conditions category of variables for Guatemala, HDI, serious assault, kidnapping, sexual violence, and theft each have a strong, highly significant correlation with credible fear receipts that increases in strength from the primary to the secondary model. Of these five variables, only serious assault is negatively correlated with credible fear receipts. The r -value for the burglary and credible fear receipts variables increases from the primary to the secondary models and the p -value decreases. While the correlation between the homicide and credible fear receipts

variables is statistically significant in both models, the negative correlation is not strong and weakens with the secondary model.

For the policy decisions category, the correlations between credible fear receipts and apprehensions and removals are strong, positive, and statistically significant, similar to the same correlations for El Salvador. The Border Patrol staffing and credible fear variables have a slightly weaker correlation for Guatemala compared to El Salvador. Like the results for El Salvador, there is essentially no correlation between the returns by the Mexican government and credible fear variables for Guatemala. This could mean that actions by Mexican immigration do not have a meaningful impact on the number of Guatemalans who ultimately enter the credible fear process in the United States or that the returns by Mexican government variable is not a good measure of the Mexican government's impact on migration flows from Guatemala to the United States.

In the other migration types category, the non-immigrant admissions and inadmissibilities variables are each highly correlated with credible fear receipts. For both the primary and secondary models, these two variables have nearly perfect, positive correlations with credible fear receipts. The variables of *presentación* and returns each have no correlation with credible fear receipts for Guatemala. The lack of correlation between credible fear receipts and *presentación* and returns indicates that there is no relationship between the population of Guatemalans who seek protection in the United States and the Guatemalans who are apprehended by INM in Mexico or voluntarily returned by the United States. On the contrary, the strong, positive correlations between credible fear receipts and inadmissibilities and non-immigrant admissions indicates that Guatemalans are more likely to present themselves at official ports of entry in order to make requests for protection in the United States and that Guatemalans entering the United States on visas are similarly situated to the Guatemalans who seek protection.

The positive correlation between each of the asylum grants variables and credible fear receipts is even stronger for Guatemala compared to El Salvador. While the correlation between both affirmative and defensive asylum grants and credible fear receipts strengthens from the primary to the secondary models, the increase is much more significant for affirmative asylum grants. In the secondary model, the previous year's

credible fear receipts variable is similarly highly correlated with the current year's credible fear receipts.

3. Honduras

Table 11 shows the strength or weakness of the relationships between the bivariate data for Honduras.

Table 11. PCC for Credible Fear and Other Variables—Honduras

| <i>Variable</i> | <i>Primary</i> | <i>Secondary</i> |
|---|----------------|------------------|
| Human Development Index (HDI) | .71** | .72** |
| Corruption Perception Index (CPI) | .50* | .63** |
| Poverty | -.39 | -.40 |
| Homicide | -.22 | -.15 |
| Serious Assault | -.58 | -.70 |
| Robbery | -.56 | -.70 |
| Kidnapping | -.62 | -.86* |
| Sexual Violence | -.80* | -.89* |
| Burglary | -.75 | -.78 |
| Theft | -.72* | -.78* |
| Car Theft | -.75* | -.78* |
| Border Patrol Staffing | .51* | .54* |
| Apprehensions | .76** | .79** |
| Removals | .50* | .45* |
| Returns by Mexican Government | .32 | .24 |
| <i>Presentación</i> before Mexican Government | .31 | .21 |
| Non-Immigrant Admissions | .94** | .94** |
| Inadmissibilities | .96** | .97** |
| Returns | .18 | -.03 |
| Affirmative Asylum Grants | .78** | .91** |
| Defensive Asylum Grants | .96** | .95** |
| Previous Year Credible Fear | - | .92** |

Note: * $p < .05$; ** $p < .01$.

Within the country conditions category, HDI is the only variable that has both high r - and highly significant p -values for both the primary and secondary models. The correlation between CPI and credible fear receipts increases in both statistical significance and strength from the primary to the secondary models. The correlations between credible fear receipts and sexual violence, theft, and car theft are each strong, increase in strength from the primary to the secondary models, and have p -values less than .05 in both models. The kidnapping variable is statistically significant and highly correlated in the secondary model only. This means that credible fear receipts from Honduras tend to decrease when the average kidnapping rate from the previous two years increases. High kidnapping rates could therefore prevent Hondurans from migrating to the United States, rather than encouraging them to flee.

In the policy decisions category, the r - and p -values between Border Patrol staffing and credible fear receipts for Honduras are identical to those for Guatemala. The correlation between apprehensions and credible fear receipts for Honduras are also similarly strong compared to the results for Guatemala. While still statistically significant, the correlation between removals and credible fear receipts for Honduras is relatively weak. Like both El Salvador and Guatemala, there is no correlation between either of the Mexican government immigration variables and Honduras's credible fear receipts.

The results for Honduras's variables that fall in the other migration types category are very similar to the same category for Guatemala. The variables of non-immigrant admissions and inadmissibilities are both significant and highly correlated with credible fear receipts for Honduras. Also, the returns variable is not correlated with Honduras's credible fear receipts. As explained above, these results suggest that the Hondurans are more likely to enter the credible fear process after presenting themselves at an official port of entry and are similarly situated with the Hondurans who enter the United States with visas. Further, the lack of correlation between credible fear receipts and *presentación* and returns indicates that there is no relationship between the population of Hondurans who seek protection in the United States and the Hondurans who are apprehended by INM or are voluntarily returned by the United States.

The similarities between Guatemala and Honduras continue with the humanitarian benefits category. Both affirmative and defensive asylum grants are highly correlated with credible fear receipts for Honduras, and the strength of the correlation for affirmative asylum grants increases with the secondary model. In the secondary model, the correlation between Honduras's previous and current year's credible fear receipts is the strongest of all four countries in this study. This is convincing evidence that Hondurans who enter the credible fear process are similarly situated with Hondurans who are granted asylum in the United States. The trend of strong, positive correlations between credible fear receipts and the variables in the humanitarian benefits category is explored in depth in the discussion section below.

4. Mexico

Table 12 shows the strength or weakness of the relationship between the bivariate data for Mexico. Note that the table for Mexico does not contain the returns by Mexican government and *presentación* variables.

Mexico differs from the other countries in this study in that the majority of variables in the country conditions category are highly correlated with the credible fear receipts variable and have highly significant *p*-values across both primary and secondary models. The strength of the correlations between credible fear receipts and HDI, CPI, homicide, serious assault, robbery, burglary, theft, and car theft either stay the same or increase from the primary to the secondary models. HDI, homicide, and theft are positively correlated with credible fear receipts, while CPI, serious assault, robbery, burglary, and car theft are negatively correlated with credible fear receipts. While poverty has a significant, negative correlation with credible fear in the primary model, the correlation is not statistically significant in the secondary model. The lack of statistical significance for the correlation between credible fear receipts and poverty in the secondary model is likely due to the drastic reduction in the number of observations. While there are eleven observations for the poverty variable in Mexico's primary model, the process of taking two-year averages results in only two observations for poverty in the secondary model.

Table 12. PCC for Credible Fear and Other Variables—Mexico

| <i>Variable</i> | <i>Primary</i> | <i>Secondary</i> |
|-----------------------------------|----------------|------------------|
| Human Development Index (HDI) | .72** | .73** |
| Corruption Perception Index (CPI) | -.53** | -.58** |
| Poverty | -.65* | -1.00 |
| Homicide | .63** | .63** |
| Serious Assault | -.89** | -.95** |
| Robbery | -.85** | -.93** |
| Kidnapping | .36 | .45 |
| Sexual Violence | .09 | .16 |
| Burglary | -.89** | -.91** |
| Theft | .84** | .93** |
| Car Theft | -.74** | -.79** |
| Border Patrol Staffing | .62** | .65** |
| Apprehensions | -.77** | -.78** |
| Removals | .33 | .38 |
| Non-Immigrant Admissions | .87** | .89** |
| Inadmissibilities | -.31 | -.45 |
| Returns | -.80** | -.82** |
| Affirmative Asylum Grants | .90** | .92** |
| Defensive Asylum Grants | .77** | .74** |
| Previous Year Credible Fear | - | .91** |

Note: * $p < .05$; ** $p < .01$.

In the policy decisions category, Mexico has the strongest correlation between Border Patrol staffing and credible fear receipts compared to the results for each other individual country. Unlike the other countries, Mexico has a strong, significant, and negative correlation between apprehensions and credible fear receipts. Compared to the other countries in this study, Mexico is an outlier with regard to the number of Mexican citizens apprehended in the United States each year. From 1997 to 2019, DHS agents apprehended more than six times as many Mexican citizens as citizens of El Salvador, Guatemala, and Honduras combined.³⁷⁵ Also, apprehensions of Mexican citizens have been on a steep downward trend, from a high of 1,744,304 in 2000 to a drop below

³⁷⁵ Department of Homeland Security, “Yearbook of Immigration Statistics.”

300,000 each year from 2015 onward.³⁷⁶ The Northern Triangle countries have experienced the opposite trend, and the apprehensions of Guatemalans and Hondurans even outpaced the apprehension of Mexicans for the first time in 2019.³⁷⁷ Taken together, the positive correlation between BP staffing and credible fear receipts and the negative correlation between apprehensions and credible fear receipts for Mexican citizens provide the best evidence that credible fear receipts increase as BP agents theoretically have more time to effectively screen individuals for fear. Another explanation for the negative correlation between credible fear receipts and apprehensions is that the recessions at the beginning of the 21st century led to fewer Mexican citizens coming to the United States in search of work, and therefore reduced the number of Mexican citizens being apprehended each year.³⁷⁸ The increase of credible fear applicants from Mexico at the same time that overall apprehensions of Mexican citizens was drastically decreasing, could therefore indicate that credible fear applicants from Mexico are fleeing to seek protection rather than merely fleeing due to economic pressures in Mexico. Finally, there is no correlation between removals and credible fear receipts for Mexico, suggesting Mexicans who are voluntarily removed are not similarly situated with Mexicans who seek protection via the credible fear process.

In the other migration types category, non-immigrant admissions are positively correlated with credible fear receipts while returns are negatively correlated with credible fear receipts. Unlike each other individual country, there is no correlation between inadmissibilities and credible fear receipts for Mexico.

The humanitarian benefits category of variables proves to be the most consistent between each individual country. Similar to the other countries in this study, there is a strong, positive correlation between asylum grants and credible fear receipts for Mexico. In addition, in the secondary model there is a strong, positive correlation between the previous and the current years' credible fear receipts.

³⁷⁶ Department of Homeland Security. Note that in this analysis, the data for apprehensions includes arrests both by CBP and ICE and is a slightly different measure than the data presented in Table 2 and Figure 4.

³⁷⁷ Department of Homeland Security.

³⁷⁸ Siskin et al., *Immigration Enforcement Within the United States*, 48.

5. Northern Triangle

The previous four sections presented the PCC for each country individually. This section and the following section pool the data for several countries prior to calculating the PCC. This additional analysis facilitates a richer discussion at the end of this chapter. Table 13 shows the strength or weakness of the relationship between the bivariate data for the combined set of Northern Triangle countries: El Salvador, Guatemala, and Honduras.

Table 13. PCC for Credible Fear and Other Variables—Northern Triangle

| <i>Variable</i> | <i>Primary</i> | <i>Secondary</i> |
|---|----------------|------------------|
| Human Development Index (HDI) | .57** | .57** |
| Corruption Perception Index (CPI) | .07 | .09 |
| Poverty | -.35* | -.38* |
| Homicide | .00 | .06 |
| Serious Assault | -.20 | -.11 |
| Robbery | -.14 | -.14 |
| Kidnapping | -.11 | -.15 |
| Sexual Violence | .42* | .65** |
| Burglary | .31 | .34 |
| Theft | .25 | .27 |
| Car Theft | -.38* | -.40* |
| Border Patrol Staffing | .54** | .56** |
| Apprehensions | .68** | .72** |
| Removals | .48** | .46** |
| Returns by Mexican Government | -.01 | -.05 |
| <i>Presentación</i> before Mexican Government | -.03 | -.06 |
| Non-Immigrant Admissions | .53** | .48** |
| Inadmissibilities | .84** | .80** |
| Returns | -.20 | -.34 |
| Affirmative Asylum Grants | .70** | .78** |
| Defensive Asylum Grants | .73** | .71** |
| Previous Year Credible Fear | - | .86** |

Note: * $p < .05$; ** $p < .01$.

The r -values within the country conditions category in Table 13 are generally lower and the p -values are generally higher compared to the same categories for individual Northern Triangle countries shown in Tables 9–11. For the combined set of Northern Triangle countries, credible fear receipts are positively correlated with HDI and sexual violence, and negatively correlated with poverty and car theft. While these correlations are statistically significant, they are generally weak. The correlation between sexual violence and credible fear receipts in the secondary model is the one outlier in this category, with a relatively strong correlation.

For the policy decisions category, the correlation between credible fear receipts and apprehensions follows the pattern seen in the individual countries: the correlation is strong, positive, and increases in strength from the primary to the secondary model. The correlations between credible fear receipts and Border Patrol staffing and removals are similarly positive and statistically significant, albeit much weaker. Following the pattern of the individual countries, the returns by Mexican government variable is not correlated with credible fear receipts.

Similar to the results for the individual countries, the positive correlation between credible fear receipts and inadmissibilities is the strongest within the other migration types category. The correlation between credible fear receipts and non-immigrant admissions is the only other statistically significant result in this category, although it shows a much weaker positive correlation. Both *presentación* before Mexican government and returns show no correlation between credible fear receipts.

The variables within the humanitarian benefits category for the Northern Triangle data set follow a similar pattern compared to each individual country. In both the primary and secondary models, both affirmative and defensive asylum grants have a strong, positive, and statistically significant correlation with credible fear receipts. Similarly, the previous year's credible fear receipts are strongly correlated with the current year's credible fear receipts.

6. Northern Triangle and Mexico

Table 14 shows the strength or weakness of the relationships between the bivariate data for the combined set of El Salvador, Guatemala, Honduras, and Mexico. Similar to Table 12, the variables of returns by Mexican government and *presentación* before Mexican government are excluded since they are not applicable for the subset of datapoints for Mexican nationals.

Table 14. PCC for Credible Fear and Other Variables—Northern Triangle and Mexico

| <i>Variable</i> | <i>Primary</i> | <i>Secondary</i> |
|-----------------------------------|----------------|------------------|
| Human Development Index (HDI) | .15 | .14 |
| Corruption Perception Index (CPI) | .00 | .01 |
| Poverty | -.23 | -.33* |
| Homicide | .14 | .19 |
| Serious Assault | -.36* | -.36* |
| Robbery | -.34 | -.39 |
| Kidnapping | -.10 | -.13 |
| Sexual Violence | .40** | .62** |
| Burglary | .19 | .21 |
| Theft | .27 | .30 |
| Car Theft | -.35* | -.37* |
| Border Patrol Staffing | .50** | .53** |
| Apprehensions | -.17 | -.19 |
| Removals | -.10 | -.11 |
| Non-Immigrant Admissions | -.06 | -.07 |
| Inadmissibilities | -.18 | -.20 |
| Returns | -.32* | -.34* |
| Affirmative Asylum Grants | .72** | .80** |
| Defensive Asylum Grants | .74** | .72** |
| Previous Year Credible Fear | - | .86** |

Note: * $p < .05$; ** $p < .01$.

Immediately apparent in Table 14 are the low r -values and high p -values in each category of variables. In the country conditions category, there are no strong, statistically

significant correlations in the primary model. And the only strong, statistically significant correlation in the secondary model is between sexual violence and credible fear receipts. While there are statistically significant correlations between credible fear receipts and serious assault and car theft in both the primary and secondary models, the r -values are very low, indicating the variables from the four countries in this study are too varied to produce strong correlations when combined in one PCC.

A similar trend is apparent in both the policy decisions and other migration types categories. Only the correlations between credible fear receipts and Border Patrol staffing and returns are statistically significant, although neither set of r -values is particularly high. However, the humanitarian benefits category does follow the general trend seen in Tables 9–13. Credible fear receipts are strongly, positively correlated with both affirmative and defensive asylum grants. In addition, the variable for the previous year's credible fear receipts is highly correlated with the current year's credible fear receipts. These fascinating results are discussed in depth at the end of this chapter.

C. RESULTS OF THE MULTIPLE LINEAR REGRESSIONS

This section reports the results of several multiple linear regressions, using standard least squares, that were conducted to determine which combination of variables significantly predicted the credible fear receipts for each of the four individual countries, the combined set of Northern Triangle countries, and the combined set of all four countries in this study. Backward selection was used to fit the regression models for each country or group of countries. Starting with the full primary or secondary model, the variables with the highest p -values were removed one at a time until the p -value for each of the remaining variables is under the statistically significant level of .05. This process led to overall statistically significant models, which are highlighted below.

While these models indicate a significant and strong relationship between the variables tested, causation cannot necessarily be inferred. Identifying precise causation is not possible with the limited dataset, which may exclude other causal variables, and because of the overwhelming complexity of individual decisions to flee one's country. However, as this section and the discussion that follows show, identifying precise

causation is not necessary to build a model to produce reasonably accurate predictions of credible fear receipts.

1. El Salvador

Table 15 reports the results of the multiple linear regressions for El Salvador's credible fear receipts. In the variables column are the variables that remained following the process of backward selection described above. The primary and secondary columns report the results of the two separate regressions run for this country's credible fear receipts. The results in the primary column refer to the regression run on the primary data model described in Table 7, while the secondary column refers to the regression run using the secondary data model described in Table 8.

Table 15. Linear Regression Results—El Salvador

| <i>Variables</i> | <i>Primary</i> | <i>Secondary</i> |
|----------------------------|--------------------|-------------------|
| Apprehensions | 0.203 (4.53)** | 0.250 (3.91)** |
| Affirmative Asylum Grants | 6.177 (-3.19)** | 5.660 (2.25)* |
| Adjusted <i>R</i> -squared | 0.738 | 0.745 |
| Observations | 23 | 22 |

Note: * $p < .05$; ** $p < .01$. *T*-values are in parentheses.

For both the primary and secondary models, the adjusted *r*-squared, or the coefficient of determination, was above 0.7, which means that 73.8 percent of the variation in credible fear receipts from El Salvador can be explained by the number of apprehensions and affirmative asylum grants in the primary model. Similarly, 74.5 percent of the variation in credible fear receipts from El Salvador can be explained by the number of apprehensions and affirmative asylum grants in the secondary model. The randomness of the residual by predicted plot indicates that both the primary and secondary models suffer from heteroscedasticity, likely due to the large range of values for the credible fear receipts variable. This means that the primary and secondary models

are good at predicting credible fear receipts above 5,000 per year, but less successful at predicting credible fear receipts below 5,000 per year.

2. Guatemala

Table 16 reports the results of the multiple linear regressions for Guatemala's credible fear receipts. In the variables column are the variables that remained following the process of backward selection for the two separate regressions run for this country's credible fear receipts, based on the models described in Tables 7 and 8.

Table 16. Linear Regression Results—Guatemala

| <i>Variables</i> | <i>Primary</i> | <i>Secondary</i> |
|-----------------------------|---------------------|-----------------------|
| Homicide | | -129.152 (-3.15)** |
| Border Patrol Staffing | | -0.308 (-2.96)* |
| Apprehensions | -0.120 (-4.21)** | 0.146 (5.74)** |
| Removals | 0.305 (5.30)** | |
| Non-Immigrant Admissions | | 0.079 (3.17)** |
| Defensive Asylum Grants | 26.535 (7.37)** | 24.330 (7.85)** |
| Previous Year Credible Fear | | -1.046 (-4.61)** |
| Adjusted <i>R</i> -squared | 0.871 | 0.986 |
| Observations | 23 | 20 |

Note: * $p < .05$; ** $p < .01$. *T*-values are in parentheses.

For both the primary and secondary models, the adjusted *r*-squared was above 0.8, which means that 87.1 percent of the variation in credible fear receipts from Guatemala can be explained by the number of apprehensions, removals, and defensive asylum grants in the primary model. Similarly, 98.6 percent of the variation in credible fear receipts from Guatemala can be explained by the homicide rate, the number of

Border Patrol agents, the number of apprehensions, the number of non-immigrant admissions, the number of defensive asylum grants, and the number of credible fear receipts from the previous year in the secondary model. For both the primary and secondary models, the equal spread condition was violated. The randomness of the residual by predicted plot indicates that both the primary and secondary models suffer from heteroscedasticity, likely due to the large range of values for the credible fear receipts variable. This means that the primary model is good at predicting credible fear receipts above 5,000 per year, but less successful at predicting credible fear receipts below 5,000 per year. The secondary model is good at predicting credible fear receipts above 2,500, but less successful at predicting credible fear receipts below 2,500.

3. Honduras

Table 17 reports the results of the multiple linear regressions for Honduras's credible fear receipts. In the variables column are the variables that remained following the process of backward selection for the two separate regressions run for this country's credible fear receipts, based on the models described in Tables 7 and 8.

Table 17. Linear Regression Results—Honduras

| <i>Variables</i> | <i>Primary</i> | <i>Secondary</i> |
|-------------------------------|--------------------|--------------------------|
| Human Development Index (HDI) | | -189448.500 (-3.71)** |
| Apprehensions | | 0.048 (2.25)* |
| Non-Immigrant Admissions | 0.065 (3.51)** | 0.236 (5.71)** |
| Defensive Asylum Grants | 13.898 (5.97)** | 17.661 (4.51)** |
| Previous Year Credible Fear | | -0.890 (-3.42)** |
| Adjusted <i>R</i> -squared | 0.952 | 0.966 |
| Observations | 22 | 21 |

Note: * $p < .05$; ** $p < .01$. *T*-values are in parentheses.

For both the primary and secondary models, the adjusted r -squared was above 0.9, which means that 95.2 percent of the variation in credible fear receipts from Honduras can be explained by the number of non-immigrant admissions and the number of defensive asylum grants in the primary model. Similarly, 96.6 percent of the variation in credible fear receipts from Honduras can be explained by the HDI, the number of apprehensions, the number of non-immigrant admissions, the number of defensive asylum grants, and the number of credible fear receipts from the previous year in the secondary model. The randomness of the residual by predicted plot indicates that both the primary and secondary models suffer from heteroscedasticity, likely due to the large range of values for the credible fear receipts variable. This means that the primary and secondary models are good at predicting credible fear receipts above 5,000 per year, but less successful at predicting credible fear receipts below 5,000 per year.

4. Mexico

Table 18 reports the results of the multiple linear regressions for Mexico's credible fear receipts. In the variables column are the variables that remained following the process of backward selection for the two separate regressions run for this country's credible fear receipts, based on the models described in Tables 7 and 8.

For both the primary and secondary models, the adjusted r -squared was above 0.9, which means that 94.2 percent of the variation in credible fear receipts from Mexico can be explained by the HDI, the homicide rate, the number of non-immigrant admissions, affirmative asylum grants, and defensive asylum grants in the primary model. Similarly, 97.7 percent of the variation in credible fear receipts from Mexico can be explained by the HDI, the homicide rate, and the number of non-immigrant admissions and affirmative asylum grants in the secondary model. The randomness of the residual by predicted plot indicates that both the primary and secondary models suffer from heteroscedasticity, likely due to the large range of values for the credible fear receipts variable. This means that the primary and secondary models are good at predicting credible fear receipts above 1,000 per year, but less successful at predicting credible fear receipts below 1,000 per year.

Table 18. Linear Regression Results—Mexico

| <i>Variables</i> | <i>Primary</i> | <i>Secondary</i> |
|-------------------------------|------------------------|-------------------------|
| Human Development Index (HDI) | -31746.380 (-2.64)* | -35203.190 (-4.17)** |
| Homicide | -172.363 (-3.85)** | -118.382 (-3.81)** |
| Non-Immigrant Admissions | 0.000 (4.30)** | 0.000 (3.92)** |
| Affirmative Asylum Grants | 6.207 (3.54)** | 13.230 (10.71)** |
| Defensive Asylum Grants | 5.849 (3.85)** | |
| Adjusted <i>R</i> -squared | 0.942 | 0.977 |
| Observations | 21 | 20 |

Note: * $p < .05$; ** $p < .01$. *T*-values are in parentheses.

5. Northern Triangle

Table 19 reports the results of the multiple linear regressions for the Northern Triangle's credible fear receipts. In the variables column are the variables that remained following the process of backward selection for the two separate regressions run for this region's credible fear receipts, based on the models described in Tables 7 and 8.

Table 19. Linear Regression Results—Northern Triangle

| <i>Variables</i> | <i>Primary</i> | <i>Secondary</i> |
|----------------------------|--------------------|---------------------|
| Border Patrol Staffing | 0.552 (3.12)** | 0.713 (4.25)** |
| Apprehensions | 0.094 (5.78)** | 0.124 (5.49)** |
| Removals | -0.218 (-2.64)* | -0.331 (-4.01)** |
| Affirmative Asylum Grants | 6.987 (6.02)** | 7.979 (6.52)** |
| Adjusted <i>R</i> -squared | 0.708 | 0.779 |
| Observations | 69 | 66 |

Note: * $p < .05$; ** $p < .01$. *T*-values are in parentheses.

For both the primary and secondary models, the adjusted *r*-squared was above 0.7, which means that 70.8 percent of the variation in credible fear receipts from the Northern Triangle can be explained by the level of Border Patrol staffing and the number of apprehensions, removals, and affirmative asylum grants in the primary model. Similarly, 77.9 percent of the variation in credible fear receipts from the Northern Triangle can be explained by the level of Border Patrol staffing and the number of apprehensions, removals, and affirmative asylum grants in the secondary model. The randomness of the residual by predicted plot indicates that both the primary and secondary models suffer from heteroscedasticity, likely due to the large range of values for the credible fear receipts variable. This means that the primary and secondary models are good at predicting credible fear receipts above 6,000 per year, but less successful at predicting credible fear receipts below 6,000 per year.

6. Northern Triangle and Mexico

Table 20 reports the results of the multiple linear regressions for the Northern Triangle and Mexico's credible fear receipts. In the variables column are the variables that remained following the process of backward selection for the two separate regressions run for the combined country and region's credible fear receipts, based on the models described in Tables 7 and 8.

For both the primary and secondary models, the adjusted *r*-squared was above 0.6, which means that 65.2 percent of the variation in credible fear receipts from the Northern Triangle and Mexico can be explained by the level of Border Patrol staffing, the number of affirmative asylum grants, and the number of defensive asylum grants in the primary model. Similarly, 78.0 percent of the variation in credible fear receipts from the Northern Triangle and Mexico can be explained by the level of Border Patrol staffing, the number of affirmative asylum grants, and the number of credible fear receipts from the previous year in the secondary model. The randomness of the residual by predicted plot indicates that both the primary and secondary models suffer from heteroscedasticity, likely due to the large range of values for the credible fear receipts variable. This means that the primary model is good at predicting credible fear receipts above 6,000 per year,

but less successful at predicting credible fear receipts below 6,000 per year. The secondary model is good at predicting credible fear receipts above 4,000, but less successful at predicting credible fear receipts below 4,000.

Table 20. Linear Regression Results—Northern Triangle and Mexico

| <i>Variables</i> | <i>Primary</i> | <i>Secondary</i> |
|-----------------------------|-------------------|-------------------|
| Border Patrol Staffing | 0.289 (3.09)** | 0.205 (2.53)* |
| Affirmative Asylum Grants | 5.295 (3.96)** | 4.393 (3.08)** |
| Defensive Asylum Grants | 7.283 (4.91)** | |
| Previous Year Credible Fear | | 0.621 (6.53)** |
| Adjusted <i>R</i> -squared | 0.652 | 0.780 |
| Observations | 92 | 88 |

Note: * $p < .05$; ** $p < .01$. *T*-values are in parentheses.

D. DISCUSSION OF RESULTS

This section begins with notable findings from the primary model bivariate tests for the individual countries, then assesses the performance of the secondary models for the same tests. The discussion of the PCC results concludes with a comparison between the results of the bivariate tests for the multi-country data sets and the bivariate tests for the individual countries. The discussion continues with the notable findings from the primary model multiple linear regressions for the individual countries, then compares these findings to the findings from the regressions that used the secondary models. An assessment of the multi-country regressions follows. Chapter IV concludes with an analysis of potential weaknesses in the statistical analyses conducted in this thesis and provides recommendations for improving future analyses on the determinants of flight resulting in credible fear receipts.

1. Primary Model PCC for Individual Countries

Within the country conditions category of variables, the only bivariate correlation that was statistically significant across each individual country's primary model was between HDI and credible fear receipts. Notably, this correlation is positive, such that when HDI in a country increases in a particular year, credible fear receipts from nationals of that country also increase. Similarly, in the PCCs for El Salvador and Mexico, there are statistically significant negative correlations between poverty and credible fear receipts. Therefore, as the poverty rates increase in El Salvador and Mexico, there are fewer credible fear applicants from those countries in the corresponding years. Taken together, these findings appear to contradict insinuations made during the 2013 and 2014 hearings that "poverty, joblessness, and economic stagnation in their home countries" leads people to flee for the United States and enter the credible fear process.³⁷⁹ These findings also appear to be inconsistent with the 2015 GAO report that cited economic concerns such as poverty as one of the primary causes of outmigration from the Northern Triangle.³⁸⁰

Instead, the bivariate correlations between HDI and credible fear receipts appear to support the conclusions reached in studies that conducted quantitative analyses similar to this thesis. As outlined in Chapter I, both Schmeidl and Davenport et al., found that variables measuring economic strength in the home country are not significantly associated with migration of refugees from those countries.³⁸¹ One possible explanation for the negative correlation between poverty rates in El Salvador and Mexico and credible fear receipts from nationals of those countries is that migration is an expensive investment that would become less attainable as poverty rates increase. Neumayer makes

³⁷⁹ H.R., *Asylum Fraud*, 23; H.R., *Asylum Abuse*, 71. In the quoted 2014 hearing, Professor Jan Ting raised poverty as an example of a reason for flight that would not make one eligible for asylum. In the 2013 hearing, Congressman Howard Coble raised the possibility that Indian nationals are fleeing due to poverty, not persecution.

³⁸⁰ Gootnick, *Central America*, 4. One caveat is that this GAO study narrowly focused on the migration of unaccompanied children, which is a separate, albeit similar, group of people compared to those in the credible fear process.

³⁸¹ Schmeidl, "Exploring the Causes of Forced Migration," 303; Davenport, Moore, and Poe, "Sometimes You Just Have to Leave," 43. Note that Schmeidl uses energy consumption as a proxy for poverty and Davenport et al. uses GNP per capita.

a similar point, writing, “Great poverty might impede migration, and little poverty takes away the incentives for migration.”³⁸² The correlations between HDI and credible fear receipts are more complex due to the fact that HDI does not just measure economic factors, but also incorporates measures for physical health and education.³⁸³ Potential explanations for the HDI-credible fear receipts correlation may similarly include the fact that improved levels of health and education ease the burdens imposed by migration, thereby making migration more likely as HDI increases. One shortcoming with this explanation is that HDI fails to capture disparity or security within each country and, therefore, future studies should include variables measuring inequality in addition to variables that broadly measure development.³⁸⁴

The other notable observation in the country conditions category is that almost all of Mexico’s country conditions variables had strong correlations with credible fear receipts. Because these correlations are not uniformly negative or positive, it is difficult to reach an explanation for why each individual variable is correlated with credible fear receipts. However, viewing these results more broadly, it is possible that Mexico’s proximity to the United States (compared to the Northern Triangle countries’ distance from the U.S.-Mexico border) allows Mexican nationals to be more responsive to changes in country conditions when making the decision of whether to flee Mexico and seek protection in the United States.

Another set of correlations remarkable in their consistency from country to country are those between asylum grants and credible fear receipts. Each individual country has a strong, statistically significant, and positive correlation between both defensive and affirmative asylum grants and credible fear receipts. Because the standards are higher and there are more opportunities for the immigration judge and asylum officer to identify potential fraud in affirmative and defensive determinations, the fact that credible fear receipts are so closely correlated with asylum grants could lend support to

³⁸² Neumayer, “Bogus Refugees?,” 393.

³⁸³ United Nations Development Programme, “Human Development Index.”

³⁸⁴ United Nations Development Programme.

the assertion that the credible fear program is not riddled with fraudsters and others who are not qualified for asylum.³⁸⁵

One caveat to bear in mind is that the average individual granted asylum in a given year may have lodged their asylum application years prior and may have been present in the United States for a year or more before that. On the other hand, the overwhelming majority of credible fear receipts in a given year are from individuals who entered the United States the same year.³⁸⁶ The difference between asylum and credible fear applicants in terms of how far the individuals are temporally removed from the conditions in their country that may have contributed to their flight raises two additional possibilities. The correlation between those who recently fled their country (credible fear applicants) and those who fled sometime in the past (asylum grantees) could reflect the accumulation of risk concept raised by Stanley and others and discussed earlier in this chapter.³⁸⁷ In other words, the strong correlation between credible fear receipts and asylum grants could be due to the fact that these populations are all responding to the same conditions in their countries, but reach their risk thresholds and flee at different times or have varying levels of financial means leading to quicker or slower journeys from their homes to the United States. Another possible explanation for this correlation relates to Neumayer's application of network theory. He writes, "A higher number of past asylum seekers from a particular country of origin lowers the costs of migration for those left behind."³⁸⁸ Those who fled to the United States earlier (represented by affirmative and defensive asylum grantees) could be providing support, whether passively by example or actively through advice and remittances, to those who fled later (represented by credible fear applicants). Neumayer's network theory is also a good explanation for the strong, positive correlations between each country's previous year credible fear receipts variable and current year credible fear receipts variable.

³⁸⁵ See Chapter III for the discussion on standards of evidence for asylum and credible fear.

³⁸⁶ See Chapter II for the description of how individuals enter the credible fear process.

³⁸⁷ Stanley, "Economic Migrants or Refugees from Violence," 142.

³⁸⁸ Neumayer, "Bogus Refugees?," 393.

The next results worthy of discussion for each individual country are the bivariate correlations of credible fear receipts with apprehensions and inadmissibilities. El Salvador, Guatemala, and Honduras each have a stronger positive correlation between inadmissibilities and credible fear receipts compared to apprehensions and credible fear receipts. It is not surprising that both inadmissibilities and apprehensions would share strong positive correlations with credible fear receipts since individuals enter the credible fear process after being apprehended or deemed inadmissible and subsequently requesting asylum. However, the stronger correlation between inadmissibilities and credible fear receipts may weaken the narrative pushed by restrictionist politicians and scholars that asylum seekers and people in the credible fear process are fraudsters. During the 2014 hearing, Congressman Chaffetz asked a panel of experts to explain the root cause of the uptick in asylum applications. Professor Ting responded, “It is still literally child’s play to get across the border. Right? I mean, unaccompanied minors are getting across the border. That is how open the border is.”³⁸⁹ When Eleanor Acer, the director of Refugee Protection at Human Rights First, attempted to explain that violence in asylum applicants’ home countries is another factor responsible for the increase in asylum claims, Chaffetz interrupted her to assert concerns about fraud.³⁹⁰ Attorney General Jeff Sessions made the spurious connection between asylum claims, crossing the border without inspection, and fraud even more bluntly. In a 2017 speech before EOIR, Sessions claimed that the Obama administration created “incentives for illegal aliens to come here and claim a fear of return,” and, “The credible fear process...has become an easy ticket to illegal entry into the United States.”³⁹¹ Contrary to the claims advanced by Chaffetz, Ting, and Sessions, the results of the PCC for El Salvador, Guatemala, and Honduras show that an increase in credible fear applicants from these countries is more closely correlated with a rise in individuals approaching an official port of entry seeking entry compared to a rise in individuals who are apprehended after crossing the border without

³⁸⁹ H.R., *Asylum Fraud*, 63.

³⁹⁰ H.R., *Asylum Fraud*, 64.

³⁹¹ Jefferson B. Sessions, *Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review* (Washington, DC: Department of Justice, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.

inspection. While these results cannot prove whether or not fraud is present in the credible fear process, they undermine the narrative that the surge in credible fear receipts occurred primarily because of fraudsters illegally crossing the southern border.

Mexico is an outlier in that there is no correlation between inadmissibilities and credible fear receipts and the correlation between apprehensions and credible fear receipts is negative. The difference between Mexico and the other countries in this study defies simple explanation, however it is likely that Mexico's proximity to and historically intertwined immigration history with the United States impacts how Mexican nationals fleeing harm decide to travel to the United States. The disparity between Mexico and the other countries in this study highlights how important it is to analyze each country individually, a topic that will be further discussed later in this chapter.

Within the other migration types category, the non-immigrant admissions variable stands out due to its very strong, positive, and statistically significant correlation with credible fear receipts for Guatemala, Honduras, and Mexico. Roberto Suro argues that the migratory flows from Central America to the United States have been established over decades and include both mixed modalities of migration and mixed motivations for that migration.³⁹² Suro writes, "Developing an analysis of the Central American surges and their implications requires understanding them in the context of the long, ongoing migrations that involve the same kinds of people leaving the same places for the same destinations."³⁹³ With this framing, the PCC results for non-immigrant admissions could imply that the Guatemalans, Hondurans, and Mexicans who are admitted into the United States (i.e., have a visa or other document that authorizes them to enter) are driven by a similar set of reasons for flight compared to those who enter the credible fear process. Whether one enters the United States by being admitted or via the credible fear process likely reflects the diversity of opportunities, connections, and means within the source population. While the correlation between non-immigrant admissions and credible fear

³⁹² Suro, "A Migration Becomes an Emergency." The concept of mixed motivation as used by Suro encompasses both a single person having multiple reasons for fleeing and separate individuals having different, unique reasons for fleeing.

³⁹³ Suro, 60.

receipts cannot speak to the veracity of credible fear claims, or lack thereof, it nonetheless shows that policymakers must not limit themselves to only analyzing a single migration modality when attempting to understand what drives people to leave their country and flee to the United States.

The final bivariate result discussed in this section is the lack of correlation, either negative or positive, between the variables measuring Mexican immigration activities and credible fear receipts from El Salvador, Guatemala, and Honduras. As described earlier in this chapter, the variables for returns by and *presentación* before the Mexican government were included in the PCCs because of the intertwined history of the United States' and Mexico's immigration enforcement systems. The lack of correlation between credible fear receipts and these two variables could be due to the vacillating nature of U.S.-Mexico immigration cooperation, which mutes any single-year impacts that the returns by or *presentación* before the Mexican government variables could have on credible fear receipts. The *presentación* variable was included in this study partly as a proxy for the number of individuals leaving Northern Triangle countries and traveling through Mexico enroute to the United States. The lack of correlation in this instance is not necessarily evidence that Mexican immigration policies do not have a measurable impact on credible fear receipts in the United States or that there is no relationship between the number of people who leave the Northern Triangle and the number who ultimately enter the credible fear process. Instead, future studies should seek new data sets that can more effectively measure these policies and migration flows.

2. Performance of the Secondary Model PCCs

Despite the reduction in observations using the secondary model, as shown in Table 8, the results of the PCCs using the secondary model were very similar to the results of the PCCs using the primary model. In total, six PCCs were conducted using the primary models and six using the secondary models. There were fifty-three bivariate correlations that were significant at the $p < .01$ level. Of those fifty-three correlations, fifty remained significant at the $p < .01$ level and three were reduced in significance to the $p < .05$ level. Of the fifty correlations that maintained the high level of significance,

the absolute value of thirty-six r -values increased, while the r -values of five remained the same, and the absolute value of nine r -values decreased. Of the three correlations that experienced a reduction in significance, the r -value for one remained the same while the absolute value for two r -values decreased. Four correlations that were significant at the $p < .05$ level in the primary model increased in significance to the $p < .01$ level and experienced an increase in the absolute value of the r -value in the secondary model. While no new information about specific bivariate correlations can be gleaned from the secondary model in comparison to the primary model, the slight improvement in the secondary model indicates that future studies should consider implementing a similarly structured secondary data set that captures the accumulative impact of conditions and events from previous years. However, such studies would be further improved with more complete data sets that do not suffer from a significant loss of observations.

3. Performance of the Multi-country PCCs

The results of the single-country PCCs are highly individualized. Particularly, the bivariate correlations for variables in the country conditions category are very unique for each country. In the combined PCC for the Northern Triangle countries, that nuance in the country conditions category is almost completely lost. Only HDI remains statistically significant at the $p < .01$ level in the primary model, although the r -value is reduced to a level lower than the HDI r -value for any of the single-country PCCs. In the secondary model the sexual violence variable does become statistically significant at the $p < .01$ level, although this is likely because Guatemala experienced a dramatic increase in the rate of sexual violence from 2012 to 2013 and it is not indicative of a trend shared with the other two countries in this PCC. The results for the remaining variables generally mirror the trends seen in the individual-country PCCs with regard to the level of statistical significance, although the strength of those correlations is reduced.

The results of the PCC for all four countries combined are even worse than the PCC for the Northern Triangle countries. In the country conditions category, only sexual violence remains statistically significant at the $p < .01$ level, and the r -values for all variables are incredibly low. In the policy decisions category of variables, only Border

Patrol staffing remains statistically significant, and again all *r*-values are reduced in absolute value. There are effectively no correlations in the other migration types category. Finally, results for the variables in the humanitarian benefits category are consistent with the results in the same category for the individual-country PCCs.

The weaker results for the two multi-country PCCs demonstrate the value in analyzing each country individually. Particularly as it relates to country conditions, almost all particularity is lost when countries were analyzed together. The completeness of the data sets may also play a factor in this outcome, as each country varied as to which variables had complete (or more complete) data sets. The fact that the PCC with all four countries was the weakest of all PCCs conducted shows that each country and region have specific factors that may cause or be related to the number of people who ultimately enter the credible fear process. Continuing to analyze countries individually, and relying on continually better data sets, allows researchers to make meaningful insights and helps policy makers reach accurate conclusions.

4. Primary Model Regressions for Individual Countries

While the PCC results show how correlated an individual independent variable is with the dependent variable of credible fear receipts, the multiple linear regression results show the combinations and weights of independent variables that can be used to accurately predict the dependent variable. The results in this thesis can therefore serve as a template for policymakers to predict future credible fear receipts. The main limitation is that the regressions in this thesis were run using independent variables that are not necessarily available in real time and are sometimes only available months or years after the events they measure occur. However, the regression results are still useful in helping policymakers understand what combination of factors may be most accurate in predicting credible fear receipts and thereby developing policies that can further research and address the roots of forced migration to the United States.

Humanitarian benefits is the most common category across all the regressions run; each primary model, secondary model, individual country, and multi-country regression contained at least one variable from the humanitarian benefits category. The

most common variable in the regressions for individual countries is defensive asylum grants, which appears in each regression except for El Salvador. Variables in the policy decisions category are the next most frequent, while variables in the country conditions and other migration types categories appear least frequently. The results show that variables that are produced by the U.S. government and in some way measure the movement of individual people were the most significant predictors of credible fear receipts. Of the primary models for individual countries, only the regression for Mexico contained variables, such as HDI and homicide rate, that did not relate to U.S. immigration or enforcement patterns. One of the greatest benefits of these results is that almost all of the variables that contribute to statistically significant predictions of credible fear receipts are tracked in real time by DHS and DOJ. This means that with support from federal components such as ICE, CBP, and EOIR, USCIS can use regression models such as those described in this chapter to predict credible fear receipts in real time and to be more prepared for any surges that may occur.

5. Performance of the Secondary Model Regressions

Each regression using the secondary model is without exception more statistically significant compared to its primary model counterpart. In addition, the secondary model regressions appear to build off of the primary model regressions. Out of the nineteen variables that came into play across all six primary model regressions, only two of those variables failed to appear in the secondary models. Ultimately, twenty-four variables contributed to the six secondary model regressions. Like the primary model regressions, the humanitarian benefits category was the most common, with the policy decisions category following closely behind. Affirmative asylum grants and apprehensions were tied as the most common variables in the secondary model regressions.

The results from the secondary model regressions further build on the case that USCIS can use statistics that the federal government already tracks on a regular basis to improve its understanding of fear-based migration flows and better prepare for credible fear surges. While the data sets used for this thesis are organized by year, the majority of the variables that come into play in the secondary model regressions are available to

USCIS on a monthly basis. The secondary model regressions show that data points from previous years can contribute to making future credible fear receipt predictions more accurate. USCIS could take an approach similar to that taken in this thesis, but instead assess how fluctuations in variables from previous months can help predict credible fear receipts for the next month. Such analytical precision is not only technically possible, due to USCIS's access to monthly data sets, but could also revolutionize how the agency manages its resources and prepares for changing workloads. Ultimately, if the federal government is prepared for fluctuations in credible fear receipts, policymakers and scholars could focus on the actual root causes of fear-based migration rather than politicking on the symptoms of an inadequate government response.

6. Performance of the Multi-country Regressions

The multi-country regressions follow a similar pattern as the multi-country PCC tests. The statistical significance of the regressions, demonstrated by the adjusted *r*-squared values, is reduced as more countries are included. In addition, the variables that contribute to the regression equation for the Northern Triangle countries diverge from all the other regressions. In the Northern Triangle regressions for the primary and secondary models, the policy category is the primary contributor, with Border Patrol staffing, apprehensions, and removals all significantly predicting credible fear receipts. The regressions for the combined set of all four countries more closely follows the regressions for individual countries in that the humanitarian benefits category appears to have a greater impact on the regression's predictive ability. Like the results from the PCC, the regression results show that analyses of what causes fear-based migration to the United States must focus on individual countries rather than broad groupings of countries.

7. Potential Flaws and Improvements in the Models

Overall, both the PCC and regressions in this thesis were successful in producing statistically significant results that told a compelling narrative about the factors that are correlated with or may contribute to fluctuations in credible fear receipts. The results outlined in this chapter are consistent with other quantitative analyses that explore the factors relating to fear-based migration around the world. However, there are elements of

the analysis in this thesis that could be improved, as described below, thereby further improving the descriptive and predictive power of the results.

One of the main weaknesses is the number of observations in the underlying data set. This issue was acknowledged early in this chapter, and it is worth repeating here. Some countries had a significant number of data points missing for certain variables, and the data points that were missing were not consistent across all the countries. This potentially limits the reliability of comparisons between the PCC and regressions of individual countries and gives countries that have more complete data sets undue influence in the multi-country analyses. Studies conducted by USCIS could potentially overcome this issue by relying on the information gathering and sharing capacity of the U.S. government. Similarly, a more complete data model, and one that included more years of data prior to 1997, could improve the power of the secondary model that utilized two-year rolling averages of data points. Such an expanded model could allow further creativity and comparison between different time-lagged effects.

Another potential flaw in this study is that some data sets reflect calendar years and other reflect fiscal years. Specifically, the data sets produced by U.S. government sources were organized by fiscal year, while those produced by the Mexican government and non-governmental organizations were organized by calendar year. It is difficult to assess whether or how this difference impacted the analyses as a whole. As discussed in the preceding sections, a potential solution to this flaw would be to perform analyses using data sets organized by month rather than year. Compared to individual researchers, USCIS has a greater capacity to collaborate with sibling agencies to collate more precise data sets.

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V. CONCLUSION

The age of restrictionism did not begin with the 2013 and 2014 congressional hearings, nor did it end with the 2020 defeat of the Trump administration. Politicians, scholars, and experts in the United States have promulgated increasingly restrictive immigration policies for more than 100 years. Although the United States joined with the international community to protect refugees in the middle of the 20th century, the U.S. government swiftly placed caveats on the protections technically available to those fleeing harm in their countries. In the late 20th century, Congress effectively introduced restrictions to asylum with the creation of the expedited removal and credible fear processes. During the 2013 and 2014 congressional hearings, restrictionists exploited the surge of credible fear applicants by framing it not as a humanitarian crisis in Central America but as a crisis of immigration fraud. While this thesis has shown the claims of fraud to be facile, this false framing provided fertile ground for the Trump administration's draconian policymaking regarding asylum. The Biden administration has made efforts to distance itself from the worst excesses of the Trump administration, but nevertheless as of this writing continues implementing and expanding policies such as Title 42 expulsions and has even reintroduced bars to asylum that were popularized by Trump.

This thesis questions the rationale for the ever-increasing restrictionism in the U.S. asylum program. Where policymakers jump to conclusions about asylum fraud and scholars such as Freudenthal fundamentally misunderstand the meaning of fraud, this thesis seeks to explore other, sounder explanations for the increase in credible fear applicants over the last 10 years. Chapter II showed how previous attempts at assessing fraud in the credible fear program were improper and ineffective and empowered restrictionists to mischaracterize the credible fear surge as a crisis of fraud. Chapter III showed how immigration law has become more punitive over time, yet despite this evolution, convictions for immigration fraud do not appear to correlate with credible fear receipts. Chapter IV addressed the central questions of this thesis by analyzing the relationship between the rates of individuals from the Northern Triangle and Mexico in

the credible fear program and conditions in each country, U.S. and Mexican government policy and enforcement decisions, U.S. humanitarian immigration benefits, and other migration types. Not only did these statistical tests demonstrate some power for understanding and even predicting credible fear caseloads, but the tests also provided insight into how policymakers and scholars can improve their analyses in the future.

This thesis does not contend that the credible fear process or the asylum program is free from fraud. On the contrary, it acknowledges that some amount of fraud assuredly exists but argues that restrictionists are incorrect in making claims regarding the rate of fraud in part because the U.S. government has failed to produce an accurate accounting of fraud in the credible fear program. The Framework for Managing Fraud Risks in Federal Programs advises agencies to conduct studies to assess fraud risks on a regular basis and to tailor the studies to the specific program.³⁹⁴ Although the credible fear program has been in place since 1997 and the Trump administration created several offshoot programs during his brief tenure, the federal government has failed to release the results of any associated asylum-related fraud risk assessments, much less regular, particularized assessments. Asylum seekers rightly enjoy privacy protections in the United States and USCIS has an interest in being discreet so as to avoid providing a roadmap of the weaknesses in the agency's fraud prevention measures. However, neither of these rationales prevents USCIS from publicizing a fraud risk profile and sharing anonymized data sets with government researchers, such as those in the GAO and CRS, as well as academics. USCIS must publish the results of its fraud studies publicly so that researchers can supplement the corpus of immigration and immigration fraud trends. If USCIS took such an open and honest approach to discussing and describing fraud in its programs, the agency may be able to avoid the most virulent characterizations by restrictionists in Congress and the public.

Regardless of whether USCIS ultimately publishes studies and data sets relating to fraud in its programs, researchers have a great deal of work that can and should be undertaken immediately. This thesis's findings show that bivariate and regression

³⁹⁴ Lord, *Framework for Managing Fraud*, 11.

analyses are necessary for analyzing the factors that explain why individuals flee Mexico and the Northern Triangle to seek protection in the United States. Improved data sets and a variety of variables can make the models more powerful in describing and predicting the credible fear caseloads. To this end, USCIS should release credible fear data sets broken down by gender and city of origin, which would enrich future studies of how demographics impact who flees their country and when they make that decision. Future research should more deeply explore the unique relationships the United States shares with Guatemala, El Salvador, Honduras, and Mexico as well as conditions in surrounding countries. Researchers should include independent variables that measure the impact of U.S. intervention, the distance from the U.S. border, the size of the diaspora in the United States, the levels of violence and economic opportunities in bordering countries.³⁹⁵ As quantitative studies of the credible fear caseload become more nuanced and increase in depth, USCIS will be able to better analyze credible fear receipt trends and predict future receipts. The federal government is urged not to use this predictive power to construct new and inefficient barriers to protection in the United States but to build capacity for change in the countries from whence people flee.

³⁹⁵ These variables are inspired, in part, by the work of Moore and Shellman. Moore and Shellman, “Whither Will They Go?,” 815.

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