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RESEARCH THAT MATTERS

LGBT ASYLUM CLAIMS in the United States

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EXECUTIVE SUMMARY

LGBT people face both generalized and unique vulnerabilities that cause many to leave their country of origin and seek refuge in another. Consensual same-sex conduct remains criminalized in 69 countries, and as many as 11 countries could impose the death penalty if convicted. Research shows that many LGBT people face persecution and violence, including domestic violence, rape, and murder, as well as discrimination in areas like education, employment, housing, and healthcare.

Little information exists about the number and characteristics of LGBT asylum seekers in the United States. Using Asylum Prescreening System data from the United States Citizenship and Immigration Service (USCIS), this report aims to fill these gaps. Our analysis relies upon fear interviews conducted by USCIS between January 3, 2007 and November 17, 2017 and coded as related to sexual orientation or gender identity (“LGBT status”).

KEY FINDINGS

- Using data about fear claims made through the defensive process, we estimate that 11,400 applications for asylum were filed in the United States on the basis of LGBT status between FY 2012 to 2017.
- Between 2007 and 2017, at least 4,385 fear claims that led to interviews by asylum officers were coded as related to LGBT status.
- We estimate that 1.2% of all credible fear interviews conducted each year between FY 2008-2017 were related to LGBT status, while 1.7% of all reasonable fear interviews conducted between FY 2012-2017 were related to LGBT status.
- Almost all interviews involving LGBT claims resulted in positive determinations of fear (98.4%), with most (96.3%) receiving positive determinations for fear of persecution and some meeting requirements for fear of torture (0.8%) or fear of both persecution and torture (1.3%).
- Over three-fourths of asylum seekers with LGBT claims were male (73.7% of credible fear interviews and 81.7% reasonable fear interviews).
- While claimants originated from 84 countries, over half (51.3%) were from the Northern Triangle region of Central America: El Salvador (28.0%), Honduras (14.9%), and Guatemala (8.4%). Significant proportions also were from Mexico (12.1%) and Ghana (7.8%).
- 88.3% of LGBT asylum claims were heard through credible fear interviews, which are conducted at ports of entry or if a migrant is apprehended after crossing the border. The remaining 11.7% were heard at reasonable fear interviews, which are conducted when migrants are subjected to reinstatement of a prior removal order.
- A large number of LGBT fear interviews (2,000) occurred in 2016 and 2017, proportional to an overall increase in defensive asylum claims during those years.

This report illustrates the value of Asylum Prescreening System data for understanding the number and characteristics of LGBT asylum seekers in the United States. At the same time, it highlights critical gaps in data systems and underscores the need for more robust data collection and reporting about both LGBT and non-LGBT asylum seekers.

LAW AND POLICY

THREATS TO LGBT PEOPLE

LGBT people face both generalized and unique vulnerabilities that cause many to leave their country of origin and seek refuge in another. Consensual same-sex conduct remains criminalized in 69 countries, and as many as 11 countries could impose the death penalty if convicted.¹ Such legal contexts are associated with lower social acceptance of LGBT people,² which can marginalize individuals on the basis of their sexual orientation or gender identity and create environments that fuel violence and discrimination against LGBT people based on fear and stigma.³ Even where same-sex conduct is not criminalized, research shows that many LGBT people face persecution and violence, including domestic violence, rape, and murder,⁴ as well as discrimination in areas like education, employment, housing, and healthcare.⁵ LGBT people who are excluded from housing and employment through discrimination may be forced to take jobs in the informal economy, such as sex work, where they may be more vulnerable to exploitation and violence.⁶

Recent reporting shows that Guatemala, Honduras, and El Salvador, located in what is often referred to as the Northern Triangle region of Central America, are among the countries of origin for LGBT people seeking asylum in the United States.⁷ LGBT people in the region face intersecting forms of violence and persecution specifically targeting them on the basis of their sexual orientation or gender identity.⁸ An extensive report by Human Rights Watch found that LGBT people in the Northern Triangle are at high risk of violence from family members who reject them.^{9, 10} LGBT people are also targeted by gangs to assert a dominant social order and public morals, or because LGBT people are already marginalized and unlikely to have protection.¹¹ Gangs act with impunity as instances of anti-LGBT violence often go uninvestigated due to corruption or fear of reporting to law enforcement agents that also discriminate against and stigmatize LGBT people.¹² An investigation by the Inter-American Commission on Human Rights similarly documented multiple forms of violence faced by LGBT people in the region, noting the particular “cruelty” of many cases of anti-LGBT violence “including cases of stoning, decapitation, burning, or impalement.”¹³ In some cases, such violence and insecurity lead LGBT people to flee their home country and seek asylum elsewhere.

ASYLUM PROCESS

The concept of asylum is grounded in the 1951 United Nations Convention Relating to the Status of Refugees. While the United States is not a signatory to the Convention, it has ratified the 1967 United Nations Protocol Relating to the Status of Refugees, which binds the United States to the same obligations regarding the status and treatment of refugees.¹⁴ The Refugee Act of 1980 brought U.S. immigration law in line with the international convention by allowing for grants of asylum on the basis of “persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹⁵ Courts have recognized sexual orientation and gender identity as constituting membership in a particular social group that could form the basis of an asylum claim with evidence of persecution.¹⁶ For an asylum application on the basis of LGBT status to be successful, an applicant must prove that sexual orientation or gender identity are the basis for membership in a particular social group, and that there is past persecution or a well-founded fear of future persecution on the basis of that membership (i.e., being LGBT).¹⁷

Generally speaking, there are three pathways for LGBT people to claim asylum upon arriving to the United States. Which path they pursue depends, in part, on whether they have been previously deported, or if they are apprehended upon entry to the United States.¹⁸

First, a migrant who enters the United States at a port of entry without valid documentation or who is apprehended after crossing the border may be placed in removal proceedings by a Customs and Border Protection (CBP) or Immigration and Customs Enforcement (ICE) agent. If migrants express that they fear persecution or torture if returned to their country of origin, they will be interviewed by an asylum officer. During the interview, the asylum officer will determine if a “credible fear” of persecution or torture is present, which requires the applicant to demonstrate a “significant possibility” of meeting eligibility criteria for asylum.¹⁹ If successful, they will make a “defensive” asylum claim against removal before an immigration judge, who will review the case and determine whether to grant asylum. If the asylum officer does not find credible fear, the asylum seeker can appeal to an immigration judge. In both cases, if asylum is denied by the immigration judge, claimants can be deported.

Most people also apply for relief through “withholding of removal” and the Convention Against Torture (CAT) at the same time as they apply for asylum. If a person is not eligible for asylum, for example, due to a criminal conviction or failure to meet procedural deadlines, they may be granted withholding of removal if they demonstrate a heightened fear of being persecuted if deported to their country of origin. Under CAT, applicants may receive either a withholding of removal or a deferral of removal if they are “more likely than not” to face torture. Unlike asylum, these forms of relief do not include pathways to naturalization.

Second, if an individual has previously been ordered removed from the United States and is placed in an administrative process known as reinstatement of removal,²⁰ they can request a reasonable fear interview. This process entails a higher legal threshold where the applicant must demonstrate that there is a reasonable fear of persecution or torture if they are returned to their home country.²¹ As above, if an individual is placed into removal proceedings, they can then seek relief through withholding of removal or CAT.

Third, a migrant who is not apprehended and placed into removal proceedings can make an “affirmative” asylum claim within one year of entering the country with United States Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS).²² This claim prompts a non-adversarial interview before an asylum officer, who may grant asylum or refer the case to an immigration court to begin removal proceedings. In immigration court, the individual may pursue a defensive asylum claim as a defense to removal.

RECENT CHANGES IN LAW AND POLICY IMPACTING ASYLUM

On December 11, 2020, the Department of Homeland Security and the Department of Justice published the final text of a rule amending laws governing the U.S. asylum process.²³ On January 8, 2021, the rule was enjoined by a federal judge, but if enforced has the potential to impact the ability of LGBT asylum claimants to seek relief.²⁴ First, the new rule excludes “gender” as an admissible claim for membership in a particular social group. This could allow an immigration judge to deny asylum claims linked to persecution fears on the basis of gender identity. The rule also narrows the definition of “political opinion” as a basis for credible fear, limiting to cases of seeking “regime change” and thus

excluding the possibility of protection where LGBT activism leads to persecution. Finally, the rule alters the definition of persecution to require the infliction of severe harm constituting an “exigent threat.” This would alter the legal threshold to exclude the cumulative harm of violence, stigma, and discrimination from family, state, and non-state actors that many LGBT people face.

The Trump administration adopted a number of other changes to U.S. immigration policy that likely impact opportunities for LGBT people to seek asylum. On September 11, 2020, the Centers for Disease Control and Prevention (CDC) issued a final rule limiting entry to the United States in response to the outbreak of the COVID-19 pandemic.²⁵ Under the pretext of enforcing this order, the Department of Homeland Security has expelled more than 200,000 people at the southern border, including individuals seeking admission for asylum relief.²⁶

The Migrant Protection Protocols (MPP), informally known as the “Remain in Mexico” policy, requires that migrants who attempt to enter the United States to seek asylum remain in Mexico while awaiting immigration court dates.²⁷ Under this policy, the U.S. government has expelled nearly 70,000 migrants to Mexico, where many face threats to physical safety and hundreds have had to take refuge in makeshift camps along the southern border.²⁸

In July 2019, USCIS and the Executive Office for Immigration Review (EOIR) within the Department of Justice issued a rule requiring migrants to apply for asylum in a country through which they travelled to reach the southern border of the United States.²⁹ Though vacated by a federal judge, this third-country transit rule would have effectively denied asylum to migrants from the Northern Triangle region who must pass through Mexico to reach a U.S. port of entry.³⁰ Under the Trump administration, the United States also signed Asylum Cooperative Agreements (ACAs) with Honduras, El Salvador, and Guatemala that designate these countries as third countries to which the United States can deport individuals claiming asylum at the U.S. border.³¹ Advocacy groups contend that these ACAs send asylum seekers to countries that do not meet the requirements for “safe third countries” under U.S. and international law.^{32,33}

ANALYSIS

CLAIMS BASED ON LGBT STATUS THAT UNDERWENT A CREDIBLE OR REASONABLE FEAR INTERVIEW

Neither the USCIS Asylum Office nor EOIR publishes statistics on claims based on sexual orientation and/or gender identity or collects data regarding the LGBT status of asylum seekers. Consequently, little was known about the number of LGBT asylum seekers until Tim Fitzsimmons, reporter at NBC Out, obtained USCIS data and published findings on August 20, 2020.³⁴ Building on this groundbreaking article, which highlighted LGBT asylum seekers from the Northern Triangle, the Williams Institute conducted additional analyses of these data.

Our analysis focuses on describing the number, percentage, and characteristics of LGBT asylees using data from the USCIS Asylum Pre-Screening System. Data were obtained via a Freedom of Information Act (FOIA) request to USCIS for information about “foreigners who have, upon, before, or after arriving in the United States, claimed political asylum due to fear of persecution in their home country because of their membership in the LGBTQ community” (Appendix I and II).³⁵ The data represent credible or reasonable fear interviews with USCIS asylum officers that resulted in a decision on whether the claim—based on “membership in a particular social group” and coded by USCIS as sexual orientation or gender [identity]-related (hereafter “LGBT status”)—met the threshold to establish a credible or reasonable fear.³⁶ Individual asylum claims were clocked into the USCIS Asylum Pre-Screening System between January 3, 2007 and November 17, 2017. Variables included in USCIS Asylum Pre-Screening System dataset were: type of interview (credible or reasonable fear), gender³⁷ of claimant (male or female), date clocked-in, date of fear determination, closure³⁸ date, claimant’s country of birth and country of citizenship, and whether the claim met requirements for establishing fear related to persecution and/or torture.

Results

Between January 3, 2007 and November 17, 2017, a total of 4,385 asylum claims that led to fear interviews by asylum officers were coded as relating to LGBT status (Table 1). Of those, 3,872 (88.3%) were heard through credible fear interviews, while 513 (11.7%) were heard at reasonable fear interviews (Figure 1). The majority of claimants were male, with 2,855 (73.7%) and 419 (81.7%) of credible and reasonable fear interviews, respectively (Figure 2). Most interviews resulted in positive determinations of fear (n=4,316, 98.4%), with a majority receiving positive determinations for fear of persecution only (n=4,222, 96.3%), while a minority met requirements for fear of torture only (n=35, 0.8%) or fear of both persecution and torture (n=59, 1.3%) (Figure 3).³⁹ The fear establishment rate was 98.8% among credible fear interviews and 95.9% among reasonable fear interviews (not shown).

Figure 1. Proportion of USCIS fear interviews based on LGBT status, by interview type, January 2007 – November 2017

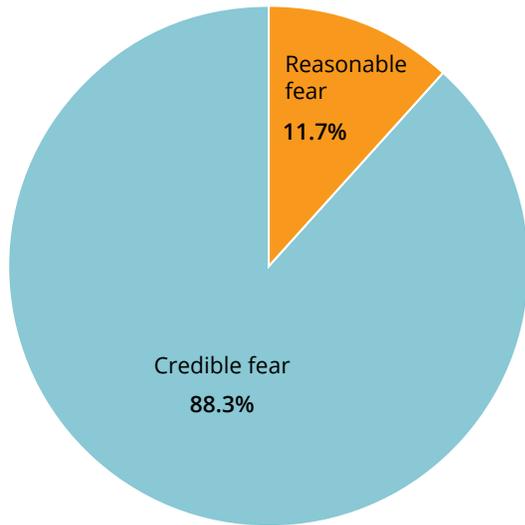


Figure 2. "Gender"⁵⁸ of LGBT asylum seekers undergoing credible/reasonable fear interview by USCIS interview type, January 2007 – November 2017

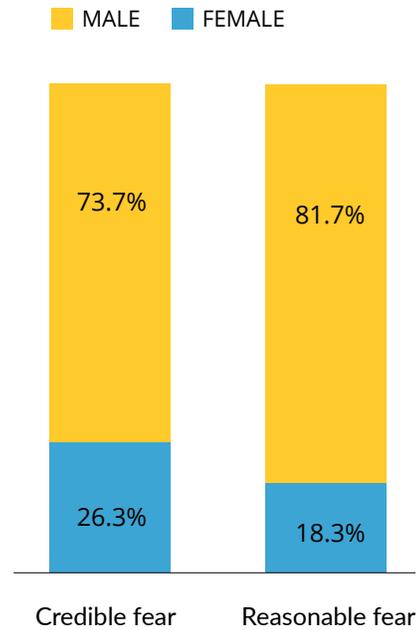
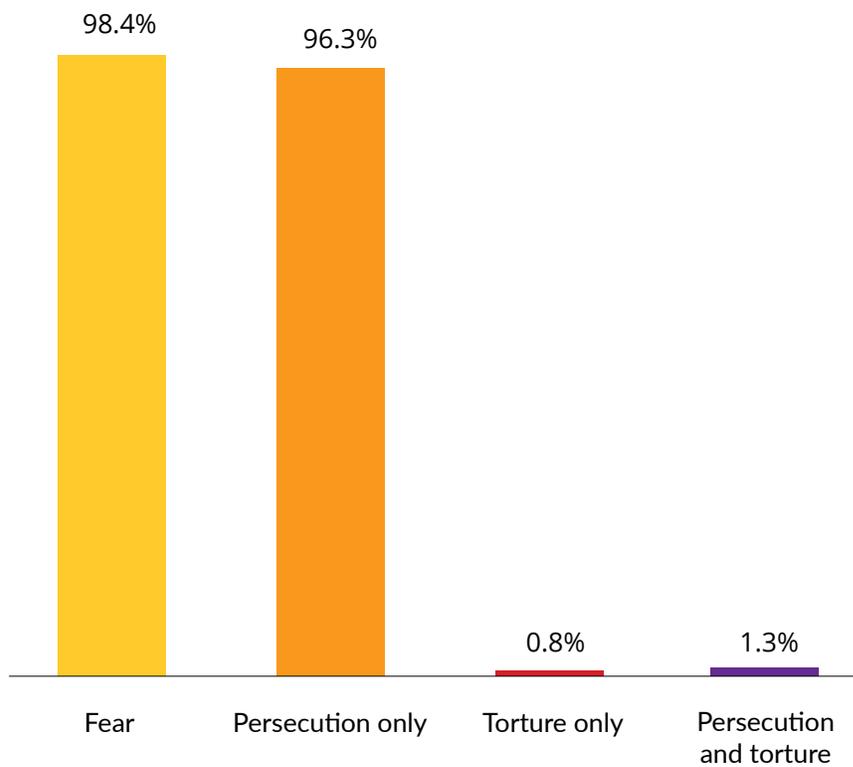
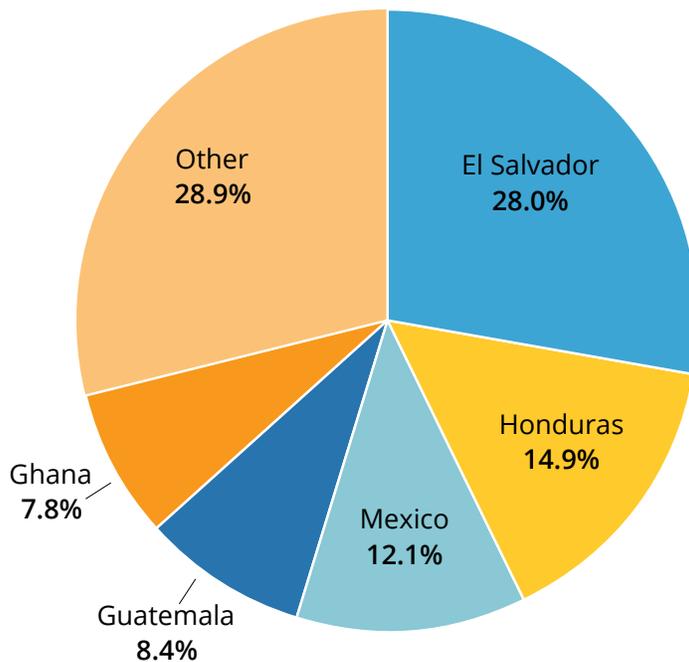


Figure 3. Positive determinations by asylum officers for asylum pre-hearing interviews based on LGBT status, January 2007 – November 2017



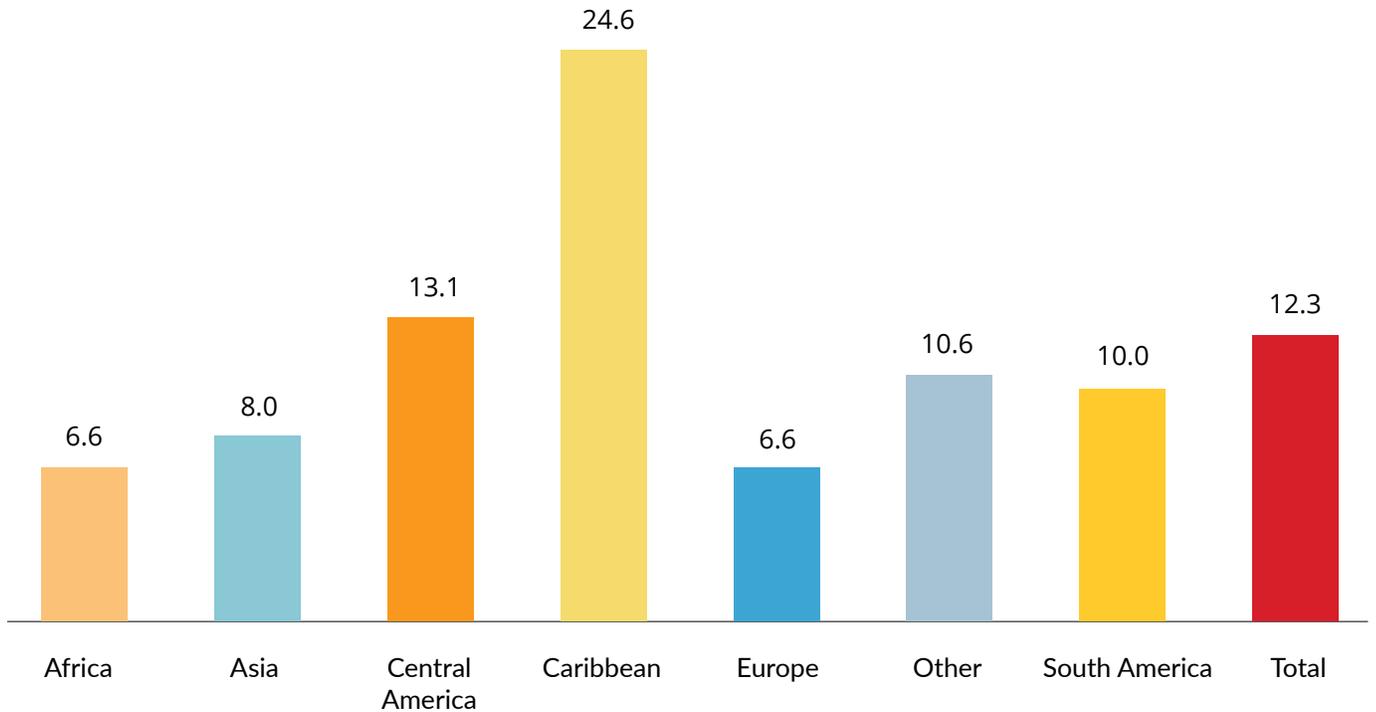
Claimants originated from 84 countries, with the majority from the Northern Triangle region of Central America: El Salvador (28.0%), Honduras (14.9%), and Guatemala (8.4%) (Figure 4, Table 1). Significant proportions were from Mexico (12.1%) and Ghana (7.8%). Claimants came from all regions of the world; the top five regions were Central America (64.3%), Africa (17.9%), South America (7.8%), the Caribbean (6.7%), and Asia (1.7%) (Table 2).

Figure 4. Credible and reasonable fear USCIS interviews with LGBT status claims, by country of citizenship of claimant, January 2007 – November 2017



The average time between case “clock-in” to a credible or reasonable fear determination by an asylum officer was 12.3 days, with a median of 6 days (interquartile range=2-13). By region, the longest average times were noted among claimants from the Caribbean (24.6 days), Central America (13.1 days), and South America (10.0 days) (Figure 5).⁴⁰

Figure 5. Average days between fear screening interview “case clock-in” to asylum officer fear determination based on LGBT status, by region of claimant, January 2007 – November 2017



The number of credible fear interviews based on LGBT status has generally risen throughout the years reported, with 1,021 and 865 interviewed LGBT applicants interviewed in FY 2016 and 2017, respectively (Figure 6). In contrast, the number of reasonable fear interviews based on LGBT status has stayed about the same over time (median=49, interquartile range = 29-62.5) as shown in Figure 7. Combined, almost half (48.7%) of fear interviews based on LGBT status were held in the last two years that data were collected (FY 2016 and 2017). This increase is proportional to the overall increase in defensive asylum claims since 2012.

Comparing the number of pre-screening fear interviews for claims based on LGBT status made in each fiscal year (October 1 – September 30) to the total number of positive and negative fear determinations published in USCIS Quarterly Stakeholder Reports, we obtained an average yearly proportion of 1.2% LGBT claims out of all credible fear interviews (FY 2008-2017, 3,783/309,614) and 1.7% out of all reasonable fear interviews (FY 2012-2017, 490/28,668).⁴¹ The highest proportion of LGBT credible fear interviews occurred in 2015 (1.6%) and the lowest in 2009 (0.4%). In contrast, the proportion of LGBT reasonable fear interviews has been generally declining, with the highest in 2012 (2.6%) and lowest in 2016 (0.8%) (Figure 8).

Figure 6. Annual number of USCIS credible fear determinations based on LGBT status and total decisions, FY 2008-2017

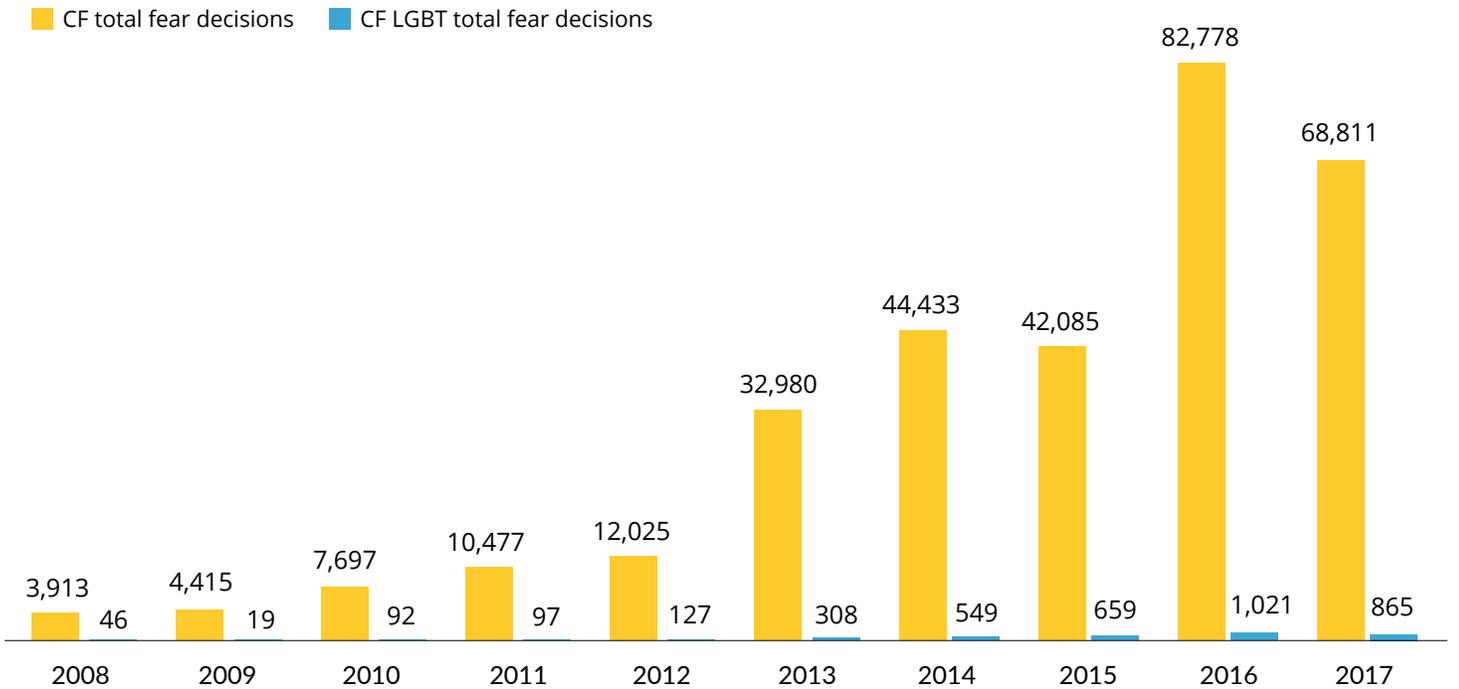


Figure 7. Annual number of USCIS reasonable fear determinations based on LGBT status and total decisions, FY 2012-2017

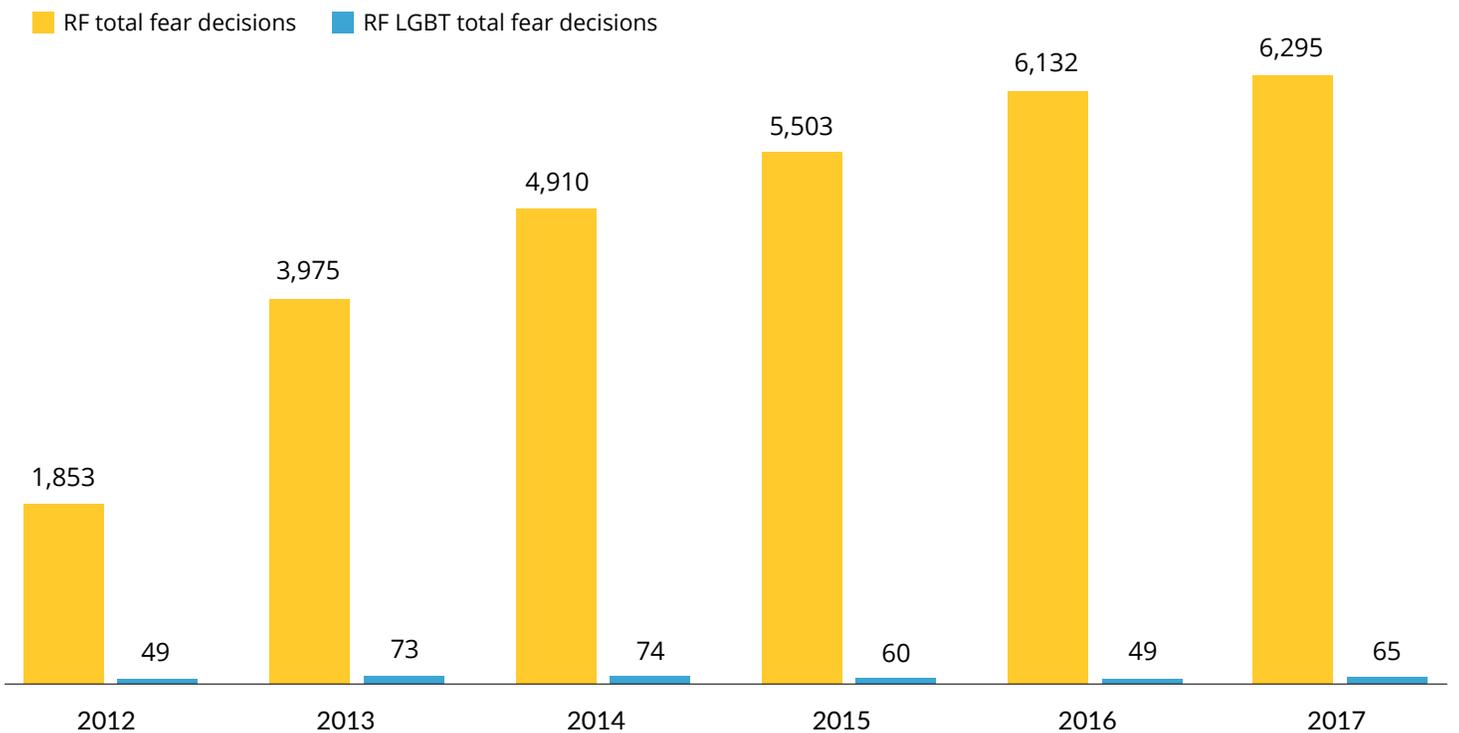
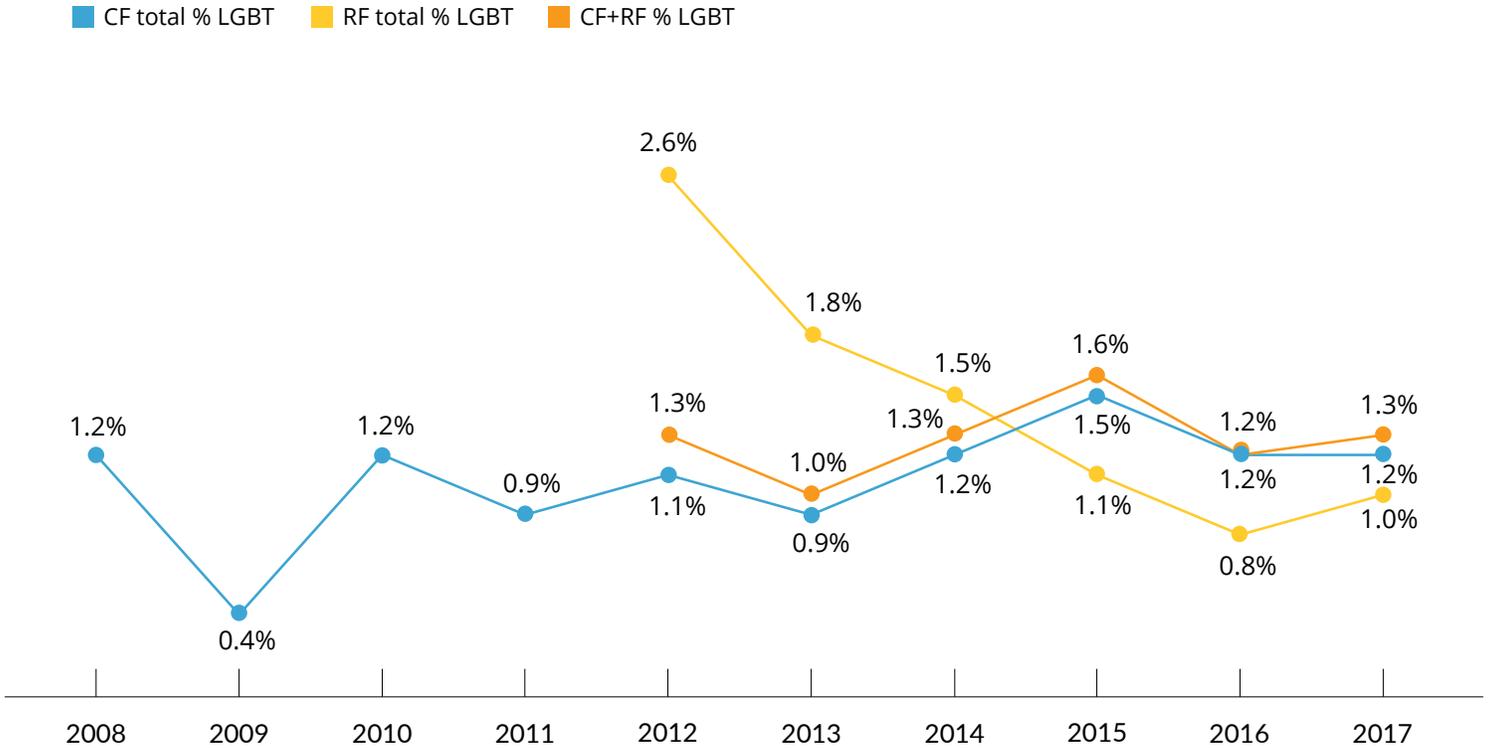


Figure 8. Proportion of USCIS credible and reasonable fear determinations based on LGBT status among total decisions, FY 2008-2017⁴²



We additionally constructed estimates of the total number of asylum applications based on LGBT status filed between FY 2012-2017—the most recent period for which we have data on both credible and reasonable fear claims (Table 3). To derive this estimate, we applied (multiplied) the percentage of LGBT status claims in each fiscal year—where credible or reasonable fear interviews with USCIS Asylum Officers were held—to the total number of affirmative and defensive asylum applications filed in each fiscal year, as reported by USCIS via the Congressional Research Service.⁴³ This estimate was then rounded to the nearest 100. This approach assumes that the percent LGBT observed among defensive claim fear hearings in each fiscal year is consistent across all defensive and affirmative applications in the same year, which may or may not be correct. Using this method, we estimate that 11,400 applications for asylum were filed in the United States on the basis of LGBT status between FY 2012-2017. More than half (51.8%) were filed in FY2016-2107. Future estimates of LGBT asylum applications should be grounded in a more complete set of federal asylum data.

DISCUSSION

LGBT people face a myriad of factors, including violence and persecution, that lead them to flee their country of origin and seek asylum in the United States. However, scant data are available to fully understand the volume or characteristics of LGBT people seeking asylum. Using data from the USCIS Asylum Prescreening System, we estimate that between January 3, 2007 to November 17, 2017, a total of 4,385 asylum claims related to LGBT status led to fear interviews with asylum officers. When comparing to overall numbers of fear determinations reported by USCIS, LGBT claims represent a yearly proportion of 1.2% of all credible fear interviews and 1.7% of all reasonable fear interviews. Using these estimates, in conjunction with published information from USCIS about total asylum applications, we estimate that 3,500 applications for asylum were filed in the United States on the basis of LGBT status in FY 2017.

The vast majority of fear claims were deemed credible by asylum officers. At 98.8%, nearly all of the credible fear interviews resulted in a positive fear determination. This is much higher than the overall FY 2008-2017 average case completion rate of 74.5%.⁴⁴ The proportion for positive fear determination from the reasonable fear interviews is equally as high at 95.9%. Findings are consistent with reports of individual LGBT asylum seekers who migrate to the United States to flee violence and persecution in their home country.⁴⁵

The majority of people seeking asylum based on LGBT status, where a credible or reasonable fear interview is held, originate from the Northern Triangle region, consistent with the pattern seen in overall defensive asylum claims.⁴⁶ A much larger proportion of claims (88.3%) were screened through the credible fear interview process, suggesting that most are individuals who entered or arrived at the United States border for the first time. Conversely, claims screened through a reasonable fear interview represent those cases where the asylum seeker faces a reinstatement of removal order (having already been removed from the United States) or, in some cases, administrative removal (based on an aggravated felony conviction).⁴⁷ These were the minority (11.7%) in our data.

While adding valuable information about LGBT asylees, several limitations of the data used in this study merit consideration. This dataset does not encompass the whole universe of asylum claims. Rather, our analyses were limited to cases where the claimant underwent a credible or reasonable fear interview by a USCIS asylum officer, and the claimant's reason for seeking asylum was coded by USCIS as related to sexual orientation or gender [identity]. We also note that our dataset does not contain information about the outcome of asylum claims that follow positive fear determinations, that is, with what degree of success asylum claims are later granted before an EOIR immigration judge. Based on the DHS Refugees and Asylees annual reports, only a minority of cases overall were ultimately granted asylum, both for defensive and affirmative asylum claims.⁴⁸

Likewise, it is important to acknowledge that our data may underrepresent the broader universe of LGBT asylum claims. Some LGBT asylum seekers may not list their LGBT status as a reason for seeking asylum or may be reluctant to disclose such information to asylum officers or DHS agents.⁴⁹ Additionally, our data do not include asylum seekers who were turned away at the border without having a chance to appear before USCIS officials, or individuals whose claims were not coded as LGBT by asylum officers.⁵⁰ For those claimants who may disclose information related to their sexual

orientation or gender identity, we do not have information about how USCIS codes the narrative fields data to flag “other social group” claims based on that information, nor the extent to which the variety of terminology used around the world to describe being LGBT has been incorporated into the USCIS coding system. And there may be some asylum seekers placed into removal proceedings who make LGBT claims without going through a fear interview. For these reasons, the fear interviews that we report are likely an underrepresentation of LGBT people who seek asylum defensively in the United States. We did not have data about LGBT people who seek asylum through the affirmative process.

A further limitation pertains to our inability to differentiate between defensive claims based on sexual orientation and those based on gender identity for transgender asylees in the Asylum Prescreening System data that we obtained. Moreover, it is impossible to ascertain which asylum claims were made by transgender claimants due to limitations of USCIS data capture, including Form I-870 (Record of Determination/Credible Fear Worksheet) and I-899 (Record of Determination/Reasonable Fear Worksheet).⁵¹ Both forms, for example, include a demographic question about the claimant’s gender (with male and female checkboxes) but do not include a question about sex assigned at birth.⁵²

Lastly, data from November 2017 to present are needed to evaluate the impact of the changes in asylum policies introduced by the Trump administration, including a narrowing of standards for granting credible fear and use of border personnel instead of asylum officers to make the fear determinations.

RECOMMENDATIONS

Our analysis highlights critical gaps and underscores the need for more robust data collection and reporting. To improve the quality and quantity of information about LGBT asylees to the United States, we recommend the following actions:

- Demographic questions about sexual orientation, gender identity, and sex assigned at birth should be included on all intake forms including Form I-870 (Record of Determination/Credible Fear Worksheet) and I-899 (Record of Determination/Reasonable Fear Worksheet), as well as I-589 (Application for Asylum and for Withholding of Removal).
- The EOIR should record the grounds for asylum claims in its case file electronic database and release these data to the public.⁵³
- Asylum officers and other personnel within CBP and USCIS who conduct credible/reasonable fear determinations, as well as immigration judges, should be adequately trained in competent interview methods for LGBT people, modelled on training provided to consular officers in the Bureau of Population, Refugees, and Migration in the Department of State.⁵⁴
- Sexual orientation, gender identity, and sex assigned at birth data should be integrated into data management systems operated by both the Department of Justice and Department of Homeland Security.
- Demographic data about sexual orientation, gender identity, and sex assigned at birth of asylees in detention should be collected within the Office of Refugee Resettlement in the Department of Health and Human Services, Customs and Border Protection, and Immigration and Customs Enforcement.

Table 1. Number of defensive asylum USCIS pre-hearing interviews based on LGBT status, from most to least, by country of citizenship, hearing type, and pre-screening determination, January 2007 – November 2017

COUNTRY OF CITIZENSHIP	TOTAL CLAIMS	TYPE OF INTERVIEW		ASYLUM PRE-SCREENING OFFICER (APSO) DETERMINATION		
		CREDIBLE FEAR (CF)	REASONABLE FEAR (RF)	CF/RF ESTABLISHED	FEAR OF PERSECUTION ESTABLISHED	FEAR OF TORTURE ESTABLISHED
Total	4,385	3,872	513	4,316	4,281	94
El Salvador	1,228	1,150	78	1,214	1,197	0
Honduras	651	570	81	638	633	0
Mexico	532	300	232	517	512	0
Guatemala	369	310	59	365	364	0
Ghana	340	339	1	337	337	6
Haiti	208	208	0	205	203	13
Cameroon	201	201	0	201	199	4
Ecuador	159	155	4	159	158	0
Brazil	110	105	5	107	107	0
Niger	60	57	3	58	58	1
Nigeria	46	45	1	46	46	0
India	42	42	0	39	39	0
Jamaica	42	21	21	42	42	0
Peru	33	30	3	33	33	0
Nicaragua	30	25	5	29	29	3
Senegal	28	28	0	28	28	0
Colombia	24	23	1	24	24	1
Somalia	22	22	0	22	22	0
Dominican Republic	19	19	0	19	19	0
Russia	19	19	0	19	19	0
Gambia	18	18	0	18	18	0
Albania	16	16	0	14	14	2
Uganda	13	12	1	13	13	1
Guinea	12	12	0	12	12	0
Pakistan	12	12	0	12	12	0
Costa Rica	10	8	2	9	8	1
Cuba	9	9	0	9	9	0
Armenia	8	8	0	8	8	0
Belize	8	4	4	7	7	0
Ukraine	8	8	0	8	7	0
China	7	7	0	7	7	0
Bangladesh	6	6	0	6	6	0

COUNTRY OF CITIZENSHIP	TOTAL CLAIMS	TYPE OF INTERVIEW		ASYLUM PRE-SCREENING OFFICER (APSO) DETERMINATION		
		CREDIBLE FEAR (CF)	REASONABLE FEAR (RF)	CF/RF ESTABLISHED	FEAR OF PERSECUTION ESTABLISHED	FEAR OF TORTURE ESTABLISHED
Romania	6	6	0	6	6	0
Benin	5	5	0	5	5	0
Ethiopia	5	4	1	5	5	0
Sierra Leone	5	5	0	5	5	1
Venezuela	4	2	2	4	4	0
Bolivia	3	2	1	3	3	0
Burkina-Faso	3	3	0	3	3	0
Mali	3	3	0	3	3	0
Togo	3	3	0	3	3	0
Turkey	3	3	0	3	3	0
Unknown	3	2	1	3	3	0
Argentina	2	1	1	2	2	0
Congo	2	2	0	2	2	0
Dominica	2	2	0	2	2	0
Egypt	2	2	0	2	2	26
Eritrea	2	2	0	2	2	2
Guyana	2	1	1	2	2	5
Iran	2	2	0	2	2	0
Morocco	2	2	0	2	2	0
Uruguay	2	2	0	2	2	0
Zimbabwe	2	2	0	2		2
Afghanistan	1	1	0	1	0	1
Angola	1	1	0	1	0	1
Australia	1	1	0	1	0	1
Bahamas	1	1	0	1	0	1
Canada	1	0	1	0	0	0
Chile	1	0	1	0	0	0
Cote d'Ivoire	1	1	0	1	0	1
DR Congo	1	1	0	1	3	1
Georgia	1	1	0	1	1	1
Guinea-Bissau	1	1	0	1	0	1
Iraq	1	1	0	1	0	1
Israel	1	1	0	1	0	1
Italy	1	1	0	0	2	0
Jordan	1	1	0	1	0	1
Kenya	1	1	0	1	0	1
Kuwait	1	1	0	1	0	1

COUNTRY OF CITIZENSHIP	TOTAL CLAIMS	TYPE OF INTERVIEW		ASYLUM PRE-SCREENING OFFICER (APSO) DETERMINATION		
		CREDIBLE FEAR (CF)	REASONABLE FEAR (RF)	CF/RF ESTABLISHED	FEAR OF PERSECUTION ESTABLISHED	FEAR OF TORTURE ESTABLISHED
Kyrgyzstan	1	1	0	1	0	1
Liberia	1	1	0	1	0	1
Mauritania	1	1	0	1	19	1
Montenegro	1	1	0	1	0	1
Namibia	1	1	0	1	1	1
Panama	1	1	0	1	0	1
Poland	1	0	1	0	0	0
Rwanda	1	1	0	1	1	1
Serbia	1	0	1	1	0	1
St Lucia	1	0	1	1	0	1
Tanzania	1	1	0	1	0	1
Trinidad & Tobago	1	1	0	1	0	1
Uzbekistan	1	1	0	1	0	1
Vietnam	1	1	0	1	0	1
Yemen	1	1	0	1	0	1
Zambia	1	1	0	1	1	1

Table 2. Number of defensive asylum pre-hearing USCIS interviews based on LGBT status by region, January 2007 – November 2017

REGION	TOTAL CLAIMS	TYPE OF INTERVIEW		"GENDER" ⁵⁵	
		CREDIBLE FEAR	REASONABLE FEAR	FEMALE	MALE
Africa	784	777	7	132	652
Asia	76	76	0	6	70
Central America	2,820	2,360	460	859	1961
Caribbean	292	269	23	30	262
Europe	63	61	2	12	51
South America	340	321	19	70	270
Other	10	8	2	2	8

Table 3. Estimated number of LGBT asylum applications and 95% confidence intervals (CI) based on proportion of credible fear (CF) and reasonable fear (RF) interviews based on LGBT status that were conducted, FY 2012-2017

FISCAL YEAR	LGBT CF+RF	TOTAL CF+RF	%LGBT CF+RF (95% CI)	AFFIRMATIVE ASYLUM TOTAL APPLICATIONS FILED ⁵⁶	DEFENSIVE ASYLUM TOTAL APPLICATIONS FILED ⁵⁷	TOTAL ASYLUM CLAIMS FILED	ESTIMATED TOTAL LGBT ASYLUM APPLICATIONS FILED, ROUNDED TO NEAREST 100 (95% CI)
2012	176	13,878	1.3% (1.1%, 1.5%)	41,880	44,497	86,377	1,100 (900, 1,300)
2013	381	36,955	1.0% (0.9%, 1.1%)	44,446	43,338	87,784	900 (800, 1,000)
2014	623	49,343	1.3% (1.2%, 1.4%)	56,912	47,366	104,278	1,300 (1,200, 1,400)
2015	719	47,588	1.5% (1.4%, 1.6%)	83,251	63,366	146,617	2,200 (2,100, 2,400)
2016	1,070	88,910	1.2% (1.1%, 1.3%)	114,927	81,878	196,805	2,400 (2,200, 2,500)
2017	930	75,106	1.2% (1.2%, 1.3%)	141,638	143,145	284,783	3,500 (3,300, 3,800)

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ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public. These studies can be accessed at the Williams Institute website.

FOR MORE INFORMATION

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RESEARCH THAT MATTERS



APPENDIX I

FREEDOM OF INFORMATION ACT (FOIA) REQUEST LETTER TO USCIS

October 9, 2017
U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
800-375-5283

FOIA REQUEST

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to records responsive to show the numbers of foreigners who have, upon, before, or after arriving in the United States, claimed political asylum due to fear of persecution in their home country because of their membership in the LGBTQ community. Members of this group include: homosexual people (gay, lesbian), bisexual people, queer people, and transgender people.

This includes and is not limited to all relevant statistics: the numbers, nationalities, and all other related public data of all aforementioned asylum seekers, whether their claims were deemed eligible or ineligible, and all records responsive to show how these decisions were made.

Specifically, these asylum claims would likely fall under the "membership in a particular social group" category of asylum claim but could also include those whose claim was based on a likely inability to access antiretroviral medications in their home country for HIV infection.

This should include but is not limited to all emails, memos, internal communications and reports related to these asylum requests. I would like to receive the information in an electronic, machine readable format. I understand that this request is large; I am happy to receive information as it becomes available.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. This information is being sought on behalf of Columbia University School of Journalism, where I am reporting on LGBTQ migration.

Please waive any applicable fees. Release of the information is in the public interest because of intense interest in immigration, migration, and LGBT issues.

I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone or email, rather than by mail, if you have questions regarding this request.

I also ask that this request be expedited under terms of the Freedom of Information Act. Expedited processing is allowed for requests that show a “compelling need,” and Columbia University School of Journalism is primarily engaged in disseminating information, with an urgency to inform the public concerning federal government activity.

Under this provision, I ask that expedited processing be allowed with a certification of “compelling need.” As the Act states, you have 10 days to decide whether to grant expedited processing.

My rationale for expedited processing under the “compelling need” stipulation is the intense public interest around the subject of migration, particularly from countries subjected to executive orders pertaining to immigration. Many people may be in the process of planning or acting upon asylum requests and up-to-date information about this type of asylum request and would benefit from accurate information in the news.

I look forward to your reply, as the statute requires.

Thank you for your assistance.

Sincerely,

Tim Fitzsimons

APPENDIX II

RESPONSE FROM USCIS TO FOIA REQUEST BY TIM FITZSIMMONS

U.S. Department of Homeland Security
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

February 28, 2019

COW2017001240

Tim Fitzsimons
NBC News Digital, Desk 321W-2
30 Rockefeller Plaza
New York, NY 10112

Dear Tim Fitzsimons:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office October 10, 2017 regarding the number of people claiming political asylum based on membership in LGBTQ for FY 2007-FY2017. You specifically requested the following:

1. I request access to records responsive to show the numbers of foreigners who have, upon, before, or after arriving in the United States, claimed political asylum due to fear of persecution in their home country because of their membership in the LGBTQ community. Members of this group include: homosexual people (gay, lesbian), bisexual people, queer people, and transgender people.
2. This includes and is not limited to all relevant statistics: the numbers, nationalities, and all other related public data of all aforementioned asylum seekers, whether their claims were deemed eligible or ineligible, and all records responsive to show how these decisions were made.
3. Specifically, these asylum claims would likely fall under the "membership in a particular social group" category of asylum claim, but could also include those whose claim was based on a likely inability to access antiretroviral medications in their home country for HIV infection.
4. This should include but is not limited to all emails, memos, internal communications and reports related to these asylum requests. I would like to receive the information in an electronic, machine readable format. I understand that this request is large; I am happy to receive information as it becomes available.

We have completed the review of all documents and have identified One Excel Spreadsheet responsive to your request. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(6) of the FOIA.

COW2017001240

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Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

We are unable to provide the access to individual records. This includes portions of items 1, 3 and 4. These portions of your request are being denied as overly burdensome, and under Exemption (b)(6).

As a result of discussion between agency personnel and a member of our staff, as a matter of administrative discretion, we are releasing computer codes found on system screen prints previously withheld under exemption b(2). There may be additional documents that contain discretionary releases of exempt information. If made, these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal to USCIS at: USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison, Jill Eggleston, for assistance at:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO 64064-8010
Telephone: 1-800-375-5283
Email: FOIAPAQuestions@uscis.dhs.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information /Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Telephone: 202-741-5770
877-684-6448
Email: OGIS@NARA.GOV
Website: OGIS.ARCHIVES.GOV

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The National Records Center does not process petitions, applications or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with the bureau, you must address these issues with your nearest District Office.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Please include the Control Number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, emailed to USCIS.FOIA@uscis.dhs.gov, or sent by fax to (816) 350-5785. You may also submit FOIA/PA related questions to our email address at FOIAPAQuestions@uscis.dhs.gov.

Sincerely,



Jill A. Eggleston
Director, FOIA Operations

Enclosure(s)

ENDNOTES

- ¹ Mendos, L. R., Botha, K., Lelis, R. C., Peña, E. L. d. I., Savelev, I., & Tan, D. (2020, December). *State-Sponsored Homophobia 2020: Global Legislation Overview Update*. Geneva, Switzerland: ILGA. Retrieved from: https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf
- ² Flores, A. R. & Park, A. (2018, March). *Examining the Relationship between Social Acceptance of LGBT People and Legal Inclusion of Sexual Minorities*. Los Angeles, CA: The Williams Institute. Retrieved from: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Acceptance-Legal-Inclusion-Mar-2018.pdf>
- ³ United Nations General Assembly. (2019, July 17). *Protection against violence and discrimination based on sexual orientation and gender identity: Note by the Secretary-General (A/74/181)*. Geneva, Switzerland: United Nations. Retrieved from: <https://undocs.org/A/74/181>
- ⁴ See, e.g., Strudwick, P. (2014, January 4). Crisis in South Africa: The shocking practice of 'corrective rape' - aimed at 'curing' lesbians. *The Independent*. Retrieved from: <https://www.independent.co.uk/news/world/africa/crisis-south-africa-shocking-practice-corrective-rape-aimed-curing-lesbians-9033224.html>
- ⁵ See generally Badgett, M. V. L. (2020). *The Economic Case for LGBT Equality: Why Fair and Equal Treatment Benefits Us All*. Boston, MA: Beacon Press.
- ⁶ Badgett, M. V. L., Waaldijk, K., & Rodgers, Y. v. d. M. (2019). The relationship between LGBT inclusion and economic development: Macro-level evidence. *World Development*, 120, 1-14. Retrieved from: <https://doi.org/10.1016/j.worlddev.2019.03.011>
- ⁷ Fitzsimmons, T. (2020, August 20). Trump proposals threaten LGBTQ asylum-seekers' hopes of refuge in U.S. *NBC Out*. Retrieved from: <https://www.nbcnews.com/feature/nbc-out/trump-proposals-threaten-lgbtq-asylum-seekers-hopes-refuge-u-s-n1236736>
- ⁸ See U.S. Department of State. (2019). *2019 Human Rights Reports Custom Report Excerpts: El Salvador, Guatemala, Honduras - Section 6. Discrimination, Societal Abuses, and Trafficking in Persons*. Retrieved from: <https://www.state.gov/report/custom/98808eec85/> (generated February 11, 2021).
- ⁹ Human Rights Watch. (2020, October 7). "Every Day I Live in Fear": Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States. New York, NY: Human Rights Watch. Retrieved from: <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador>
- ¹⁰ Human Rights Watch. (2021, January). "I'm Lucky to Still Be Alive": Violence and Discrimination Against LGBT People in El Salvador. New York, NY: Human Rights Watch. Retrieved from: https://www.hrw.org/sites/default/files/media_2021/01/202101LGBT_ElSalvador_EN.pdf
- ¹¹ Ibid.
- ¹² Human Rights Watch (2020). On November 11, 2020 the Inter-American Court of Human Rights heard the case of Vicky Hernández, a trans woman from Honduras killed in 2009. Petitioners argue that Honduras failed to adequately investigate the murder, which is violation of the right to life under the American Convention on Human Rights.
- ¹³ Inter-American Commission on Human Rights. (2015, December 12). *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (OEA/Ser.L/V/II. Doc.36/15 Rev.2). Washington, DC: Organization of American States. Retrieved from: <https://www.oas.org/en/iachr/reports/pdfs/violencegbtpersons.pdf>

¹⁴ 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees. Retrieved from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx>

¹⁵ The Refugee Act of 1980, 94 Stat. 102; Immigration and Nationality Act (I.N.A.) § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A) (2012).

¹⁶ *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1082 (9th Cir. 2015) (finding a transgender woman from Mexico eligible for CAT relief in light of her “past torture, and un rebutted country conditions evidence showing that such violence continues to plague transgender women in Mexico . . .”); *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 820–23, 1990 WL 547189 (BIA 1990) (finding that sexual orientation can be the basis for establishing a “particular social group” for asylum purposes);

¹⁷ *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014)

¹⁸ For a general review of the different paths to asylum and changes made under the Trump administration, see American Immigration Council. (2020, June 11). *Asylum in the United States*. Washington, DC: American Immigration Council. Retrieved from: <https://www.americanimmigrationcouncil.org/research/asylum-united-states>. See also Human Rights First. (n.d.). *Asylum Law and Procedure*. New York, NY: Human Rights First. Retrieved from: <https://www.humanrightsfirst.org/asylum/asylum-law-and-procedure>

¹⁹ 8 C.F.R. § 208.30(e)(2) (2018) (“An alien will be found to have a credible fear of persecution if 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, the alien can establish eligibility for asylum . . .”).

²⁰ I.N.A. § 241(a)(5), 8 U.S.C. § 1231(a)(5) (2012); 8 C.F.R. § 1241.8(a) (2018).

²¹ 8 C.F.R. § 208.31(c) (2018) (“The alien shall be determined to have a reasonable fear of persecution or torture if the alien establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal.”).

²² U.S. Citizenship and Immigration Services.). *The Affirmative Asylum Process*. Department of Homeland Security. Retrieved from: <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process> (last updated January 26, 2021). There are common exceptions to the one-year filing deadlines on the basis of change or extraordinary circumstances. See INA §208(a)(2)(D).

²³ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80274 (December 11, 2020), <https://www.federalregister.gov/documents/2020/12/11/2020-26875/procedures-for-asylum-and-withholding-of-removal-credible-fear-and-reasonable-fear-review>

²⁴ On January 8, 2021 a federal judge enjoined this rule, and it has yet to be enforced. Court Blocks Illegal “Death to Asylum” Trump Rule. (2021, January 8). *Center for Gender and Refugee Studies*. Retrieved from: <https://cgrrs.uchastings.edu/news/court-blocks-illegal-%E2%80%9Cdeath-asylum%E2%80%9D-trump-rule>

²⁵ Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 56424 (September 11, 2020), <https://www.federalregister.gov/documents/2020/09/11/2020-20036/control-of-communicable-diseases-foreign-quarantine-suspension-of-the-right-to-introduce-and>

²⁶ U.S. Customs and Border Protection. *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*. Department of Homeland Security. Retrieved from: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last updated February 10, 2021).

²⁷ See Memorandum from Kirstjen M. Nielsen, Sec'y, Dep't of Homeland Sec., to L. Francis Cissna, Dir., U.S. Citizenship & Immigration Serv., Kevin K. McAleenan, Comm'r, U.S. Customs & Border Prot. & Ronald D. Vitiello, Deputy Dir. & Senior Official Performing the Duties of Dir., U.S. Immigration & Customs Enf't, Policy Guidance for Implementation of the Migrant Protection Protocols 1 (Jan. 25, 2019), https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protectionprotocols-policy-guidance.pdf [<https://perma.cc/55GP-YE92>].

²⁸ Dickerson, C. (2020, October 23). Inside the Refugee Camp on America's Doorstep. *The New York Times*. Retrieved from: <https://www.nytimes.com/2020/10/23/us/mexico-migrant-camp-asylum.html>

²⁹ Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829 (July 16, 2019), <https://www.federalregister.gov/documents/2019/07/16/2019-15246/asylum-eligibility-and-procedural-modifications>

³⁰ The final rule went into effect on January 19, 2021; however, it was permanently enjoined by a federal judge on February 16, 2021. See *East Bay Sanctuary Covenant, et al. v. Williams Barr, et al.*, No. 19-cv-04073-JST, 2021 WL 607869 (N.D. Cal. Feb. 16, 2021).

³¹ Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 63994 (November 19, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-19/pdf/2019-25137.pdf>; On February 6, 2021, President Biden suspended these ACAs; Reuters Staff. (2021, February 6). Biden administration suspends Trump asylum deals with El Salvador, Guatemala, Honduras. *Reuters*. Retrieved from: <https://www.reuters.com/article/us-usa-immigration-centralamerica/biden-administration-suspends-trump-asylum-deals-with-el-salvador-guatemala-honduras-idUSKBN2A702Q>

³² Human Rights First. (2020, December). *Humanitarian Disgrace: U.S. Continues to Illegally Block, Expel Refugees to Danger*. New York, NY: Human Rights First. Retrieved from: <https://www.humanrightsfirst.org/sites/default/files/HumanitarianDisgrace.12.16.2020.pdf>

³³ Human Rights Watch. (2020, May 19). *Deportation with a Layover: Failure of Protection under the US-Guatemala Asylum Cooperative Agreement*. New York, NY: Human Rights Watch. Retrieved from: <https://www.hrw.org/report/2020/05/19/deportation-layover/failure-protection-under-us-guatemala-asylum-cooperative>

³⁴ Fitzsimmons (2020).

³⁵ *Ibid.*

³⁶ In the dataset we received, individual cases of fear determination are coded as “sexual orientation” or “gender-related.” Insofar as the data were provided in response to a FOIA request specifically requesting records showing claims based on “membership in the LGBTQ community,” we understand claims coded as “gender-related” to represent claims related to gender identity.

³⁷ It is unclear whether “gender” refers to gender identity or sex. Form I-589 “Application for Asylum and for Withholding of Removal” includes a “Male” and “Female” option that the claimant can check, but it is uncertain if the gender reported in this dataset reflects claimant’s choices (which would depend on how the claimant interprets it) or whether USCIS recodes them after the fact.

³⁸ This includes cases that were administratively closed and cases where a credible fear determination was not made due to case withdrawal or claimants who are no longer in expedited removal.

³⁹ Fear of persecution and torture are not exclusive categories, hence totals add to more than the overall positive fear establishment rate.

⁴⁰ This strictly refers to average time between one’s asylum claim being recorded in the system to a determination whether a credible or reasonable fear is established and does not cover the time between an asylum case being referred

to immigration court (if credible or reasonable fear is found) to a decision being made, which can take a year or more. Meissner, D., Hipsman, F., & Aleinikoff, T. A. (2018, September). *The U.S. Asylum System in Crisis: Charting a Way Forward*. Washington, DC: Migration Policy Institute. Retrieved from: <https://www.migrationpolicy.org/sites/default/files/publications/MPI-AsylumSystemInCrisis-Final.pdf>. See also American Immigration Council (2020).

⁴¹ Data reported in charts for credible fear claims is limited to FY 2008-2017, while reasonable fear claims is limited to FY 2012-2017, due to gaps in publicly available reports from U.S. Citizenship and Immigration Services. *Immigration and Citizenship Data*. Department of Homeland Security. Retrieved from: <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data>. The caseload of credible fear claims for 2008-2012 are not available via USCIS as of December 18, 2020 and were obtained via Congressional Research Service report, Congressional Research Service. (2019, February 19). *Immigration: U.S. Asylum Policy* (R45539 Version 2). Retrieved from: <https://crsreports.congress.gov/product/pdf/R/R45539/2>. To create these proportions, we reported years where data for a full USCIS fiscal year was available from either USCIS or the Congressional Research Service report listed above. The proportions were a result of dividing the number of claims in the dataset with the number of claims where a fear determination decision was made reported in USCIS or Congressional Research Service reports.

⁴² See Fn 40.

⁴³ Congressional Research Service (2019), tables A-1 and C-1.

⁴⁴ Congressional Research Service (2019), average of FY 2008-2017 from table B-3, column “% Total Completions with Positive Credible Fear Findings”

⁴⁵ Amnesty International. (2017, November). *No Safe Place: Salvadorans, Guatemalans and Hondurans Seeking Asylum in Mexico Based on Their Sexual Orientation and/or Gender Identity* (AMR 01/7258/2017). London, United Kingdom: Amnesty International. Retrieved from: <https://www.unhcr.org/en-us/5a2ee5a14.pdf>; Human Rights Watch (2020).

⁴⁶ Migration Policy Institute (2018).

⁴⁷ U.S. Citizenship and Immigration Services. *Questions and Answers: Reasonable Fear Screenings*. Department of Homeland Security. Retrieved from: <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-reasonable-fear-screenings> (last updated June 18, 2013). Reinstatement of removal under INA § 241(a)(5) is for individuals with prior orders. Administrative removal orders can apply to certain individuals convicted of aggravated felonies under INA § 238(b).

⁴⁸ U.S. Department of Homeland Security. *Refugees and Asylees*. Retrieved from: <https://www.dhs.gov/immigration-statistics/refugees-asylees>

⁴⁹ Heartland Alliance. (2012). *Rainbow Welcome Initiative: An assessment and recommendations report on LGBT refugee resettlement in the United States*. Retrieved from: https://rainbowwelcome.org/uploads/pdfs/ORR%20Report%20MASTER%20COPY_01.2012.pdf

⁵⁰ U.S. Commission on International Religious Freedom. (2016, August 2). *Serious Flaws in U.S. Treatment of Asylum Seekers in Expedited Removal: Children Especially Harmed*. Retrieved from: <https://www.uscirf.gov/news-room/releases-statements/serious-flaws-us-treatment-asylum-seekers-expedited-removal-children>

⁵¹ I-589, Application for Asylum and for Withholding of Removal. Retrieved from: <https://www.uscis.gov/i-589>

⁵² See USCIS forms at <https://www.slideshare.net/jnemanis/uscis-forms-0312101>

⁵³ See generally <https://www.justice.gov/eoir/foia-library-0>

⁵⁴ U.S. Department of State. *Protecting and Assisting LGBT Refugees* [archived content]. Retrieved from: <https://2009-2017>.

[state.gov/j/prm/policyissues/issues/c62979.htm](https://www.state.gov/j/prm/policyissues/issues/c62979.htm)

⁵⁵ See Fn 36.

⁵⁶ Congressional Research Service (2019), table A-1.

⁵⁷ Congressional Research Service (2019), table C-1.

⁵⁸ See Fn 36.