

103^D CONGRESS
1ST SESSION

H. R. 3223

To amend the Immigration and Nationality Act to establish fair and expedited procedures for adjudicating political asylum claims and to prevent fraud and abuse in the asylum process.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1993

Mr. BECERRA (for himself and Mr. NADLER) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to establish fair and expedited procedures for adjudicating political asylum claims and to prevent fraud and abuse in the asylum process.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF**
4 **CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Asylum Abuse Prevention and System Improvements Act
7 of 1993”.

1 (b) REFERENCES TO IMMIGRATION AND NATIONAL-
2 ITY ACT.—Except as otherwise expressly provided, when-
3 ever in this Act an amendment or repeal is expressed in
4 terms of an amendment to, or repeal of, a section or other
5 provision, the reference shall be considered to be made to
6 a section or other provision of the Immigration and Na-
7 tionality Act.

8 (c) TABLE OF CONTENTS.—The table of contents of
9 this Act is as follows:

- Sec. 1. Short title; references in Act; table of contents.
- Sec. 2. Criminal penalty for assisting in fraudulent asylum applications.
- Sec. 3. Procedures for adjudicating political asylum claims.
- Sec. 4. Detention and release.
- Sec. 5. Increased resources for asylum adjudications.
- Sec. 6. Report to congress on reduction in backlog of pending asylum cases.
- Sec. 7. Use of immigration emergency fund.
- Sec. 8. Definitions.
- Sec. 9. Effective date.

10 **SEC. 2. CRIMINAL PENALTY FOR ASSISTING IN FRAUDU-**
11 **LENT ASYLUM APPLICATIONS.**

12 (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is
13 amended by adding at the end the following new sub-
14 section:

15 “(d) Any person who knowingly for the purpose of
16 commercial advantage or private financial gain assists an
17 alien in misrepresenting a material fact in an application
18 for asylum or induces an alien to make a misrepresenta-
19 tion of a material fact in an asylum application, for each
20 transaction constituting a violation of this subsection, re-
21 gardless of the number of aliens involved, shall—

1 “(1) be fined in accordance with title 18,
2 United States Code, or imprisoned for not more
3 than 5 years, or both; or

4 “(2) in the case of a second or subsequent of-
5 fense be fined in accordance with title 18, United
6 States Code, or imprisoned not more than 10 years,
7 or both.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to violations occurring on or
10 after the date of the enactment of this Act.

11 **SEC. 3. PROCEDURES FOR ADJUDICATING POLITICAL ASY-**
12 **LUM CLAIMS.**

13 (a) IN GENERAL.—Section 208 (8 U.S.C. 1158) is
14 amended—

15 (1) by amending the heading to read as follows:

16 “ASYLUM”;

17 (2) by striking subsection (a) and inserting the
18 following:

19 “(a) IN GENERAL.—

20 “(1) APPLICATION FOR ASYLUM.—An alien
21 physically present in the United States or at a land
22 border or port of entry, irrespective of such alien’s
23 status, may apply for asylum in accordance with this
24 section.

25 “(2) CONDITIONS FOR GRANTING ASYLUM.—
26 Under such regulations as the Attorney General may

1 prescribe, the Attorney General may, in the discre-
2 tion of the Attorney General, grant asylum to an
3 alien if the alien applies for asylum and establishes
4 that the alien is a refugee within the meaning of sec-
5 tion 101(a)(42)(A).”;

6 (3) by redesignating subsections (b) through (d)
7 as (c) through (e), respectively; and

8 (4) by inserting after subsection (a) the follow-
9 ing new subsection:

10 “(b) ASYLUM PROCEDURES.—

11 “(1) JURISDICTION.—The Attorney General
12 shall provide that the Executive Office of Immigra-
13 tion Review, established by the Attorney General by
14 regulation, shall have jurisdiction over all applica-
15 tions for asylum and withholdings of deportation.

16 “(2) COORDINATION BETWEEN INS AND
17 EOIR.—Not later than 90 days after enactment of
18 this Act, the Attorney General shall establish by reg-
19 ulation procedures for coordination between the Im-
20 migration and Naturalization Service and the Execu-
21 tive Office for Immigration Review on the issuance
22 by the Service of Orders to Show Cause and Exclu-
23 sion Orders, when necessary, to asylum applicants.
24 Such regulations shall ensure that such orders are
25 issued and served in a manner that facilitates adju-

1 dication of asylum claims and other forms of relief
2 available to such aliens under the procedures and
3 time frames of this Act.

4 “(3) CENTRAL ASYLUM OFFICE.—

5 “(A) ESTABLISHMENT OF OFFICE.—The
6 Attorney General shall provide for the establish-
7 ment, within the Executive Office of Immigra-
8 tion Review, of an office, to be known as the
9 ‘Central Asylum Office’, to be headed by a di-
10 rector appointed by the Attorney General.
11 There shall be assigned to such office such em-
12 ployees as the Attorney General shall direct.

13 “(B) ASYLUM OFFICERS.—Among the em-
14 ployees assigned to such office there shall be a
15 corps of professional asylum officers who shall
16 receive comprehensive training in international
17 human rights and refugee law, as well as other
18 information relevant to asylum determinations.

19 “(C) DOCUMENTATION CENTER.—Such of-
20 fice shall maintain a documentation center with
21 regularly updated information on country-spe-
22 cific worldwide human rights conditions. Such
23 documentation center shall be made available to
24 both personnel of the office and representatives
25 of applicants.

1 “(4) ASYLUM IMMIGRATION JUDGES.—The At-
2 torney General shall designate from among the corps
3 of special inquiry officers within the Executive Office
4 of Immigration Review, a corps of asylum immigra-
5 tion judges who have received comprehensive train-
6 ing in international human rights and refugee law.

7 “(5) ASYLUM ADJUDICATION PROCEDURES.—

8 “(A) ASYLUM OFFICER INTERVIEW AND
9 DETERMINATION.—

10 “(i) IN GENERAL.—An applicant for
11 asylum shall be granted a first-instance,
12 nonadversarial interview by an asylum offi-
13 cer promptly after the filing of the alien’s
14 application. Promptly after such interview,
15 the asylum officer shall—

16 “(I) grant asylum under clause
17 (ii),

18 “(II) find that an application is
19 frivolous under clause (iii), or

20 “(III) refer the case without prej-
21 udice to the asylum immigration judge
22 for a full hearing on the merits under
23 clause (iv).

24 “(ii) GRANT OF ASYLUM BY THE ASY-
25 LUM OFFICER.—The asylum officer may in

1 the exercise of the officer's discretion grant
2 asylum to any applicant the asylum officer
3 determines to be a refugee within the
4 meaning of section 101(a)(42)(A).

5 “(iii) FINDING BY ASYLUM OFFICER
6 THAT AN APPLICATION IS FRIVOLOUS.—

7 “(I) IN GENERAL.—If the asylum
8 officer determines that the alien's
9 claim to asylum is frivolous, the asy-
10 lum officer shall find the alien ineli-
11 gible for asylum. Subject to the provi-
12 sions of paragraph (9), such alien who
13 has been served an order to show
14 cause under section 242B or put into
15 exclusion proceedings under section
16 236 shall be taken into custody pend-
17 ing a hearing before an asylum immi-
18 gration judge. Aliens who are not in a
19 unlawful status whose claims are
20 ruled frivolous shall be entitled to no
21 further administrative or judicial re-
22 view of the asylum officer's deter-
23 mination that a claim is frivolous.

24 “(II) REVIEW OF ASYLUM OFFI-
25 CER DETERMINATION OF FRIVOLOUS

1 ASYLUM CLAIM.—An alien adversely
2 affected by a determination of an asy-
3 lum officer under subclause (I) shall
4 be informed of the alien’s right to
5 seek a review of that ruling and may
6 request such a review, to be held at
7 the time of the alien’s exclusion or de-
8 portation hearing before an asylum
9 immigration judge.

10 “(iv) REFERRAL OF APPLICATION TO
11 ASYLUM IMMIGRATION JUDGE FOR DETER-
12 MINATION.—If an asylum officer does not
13 grant asylum to the applicant but does not
14 determine that the alien’s claim to asylum
15 is frivolous, the asylum officer shall refer
16 the claim to an asylum immigration judge
17 for a full hearing on the merits.

18 “(v) FAILURE OF ASYLUM OFFICER
19 TO CONDUCT INTERVIEW WITHIN 30 DAYS
20 OF FILING AN APPLICATION FOR ASY-
21 LUM.—An alien who is not interviewed by
22 an asylum officer within 30 days of filing
23 an application for asylum may request that
24 their case be referred directly to an asylum
25 immigration judge for a full hearing on the

1 merits to determine the applicant's quali-
2 fication for asylum.

3 “(B) ASYLUM IMMIGRATION JUDGE HEAR-
4 ING AND DECISION ON FRIVOLOUS NATURE OF
5 ASYLUM CLAIM.—

6 “(i) Promptly after a determination
7 by an asylum officer under subparagraph
8 (A)(iii)(I) that an alien's application for
9 asylum is frivolous, the alien shall be enti-
10 tled to a review of that determination to be
11 held during any deportation or exclusion
12 hearing.

13 “(ii) REVIEW OF FRIVOLOUS DETER-
14 MINATION.—If an asylum immigration
15 judge finds that an alien's asylum applica-
16 tion is frivolous, the judge shall proceed to
17 a determination of the alien's deportability
18 or excludability, and eligibility for relief
19 thereof. There shall be no further adminis-
20 trative appeal of the decision of the asylum
21 immigration judge on the question of the
22 frivolous or nonfrivolous nature of the
23 alien's asylum application.

24 “(iii) FINDING BY ASYLUM IMMIGRA-
25 TION JUDGE THAT AN APPLICATION IS

1 NONFRIVOLOUS.—If an asylum immigra-
2 tion judge finds that an alien’s application
3 is nonfrivolous, the alien shall be entitled
4 to a hearing before an asylum immigration
5 judge under subparagraph (C).

6 “(C) HEARING AND DECISION BY ASYLUM
7 IMMIGRATION JUDGE.—

8 “(i) IN GENERAL.—An asylum immi-
9 gration judge shall conduct a hearing
10 promptly after the finding that an applica-
11 tion is not frivolous under subparagraphs
12 (A)(iv) or (B)(iii). Such hearing shall be
13 on the merits of the asylum claim and, in
14 the case of an alien who has been served
15 an order to show cause under section 242B
16 or put into exclusion proceedings under
17 section 236, on the order to show cause or
18 exclusion order. Such hearing shall be con-
19 ducted within 45 days of the filing of the
20 application for asylum in a manner consist-
21 ent with paragraphs (1) through (4) of
22 section 242(b).

23 “(ii) DECISION.—Promptly after the
24 conclusion of a hearing under clause (i), an

1 asylum immigration judge shall grant or
2 deny an alien’s application for asylum.

3 “(D) OPPORTUNITY FOR COUNSEL; TRANS-
4 LATION AND INTERPRETER SERVICES.—At all
5 stages of the asylum adjudication process, the
6 alien shall have—

7 “(i) the opportunity to be represented
8 by counsel of the alien’s choosing, at no ex-
9 pense to the Government; and

10 “(ii) translation and interpreter serv-
11 ices.

12 “(E) BAR ON DAMAGES FOR FAILURE TO
13 MEET DEADLINES.—Nothing in this paragraph
14 relating to scheduling and deadlines may be
15 construed as creating any right to monetary
16 damages.

17 “(6) MANDATORY DENIALS.—An application for
18 asylum shall be denied if—

19 “(A) the alien, having been convicted by a
20 final judgment of a particularly serious crime in
21 the United States, constitutes a danger to the
22 community;

23 “(B) the applicant has been firmly reset-
24 tled into another country;

1 “(C) there are reasonable grounds for re-
2 garding the alien as a danger to the security of
3 the United States; or

4 “(D) the applicant has ordered, incited, as-
5 sisted or otherwise participated in the persecu-
6 tion of any person on account of race, religion,
7 nationality, membership in a particular social
8 group, or political opinion.”.

9 (b) CLERICAL AMENDMENT.—The item in the table
10 of contents relating to section 208 is amended to read as
11 follows:

 “Sec. 208. Asylum.”.

12 **SEC. 4. DETENTION AND RELEASE.**

13 Section 208(b) (8 U.S.C. 1158), as amended by sec-
14 tion 3(a) of this Act, is further amended by adding at the
15 end the following new paragraph:

16 “(9) DETENTION AND RELEASE OF ASYLUM AP-
17 PLICANTS.—

18 “(A) TRANSFER OF CLOSED MILITARY
19 BASES FOR DETENTION OF ASYLUM APPLI-
20 CANTS.—

21 “(i) PRIORITY AVAILABILITY TO DE-
22 PARTMENT OF JUSTICE.—Notwithstanding
23 any other provision of law, military instal-
24 lations to be closed under a base closure
25 law shall be made available, as determined

1 by the Attorney General, to the Depart-
2 ment of Justice, Immigration and Natu-
3 ralization Service, for use as facilities for
4 the detention of applicants for asylum.

5 “(ii) Clause (i) shall apply only to fa-
6 cilities within a 50-mile radius of a major
7 metropolitan area.

8 “(iii) DEFINITION.—For purposes of
9 this subparagraph, the term ‘base closure
10 law’ means each of the following:

11 “(I) the Defense Base Closure
12 and Realignment Act of 1990 (part A
13 of title XXIX of Public Law 101–510;
14 10 U.S.C. 2687 note);

15 “(II) title II of the Defense Au-
16 thorization Amendments and Base
17 Closure and Realignment Act (Public
18 Law 100–526; 10 U.S.C. 2687 note);

19 “(III) section 2687 of title 10,
20 United States Code; or

21 “(IV) any other similar law en-
22 acted after the date of the enactment
23 of this paragraph.

24 “(B) CONDITIONS FOR RELEASE.—Except
25 as provided in subparagraph (D), an asylum

1 applicant who is taken into custody pursuant to
2 section 235 or 242(a)(1) may be released pend-
3 ing a final decision if—

4 “(i)(I) the alien’s application was not
5 determined to be frivolous under sub-
6 section (b)(5); and

7 “(II) the Attorney General determines
8 that the alien poses no danger to the com-
9 munity, is not likely to abscond, and has
10 either posted a reasonable bond or has ties
11 to the community in the form of a family
12 member, sponsoring agency, or other re-
13 sponsible adult; or

14 “(ii) the Attorney General determines
15 that the alien’s detention is not in the pub-
16 lic interest.

17 “(C) DETENTION STANDARDS FOR MINORS
18 WHO APPLY FOR ASYLUM.—The Attorney Gen-
19 eral shall make provision for the prompt release
20 to licensed child welfare agencies, foster homes,
21 group homes or to relatives or other responsible
22 adults living in the United States, any applicant
23 who is aged 18 years or younger and who is not
24 in the company of a parent or adult guardian,
25 except that no juvenile shall be released from

1 detention if there are reasonable grounds to be-
2 lieve that the juvenile poses a danger to public
3 safety. Provisions for release of minors shall be
4 in accordance with Federal law and regulation
5 regarding detention and release of juveniles, ap-
6 plicable child welfare laws and standards, and
7 applicable State and local government licensing
8 standards, regulations and laws.

9 “(D) OBLIGATIONS.—Prior to an alien’s
10 release from detention, a prescreening officer
11 shall provide the released alien with information
12 on the next stages in the application process;
13 precise dates on the next stages; notice of obli-
14 gations and the consequences for failing to meet
15 those obligations; and the availability of coun-
16 sel. Throughout the prescreening procedure, ap-
17 plicants may be represented by counsel.

18 “(E) SUPERVISION AND PERIODIC CON-
19 TACT.—

20 “(i) An applicant released under sub-
21 paragraph (B) or (C) shall maintain peri-
22 odic contact with an entity designated by
23 the Attorney General under clause (iii).
24 Entities designated under this clause may
25 either be employees of the United States

1 Government or private or voluntary agen-
2 cies or individuals with experience in such
3 matters.

4 “(ii) At such time as the conditions in
5 clause (iii) have been met, an applicant’s
6 failure to substantially comply with clause
7 (i) shall constitute a violation of the terms
8 of the alien’s release.

9 “(iii) Not later than 90 days after en-
10 actment of this Act, the Attorney General
11 shall establish criteria and procedures for
12 the supervision of and periodic contact
13 with asylum applicants released under sub-
14 paragraph (A).

15 “(F) PENALTIES FOR FAILURE TO AP-
16 PEAR.—The unexcused failure of an applicant
17 to appear for a scheduled interview or hearing
18 shall be presumed an abandonment of the appli-
19 cation and cause for summary dismissal of the
20 claim to asylum. Failure to appear shall be ex-
21 cused if the notice of the interview was not
22 mailed to the applicant’s current address and
23 such address had been provided to the Execu-
24 tive Office of Immigration Review by the appli-
25 cant prior to the date of mailing in accordance

1 with section 265 and regulations promulgated
2 thereunder. Such failure to appear may be ex-
3 cused for other serious reasons at the discretion
4 of the asylum officer or asylum immigration
5 judge.

6 “(G) SPECIAL DUTIES TOWARD ALIENS IN
7 CUSTODY OF THE SERVICE.—When any alien in
8 the custody of the Service requests asylum or
9 withholding of deportation or expresses fear of
10 persecution or harm upon return to the alien’s
11 country of origin or to agents thereof, the Serv-
12 ice shall make available the appropriate applica-
13 tion forms for asylum and withholding of depor-
14 tation and shall provide—

15 “(i) up-to-date and accurate lists of
16 persons, legal services and private non-
17 profit agencies that can assist the alien in
18 preparing his asylum claim;

19 “(ii) access to private facilities for
20 consultation with legal representatives and/
21 or counsel regarding the preparation of
22 said application;

23 “(iii) clear and concise presentation of
24 rights and responsibilities applicable under
25 the law;

1 “(iv) reasonable access to counsel and
2 representatives; and

3 “(v) reasonable access to materials
4 necessary in preparing an asylum claim.”.

5 **SEC. 5. INCREASED RESOURCES FOR ASYLUM ADJUDICA-**
6 **TIONS.**

7 (a) FUNDS FORMERLY USED FOR INS ASYLUM AD-
8 JUDICATIONS TO BE USED FOR CENTRAL ASYLUM OF-
9 FICE.—Section 286(n) (8 U.S.C. 1356(n)) is amended by
10 adding at the end the following: “The Attorney General
11 shall ensure that from the funds deposited in such ac-
12 count, an amount not less than the amount allocated in
13 fiscal year 1993 to the Department of Justice, Immigra-
14 tion and Naturalization Service, Office of Refugees Asy-
15 lum and Parole, for adjudicating asylum claims in fiscal
16 year 1993 be provided each fiscal year to the Central Asy-
17 lum Office in the Executive Office of Immigration Review,
18 for the purposes of carrying out adjudication procedures
19 in section 208(b).”.

20 (b) INCREASE IN NUMBER OF ASYLUM OFFICERS
21 AND ASYLUM IMMIGRATION JUDGES.—Beginning in fiscal
22 year 1994 and for each subsequent fiscal year for which
23 the number of pending asylum adjudications at the end
24 of the preceding fiscal year exceeds 50,000, there are au-
25 thorized to be appropriated for the Department of Justice,

1 Executive Office of Immigration Review, such sums as
2 may be necessary to provide for—

3 (1) an increase in the number of asylum offi-
4 cers so that the average level of such personnel for
5 such fiscal year is at least 100 percent higher than
6 such level for fiscal year 1993,

7 (2) an increase in special inquiry officers so
8 that the number of such personnel is at least 100
9 percent higher than such level for fiscal year 1993,
10 and

11 (3) an increase in the number of clerks, trial at-
12 torneys, support staff, and requisite materials nec-
13 essary to support the increased personnel under
14 paragraphs (1) and (2).

15 **SEC. 6. REPORT TO CONGRESS ON REDUCTION IN BACK-**
16 **LOG OF PENDING ASYLUM CASES.**

17 Not later than 180 days after the date of the enact-
18 ment of this Act, the Attorney General shall submit to
19 the Judiciary Committees of the House and Senate a re-
20 port detailing the nature of the backlog in adjudicating
21 asylum claims. Such report shall include—

22 (1) an assessment of the number of applicants
23 awaiting asylum adjudications and the length of
24 time they have been waiting;

1 (2) an assessment of the number, nature, and
2 sizes of specific identifiable classes of aliens awaiting
3 adjudication;

4 (3) recommendations on administrative meas-
5 ures that the Department of Justice can take to
6 eliminate the backlog in asylum adjudications; and

7 (4) recommendations on actions Congress can
8 take to eliminate the backlog, with specific emphasis
9 on eliminating the backlog in instances where there
10 are large classes of pending asylum cases.

11 **SEC. 7. USE OF IMMIGRATION EMERGENCY FUND.**

12 Section 404(b) (8 U.S.C. 1101 note) is amended—

13 (1) in paragraph (2)(A), by striking “Funds”
14 and inserting “Notwithstanding any other provision
15 of this section, except as provided in paragraph (3),
16 funds”, and

17 (2) by adding at the end the following new
18 paragraph:

19 “(3) The Attorney General may use up to
20 \$15,000,000 of this fund to manage large and sudden
21 numbers of asylum applicants arriving at or attempting
22 to land or enter the United States, including the territorial
23 waters of the United States and ports of entry. For the
24 purposes of this paragraph, the requirement of paragraph

1 (1) that an immigration emergency be determined shall
2 not apply.”.

3 **SEC. 8. DEFINITIONS.**

4 Section 101(a) (8 U.S.C. 1101(a)) is amended by
5 adding at the end the following new paragraphs:

6 “(47) The term ‘frivolous’ means, with respect to a
7 claim for asylum, a claim that—

8 “(A) the grounds of the claim are outside the
9 scope of the definition of a refugee under this sec-
10 tion;

11 “(B) the claim is totally lacking in substance;
12 or

13 “(C) the claim is manifestly lacking in any
14 credibility.

15 “(48) The term ‘firmly resettled’ means, after an
16 alien’s entry into a country of refuge, the alien’s receipt
17 of an offer of permanent resident status, citizenship, or
18 some other type of permanent resettlement unless the
19 alien establishes that—

20 “(A) the entry into that country was a nec-
21 essary consequence of the flight from persecution,
22 that the alien remained in the country only as long
23 as was necessary to arrange onward travel, and that
24 the alien did not establish significant ties in that
25 country, or

1 “(B) the conditions of residence in that country
2 were so substantially and consciously restricted by
3 the authorities of that country that the alien was not
4 in fact resettled, taking into account the conditions
5 under which other residents of that country live, the
6 type of housing made available to the alien, whether
7 permanent or temporary, the types and extent of
8 employment available to the alien, whether perma-
9 nent or temporary, and the extent to which the alien
10 received permission to hold property and to enjoy
11 other rights and privileges ordinarily available to
12 other residents in the country such as travel docu-
13 mentation (including documentation for a right of
14 entry or reentry), education, public relief, or natu-
15 ralization.”.

16 **SEC. 9. EFFECTIVE DATE.**

17 Except as otherwise provided, the amendments made
18 by this Act shall take effect 90 days after the enactment
19 of this Act.

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