



STATEMENT FOR THE RECORD OF ELEANOR ACER

Director, Refugee Protection

HUMAN RIGHTS FIRST

On

“Oversight of the U.S. Department of Homeland Security”

Submitted to the

Senate Judiciary Committee

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About Human Rights First

Human Rights First is a non-profit, nonpartisan human rights advocacy organization that challenges America to live up to its ideals. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country, working in partnership with volunteer attorneys at U.S. law firms.

The Rise in Protection Requests on the U.S.-Mexico Border

Over the last few years the number of individuals detained in “expedited removal” along the U.S. southern border who have expressed a fear of return has sharply increased. The overwhelming majority of these people are from El Salvador, Guatemala, Honduras and Mexico, where a rise in murders, rape, violence against women, kidnappings, extortion, and other brutality - fueled by political instability, economic insecurity, breakdown of the rule of law, and the dominance of local and transnational gangs - are prompting many people to flee their homes.

It has been suggested that this increase in protection requests 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 pass rates for the expedited removal system’s protection 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. The recommendations outlined below are informed by Human Rights First’s recent visits to key border points, border patrol stations, and immigration detention facilities in Arizona, California and Texas as well as our first-hand experience assisting and providing *pro bono* representation to asylum seekers including some who have come to this country through the southern border. Human Rights First released a detailed Blueprint of its recommendations in June 2014.¹

The Resource Imbalances

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. Under expedited removal, immigration enforcement officers, rather than immigration judges, can order the deportation of immigrants lacking valid documentation. 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. This increase is particularly steep between 2010 and 2013 – with the number more than doubling between 2012 and 2013.

¹ For the full Human Rights First Blueprint visit <http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border>.

Despite the sharp increase in expedited removal in recent years and the massive increases in resources for CBP and ICE which handle the initial stages of the expedited removal process, there was not 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 in to 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 has 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 undermine protection – like the shift to the use of telephone calls to conduct credible fear interviews and efforts to heighten the credible fear standard.

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. 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 immigration detention facilities. 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; and many “affirmative” asylum seekers now wait months or years for their asylum interviews – a potential vulnerability that could be exploited, and also 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).

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. While immigration enforcement budgets increased by 300% between 2002 and 2013, funding for the immigration courts has lagged far behind, increasing by only 70%. Over 366,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 578 days.

Alternatives to Detention

On May 29, 2014, Secretary Johnson testified before the House Judiciary Committee that, “alternatives to detention in general is an important program.” Alternatives to detention, including the technology-only slots operated by ICE itself, the more case-management or intense electronic monitoring forms operated by a private contractor, or pilots with social service providers have been used increasingly in recent years. Alternatives to detention (ATDs) save costs, with the current contract at a mere 17 cents to \$17 rather than the \$160 per day average of one detention bed. In addition, 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. Secretary Johnson stated before the Committee that “there are instances where it is not necessary, given the costs to the taxpayer, to detain people who are in the system, and therefore alternatives to detention is something that can and should be looked at and funded by this Congress.” 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.

ICE should step up its capacity to use alternatives to detention as a major part of its strategy to address any appearance concerns relating to individuals who need additional supervision to assure appearance upon release from detention after crossing or arriving at the southern border. Asylum seekers have traditionally appeared for their immigration court hearings at relatively high rates. A greater focus on identifying individuals who meet the requirements for parole, bond or release on alternative monitoring measures, will help free up more bed space so that asylum seekers and immigrants are not held for days in CBP custody while waiting for space to become available. Rather than pointing to a need for additional detention facilities, this situation could be managed with a much better use of existing detention space.

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, rather than detention, in appropriate cases that do not present safety risks. Secretary Johnson testified that his interpretation of bed quota is “beds, not people,” an interpretation agreed to by Rep. Labrador at the May, 29, 2014 House Judiciary Committee hearing. 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. Secretary Johnson stated at the hearing that, “arriving at the right balance between what we devote to those who should be detained and those who can be released as an alternative to detention is a difficult job that we have to continually evaluate to achieve that balance that ensures public safety and maximizes the efficient use of taxpayer dollars. So that's what I'm interested in doing, in working with the Congress to try to achieve.” This budget flexibility would support achieving that balance. Moreover, by adequately funding the immigration courts and eliminating hearing delays, the cost-savings of alternatives will be fully realized.

Effective, Fiscally-Prudent Solutions that Reflect American Values

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, repair protection safeguards, and enhance tools for addressing abuse. Congress should properly resource the asylum office 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. 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 have been neglected for years and constitute smart investments in the integrity of the U.S. immigration court and asylum systems. We know 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.

RECOMMENDATIONS

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

PROPERLY RESOURCE ASYLUM OFFICE AND IMMIGRATION COURTS TO REDUCE BACKLOGS AND VULNERABILITY TO ABUSE

- 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.
- 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.

LAUNCH MEASURES TO SUPPORT APPEARANCE

- Congress should support more capacity and smarter use of alternatives to detention nationally in place of detention for border arrivals determined to need appearance support and who present no danger to the community. Congress should increase funding for alternatives to detention and grant ICE flexibility between the detention and alternatives budget so that experienced agency law enforcement officials can make custody determinations on a case-by-case basis.
- Congress should reform the U.S. approach to immigration detention: Congress should ensure that ICE conduct additional training and has oversight in implementation of bond and parole policies. Congress should support a transition to civil immigration detention by providing funding to implement more civil detention standards and oversight to ensure proper implementation.

ADDRESS GAPS IN ACCURATE INFORMATION ABOUT THE PROCESS

- Congress should appropriate funds for expansion of cost-efficient legal information presentations to all facilities within a few days of arriving in detention.
- Congress should support projects to increase legal counsel for vulnerable populations, including vulnerable indigent asylum seekers in immigration detention.

ENHANCE TOOLS FOR DETECTING AND INVESTIGATING ABUSE AND CRIMINAL ACTIVITY

- Congress should support, if necessary, an increase in funds to increase ICE capacity to manage its caseload and USCIS capacity to conduct background checks in an automated manner.

ADDRESS TRIGGERS OF FLIGHT AND STRENGTHEN – DO NOT WEAKEN - PROTECTION SAFEGUARDS

- Congress should support efforts to increase inter-agency attention to promote outcomes to confront impunity and rule of law challenges contributing to flight and to support non-profit legal groups to assist and provide accurate information to displaced victims within countries of origin. All proposed actions should be consistent with U.S. refugee protection and human rights commitments, and all measures should include protection mechanisms.
- Congress should fund comprehensive USCIRF study, of expanded expedited removal and detention.
- In line with the recommendations of USCIRF and the strong bipartisan history of support for asylum and refugees, Congress should encourage the administration to strengthen, rather than weaken, existing safeguards to protect refugees. 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.

Conclusion

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. Over thirty three years ago, President Ronald Reagan signed into law the Refugee Act of 1980, which passed Congress with strong bi-partisan support, enshrining into domestic law America's historic 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 - 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, refugee face greater risks everywhere.”² America can and should stand firm as a beacon of hope for those fleeing persecution.

² Statement in Support of U.S. Commitment to Refugees available at <http://www.humanrightsfirst.org/sites/default/files/Republican%20Statement.pdf>.