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American ideals. Universal values.

BLUEPRINT

# How to Protect Refugees and Prevent Abuse at the Border

BLUEPRINT FOR U.S. GOVERNMENT POLICY

JUNE 2014



## American ideals. Universal values.

On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

*Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.*

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**This report is available online at [humanrightsfirst.org](http://humanrightsfirst.org)**

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**Appendices for this report are available online at [www.humanrightsfirst.org](http://www.humanrightsfirst.org)**

## Introduction

Over the last few years there has been a sharp increase in the number of asylum seekers detained in “expedited removal” along the U.S. southern border who have expressed a fear of return to their home countries. The overwhelming majority of these people are from El Salvador, Guatemala, Honduras and Mexico. A rise in murders, rape, violence against women, kidnappings, extortion, and other brutality in these countries, which varies due to the particular conditions in each country—fueled by political instability, economic insecurity, breakdown of the rule of law, and the dominance of local and transnational gangs—is prompting many people to flee their homes.

It has been suggested that this increase in requests for protection reflects fraud, and that asylum is a “loophole” that allows perpetrators of fraud to gain entry to the United States. This view has led some to call for more immigration detention and for changes to lower the rate at which people requesting protection in the expedited removal system pass screening interviews, called “credible fear” interviews. Yet there is also broad agreement that protecting those who flee persecution is an important American value. How to address the multiple challenges associated with this increase in protection requests presents the U.S. government with a thorny dilemma, one that is complicated by the political demands to secure the border before moving ahead with immigration reform legislation and by the escalating humanitarian crisis of children at the border.

In order to learn more about the increase in protection requests, and to inform recommendations for addressing these challenges, Human Rights First conducted visits to key border points, border patrol stations and immigration detention facilities in Arizona, California and Texas.<sup>1</sup> This Blueprint is informed by that research as well as our first-hand experience assisting and providing *pro bono* representation to asylum seekers including many who have come to this country through the southern border.

Over the years, resources for immigration enforcement, including Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), have quadrupled—rising from \$4.5 billion in 2002 to \$18 billion in FY 2013.<sup>2</sup> Under expedited removal, immigration enforcement officers, rather than immigration judges, can

order the deportation of immigrants lacking valid documentation. Following DHS’s decision to expand the use of expedited removal from formal “ports of entry” to those apprehended within 100 miles of the border and within 14 days of illegal entry, the use of this summary deportation process has also risen dramatically.<sup>3</sup> While the United States deported 41,752<sup>4</sup> individuals through expedited removal in 2004, that number rose to 163,498 in 2012 with the sharpest rise in the last few years.<sup>5</sup> This increase in the use of expedited removal is part of a broader DHS strategy to shift from judicial to primarily non-judicial deportation processes.<sup>6</sup> Not only has the use of expedited removal increased, but so too have the number of individuals referred into expedited removal’s credible fear process, rising from 7,917 in 2004 to 36,035 by 2013<sup>7</sup>. This increase is particularly steep between 2010 and 2013—with the number more than doubling between 2012 and 2013. These numbers amount to only a very small portion of overall CBP apprehensions.<sup>8</sup>

A confluence of factors is contributing to the increase in the number of people expressing fears of return and requiring credible fear interviews. The escalation of immigration enforcement, the significant expansion in the use of expedited removal, and the increased violence pushing some people to flee are all putting pressures on U.S. protection screening and adjudication systems. The violence in countries south of the United States, outlined in Appendix D to this Blueprint, is affecting a wide range of people including women targeted for murder, rape and domestic violence, LGBT persons, journalists, police officers, and ordinary people threatened and terrorized by gangs and drug cartels that sometimes have close ties to government. Smuggling networks are posing a challenge as well. Some experts also believe that, in the wake of CBP’s increased use of expedited removal and reinstatement of removal, a higher portion of border crossers may be returning to homes and families in the United States rather than first time entrants.<sup>9</sup> All of this is happening in the midst of the politically charged debate on immigration reform legislation, which some believe encourages immigrants to come to the United States.<sup>10</sup>

Despite the sharp increase in expedited removal in recent years and the massive increases in resources for CPB and ICE which handle the initial stages of the expedited removal process, there has not been a parallel sharp increase in resources for expedited removal’s credible fear screening process or the subsequent adjudication process before the immigration courts. The immigration system at

the border is imbalanced, with extraordinary resources put into the capacities to apprehend and detain but too few resources allocated to the protection and adjudicatory components of the expedited and regular removal processes. This imbalance had led to backlogs and delays that can undermine the integrity of these systems, increase costs at the tail end of the process, and leave asylum seekers in limbo for years. It has also prompted changes that have undermined protection—like the shift to the use of telephone calls to conduct credible fear interviews and changes to heighten the credible fear standard.

As outlined in this Blueprint, the Obama administration and the U.S. Congress have the tools to address these complex challenges. The administration should step up its use of alternatives to detention, effectively implement parole and bond, repair protection safeguards, and enhance tools for addressing abuse, requesting the funding to do so where necessary. Congress should properly resource the protection screening interviews and immigration courts to reduce backlogs and vulnerability to abuse, support legal presentations in more immigration detention facilities and within days of detention, and support the increased use of alternatives to detention. While detention has long been the default tool used by immigration authorities, further escalating reliance on detention would be exceedingly expensive, and numerous studies have documented that case management, supervision, monitoring or alternative measures lead to high appearance rates.

These solutions are fiscally prudent, effective and reflect American values. For example, alternatives to detention have been endorsed by a wide spectrum of groups and are increasingly turned to in criminal justice systems because they are highly effective measures that can help meet the government's objective to secure appearance, while mitigating much of the immense human and fiscal costs of institutional detention. Initiatives that provide immigrants with accurate legal information have been demonstrated to improve efficiencies in immigration court, and certainly contribute—along with quality legal counsel—to more just and fair results. Measures such as adequately funding the immigration courts and asylum office, which will require appropriations of additional funding, will strengthen systems that are in urgent need of additional staff and constitute smart investments in the integrity of the U.S. immigration court and asylum systems. For instance, timely asylum and immigration court removal

processes deter people from exploiting them. U.S. immigration authorities, at every step in the process, also have extensive tools to identify potential abuse, criminal activity and security risks and these tools have been significantly enhanced in recent years.

Effectively addressing these challenges should be a top priority for both the Administration and Congress. This surge is part of a pressing challenge along the southern border. The United States has a strong interest in maintaining the integrity and effectiveness of its immigration and asylum systems and safeguarding them from abuse. This interest is particularly crucial during a very public debate on immigration reform. America also has a strong interest in maintaining its global leadership in protecting the persecuted. Thirty three years ago, the Refugee Act of 1980, which passed Congress with strong bi-partisan support, enshrined into domestic law America's commitment to protect the persecuted. As the Council on Foreign Relations Independent Task Force on Immigration Policy, co-chaired by former Florida Governor Jeb Bush and former Clinton White House chief of staff Thomas "Mack" McLarty, pointed out—and a group of leading Republicans recently affirmed<sup>11</sup>—the U.S. commitment to protect refugees from persecution is "enshrined in international treaties and domestic U.S. laws that set the standard for the rest of the world; when American standards erode, refugees face greater risks everywhere." America can and should stand firm as a beacon of hope for those fleeing persecution.

## Summary Recommendations

In order to address the increase in protection requests at the border Human Rights First recommends:

### Properly Resource Asylum Office Screening Processes and Immigration Courts to Reduce Backlogs and Vulnerability to Abuse

- DHS should request, and Congress should appropriate, funds to increase asylum office staffing and resources to conduct timely in-person credible fear and reasonable fear screening interviews and address backlogs, without diverting staff from conducting timely affirmative asylum interviews.
- DOJ should request, and Congress should appropriate, funds to increase nationally the number of immigration court judges, law clerks, and related

resources to address removal hearing delays, eliminate backlogs and conduct timely hearings.

### Launch Measures to Support Appearance

- DHS should increase capacity to use alternatives to detention nationally for border arrivals released to locations in other parts of the country who are determined to need appearance support, and Congress should support this initiative.
- DHS should create and staff new positions to support appearance, parole, and alternatives.
- DOJ should request, and Congress should appropriate, funding for timely immigration court hearings which will help support appearance, and steps to provide counsel, outlined below, will also support appearance.
- DOJ and DHS should facilitate immigration court appearance through timely filing of Notices to Appear with, and changes of venue to, court where asylum seeker is actually located.

### Address Gaps in Accurate Information about the Process

- DOJ should request, and Congress should appropriate, funds for expansion of cost-efficient legal information presentations to all facilities within a few days of arriving in detention.
- DOJ and DHS should facilitate quality legal counsel early in the process for vulnerable indigent asylum seekers in immigration detention, and Congress should support projects to increase legal counsel for vulnerable populations.
- All immigration officers and government officials should facilitate accurate information on asylum and credible fear.

### Strengthen—Do Not Weaken—Protection Safeguards

- USCIS should conduct credible fear interviews in person and in a timely manner, end telephone interviews, revise flawed language in the newly re-issued 2014 Credible Fear Lesson Plan, and intensify supervisory review of decisions under the plan.
- CBP should improve, and implement USCIRF recommendations on, CBP interviews.

- DHS should facilitate updated USCIRF study, and Congress should fund comprehensive USCIRF study, of expanded expedited removal and detention.
- DHS should roll back use of expedited removal, particularly if its protection interview component is not adequately resourced.
- The Administration and Congress should review and address gaps in other protection mechanisms.

### Effectively Implement Parole, Bond, and Alternatives to Detention

- DHS should step up capacity to smartly use alternatives to detention nationally in place of detention for border arrivals determined to need appearance support who (present no danger and) are released to other parts of the country.
- ICE should conduct additional training and oversight to effectively implement bond and parole, and should create positions to support appearance.
- DHS should only use facilities, and should develop standards, appropriate to civil immigration detention, and Congress should support this transition.

### Enhance Tools for Detecting and Investigating Abuse and Criminal Activity

- DHS should utilize multiple tools for detecting abuse and criminal activity, and refer fraudulent schemes or criminal activity for investigation.
- DHS and DOJ should prioritize prosecutions of individuals who orchestrate schemes that defraud the immigration and asylum systems.
- DHS should increase, and Congress should support if necessary, funds to increase ICE capacity to manage caseload and USCIS capacity to conduct background checks in an automated manner.

### Address Triggers of Flight

- The administration should broaden inter-agency attention to promote outcomes to confront impunity and rule of law challenges contributing to flight from Central America and Mexico. All proposed actions should be consistent with U.S. refugee protection and human rights commitments, and include protection mechanisms.

- Support non-profit legal groups to assist displaced victims in countries of origin and carefully assess any informational campaigns.

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## Reduce Backlogs and Vulnerability to Abuse

Resources and staffing for the USCIS Asylum Division (which conducts the expedited removal process's credible fear interviews) and for the immigration courts (which adjudicate the removal cases that come out of the expedited removal process after an individual "passes" his credible fear interview) have lagged far behind the substantial increase in resources for immigration enforcement.

As the use of expedited removal and number of credible fear interviews grew over the years, so too did the wait times and backlog in credible fear interviews. In 2009, Human Rights First reported that detained asylum seekers in Arizona, California, and Texas were waiting several months for their credible fear interviews<sup>12</sup> and these kinds of delays in the border areas persisted for several years. To address these delays, the USCIS Asylum Division began redeploying staff to conduct credible fear interviews more promptly after arrival, hiring additional staff, and increasing the use of the telephone to conduct interviews with asylum seekers held at detention facilities that are often located hours away from asylum offices. About 100 additional asylum officers are slated to be added during FY 2014. The deployment of asylum officers from the affirmative asylum process to address the credible fear delays has led to a growing backlog of affirmative asylum filings; statistics show that USCIS currently has over 45,000 affirmative asylum cases pending, and many asylum seekers now wait months or years for their asylum interviews—a potential vulnerability that could be exploited,<sup>13</sup> as well as a source of enormous hardship to legitimate asylum seekers. Prolonged delays also remain in "reasonable fear" interviews (the screening interviews conducted as part of reinstatement of removal), with the average length of wait time—while the individual remains in "mandatory" detention—now at 111 days. (A lawsuit over these delays was filed in April 2014.)<sup>14</sup>

The lack of staffing to conduct increased numbers of credible fear interviews at distant detention centers, along with some logistical challenges, has led the USCIS Asylum Division to shift to conduct the majority of credible fear interviews by telephone. While only 2 percent of credible fear interviews took place by telephone in 2009, by 2013, 60 percent took place by telephone and so far this year 68 percent have been conducted by telephone.<sup>15</sup> There are many challenges to communicating over the telephone about difficult issues relating to violence, harm, or traumatic incidents, often through an interpreter who is also on a telephone line. Some non-profit lawyers report seeing shorter screening interviews, more confusion on the part of their asylum seeker clients, and subsequently more inaccuracies in credible fear interview reports. The Asylum Division cautions its officers that the nature of the credible fear interview process—which includes detention and often telephonic interviews—can limit reliability of and ability to evaluate factors like demeanor, candor and responsiveness.<sup>16</sup> Not only are these interviews an asylum seeker's only opportunity to explain his or her fears of return, but the written reports of these interviews are often used by ICE trial attorneys to challenge the credibility of an asylum seeker in immigration court. It is thus doubly important that interviews are conducted in such a way as to support their accuracy.

The immigration court system, which receives the expedited removal cases that successfully pass out of the credible fear process, is widely recognized to be overstretched, backlogged, and underfunded.<sup>17</sup> While immigration enforcement budgets increased by 300 percent between 2002 and 2013, funding for the immigration courts has lagged far behind, increasing by only 70 percent.<sup>18</sup> Over 366,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 578 days.<sup>19</sup> The Administrative Conference of the United States (ACUS) concluded that the immigration court backlog and "the limited resources to deal with the caseload" present significant challenges; and the American Bar Association's Commission on Immigration concluded that "the EOIR is underfunded and this resource deficiency has resulted in too few judges and insufficient support staff to competently handle the caseload of the immigration courts." These kinds of delays can also increase the system's vulnerability to abuse as some individuals may not appear (inadvertently as well as purposefully) when hearings will not occur for several years.<sup>20</sup>

## Recommendations

Human Rights First recommends the following steps to eliminate delays in the asylum and immigration court systems:

- **Increase asylum office staffing and resources for the conduct of timely in-person credible fear and reasonable fear interviews and to address backlogs.** USCIS should conduct an assessment of staffing, space and resources needed for the agency to meet its caseload (under expedited removal and reinstatement of removal, as well the affirmative asylum process) and conduct these interviews in person in a timely manner. USCIS should request, and Congress should support, appropriations necessary to allow the Asylum Division to conduct timely screening interviews in expedited removal and reinstatement of removal without diverting officers from the affirmative asylum process which is supported through fee-based funding. One option is to maintain a separate “contingency” account from which USCIS could draw only as necessary for protection interviews conducted as part of expedited removal or reinstatement of removal. (Alternatively, as credible fear and reasonable fear interviews are critical components of the immigration enforcement tools of expedited removal and reinstatement of removal, DHS should deploy, or Congress should re-deploy, some of its immigration enforcement funding to these processes.) With increased resources for these screening interviews, the Asylum Division should consider locating some staff and offices at or near the major border area ICE detention facilities, and ICE should more closely coordinate with the Asylum Division and EOIR in its choice of detention facility locations and space for these key functions. If the administration and Congress cannot provide the necessary resources to staff the credible fear process adequately without undermining the integrity of the asylum process, DHS should roll back its expansion of expedited removal which has always raised serious protection concerns. Similarly, if the reasonable fear process cannot be adequately funded, the administration should step back its use of reinstatement of removal.
- **Eliminate Affirmative Asylum Interview Backlog.** USCIS should also address the affirmative asylum backlog. If this backlog is allowed to continue, it could lead to some of the same types of abuses and challenges that plagued the asylum system in the early 1990’s when individuals were allowed to sit in the backlog for years, awaiting scheduling of an asylum office interview.<sup>21</sup> The integrity of the asylum system should be safeguarded by ensuring that asylum interviews are scheduled within about 60 days of filing an asylum application, that individuals who are not granted asylum are promptly referred into immigration court removal proceedings, and that they then generally have their immigration court removal hearing within approximately six months.
- **Increase immigration court staffing to address removal hearing delays and eliminate hearing backlog.** Congress should increase resources and staffing for the immigration courts to ensure that individual merits hearings are generally scheduled within approximately six months of the filing of an asylum application. For FY 2015, Congress should appropriate at minimum the President’s requested \$347.2 million (for a total of \$351 million), which would allow for some expansion of Legal Orientation Presentations as well as add 35 full immigration judge teams that would help alleviate some of the resource deficiencies currently facing the immigration courts.<sup>22</sup> In subsequent fiscal years, the Administration should request, and Congress appropriate funds for, 75 new immigration judge teams per year for three fiscal years—the level called for in the Senate’s bipartisan comprehensive immigration reform bill<sup>23</sup>. This significant and overdue increase in resources is needed to allow the courts to begin to reduce existing backlogs and delays, and would help address concerns that some individuals who pass their screening interviews at the border and are placed into immigration court removal proceedings may not appear at their hearings so far in the future.



## Launch Measures to Enhance Appearance

Asylum seekers have traditionally appeared for their immigration court hearings at relatively high rates.<sup>24</sup> Recent data provided to UNHCR indicated that in FY 2012 only five percent of completed removal proceedings of asylum seekers had in absentia removal orders.<sup>25</sup> Additional measures could support appearance. Some ICE officers working at detention facilities in the border areas are juggling large caseloads, and when asylum seekers are released from immigration detention they often do not receive the level of information and explanation necessary to support their appearance. Many non-profit attorneys who work with asylum seekers—both in the border areas and in the locations that they move to after release from immigration detention—report that asylum seekers do not have and in some cases do not understand crucial information relating to their appearance and reporting obligations with ICE and the immigration courts.

In some instances, asylum seekers are not provided with a Notice to Appear that initiates immigration court proceedings, or that notice does not indicate any information about the time or location of a future hearing. In other cases, the notice starting immigration court hearings is filed in an immigration court located near the detention facility, even though the asylum seeker was released with the understanding that he would be residing in a city located across the country. Some individuals believe that the notice they receive telling them to report to an ICE office (for purpose of monitoring their release on parole for instance) is actually their immigration court appointment. Some individuals who were released through parole genuinely believed that they had been given an immigration status, and did not understand their cases were or would be placed in removal proceedings, and that they had obligations to appear in court.

Focusing additional staff on the front end of the process—by increasing the information and support for appearance—will save staff time, resources, and facilitate meeting the government’s goals of appearance and compliance at the end of the process.

## Recommendations

To support appearance, ICE and EOIR should work together to enhance measures to facilitate appearance of individuals released from immigration detention including to:

- **Increase Capacity to Use Alternative Appearance Measures Nationally.** ICE should launch an initiative to more smartly use alternatives to detention for individuals detained in border areas who need additional supervision to mitigate flight risk. This nationwide initiative should provide case management, and, where necessary, supervision, monitoring and/or other measures to support appearance in the locations to which individuals relocate upon release. In other words, if an asylum seeker who crossed the border is determined to require additional measures to mitigate flight risk (and is not a danger to the community) is released from detention in Arizona or Texas, that individual or family can be monitored in New York, Atlanta, Los Angeles, or whatever other location to which the individual relocates. While some view detention as the only way to assure appearance, numerous studies have documented that case management, supervision, monitoring and/or alternative measures can lead to high appearance rates. The most recent statistics available from ISAP II, the program currently contracted by ICE for its alternatives to detention monitoring, reported that individuals attended their final hearings 97.4 percent of the time and complied with final orders 85 percent of the time.<sup>26</sup> As the Council on Foreign Relations’ Independent Task Force on U.S. Immigration Policy noted, alternatives to detention can “ensure that the vast majority of those facing deportation comply with the law, and at much lower costs.”<sup>27</sup>
- **Create Specially Trained Staff Positions to Support Appearance.** ICE should create sufficient numbers of dedicated positions at immigration detention facilities specially focused on and trained to support appearance after any release on parole, bond or alternative measures. (Steps to effectively implement bond and parole are outlined later in this Blueprint.) These staff members should provide in depth additional information and explanation to detainees who are being released (in the individual’s language) concerning the immigrant’s various

appearance obligations in order to proactively address some of the confusion and logistical snafus that can lead to non-appearance. This information should include: immigration court appearance requirements or any conditions on release from immigration detention (such as reporting to an ICE office); the differences between various appointments; the locations of the relevant offices and the procedures to follow if the applicant should have to move addresses again. They should also explain basic court procedures and requirements, outline the key differences between ICE and EOIR to reiterate the importance of notifying and complying with both agencies, and could liaise with ICE trial attorneys and the immigration courts so that court proceedings are initiated promptly and in the correct location. While some ICE officers may view steps to ensure appearance at immigration court as outside of their jurisdiction, appearance at court is an essential step along the path to appearance for removal. This staff could also review address information and take quick steps to ensure accurate information is inputted into the system.

- **Facilitate Appearance at Immigration Court through Timely Filing of Notices to Appear with Destination Court, Prompt Docketing, and Proactive Transfer of Immigration Court Venue.** Where an asylum seeker is released from detention before immigration court proceedings have begun, ICE and other DHS personnel should file the Notice to Appear (NTA) that initiates those proceedings with the immigration court that will have jurisdiction over the location where the asylum seeker will be residing, and should file that Notice in a timely manner, at the same time it is served on the immigrant. These steps will help prevent the non-appearance and confusion that can result when ICE files the Notices to Appear with an immigration court in the jurisdiction where the immigrant was originally detained, even though the immigrant was released with the understanding that he or she would be living at a different address in a different region of the country. This not only causes challenges for unrepresented asylum applicants, who need to file a written request for a change of venue in their cases and receive little or no guidance on how to do so, it also creates additional burdens for an already overburdened court system. It requires the scheduling of the case and the adjudication of a motion in the original jurisdiction, which could be

avoided if the NTA were filed in the destination location from the outset. Filing the NTA with the court in a timely manner, at the same time it is served on the immigrant (rather than waiting many months or longer), and prompt docketing by the court, will help avert failures to appear in immigration court as well as inadvertent failures to file asylum applications within one year of arrival—which can lead to asylum denials for refugees with well-founded fears of persecution and unnecessary diversion of immigration court time to adjudicate the many technicalities relating to the filing deadline bar.

When immigration court hearings are already pending at the time of release, ICE should work with EOIR to proactively change the venue (location) of immigration court hearings to the location where asylum seekers will be living after release. Non-profit attorneys report that asylum seekers are often confused about where they are supposed to appear, and that it is difficult to impossible for most of them to file a formal motion to change venue without the assistance of counsel. ICE did report that its offices and the immigration courts have in some cases worked together to facilitate changes of venue in cases where immigrants are relocating to other parts of the country. This approach, if properly explained to the released individual, is more likely to facilitate a subsequent appearance at immigration court—as opposed to a case where the individual is left to navigate the system on his or her own.

- **Support Timely Immigration Court Hearings.** DOJ should request, and Congress should support, funding for the immigration courts as outlined earlier in this Blueprint. When immigration court hearings are delayed for years, individuals may be more likely to fail to appear for those hearings. By eliminating the prolonged delays, Congress will also help fully realize the cost savings of alternatives to detention.
- **Take Steps Outlined Below to Support Legal Representation Which Can Support Appearance.**

## Address Gaps in Accurate Information

Many who request protection lack accurate information about “credible fear,” asylum, and their eligibility for protection. Some receive inaccurate information in their home countries, whether from friends, news pieces, social media, smugglers, or other sources. Some articles in the U.S. and other media have mistakenly described passing the credible fear screening process as a status of “temporary asylum,” with officials or unnamed sources quoted saying that it is a way for people to stay in the United States. This kind of misinformation can then be circulated through social media and word of mouth, potentially encouraging people to make decisions based on inaccurate information.

Some have suggested that the majority of referrals for credible fear interviews, particularly for Central American cases, occur only after an individual has been transferred from CBP custody to an immigration detention facility, implying that immigrants are vulnerable to coaching by detainees once in immigration detention. As discussed later in this Blueprint, non-profit lawyers report that many asylum seekers have told them that while in Border Patrol custody they did not understand, or were not told, they could request protection. Certainly the potential for misinformation is sharply increased when immigration detainees have little or no access to accurate legal information. Human Rights First researchers met many asylum seekers—both in detention and after release—who clearly suffered from an acute lack of accurate legal information and legal counsel while held in immigration detention.

Currently, the highly cost-efficient government funded Legal Orientation Programs reach 25 of ICE’s approximately 250 detention facilities across the country. A 2012 study by the Justice Department showed that the government saved approximately \$18 million in the years studied, mainly on the reduced time an individual who receives LOP spends in detention.<sup>28</sup> Although EOIR has received additional funding to expand the program, the program will still reach only a fraction of detention facilities. And as ICE increasingly relies on previously little-used detention space in other areas, such as the Coastal Bend and East Hidalgo detention facilities in South Texas or the

facility in San Luis, Arizona, non-profit legal service providers located further from these remote facilities will continue to be stretched thin in their ability to provide services. Even where these presentations exist, asylum seekers are generally not provided with legal presentations until *after* they have passed their credible fear interviews, and their cases are pending before the immigration courts.

People facing persecution have a right to seek asylum, and the fact that an individual expresses a fear of return after learning about the possibility of seeking protection—whether from a lawyer, social media, or other source—does not mean that the asylum seeker’s request is fraudulent. (As detailed in Appendix B of this Blueprint, U.S. immigration officers have multiple tools for detecting and addressing any instances of fraud that they do encounter.) But inaccurate information harms both the individuals who act on it, and potentially the system itself.

### Recommendations

The Obama administration and Congress should prioritize accurate legal information including:

- **Expand Access to Early Legal Information Presentations.** Congress should appropriate sufficient funds for, and the Department of Justice should expand, Legal Orientation Programs from the existing 25 programs to all facilities nationwide. Consistent with the bipartisan Senate immigration bill, S. 744, and subsequent proposed legislation, these presentations should be provided to all who are detained within a few days of their arrival to ensure that individuals receive prompt and accurate information<sup>29</sup>. Congress should support this initiative. ICE should coordinate with non-profit legal offices to provide access to newly arrived immigration detainees. Given the large increase in protection requests and the potential for misinformation that exists, it is more important than ever for respected and competent legal service providers to have access to immigration detainees within a few days of their arrival in a facility.
- **Support Increased Quality Representation Early in the Process for Indigent Asylum Seekers.** The U.S. government does not generally provide funding for legal representation for asylum seekers and other immigrants in their immigration proceedings, despite the well-documented importance of counsel. Only about one in five detained individuals have a lawyer in

immigration proceedings. Yet a recent academic study showed that people in the New York immigration courts with a lawyer are 500 percent more likely to win their cases than those without representation.<sup>30</sup> One study found that representation was the single biggest factor in the outcome of an asylum case.<sup>31</sup> The administration should build on efforts to pilot legal representation for vulnerable groups such as children and individuals with mental disabilities, and should also extend this effort to indigent asylum seekers in detention who do not have pro bono representation.<sup>32</sup> Consistent with S.744, Congress should support projects to increase access to legal counsel for vulnerable populations.<sup>33</sup> To minimize the exposure of asylum seekers to unauthorized or unethical legal practitioners, EOIR and DHS should continue efforts to identify and refer for investigation and potential prosecution lawyers or non-lawyers who are perpetrating fraud, such as in the recent high-profile cases in New York City and California.

- **Provide Accurate Information on Credible Fear and Asylum:** All DHS officers and officials, as well as other government officials, should be careful to accurately describe the credible fear and asylum systems to asylum seekers and immigrants, but also to representatives of the media, so as not to inadvertently contribute to misinformation.

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## Enhance Tools for Detecting and Investigating Abuse

U.S. immigration authorities have extensive tools to detect and investigate abuse and criminal activity and they can, and do, use these tools with respect to individuals taken into custody at or near U.S. borders. During Human Rights First's visits to CBP border entry points and ICE facilities in Arizona, California and Texas, immigration officials confirmed that immigrants and asylum seekers who are detained at or near the border and placed into expedited

removal are promptly and repeatedly fingerprinted and subjected to inquiry and checks by multiple U.S. agencies at multiple stages of the process. As detailed in Appendix B to this Blueprint, these checks and inquiries are conducted at each stage of the process: by CBP (Border Patrol and OFO), by ICE (immediately after an individual is taken into custody/detained by ICE) by USCIS (during credible fear interviews), by ICE (prior to any parole or release from detention) as well as various tools that can be used by ICE trial attorneys and EOIR in immigration court proceedings.

These agencies also have an extensive array of tools and investigative support that are used to identify potential connections to criminal activity, drug cartels, terrorism, smuggling, fraud and/or misrepresentations about identity. These tools have been significantly enhanced in recent years, and immigration officers were very pleased with their access to a vast array of databases containing a wide range of information that assists them in identifying potential criminal conduct, security risks and other abuse, as well as their ability to refer matters to various investigative units. For example, both OFO and Border Patrol officers have more access to prompt information that can identify prior orders of removal, prior immigration violations, criminal activity in the United States, and criminal activity outside of the United States. In addition, prosecuting the perpetrators of fraudulent schemes will reduce fraud and abuse and enhance the integrity of the asylum and immigration systems, as well as protect the immigrants who are often victims of these schemes.

Moreover, as DHS confirmed in December 2013, "Before individuals are granted asylum, they must all establish identity and pass all requisite national security and law enforcement background security checks. Each asylum applicant is subject to extensive biometric and biographic security checks. Both law enforcement and intelligence community checks are required—including checks against the FBI, the Department of Defense, the Department of State, and other agency systems."<sup>34</sup>

While fraud and abuse should be addressed, the fact that an individual with genuine fears of return is not ultimately ruled eligible for asylum or other protection does not mean that his or her request for protection was fraudulent. There are many reasons—including a failure to establish a "nexus" between persecution and a "protected ground" for asylum eligibility, a failure to establish a reasonable possibility of persecution, and a lack of counsel to make technical legal arguments—that can lead a person with a

genuine fear of harm to be denied asylum. Moreover, as a researcher with the Congressional Research Service testified at a December 2013 hearing before the House Judiciary Committee, “an increase in asylum or credible fear claims in and of itself does not signify an increase in the abuse of the asylum process any more than a reduction in asylum or credible fear claims signifies a reduction in the abuse of the asylum process.”<sup>35</sup>

## Recommendations

- **Utilize and Enhance Multiple Tools for Detecting and Addressing Abuse and Criminal Activity.**

CBP, ICE, and USCIS should continue and increase where needed their use of the many available tools for combatting fraud, abuse, terrorism and criminal activity. As detailed in Appendix B, these include training, enhanced background biographical and biometric checks, database checks that identify associations with terrorism, fraud detection and investigation capacities, and referral of cases for criminal prosecution. If additional resources are needed, the Administration should request and Congress should appropriate funding so that DHS and DOJ have the resources required to adequately combat fraud.

- DOJ prosecutors should prioritize prosecutions of individuals who orchestrate schemes that defraud the immigration and asylum systems. DOJ should prioritize prosecution of the perpetrators of fraudulent schemes, and EOIR and state/local entities should increase collaboration to prosecute fraudulent immigration schemes. Prosecuting the perpetrators of fraudulent schemes will reduce fraud and abuse and enhance the integrity of the asylum and immigration systems. The American Bar Association, the New York Immigrant Representation Study Group, and others have recommended strict penalties for those who engage in unauthorized practice of law.<sup>36</sup> In recent years, referrals from immigration authorities have led to numerous prosecutions of perpetrators of fraud.<sup>37</sup> All inquiries should be conducted consistently with relevant regulations concerning confidentiality.

- **Expand ICE Capacity for Managing Custody**

**Caseload.** ICE should increase staff to manage custody at the busiest locations so that officers have the time to verify, in a timely manner, an address and information an individual offers regarding community ties in connection with release. While many officers take these steps, at least one officer indicated to the media that some individuals were released to unknown addresses.<sup>38</sup> If ICE suspects orchestrated fraud concerning information regarding sponsors and their addresses, ICE should have resources and time to investigate.

- **Increase Funding for Document Verification and Investigations.** Congress should increase funding and quality assurance for overseas investigations so that when overseas investigations are needed, they can be conducted in a timely manner, with appropriate care and consistent with the relevant regulations and guidance to safeguard confidentiality.

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## Strengthen—Do Not Weaken—Protection Safeguards

The use of expedited removal puts the United States at risk of deporting asylum seekers fleeing persecution without giving them a meaningful opportunity to apply for asylum. The potential impact on individuals fleeing persecution is so acute that the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States called for repeal of expedited removal in its final report in May 1999. In its 2005 comprehensive study of expedited removal—based on research conducted *before* the expansion of expedited removal to the area within 100 miles of the border—the U.S. Commission on International Religious Freedom found serious flaws in the implementation of safeguards that had been built into the expedited process to prevent the United States from summarily deporting refugees. In the wake of the increases in the use of expedited removal and the number of protection requests within expedited

removal, a number of changes in the conduct of the credible fear process—as well as some continuing challenges relating to the conduct of expedited removal interviews by CBP—raise renewed questions about the effective implementation of the protection safeguards in the expedited removal process.

*Credible fear interviews mostly conducted by telephone.* Although credible fear interviews were conducted primarily in person for many years (with only 2 percent conducted by telephone in 2009), so far this year 68 percent have been conducted by telephone—with telephonic rates particularly high for the asylum offices serving detention centers located close to the border.<sup>39</sup> In the first half of FY 2014, 1,731 individuals received negative credible fear findings based solely on a telephonic interview. As noted above, there are resource, space, location and other reasons why USCIS has turned increasingly to the use of telephone calls to conduct credible fear interviews and it reports that it does not see a difference in grant rates for telephonic interviews versus in person or video interviews.<sup>40</sup> For many years though, asylum officers were not allowed to deny a credible fear interview conducted by telephone, reflecting the serious questions about the use of telephonic interviews to deny an individual the opportunity to file a request for asylum in the United States. It is much more difficult for asylum seekers who have suffered violence, rape and trauma to reveal information about these incidents to a voice on a telephone. The possibilities for misunderstandings and inaccuracies are heightened when interviews with asylum seekers are conducted by telephone, with an interpreter on an additional line. The odds of erroneous denials—that can send refugees back to persecution—will likely increase over time as these telephone interviews become even more routine. Inaccuracies in credible fear interview transcripts can also harm refugees who “pass” their credible fear interviews, by subsequently leading to erroneous asylum denials based on alleged “inconsistencies” stemming from the earlier credible fear write-ups.

*New training Lesson Plan.* New training guidance for credible fear interviews raises additional concerns that safeguards to protect refugees are being eroded in the face of an increase in protection requests. In December 2013 testimony before the House Judiciary Committee, USCIS and DHS indicated that they had initiated a review of the guidance and training materials used in the credible fear process to “make certain that our application of the

credible fear standard properly reflects a significant possibility that claims for asylum or protection under the Convention Against Torture will succeed when made before an immigration judge.”<sup>41</sup> The number of credible fear grants based only on potential CAT eligibility had increased significantly over the years, and had jumped to 38 percent of credible fear grants in FY 2013.<sup>42</sup> However, as detailed in Appendix E to this Blueprint, the new February 2014 Lesson Plan goes well beyond addressing gaps in training. The guidance, along with an accompanying memorandum that cites to the increase in credible fear interviews and “the attention on these adjudications,” appears to signal that asylum officers should apply a higher standard in credible fear screenings. The Lesson Plan specifically deletes a number of references to legislative history regarding the level of the screening standard. In some places, the guidance appears to treat credible fear interviews like full-blown asylum interviews and to require production of evidence that would be difficult or impossible for a recently detained unrepresented asylum seeker to produce at a credible fear interview.

*CBP Interviews.* Lawyers from multiple non-profit organizations told Human Rights First researchers that they regularly encounter asylum seekers who report that they were not told that they could request protection, or that Border Patrol or other CBP officers ignored their request or told them that they could not request, or would not be eligible for, asylum.<sup>43</sup> Human Rights First also interviewed asylum seekers who recounted similar experiences, including that when apprehended by border officials and expressing fear of return, they were reportedly told that “[the United States] doesn’t do asylum,” or is “not doing asylum today,” or that an individual wouldn’t qualify for asylum or, that if they chose to pursue an asylum claim, they’d be detained for years. Appendix C includes brief information about some of these cases, as well as examples of asylum seekers who said they were physically mistreated. Border Patrol and Office of Field Operations officers asserted that their officers follow proper procedures regarding potential asylum applications and asked all individuals the relevant questions regarding potential fear of return. Some clearly take this responsibility seriously. At the same time, there is a history of problems in this area. In its 2005 study on expedited removal, the bi-partisan U.S. Commission on International Religious Freedom (USCIRF) found serious flaws in the conduct of CBP interviews. CBP officers are required to

follow a standard script informing each individual in expedited removal that he or she may ask for protection if he or she has a fear of returning home. In approximately *half* of inspections observed by USCIRF researchers, inspectors failed to inform the immigrant of the information in that part of the script. According to USCIRF's research, "[a]liens who did receive this information were seven times more likely to be referred for a credible fear determination than those who were not."<sup>44</sup>

One contributing factor may be open, non-confidential, and often chaotic locations in which many interviews are conducted in the busiest Border Patrol stations and CBP ports of entry.<sup>45</sup> These areas allow no privacy, and discourage the revealing of private or traumatic information. For example, in one Border Patrol station Human Rights First visited, individuals participate in their initial interviews telephonically with Border Patrol officers stationed remotely at other sectors, while in the midst of an open area seated near other migrants and surrounded by holding cells and armed officers. Compounding these difficulties, some are exhausted, disoriented and traumatized after often harrowing journeys to the United States and are now detained in border stations that are frequently known as "*hieleras*," or "iceboxes."

*Other forms of protection.* Some individuals who express a fear of return to their home countries may not ultimately meet the very specific requirements for asylum, withholding of removal or withholding under the Convention Against Torture (CAT). While there are certainly asylum cases relating to the violence in Central American countries and Mexico that are eligible for asylum or other existing forms of U.S. protection,<sup>46</sup> there are other cases that will not fit within the parameters of these forms of protection even though the individuals face very real harms, that can be "comparable to those of many wartime atrocities."<sup>47</sup> In addition to asylum and CAT protection, as well as T-visas (for some victims of trafficking), U-visas, and special immigrant juvenile status, the United States has several other tools that can be used to extend temporary protection to individuals at risk, including Temporary Protected Status (TPS), deferred enforced departure, and extending humanitarian parole to those with serious protection needs.<sup>48</sup> Each of these approaches has its limitations, and there are certainly gaps in the U.S. protection framework.<sup>49</sup> TPS for instance only covers those who arrive before a designation (though re-designation is possible), and does not allow a recipient to petition for admission of immediate family.<sup>50</sup> The UNHCR, in its March

2014 report on unaccompanied children from Central America and Mexico, describes the need for a complementary protection regime so that adults and children who have fled horrific violence and lawlessness, but who do not meet the refugee definition, are not returned to situations of grave danger.<sup>51</sup>

## Recommendations

DHS should strengthen, rather than weaken, safeguards to identify and protect asylum seekers and Congress should support staffing and resources for timely in person protection screening:

- **Conduct credible fear interviews in person, in a timely manner, and not by telephone.** USCIS should request, and Congress should support, sufficient resources and staff to conduct credible fear and reasonable fear interviews in person and in a timely manner. For all the reasons outlined in this Blueprint, these critical interviews should be conducted in person, rather than by telephone. At the very least, USCIS should revert to its prior limited use of telephonic interviews. The use of a telephone interview from an immigration detention facility to attempt to meet critical *non-refoulement* obligations sets a poor example for the rest of the world.
- **Revise Flaws in Lesson Plan on Credible Fear.** USCIS should revise the February 2014 Lesson Plan on Credible Fear in a number of ways including to: clarify in additional places that screenings are not full-blown adjudications; restore prior language on the legislative history concerning the "low" level screening standard; make adjustments to revise other language that appears to attempt to further raise the "significant" possibility standard; and clarify that asylum seekers are not expected to produce documentary evidence at credible fear interviews. USCIS should immediately intensify supervisory review of credible fear determinations under the plan.
- **Implement USCIRF Recommendations and Improve CBP Interviews.** CBP should: require, and allocate as larger spaces are secured, confidential settings for I-867A&B interviews; allocate sufficient staff to conduct these interviews in person; and ensure all officers who conduct expedited removal interviews, including both at OFO and OBP, are trained on the requirements relating to identifying potential protection requests. The DHS Office of Civil

Rights and Civil Liberties should observe, assess and make recommendations regarding the conduct of these interviews. DHS should review the emerging practice of conducting consular interviews at Border Patrol stations and assess its consistency with refugee protection obligations, in particular with respect to individuals in fear of state-linked persecution. USCIRF recommended that CBP expand and enhance the videotape systems used at several locations to all major ports of entry and border patrol stations to record all secondary interviews. Some CBP officers expressed support for this idea, calling it a “win win” but they stressed that improvements to technology would be necessary to implement this reform. USCIRF also recommended that a statement be included on the I-867B immigration form explaining the specific purpose the document is designed to serve, and its limitations.<sup>52</sup>

- **Conduct Updated USCIRF Study.** Congress should authorize, and appropriate resources for, a comprehensive updated study by the U.S. Commission on International Religious Freedom on expedited removal that includes an examination of “expanded” expedited removal. DHS should cooperate with, and direct its component agencies to cooperate with, any USCIRF study of expedited removal and immigration detention.
- **Roll Back Use of Expedited Removal.** The expedited removal process has always presented grave risks that the United States will deport refugees in violation of its human rights and refugee protection commitments, as the Advisory Committee on Religious Freedom’s concerns made clear. Congress should revise INA §235 to limit the use of expedited removal<sup>53</sup> as the process lacks sufficient safeguards to ensure asylum seekers are not mistakenly deported, and departs people without immigration court hearings. At the very least, DHS should revisit and roll back the decision<sup>54</sup> to expand the use of expedited removal beyond ports of entry. Continued use of expanded expedited removal is particularly inappropriate given the failure to adequately staff the process to assure that the measures built into expedited removal to protect refugees are effectively administered.
- **Monitor Country Conditions and Assess Need for Additional Protection Mechanisms.** Informed by evolving country conditions, the administration should

assess the potential to use its existing tools—including TPS (with re-designations if necessary), humanitarian parole and/or the exercise of discretion—to prevent the United States from returning to danger individuals who do not meet the criteria for asylum, withholding or CAT protection yet have well-founded fears of harm if returned. TPS, and other protection mechanisms, would exclude those who would pose a danger to the community here. The use of other protection tools such as T-visas for victims of trafficking, as well as U-visas and special immigrant juvenile status should also be facilitated in eligible cases. Over the longer term, Congress and the administration should address deficiencies and gaps in existing protection mechanisms, including to provide for family unity for TPS recipients, to allow adjustment after 10-year wait periods, and/or consider new mechanisms to protect individuals who do not meet the criteria for asylum, withholding or CAT protection, yet face serious harms.

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## Effectively Implement Parole, Bond and Alternatives to Detention

With the increase in apprehensions and arrivals in a few key border areas, especially in the Rio Grande Valley in Texas and at the San Ysidro port of entry in California, the number of asylum seekers detained in these border areas has increased sharply. Both CBP and ICE officials also report a spike in families crossing the border, and the increase in unaccompanied children has led the administration to tap FEMA to help address the humanitarian crisis. At the same time, apprehensions at the border have declined significantly since their peak in 2000.<sup>55</sup> Faced with the increase in asylum seekers along the border, some view more detention as the answer. While detention has long been the default tool used by immigration authorities, further escalating reliance on detention would be exceedingly expensive. ICE already



detains up to 34,000 immigrants and asylum seekers each day, with over 478,000 immigrants detained in FY 2012, the most recent year with statistics available. At an average cost of approximately \$160 per person, per day, the U.S. immigration detention system costs taxpayers over \$2 billion annually, despite the availability of less costly, less restrictive and highly successful alternative to detention programs.<sup>56</sup>

Detention already appears to be on the rise along the southern border. Human Rights First recently visited three immigration detention centers in Arizona, California and Texas, which together can hold 3,400 immigration detainees at any one time. A new facility is planned next to the current Otay Detention Center, and although the facility is currently only slated for the same number of immigration detention beds as Otay, the facility itself will be significantly larger, leaving open the possibility that ICE may receive additional beds in the facility. In addition to these, and several other long-standing facilities contracted or operated by ICE in the southwest (including the less penal Karnes and Hutto detention facilities), ICE appears to be increasing its use of jails and facilities that were previously holding only a minimal number of detainees. These include at least two facilities with a combined 1,000 beds in south Texas (at East Hidalgo and Coastal Bend) and a 71 bed facility in San Luis, Arizona. Asylum seekers and other immigration detainees in these facilities wear prison-clothing and, with the exception of Karnes and Hutto, are held in conditions that are indistinguishable from those in traditional criminal correctional facilities. In the Otay Detention Center near San Diego, the immigrant detainee population may be co-mingled with the U.S. Marshal prisoner population.

Some have asserted that a 2009 memorandum on parole for “arriving” asylum seekers is the cause of the uptick in protection requests along the border. However, in FY 2013, 76 percent of asylum seekers referred into the credible fear process were not considered “arriving” asylum seekers as they did not present themselves at a “port of entry.”<sup>57</sup> Moreover, in order to be paroled under the 2009 guidance, arriving asylum seekers must satisfy certain criteria. Key factors have consistently—both under this guidance and its predecessors—included that: the asylum seeker passes the credible fear screening process; the asylum seeker can establish his or her identity; the asylum seeker is not a flight risk/has community ties; and the asylum seeker does not present a risk or danger to the community.<sup>58</sup> For asylum seekers detained after crossing

the U.S. border, (who are not considered “arriving aliens”), securing release on “bond” has become much more difficult in the busiest border areas. In the Rio Grande Valley, legal service providers report that bonds appear to be regularly set at \$7,500 or higher—significantly higher than the minimum \$1,500 required by law in cases where bond is set—and that asylum seekers who are indigent often cannot pay these high bonds.

Despite the possibility of parole or bond, many asylum seekers are detained for months or years in U.S. immigration detention facilities. Over the last year, Human Rights First has met with scores of asylum seekers who have been detained, sometimes for prolonged periods of time, including: an asylum seeker from Rwanda who had been detained for over 18 months, asylum seekers from Central America fleeing persecution for their sexual orientation who were detained for months, Eritrean asylum seekers who were detained for months, and women from Central America fleeing gender-based violence, including one who had been detained for several years.

While alternatives to detention, including the technology-only option operated by ICE itself, the more case-management or intense electronic monitoring forms operated by a private contractor, or pilot projects with faith-based social service providers have been used increasingly in recent years, at the time of our visit ICE did not appear to be using alternatives to detention as a major part of its strategy to address any appearance concerns relating to individuals crossing or arriving at the southern border who do not pose any risks to the community but may need ATDs to mitigate appearance or flight risk concerns. Alternatives to detention (ATDs), if used smartly, save costs when used in place of institutional detention, with the current contract estimated to cost a mere 17 cents to \$17 rather than the \$160 per day average of one detention bed. To maximize their impact and cost-effectiveness, electronic and other forms of monitoring should be used to mitigate flight risk, not as an additional requirement for someone who could otherwise simply be released without conditions. The most recent statistics report that 97.4 percent of participants in the ISAP II alternatives to detention program used by ICE appear at their final immigration court hearing, and 85 percent comply with removal orders.<sup>59</sup> Despite this, there appeared to be little availability of formal ATD placement options, and ICE officers reported that it is difficult to coordinate placement into ATDs for someone leaving the “Area of

Responsibility” from which they are being released and moving to another part of the country.

A greater focus on identifying individuals who qualify for parole, bond or release on alternative monitoring measures, will also help free up more bed space so that asylum seekers and immigrants who are subject to “mandatory detention” are not held for days in CBP custody while waiting for space to become available. Both ICE and CBP have reported difficulty in transferring individuals quickly from CBP custody to ICE custody. Border patrol stations and CBP “ports of entry” are not suitable spaces for detaining immigrants for days. Rather than pointing to a need for additional detention facilities, this situation could be managed with a better use of existing detention space. If ICE used alternatives to detention, in more cases, many beds currently used for individuals who do not need detention to mitigate flight risk could be made available for others who are subject to “mandatory detention” as they await their credible fear interview.

## Recommendations

- **Create and Staff New ICE positions on Parole, Supervision and Support.** ICE should create, and Congress should support, the creation of dedicated, trained positions focused on appearance, parole and release. This staff would: (1) facilitate the appearance of individuals who are released (as detailed earlier in this Blueprint); and (2) work with ICE officers to promptly identify and assess individuals who are eligible for release, making bed space available more promptly for new arrivals and decreasing sometimes extended detention times for individuals who do not need to be detained.
- **Implement Nationwide Initiative of Alternatives to Detention for Border Cases that Need Supervision.** The administration and DHS should reject the notion that it is required to fill a minimum number of beds and strongly support a shift to using alternatives to detention to mitigate risks that would otherwise be addressed through detention in appropriate cases that do not present safety risks. ICE should launch a stepped up initiative to increase its use of alternatives to detention with a strong emphasis on case management for cases released in the border areas that need additional supervision to mitigate flight risk. This nationwide initiative should provide case management, supervision, monitoring and/or other measures to support appearance in the locations to which individuals relocate upon release. With alternatives to detention used increasingly in the criminal justice system, a wide range of experts—including the Pretrial Justice Institute, the Texas Public Policy Foundation (home to Right on Crime)—have endorsed alternatives as cost-saving. Congress should increase appropriations for alternatives to detention and eliminate the bed “quota,” appropriations language that some interpret as a requirement that a minimum number of beds be filled regardless of need. Congress should also grant ICE flexibility to shift funds, based on need, between detention and alternatives to detention. Moreover, by adequately funding the immigration courts and eliminating hearing delays (as outlined above), the cost-savings of alternatives will be fully realized.
- **Effectively Implement and Increase Training on Asylum Parole Guidance.** ICE officers should implement parole effectively in accordance with the 2009 parole guidelines, and DHS should put these guidelines into regulations as USCIRF has repeatedly recommended. Additional training would minimize misunderstandings, address delays in parole assessments, and make sure that asylum seekers who meet the criteria are not denied parole. An effective parole policy for asylum seekers is consistent with American values and human rights commitments. In its 2013 report on asylum seekers in detention, USCIRF noted that the 2009 parole guidance was in line with USCIRF’s recommendations, and recommended that it be codified into regulations: “USCIRF has recommended that asylum seekers with credible fear who do not pose flight or security risks should be released, not detained and that such a policy be codified into regulations. Asylum seekers may have suffered trauma and abuse prior to arrival in the United States and detaining them after credible fear interviews may be re-traumatizing, with long-term psychological consequences.”<sup>60</sup>

- **Fairly and Effectively Administer Bond.** ICE headquarters should review and provide oversight of bond levels set by local ICE offices. Bond should not be prohibitively high, and should not be automatically set at a minimum any higher than the statutory requirement. It should not be essentially impossible for an indigent asylum seeker who presents no risks to secure release. All determinations should be based on assessments of the particular individual's situations.<sup>61</sup> The DHS Office of Civil Rights and Civil Liberties should secure statistical data on bond amounts and parole to assess whether there are disparities for asylum seekers from certain areas (such as Africa).
- **Build on Community-based Alternatives Model For Families.** ICE should use alternatives to detention in cases where additional supervision of families is needed, rather than resorting to detention, which is not appropriate for children. DHS should build on models of community-based alternatives, such as the pilots already in place with Lutheran Immigration and Refugee Service or the U.S. Conference of Catholic Bishops. This model could be particularly useful to address the situation of families who cannot remain in CBP custody. The case management, legal and social services element would be particularly important for families seeking asylum to better understand their cases and requirements for appearance and compliance.
- **Only Use Facilities and Standards Appropriate to Civil Immigration Detention.** ICE should phase out the use of prisons, jails, and jail-like facilities to hold asylum seekers and other immigration detainees. After an individualized assessment of the need to detain, ICE should only use facilities with conditions appropriate for civil immigration detention.<sup>62</sup> Congress should support this transition. DHS and ICE should develop and implement new standards guided by the American Bar Association's Civil Immigration Detention Standards which confirm some key conditions including that detainees be permitted contact visits, be allowed to wear their own clothing (rather than uniforms), and be provided access to outdoor recreation throughout the day. In 2009, DHS and ICE committed to shift away from the longtime reliance on jails and jail-like facilities to facilities with conditions more appropriate for civil immigration law detainees.<sup>63</sup> Despite some progress, ICE continues

to hold the overwhelming majority of its daily detention population in jails and jail-like facilities, with approximately 50 percent held in actual jails.<sup>64</sup> USCIRF has also recommended that asylum seekers be held only in "non-jail-like" facilities when detained, and that DHS create detention standards tailored to the needs of asylum seekers and survivors of torture.<sup>65</sup>

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## Address Triggers of Flight Through Foreign Policy and Aid

This Blueprint focuses on how the U.S. agencies entrusted with America's borders can protect refugees and safeguard the immigration and asylum systems from abuse. Human Rights First's research and interviews with asylum seekers confirm that a significant escalation of violence in some countries is a primary factor prompting some people to flee their countries and seek U.S. protection. Many of the asylum seekers interviewed by Human Rights First attorneys and staff over the last year—including in the border areas—have reported genuine fears of harm in their countries. The brutal violence in these countries is affecting a wide range of people including women targeted for murder, rape and domestic violence, LGBT persons, journalists, police officers, and ordinary people threatened and terrorized by gangs and drug cartels that sometimes have close ties to government.

While conditions vary from country to country, violence and criminal activity in Central America have increased dramatically over the past several years, fueled by political instability, a breakdown of the rule of law, and the dominance of local and transnational gangs seeking to profit from trafficking in weapons, drugs, and humans. According to U.S. government estimates, 95 percent of cocaine trafficked from South America moves through Mexico and Central America, a significant factor contributing to regional instability and violence.<sup>66</sup> Further exacerbating instability is the shifting power balance in

favor of transnational criminal organizations and state actors' increasing involvement in "transactional" relationships with criminal organizations.<sup>67</sup> Recent surveys conducted in the region indicate the role of violence, insecurity, and breakdown of the rule of law in triggering flight from Central America.<sup>68</sup> Violence against women and LGBT persons is also a serious problem. In Honduras for instance, the killings of women increased by 246% between 2005 and 2012, and NGOs "reported 24 violent deaths of LGBT individuals and documented multiple cases of assault" in 2012. Additional information about the violence, persecution and impunity that are catalysts of flight are further detailed in Appendix D to this Blueprint.

Many who request U.S. protection lack accurate information about asylum and their eligibility for protection. Some receive inaccurate information in their home countries, whether from friends, news pieces, social media, smugglers or other sources. Some articles in the U.S. and other media have mistakenly described passing the credible fear screening process as a status of "temporary asylum," with officials or unnamed sources quoted saying that it is a way for people to stay in the United States. This kind of misinformation can then be circulated through social media and word of mouth, potentially encouraging people to make decisions based on inaccurate information.

Various experts have detailed recommendations for addressing the crisis in Central America and Mexico—including the Council on Foreign Relations, the U.S. Conference of Catholic Bishops, International Crisis Group, and UNHCR.<sup>69</sup> For instance, based on its research concerning children who flee from Central America and Mexico, USCCB recommends that anti-gang prevention measures be tackled at regional and local community levels in addition to national levels, and that prevention efforts include systematic training and educational programs. These and other recommendations should be carefully reviewed, with heightened inter-agency attention.

## Recommendations

Human Rights First recommends the following initial steps to identify and begin to address the rule of law and impunity issues that are helping to drive flight:

- **Broaden Inter-Agency Attention to Identify and Address Impunity, Rule of Law Deficits and Other Drivers of Flight:** The administration should elevate inter-agency attention to promote outcomes to

confront the impunity and rule of law challenges contributing to flight from Central America and Mexico. Addressing these challenges will require expertise beyond that of the Department of Homeland Security and its component agencies, and in particular the U.S. State Department and the U.S. Embassies in these countries as well as DOJ and USAID. One option is to formally expand the existing inter-agency efforts around unaccompanied children, as some of the same factors are contributing to the flight of both children and adults. All steps taken should be consistent with U.S. refugee protection and other human rights obligations, and any enforcement measures proposed should include effective mechanisms to secure the protection of those who face persecution, trafficking, torture or other serious human rights violations.

- **Support Accurate Information and Assistance:** The United States should support qualified non-profit legal groups working with victims of violence in Central America and parts of Mexico. Non-profit legal groups can provide support and accurate information for those who are threatened or displaced, including victims' services and accurate legal information about seeking protection. All steps taken by the U.S. government should be consistent with U.S. refugee protection and other human rights obligations. While there is certainly a lack of accurate information about U.S. asylum and immigration eligibility in some of these countries, broad information campaigns aimed at discouraging individuals from migrating and applying for asylum have not necessarily been effective when used by other countries, and would raise serious questions relating to U.S. refugee protection and human rights commitments.<sup>70</sup> The United States should closely review any informational campaigns to assess effectiveness and consistency with refugee protection and human rights commitments.

## Endnotes

- 1 In April 2014, Human Rights First visited and spoke with personnel at the following government sites to research this report: in Texas, the ICE Port Isabel Detention Facility; Customs and Border Protection (CBP) Office of Field Operations office in Hidalgo; the CBP McAllen Border Patrol Station; and the Houston USCIS Asylum Office. In Arizona, we visited the ICE Eloy Detention Facility and the CBP Nogales Border Patrol Station. In California, we visited the ICE Otay Detention Facility; the CBP Office of Field Operations port of entry at San Ysidro; the CBP Imperial Beach Border Patrol Station; and the USCIS Los Angeles Asylum Office (which also has jurisdiction over entrants at the Arizona border). In addition, in each site we interviewed legal and social service providers, as well as detained and non-detained asylum seekers identified with the assistance of local service providers or who signed up to speak with us through the ICE Access Directive. We also conducted interviews with immigration lawyers and legal and social service providers in other areas, including Austin, Texas; Pennsylvania; and Florida, where we know asylum seekers have been transferred from border areas. This Blueprint is also informed by the many cases Human Rights First's pro bono representation programs in Washington, DC and New York screen and works with on a daily basis. We are grateful to the agencies who facilitated access and the many individuals who took the time to speak with us, and especially to the immigrants who were willing to share their stories.
- 2 Rosenblum, Marc R., and Doris Meissner with Claire Bergeron and Faye Hipsman. 2014. *The Deportation Dilemma: Reconciling Tough and Humane Enforcement*. Washington, DC: Migration Policy Institute, available at: <http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement> (Unless otherwise noted, all years throughout this Blueprint refer to Fiscal Years, from October through September.)
- 3 National Immigration Law Center, "DHS Announces Latest in Series of Expedited Removal Expansions: Entire U.S. Border Now Covered," *Immigrants' Rights Update*, Vol. 20, Issue 1, March 23, 2006. ("The U.S. Dept. of Homeland Security has announced that it is now using expedited removal along the entire U.S. border, including in all coastal areas adjacent to the country's maritime borders. This most recent expansion of expedited removal, the use of which the DHS has expanded incrementally over the past few years, represents the most dramatic expansion to date. The latest development is particularly troubling in light of findings reached by the U.S. Commission on International Religious Freedom (USCIRF), in its extensive study of expedited removal, that the DHS's implementation of the program is seriously deficient.")
- 4 Dougherty, Mary, and Denise Wilson and Amy Wu, 2005. *Annual Report, Immigration Enforcement Actions: 2004*, Washington, DC: Department of Homeland Security, Office of Immigration Statistics, available at: <http://www.dhs.gov/xlibrary/assets/statistics/publications/AnnualReportEnforcement2004.pdf>
- 5 The number of expedited removals rose to 109,867 in 2010, to 122,320 in 2011 and to the 163,498 in 2012, Simanski, John F., and Lesley M. Sapp. 2013. *Annual Report, Immigration Enforcement Actions: 2012*. Washington, DC: Department of Homeland Security, Office of Immigration Statistics, available at: [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2012\\_1.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_1.pdf)
- 6 Migration Policy Institute, *The Deportation Dilemma, Reconciling Tough and Humane Enforcement* (April 2014), p. 3. See also Thompson, Ginger and Sarah Cohen, "More deportations follow minor crimes, records show," *The New York Times*, April 6, 2014, available at: [http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?\\_r=0](http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?_r=0) ("In the final year of the Bush administration, more than a quarter of those caught in the United States with no criminal record were returned to their native countries without charges. In 2013, charges were filed in more than 90 percent of those types of cases, which prohibit immigrants from returning for at least five years and exposing those caught returning illegally to prison time.")
- 7 USCIS Statistics on file with Human Rights First; See also U.S. Congress, Testimony of Ruth Wasem before the House Committee on the Judiciary, "Asylum Abuse: Is It Overwhelming Our Borders?" December 12, 2013, available at: [http://judiciary.house.gov/\\_cache/files/5d634f9d-d515-4545-a3f7-f8e6c83da86d/wasem-testimony.pdf](http://judiciary.house.gov/_cache/files/5d634f9d-d515-4545-a3f7-f8e6c83da86d/wasem-testimony.pdf)
- 8 Based on Human Rights First analysis of available data, for FY 2012, the last year for which CBP data is available, credible fear referrals are about 2.5 percent of the overall apprehensions by U.S. Border Patrol and individuals determined inadmissible by CBP's Office of Field Operations. Credible fear referrals are about 8 percent of Border Patrol expedited removal apprehensions and OFO inadmissibility determinations for FY 2012.
- 9 Migration Policy Institute, *Deportation Dilemma*, 2014 at pp. 6-7, available at: <http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>
- 10 See Wood, Genevieve. "The Smallest Victims of Obama's Immigration Policy," *The Foundry*, May 27, 2014, <http://blog.heritage.org/2014/05/27/smallest-victims-obamas-immigration-policy/>; See also Carter, John, "Nightmare at the Border," *The Hill*, Apr. 17, 2014, <http://thehill.com/blogs/congress-blog/foreign-policy/203719-nightmare-at-the-border#ixzz33gT3an8> ("...[t]he Obama administration has indisputably created an invitational posture for illegal immigrants. This posture has created a gravitational pull so strong, that illegal immigrants are willing to put their own children in harm's way in order to take advantage of the President's determination to evade the law.") See also Robles, Frances, "Wave of Minors on Their Own Rush to Cross Southwest Border," *The New York Times*, June 4, 2014, available at [http://www.nytimes.com/2014/06/04/world/americas/wave-of-minors-on-their-own-rush-to-cross-southwest-border.html?emc=edit\\_th\\_20140604&nl=todaysheadlines&nid=57075833&\\_r=1](http://www.nytimes.com/2014/06/04/world/americas/wave-of-minors-on-their-own-rush-to-cross-southwest-border.html?emc=edit_th_20140604&nl=todaysheadlines&nid=57075833&_r=1) ("As gang violence here worsens and word gets out that the children who made it to the other side were reunited with long-lost parents with the blessing of United States immigration authorities, more and more youngsters are making the treacherous journey.")

- <sup>11</sup> Press Release, "Republican leaders release statement in support of U.S. commitment to refugees," Feb. 10, 2014, <http://www.humanrightsfirst.org/press-release/republican-leaders-release-statement-support-us-commitment-refugees>
- <sup>12</sup> Human Rights First, "U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison," 2009, p. 37, available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf>
- <sup>13</sup> USCIS statistics on file with Human Rights First; see also Linthicum, Kate, "ACLU sues over delays for immigrants seeking U.S. protection," *Lose Angeles Times*, April 17, 2014, available at: <http://www.latimes.com/local/lanow/la-me-ln-aclu-immigration-ice-lawsuit-20140416-story.html>
- <sup>14</sup> Linthicum, Kate, "ACLU sues over delays for immigrants seeking U.S. protection," *Los Angeles Times*, April 17, 2014, available at: <http://www.latimes.com/local/lanow/la-me-ln-aclu-immigration-ice-lawsuit-20140416-story.html>
- <sup>15</sup> USCIS statistics on file with Human Rights First. While in FY 2009, approximately 2 percent of credible fear screenings took place by telephone, this proportion increased to 16.3 percent in FY 2010, 48.2 percent in FY 2011, 50 percent in FY 2012, and 60 percent in FY 2013. Thus far in FY 2014, 68 percent of credible fear screenings have taken place by telephone. In the first half of FY 2014, 1,731 individuals have received a negative credible fear finding based solely on a telephonic interview. The proportion of credible fear screenings done by telephone is especially high in the Houston and Los Angeles Asylum Offices. In Houston, in FY 2013, 13,722 out of 19,676 cases, or 70 percent of cases were completed by telephone. In the first half of FY 2014, 8,247 out of 10,959, or 75 percent of cases, in Houston were conducted by telephone.
- <sup>16</sup> Credible Fear Lesson Plan at 18-19.
- <sup>17</sup> American Bar Association, *Reforming the Immigration Detention System* (2010), p. 2-16 available at [http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf); Administrative Conference of the United States (ACUS), "Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012," available at <http://www.acus.gov/report/immigration-removal-adjudication-report>
- <sup>18</sup> Rosenblum and Meissner, 2014, *Deportation Dilemma*, at p. 2, available at: <http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>
- <sup>19</sup> Immigration Court Backlog Tool: Pending Cases and Length of Wait in Immigration Courts. Backlog as of March 2014. *Transactional Records Clearing House*, available at: [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/)
- <sup>20</sup> ABA, *Reforming the Immigration Detention System*, p. 2-16 available at [http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf)
- <sup>21</sup> The integrity of any system is protected by its ability to operate fairly and in a timely manner. In the 1990s, the asylum system was under-resourced and under-staffed. Faced with a large number of asylum filings prompted by a wave of brutal civil wars and human rights abuses in Central America, the asylum system developed a substantial backlog. This multi-year backlog and lack of adequate staffing left the U.S. asylum system vulnerable to abuse. Some individuals sought to exploit the system. Some people were told by unscrupulous lawyers or others that they could sign a form and would then be allowed to remain in the United States for years with work authorization. This backlog had a devastating impact on the cases of many bona fide asylum seekers. Their lives were in limbo for years, and the delays in their asylum grants left many separated from their children and spouses for years.
- The U.S. Immigration and Naturalization Service (INS) launched a major reform effort and took a number of steps to address these challenges. These steps included quicker adjudications, quicker referrals to deportation proceedings for those not granted asylum after an asylum interview, and increased staffing to ensure timely adjudication. The INS also terminated the automatic grant of work authorization to asylum applicants at the time they apply – a step that has left many legitimate asylum seekers without the means to support themselves while they await adjudication of their asylum requests. As a result of the asylum processing improvements that were put in place at the time, and continued for many years after, individuals who applied for asylum would generally have their asylum interviews within a month or two of filing. Individuals who applied for asylum saw their cases promptly put into removal proceedings if they were not found eligible for asylum by the asylum office. However, in recent years, due to inadequate funding and increased demand for asylum officers to conduct credible fear interviews at the border, backlogs and delays have been allowed to grow in both the asylum and immigration court systems.
- <sup>22</sup> See FY 2015 Budget Request At a Glance (EOIR): <http://www.justice.gov/jmd/2015summary/pdf/eoir.pdf>. Immigration judges do not currently enjoy the same support staffing and resources as many federal judges; in particular, most immigration judges share one legal clerk between three to four judges, creating a huge burden. In the description for future immigration court resources in its most recent budget request, the Administration says increased funding would create 35 new immigration judge "teams," which it defines as "an Immigration Judge, Language Specialist, Legal Technician, Clerk and Law Clerk."
- <sup>23</sup> Senate Bill 744(II)(E)(3505) available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s744is/pdf/BILLS-113s744is.pdf>
- <sup>24</sup> For instance, a 2000 study by the Vera Institute of Justice identified an appearance rate of 71 percent for asylum seekers without appearance support and 91 percent for asylum seekers with intensive support. While it documented the cost-savings and effectiveness of Alternatives to Detention for immigrants released from detention, the Vera study actually concluded that as asylum seekers generally appeared for their hearings, they were not a population that generally needed alternatives to detention. Monitoring, case management and other alternatives to detention continue to report high appearance rates. The most recent statistics available from ISAP II, the program currently contracted by ICE for its alternatives to detention monitoring (which can include asylum seekers), reported that individuals attended their final hearings 97.4 percent of the time and complied with final orders 85

- percent of the time. Vera Institute of Justice, *The Appearance Assistance Program: An Alternative to Detention for Noncitizens in US Immigration Removal Proceedings*, New York, 2000, available at: [http://www.vera.org/sites/default/files/resources/downloads/aap\\_speech.pdf](http://www.vera.org/sites/default/files/resources/downloads/aap_speech.pdf)
- <sup>25</sup> Recent data provided to UNHCR indicated that in FY 2012 only five percent of completed removal proceedings had in absentia removal orders. Written Statement for the Record, Submitted by Leslie E. Vélez, United Nations High Commissioner for Refugees, for House Committee on the Judiciary Hearing on "Asylum Abuse: Is it Overwhelming our Borders?" December 12, 2013, p. 6: "The absconder rates also decreased proportionately among all asylum decisions, from 10.3% in FY 2008 to 5.0% in FY 2012."
- <sup>26</sup> Vera Institute of Justice, *The Appearance Assistance Program: An Alternative to Detention for Noncitizens in US Immigration Removal Proceedings*, New York, 2000, available at: [http://www.vera.org/sites/default/files/resources/downloads/aap\\_speech.pdf](http://www.vera.org/sites/default/files/resources/downloads/aap_speech.pdf)
- <sup>27</sup> Council on Foreign Relations, Independent Task Force Report no. 63, Jeb Bush, Thomas McClarty III, and Edward Alden, *U.S. Immigration Policy*, (2009) p. 29, available at: <http://www.cfr.org/immigration/us-immigration-policy/p20030>
- <sup>28</sup> Department of Justice, Cost Savings Analysis—The EOIR Legal Orientation Program, (April 4, 2012), p. 3, available at [http://www.justice.gov/eoir/reports/LOP\\_Cost\\_Savings\\_Analysis\\_4-04-12.pdf](http://www.justice.gov/eoir/reports/LOP_Cost_Savings_Analysis_4-04-12.pdf)
- <sup>29</sup> Senate Bill 744(II)(E)(3503) available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s744is/pdf/BILLS-113s744is.pdf>
- <sup>30</sup> Steering Committee of the New York Immigrant Representation Study Report, "Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings," *Cardozo Law Review*, (Dec. 2012) pp. 1, 11, available at [http://www.cardozolawreview.com/content/denovo/NYIRS\\_ReportII.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf); In addition, the New York Study Group on Immigrant Representation reported that only 13 percent of unrepresented non-detained immigrants reach a successful outcome in their cases. That number jumps to 74 percent when the immigrant is represented. Steering Committee of the New York Immigrant Representation Study Report, "Accessing Justice I: The Availability and Adequacy of Counsel in Removal Proceedings," *Cardozo Law Review*, (2011) Vol. 33:2, p. 364 and seriatim, available at [http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS\\_percent20Report.33-2.pdf](http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS_percent20Report.33-2.pdf); See also United States Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal*, February 8, 2005, p. 70, available at: <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal> ("With approval rates of 25 percent for represented asylum seekers in Expedited Removal and 2 percent for those who are unrepresented, the findings of the Study clearly underscore that unrepresented applicants have serious difficulties presenting their claim for asylum in an adversarial asylum proceeding"); Jaya Ramji-Nogales, Andrew I. Schoenholtz and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007), p. 287 ("whether an asylum seeker is represented in court is the single most important factor affecting the outcome of her case." Asylum seekers represented by a lawyer were roughly *three times more likely* to be granted relief than asylum seekers not represented by legal counsel.)
- <sup>31</sup> Jaya Ramji-Nogales, Andrew I. Schoenholtz and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007), p. 340.
- <sup>32</sup> A recent study argues that if all poor immigrants facing deportation were provided with legal counsel, the savings would cover the costs. The study (conducted by NERA Economic Consulting, an international firm based in New York, at the behest of the Bar Association, working with the law firm WilmerHale, and based on federal data, academic studies and interviews) estimates that a system that provided legal counsel for every poor immigrant facing deportation would cost about \$208 million per year and would pay for itself by saving about the same amount in reduced government expenditures to detain and remove immigrants and in other savings associated with the overburdened enforcement system. See Montgomery, John, NERA Economic Consulting, *Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings*, May 28, 2014, available at [http://www.nera.com/67\\_8564.htm](http://www.nera.com/67_8564.htm); see also New York City Bar, "City Bar Welcomes NERA Report Finding Appointed Immigration Counsel Would Pay for Itself," May 30, 2014, <http://www.nycbar.org/44th-street-blog/2014/05/30/city-bar-welcomes-nera-report-finding-appointed-immigration-counsel-would-pay-for-itself/>; and Semple, Kirk, "Public Defender System for Immigrants Facing Deportation Would Pay for Itself, Study Says," *The New York Times*, May 29, 2014.
- <sup>33</sup> Senate Bill 744(II)(E)(3503) available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s744is/pdf/BILLS-113s744is.pdf>
- <sup>34</sup> U.S. Congress, Written Testimony before the House Committee on the Judiciary, "Asylum Abuse: Is It Overwhelming Our Borders?" Combined DHS Written Testimony, December 12, 2013, p. 7, available at: [http://judiciary.house.gov/\\_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf](http://judiciary.house.gov/_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf)
- <sup>35</sup> U.S. Congress, Testimony of Ruth Wasem before the House Committee on the Judiciary, "Asylum Abuse: Is It Overwhelming Our Borders?" December 12, 2013, p. 16, available at: [http://judiciary.house.gov/\\_cache/files/5d634f9d-d515-4545-a3f7-f8e6c83da86d/wasem-testimony.pdf](http://judiciary.house.gov/_cache/files/5d634f9d-d515-4545-a3f7-f8e6c83da86d/wasem-testimony.pdf)
- <sup>36</sup> See Steering Committee of the New York Immigrant Representation Study Report, "Accessing Justice I: The Availability and Adequacy of Counsel in Removal Proceedings," *Cardozo Law Review*, (2011) Vol. 33:2, p. 388-394, available at [http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS\\_percent20Report.33-2.pdf](http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS_percent20Report.33-2.pdf); and American Bar Association Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, Washington, D.C., 2010, p. 5-17, available at [http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba\\_complete\\_full\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf)

- <sup>37</sup> For two recent examples of prosecutions concerning orchestrated efforts to defraud the asylum system, see Department of Justice Press Release, "Twenty-Six Individuals, Including Six Lawyers, Charged in Manhattan Federal Court With Participating in Immigration Fraud Schemes Involving Hundreds of Fraudulent Asylum Applications," December 18, 2012. <http://www.justice.gov/usao/nys/pressreleases/December12/AsylumFraudChargesPR.php>. Also see Department of Justice Press Release, "SoCal Immigration Consultants Sentenced to Prison in Scheme that Filed Bogus Asylum Applications for Hundreds of Chinese Aliens," May 7, 2014. <http://www.justice.gov/usao/cac/Pressroom/2014/057.html>. Both these cases as well as other prosecutions usually involve high-level inter-agency collaboration and coordination to identify and prosecute fraud in the asylum system. For state level prosecutions in the past year, see Federal Trade Commission Press Release, "FTC Wins Court Judgment Against Immigration Services Scam: Court Bans Baltimore-based Defendants from Providing Immigration Services," April 11, 2014, <http://www.ftc.gov/news-events/press-releases/2014/04/ftc-wins-court-judgment-against-immigration-services-scam>; Attorney General of New York Press Release, "A.G. Schneiderman Announces Felony Conviction Of Phony Lawyer Who Scammed New York Immigrants: Fake Lawyer Michael Schorr Pleads Guilty To Felony Charges For Defrauding Unsuspecting Clients And Judges; Now Faces Up To 7 Years In Prison," Dec. 18, 2013, <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-felony-conviction-phony-lawyer-who-scammed-new-york>; Attorney General of Texas Press Release, "Attorney General's Office Shuts Down Unauthorized Austin-Based Immigration Consultant," Sept. 9, 2013, <https://www.texasattorneygeneral.gov/oagnews/release.php?id=4521>
- <sup>38</sup> LaJeunesse, William. "Agencies buying hotel rooms for surge of Mexican illegal immigrants, others released," *Foxnews.com*, August 12, 2013. [http://www.foxnews.com/us/2013/08/12/surge-mexican-illegal-immigrants-claiming-asylum-overwhelms-border-officials/?cmpid=cmt\\_twitter\\_fn#ixzz2b7tB9M](http://www.foxnews.com/us/2013/08/12/surge-mexican-illegal-immigrants-claiming-asylum-overwhelms-border-officials/?cmpid=cmt_twitter_fn#ixzz2b7tB9M)
- <sup>39</sup> While in FY 2009, approximately 2 percent of credible fear screenings took place by telephone, this proportion increased to 16.3 percent in FY 2010, 48.2 percent in FY 2011, 50 percent in FY 2012, and 60 percent in FY 2013. Thus far in FY 2014, 68 percent of credible fear screenings have taken place by telephone. In the first half of FY 2014, 1,731 individuals have received a negative credible fear finding based solely on a telephonic interview. The proportion of credible fear screenings done by telephone is especially high in the Houston and Los Angeles Asylum Offices. In Houston, in FY 2013, 13,722 out of 19,676 cases, or 70 percent of cases were completed by telephone. In the first half of FY 2014, 8,247 out of 10,959, or 75 percent of cases, in Houston were conducted by telephone. Statistics from USCIS Asylum Division, April 2014. On file with Human Rights First.
- <sup>40</sup> Statistics from USCIS Asylum Division, April 2014. On file with Human Rights First
- <sup>41</sup> U.S. Congress, Written Testimony before the House Committee on the Judiciary, "Asylum Abuse: Is It Overwhelming Our Borders?" Combined DHS Written Testimony, December 12, 2013, p. 7, available at: [http://judiciary.house.gov/\\_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf](http://judiciary.house.gov/_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf)
- <sup>42</sup> In 2004, 0.3% (24 Torture out of 7,211 Persecution + Torture + Neither) cases were CAT only; In FY 2012, 26.4% of cases (3,157 out of 11,982) were CAT only; In FY 2013, 38.13% of cases (12,456 out of 32,664) were CAT only; In FY 2014 through Q2, 30.61% of cases (5,623 out of 18,368) were CAT only. Statistics from USCIS Asylum Division, April 2014. On file with Human Rights First.
- <sup>43</sup> A report issued in May 2014 by the American Immigration Council similarly reports that its researchers "heard frequent complaints that CBP officers often dissuade people from seeking asylum, sometimes berating and yelling at them. Some advocates complained that clients were harassed, threatened with separation from their families or longer detentions, or told that their fears did not amount to asylum claims." Campos, Sara and Joan Friedland. 2014. American Immigration Council, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context*, (2014), p. 10, available at: [http://www.immigrationpolicy.org/sites/default/files/docs/asylum\\_and\\_credible\\_fear\\_claims\\_final.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/asylum_and_credible_fear_claims_final.pdf)
- <sup>44</sup> USCIRF, *Report on Asylum Seekers in Expedited Removal*, 2005, p. 54, available at: <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal>
- <sup>45</sup> A recent study indicates that attorneys have reported that CBP conducted initial interviews too rapidly, without confidentiality, and without proper interpretation. "The resulting discrepancies, such as erroneous birth dates, were later used against applicants in court. Many attorneys stated that they routinely saw identical boilerplate statements in officers' reports and that officers often failed to record asylum seekers' statements even though clients told attorneys that they had provided specific information to the officers." Campos, Sara and Joan Friedland. 2014, American Immigration Council, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context*, (2014), p. 10, available at: [http://www.immigrationpolicy.org/sites/default/files/docs/asylum\\_and\\_credible\\_fear\\_claims\\_final.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/asylum_and_credible_fear_claims_final.pdf)
- <sup>46</sup> For example, as Don Kerwin points out, "Substantial percentages of those fleeing violence in Mexico would appear to be strong candidates for political asylum, including journalists, police officers who fought cartel infiltration, and members of targeted families in violence-ravaged communities," though individuals who fear generalized violence or criminality not "on account of" an enumerated ground would not be eligible. Kerwin, D. "Creating a More Responsive and Seamless Refugee Protection System: The Scope, Promise and Limitations of US Temporary Protection Programs," *Journal on Migration and Human Security*, Volume 2 Number 1 (New York: Center for Migration Studies of New York, 2014) p. 50, available at <http://www.migrationpolicy.org/research/faltering-us-refugee-protection-system>. See also Campos, Sara and Joan Friedland. 2014. American Immigration Council, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context*, (2014), p. 13, available at: [http://www.immigrationpolicy.org/sites/default/files/docs/asylum\\_and\\_credible\\_fear\\_claims\\_final.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/asylum_and_credible_fear_claims_final.pdf)
- <sup>47</sup> Kan, Paul R., *Mexico's Narco-Refugees: The Looming Challenge for U.S. National Security*. (Carlisle: U.S. Army War College, 2011) p. 10, available at: <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1083.pdf>



- <sup>48</sup> See Kerwin, *Creating a More Responsive and Seamless Refugee Protection System*, supra at endnote 46 for a detailed discussion of this.
- <sup>49</sup> Kerwin, "Creating a More Responsive and Seamless Refugee Protection System," (2014); Joan Fitzpatrick, "The International Dimension of U.S. Refugee Law," 15 Berkeley J. Int'l Law. 1 (1997). Available at: <http://scholarship.law.berkeley.edu/bjil/vol15/iss1/1>; Claire Bergeron, "Temporary Protected Status after 25 Years: Addressing the Challenge of Long-Term 'Temporary' Residents and Strengthening a Centerpiece of US Humanitarian Protection," JMHS Volume 2 Number 1 (2014): 23-44, available at <http://jmhs.cmsny.org/index.php/jmhs/article/view/23>
- <sup>50</sup> Bergeron, "Temporary Protected Status after 25 Years," (2014) p. 31-32; Kerwin, "Creating a More Responsive and Seamless Refugee Protection System," (2014) p. 50, 56.
- <sup>51</sup> See Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection, p. 2. United Nations High Commissioner for Refugees Regional Office for the United States and the Caribbean, 2014. In its report, UNHCR concluded that: "There may be individuals who are found not to meet the refugee definition contained in the 1951 Convention or 1967 Protocol but are nevertheless in need of international protection due to their lack of safety or security and their inability to receive State protection in their countries of origin.... In general, these are persons fleeing armed conflict, serious internal disorder, massive human rights violations, generalized violence or other forms of serious harm with no link to a refugee protection ground as contained in the international refugee definition. Such individuals should be given a formal, legal – complementary or subsidiary – status, with defined rights and obligations, for the period of time necessary to safeguard their safety and security." In its report, UNHCR states that these obligations emanate from a range of human rights instruments, among them the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*.
- <sup>52</sup> USCIRF, *Report on Asylum Seekers in Expedited Removal*, 2005, p. 57, available at: <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal> USCIRF concluded, based on its observations of numerous credible fear interviews, that the "Record of Sworn Statement" (Form I-867A and B) records created at ports of entry during the Expedited Removal process are often incomplete and less than reliable. Reliance on these records by immigration judges for purposes of assessing the credibility of an asylum applicant's testimony in court could, therefore, lead to the incorrect removal of asylum seekers to countries where they may face persecution. In 31 percent (43/137) of transcripts reviewed, immigration judges denying asylum cited the asylum seeker's statement made to the immigration inspector at the port of entry, as recorded on Form I-867A and B.
- <sup>53</sup> See Acer, E., Magner, T., "Restoring America's Commitment to Refugees and Humanitarian Protection," 27 *Geo. Immigr. L.J.* 445, (2013)
- <sup>54</sup> See Federal Register Notice by U.S. Customs and Border Protection, *Designating Aliens for Expedited Removal*, August 11, 2004, <https://www.federalregister.gov/articles/2004/08/11/04-18469/designating-aliens-for-expedited-removal>; See also NILC, "DHS Announces Latest in Series of Expedited Removal Expansions: Entire U.S. Border Now Covered," *Immigrants' Rights Update*, Vol. 20, Issue 1, March 23, 2006, on expansion of expedited removal ("The U.S. Dept. of Homeland Security has announced that it is now using expedited removal along the entire U.S. border, including in all coastal areas adjacent to the country's maritime borders. This most recent expansion of expedited removal, the use of which the DHS has expanded incrementally over the past few years, represents the most dramatic expansion to date.")
- <sup>55</sup> Rosenblum and Meissner at p.21.
- <sup>56</sup> National Immigration Forum, *The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, (Aug. 2013) pp. 1,11 <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>
- <sup>57</sup> USCIS Statistics on file with Human Rights First.
- <sup>58</sup> Moreover, the 2009 asylum parole guidance for asylum seekers specifically states that "Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or the U.S. national security" and only authorizes release from detention on parole if ICE determines that the individual "poses neither a flight risk nor a danger to the community." 2009 Parole Guidance at pp. 6, 8, available at: [http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf)
- <sup>59</sup> Schriro, Dora, "Immigration Detention Overview and Recommendations," October 6, 2009, p. 6, available at: <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>
- <sup>60</sup> USCIRF, *Report on Asylum Seekers in Expedited Removal*, 2005, pp. 8, 67, available at: <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal>
- <sup>61</sup> Detention as a method of deterrence is impermissible under international refugee protection standards. UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, (2012) p. 19, available at <http://www.unhcr.org/505b10ee9.html>
- <sup>62</sup> Detainees should be permitted to wear their own clothing, move freely in a "normalized environment" among various areas within a secure facility, access true outdoor recreation throughout the day, access programming and email, have some privacy in toilets and showers, and have contact visits with family and friends. See American Bar Association, *ABA Civil Immigration Detention Standards, 2011-2012*, available at: <http://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.authcheckdam.pdf>
- <sup>63</sup> A 2009 report, prepared for DHS and ICE by the expert appointed by Secretary Napolitano to review the immigration detention system, concluded that "all but a few of the facilities that ICE uses to detain aliens were built as jails and prisons" and that the detention standards used by ICE, which are based on criminal incarceration standards, "impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population. Schriro, Dora, "Immigration Detention Overview and Recommendations," October 6, 2009, pp. 2, 16, available at:

<http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>; In fact, many criminal correctional facilities actually offer less restrictive conditions than those typically found in immigration detention facilities, and corrections experts have confirmed that a normalized environment helps to ensure the safety and security of any detention facility. Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—a Two Year Review*, 2011, at 22, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf> See also Randall Atlas, “Changes in Prison Facilities as a Function of Correctional Philosophy,” in *History of Prisons*,

Chapter 3, ed. Roger Dunham (1991) at 10 (“The primary assumption of operation [behind the direct supervision model] was that a normalized environment would evoke normal behavior.”)

In a statement of objectives for new facilities, ICE described “less penal” conditions that would include increased outdoor access, contact visitation with families, and “non-institutional” clothing for some detainees. Schriro, “Immigration Detention Overview and Recommendations,” (2009) at 5, 22-25, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>

- <sup>64</sup> DHS and ICE have opened two facilities with less-penal conditions and made progress on some other aspects of detention reform. See Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—a Two Year Review*, 2011, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>
- <sup>65</sup> USCIRF, *Report on Asylum Seekers in Expedited Removal*, 2005, p. 68, available at: <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal> The UNHCR, in its 2012 guidelines on detention, as well as other international human rights authorities, have confirmed that asylum seekers and other immigration detainees should not be detained in facilities that are essentially penal facilities. UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, (2012), p. 29-32, available at <http://www.unhcr.org/505b10ee9.html>
- <sup>66</sup> Douglas Farah, “Central America’s Northern Triangle: A Time for Turmoil and Transitions.” *Prism* 4. No.3 (2013), pp.90-91.
- <sup>67</sup> *Id.*
- <sup>68</sup> Jonathan Hiskey et al. “Violence and Migration in Central America.” *Americas Barometer Insights*: 2014, p.7.
- <sup>69</sup> These include the U.N. High Commissioner for Refugees, the Council on Foreign Relations, the Women’s Refugee Commission, the International Crisis Group, and the U.S. Conference of Catholic Bishops. United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, available at: <http://www.unhcrwashington.org/children>; Council on Foreign Relations, Independent Task Force Report no. 63, Jeb Bush, Thomas McClarty III, and Edward Alden, *U.S. Immigration Policy*, (2009), available at: <http://www.cfr.org/immigration/us-immigration-policy/p20030>; Women’s Refugee Commission, *Forced from Home: The Lost Boys and Girls of Central America*, Oct. 2012, available at <http://womensrefugeecommission.org/forced-from-home-press-kit>; International Crisis Group, *Corridor of Violence: the Guatemala- Honduras Border* Latin America Report No. 52, June 4, 2014, available at <http://www.crisisgroup.org/~media/Files/latin-america/Guatemala/052-corridor-of-violence-the-guatemala-honduras-border.pdf>; United States Conference of Catholic Bishops, *Mission to Central America: The Flight of Unaccompanied Children to the United States*, Nov. 2012, <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>
- <sup>70</sup> Australian Parliamentary Library, *Research Paper No. 1 2012-2013: Destination anywhere? Factors Affecting Asylum Seekers’ Choice of Destination Country* (February 5, 2013), p. 22, available at [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1213/13rp01](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1213/13rp01) (“To the extent that the decision is influenced by what asylum seekers know about the destination country, the knowledge that a country is democratic and free is more important than knowledge of specific asylum policy”); K. Koser and C. Pinkerton, *The Social Networks of Asylum Seekers and the Dissemination of Information About Countries of Asylum*, Research Development and Statistics Directorate, UK Home Office, London, 2002, pp. 10–11, viewed 3 September 2012, <http://library.npia.police.uk/docs/hordsolr/socialnetwork.pdf> (“One of the principal reasons why asylum seekers seem unlikely to attach weight to information disseminated by formal institutions, is that these are not trusted. Interestingly, this does not appear to arise from a concern that institutions in destination countries will provide misinformation in order to deter asylum seekers, rather the issue is a lack of trust of any formal institution. This is exacerbated in cases where asylum seekers have been forced to flee their homes countries because they have experienced fear or persecution”).