



**Statement for the Record of Eleanor Acer
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House Judiciary Subcommittee on Immigration and Border Security Hearing

**“Another Surge of Illegal Immigrants Along the Southwest Border: Is this the
Obama Administration’s New Normal?”**

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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. With offices in Houston, New York, and Washington D.C., Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country including Central American families and unaccompanied children, working in partnership with volunteer attorneys at many of the nation’s leading law firms. Human Rights First appreciates the opportunity to submit its views for this hearing.

Regional Refugee Crisis Stemming from Violence and Human Rights Abuses in Central America

Fueled by lack of government accountability, the capture of state institutions by organized crime, and corruption, the three countries of the Northern Triangle of Central America—El Salvador, Guatemala, and Honduras—consistently rank among the most dangerous countries in the world. In 2015, El Salvador’s homicide rate climbed to ninety per 100,000 individuals, making it the most violent country in the world not at war.¹ The United Nations refugee agency and others have highlighted systemic violence in the Northern Triangle against women and children in particular.² All three Northern Triangle countries rank among the highest in the world for rates of femicide, and El Salvador and Guatemala claim the highest rates of homicide against children in the world, though violence is not restricted to these groups.³ As a result, tens of thousands of

¹ Danielle Renwick, “Central America’s Violent Northern Triangle,” Council on Foreign Relations, January 19, 2016.

² United Nations High Commissioner for Refugees, *Children on the Run*, Washington, D.C. 2014; United Nations High Commissioner for Refugees, *Women on the Run*, Washington, D.C. 2015.

³ Tessa Wardlaw, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, Sept. 2004, available at http://www.unicef.org/publications/index_74865.html; Ami Sedghi, *The world's most dangerous countries for young people: homicide rates for under 20-year-olds mapped*, THE GUARDIAN, Sept. 5, 2014, <http://www.theguardian.com/news/datablog/ng-interactive/2014/sep/05/the-worlds-most-dangerous-countries-for-young-people-homicide-rates-for-under-20-year-olds-mapped>.

children and adults have been forced to flee, or face death. In fact, recent research has identified at least 80 cases in which individuals deported by the United States to Central America since January 2014 have been murdered upon their return.⁴

UNHCR has called upon all countries in the region to recognize that there is a growing refugee situation in parts of Central America.⁵ Recent reports indicate that other countries in the region have seen asylum applications from people fleeing violence in the Northern Triangle increase by a factor of 13.⁶ U.S. government data also confirms that many who flee these countries have a significant possibility of establishing eligibility for asylum: in the second quarter of fiscal year 2015, U.S. asylum officers found that 88 percent of families seeking asylum from family detention centers had a credible fear of persecution. Even those who do not meet the technical requirements for asylum may face life-threatening dangers if returned to their home countries. Given the dangerous conditions in the region, 273 civil rights, labor rights, faith-based, immigrant, human rights, humanitarian, and legal service organizations recently recommended that the United States designate the three Northern Triangle countries for Temporary Protected Status (TPS).⁷

American Values and Refugee Protection Commitments

Protecting the persecuted is a core American value. Reflecting this country's deep-seated commitment to liberty and human dignity, as well as its pledge under the Refugee Convention's Protocol, the United States has long led efforts to protect those who flee from political, religious, and other persecution. In the wake of World War II, the United States helped lead efforts to draft the Refugee Convention, so that refugees would never again be returned to places where they would face persecution.

The U.S. asylum system has protected thousands of refugees from return to places where they would face political, religious, or other persecution. Through our pro bono legal representation initiatives, we see these people day in and day out: they are victims of religious persecution from China; women targeted for honor killings, trafficking and horrific domestic violence; gay men attacked in countries where they face constant threats; human rights advocates who stand up against oppression in Syria or against the perpetrators of brutal violence in Central America; and ordinary people who are persecuted for who they are or what they believe.

Refugees should not be penalized for seeking protection, and it is not illegal to seek asylum. The right to seek asylum is affirmed in the Universal Declaration of Human Rights. U.S. law created a process for seeking asylum, and U.S. treaty commitments prohibit the return of refugees to persecution.

⁴ Sibylla Brodzinsky and Ed Pilkington, "U.S. government deporting Central American migrants to their deaths," *The Guardian*, October 12, 2015.

⁵ United Nations High Commissioner for Refugees, "UNHCR warns of looming refugee crisis as women flee Central America and Mexico," Press Release, October 28, 2015.

⁶ United Nations High Commissioner for Refugees, *Women on the Run*, Washington, D.C. 2015.

⁷ Cite to TPS letter.

Failing to Live Up to Our Values and Obligations to Children and Families Fleeing Persecution

In June 2014, the Obama Administration launched a misguided family detention policy that has taken a punitive approach to asylum-seeking families, contrary to refugee protection and child welfare principles. Rather than implementing a refugee protection response to the increased number of women and children seeking asylum at the southern border, the Administration chose to send families to detention facilities and subject them to expedited removal proceedings, not only compromising due process and children's health, but also creating unnecessary strains on an already stretched and backlogged system.

Growing evidence shows that detention—even for relatively short periods of time—is harmful to the health of children. The American Academy of Pediatrics wrote to Secretary of Homeland Security Jeh Johnson in July 2015 urging the government to reconsider its renewed policy of detaining families.⁸ In a December 2015 op-ed, Dr. Benard Dreyer, president-elect of the American Academy of Pediatrics, described his concern “that the federal government's current policy of detaining children is exacerbating [children's] risk for physical and mental health problems and needlessly exposes them to additional trauma.”⁹

In a March 2015 report, Juan Mendez, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment summarized: “Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with posttraumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.”

The Obama Administration's continued use of detention for families is not only harmful to children's health, but also unnecessary from a justice and law enforcement perspective.¹⁰ Community-based programs are effective in securing appearance at court hearings, and recent government data shows that 98 percent of families with legal counsel have complied with immigration court obligations.¹¹ Alternatives are also much less expensive than detention, which

⁸ Letter to Jeh Johnson from Sandra Hassink, President of the American Academy of Pediatrics, July 24, 2015, <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAP%20Letter%20to%20Secretary%20Johnson%20Family%20Detention%20Final.pdf>.

⁹ Dr. Benard Dreyer, “Dreyer: Immigration detention centers are no place for children,” Houston Chronicle, December 16, 2015, <http://www.houstonchronicle.com/opinion/outlook/article/Dreyer-Immigration-detention-centers-are-no-place-6703363.php>.

¹⁰ See Human Rights First, *Family Detention: Still Happening, Still Damaging*, October 2015.

¹¹ Human Rights First, “Myth vs. Fact: Immigrant Families' Appearance Rates in Immigration Court,” Fact Sheet, July 2015, available at <http://www.humanrightsfirst.org/sites/default/files/MythvFact-Immigrant-Families.pdf>.

costs \$1,029 per day for a family of three. Past studies show that even intensive community-based programs come at only 20 percent of the cost of detention.¹²

Human Rights First has issued several reports over the past year highlighting the human rights, due process, and health concerns associated with DHS' policy of detaining families. In June 2015, one year after the Obama Administration announced its large-scale increase in detention of families, Human Rights First found that the government employed a deterrence-based approach to asylum-seeking families, contrary to international legal obligations that require a case-by-case assessment in order to justify detention of an asylum seeker.¹³ The Berks County Residential Center was the focus of a subsequent report, highlighting the negative health consequences of detention—even for relatively short periods of time—on immigrant children.¹⁴ In October, Human Rights First issued another report in the wake of the decision in the U.S. District Court for the Central District of California and the Administration's policy changes, reiterating that family detention is not only damaging to the health and well-being of children, but an unnecessary measure in light of the availability of effective and less expensive alternatives that place less burdens on an already backlogged immigration system.¹⁵

The Proposals in H.R. 1153 and H.R. 1149 Would Send Legitimate Refugees and Children Back to Danger

Human Rights First strongly opposes the “Asylum Reform and Border Protection Act” (H.R. 1153), and the “Protection of Children Act” (H.R. 1149). The provisions included in the Asylum Reform and Border Protection Act of 2015 (H.R. 1153) would severely undermine access to asylum in the United States. The bill, along with the “Protection of Children Act” of 2015 (HR 1149), would lead to the deportation of legitimate refugees with well-founded fears of persecution, leave others in immigration detention for months, and put children at risk of return to trafficking, death, and persecution in their home countries. Various provisions would deny asylum to refugees even if they are credible and have well-founded fears of persecution. The bills are inconsistent with American ideals and would erode the United States' legacy as a global leader in protecting refugees and victims of trafficking.

Among many changes to law, the Asylum Reform and Border Protection Act of 2015 would:

- **Raise the expedited removal screening standard to an unduly high level.** The bill would require that an asylum seeker – in order to even be allowed to apply for asylum – not only show a “significant possibility of establishing eligibility for asylum” but also prove it is more likely than not that his or her statements are true. This high standard is not appropriate for a screening

¹² Oren Root, “The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Removal Proceedings,” April 30, 2000, available at <http://www.vera.org/pubs/appearance-assistance-program-alternative-detention-noncitizens-us-immigration-removal>.

¹³ Human Rights First, U.S. Detention of Families Seeking Asylum: A One-Year Update, June 2015.

¹⁴ Human Rights First, Family Detention in Berks County, Pennsylvania, August 2015.

¹⁵ Human Rights First, Family Detention: Still Happening, Still Damaging, October 2015.

process, and the conditions under which interviews are conducted – in immigration detention facilities, sometimes over the phone, with traumatized applicants, using interpreters of variable quality – would lead to the deportation of many asylum seekers with legitimate claims. Even under the current standard, legitimate asylum seekers are sometimes denied “credible fear” and the chance to file an application for asylum. For example, a transgender asylum seeker was denied credible fear despite supporting letters from human rights organizations and extensive country information backing up his request.

- **Deny asylum to large numbers of refugees based on transit or stays in countries where they had no legal status**, or no lasting legal status, and to which they cannot be returned in most cases. Refugees with valid claims would be left in a state of uncertainty, with no prospects for a durable solution and no secure future for themselves and their children. Many would be left in the United States under orders of removal and could spend the rest of their lives unable to be returned to their countries of origin without another place to go.
- **Appear to prevent arriving asylum seekers who have passed the credible fear screening process from being paroled from immigration detention**, instead leaving them in jails and facilities with conditions that resemble jails for months or longer, even though there are more fiscally-prudent and humane alternatives that have been proven effective. Although other provisions of the bill assume the release on parole of some applicants, the changes to the parole statute itself are so significant that they would not only impact asylum seekers but would prevent the United States from quickly bringing prominent political dissidents or human rights advocates at risk abroad to safety here.
- **Drastically narrow the definition of an “unaccompanied child”** and allow unaccompanied children to be held in the custody of Immigration & Customs Enforcement (ICE) for as long as one month rather than being transferred to the more appropriate care of the Dept. of Health and Human Services.
- **Subject unaccompanied children to the arbitrary one-year asylum filing deadline bar.** The flawed asylum filing deadline has already led the United States to deny asylum to refugees with well-founded fears of persecution and has created inefficiencies by unnecessarily putting the cases of legitimate refugees into the overstretched immigration court system. To apply this legal technicality to children would subject the most vulnerable to an already arbitrary and harmful bar to protection.
- **State that the government not bear expense for counsel.** The bill also states that in no instance will the government bear expense for counsel for anyone in removal or appeal proceedings. Children – including toddlers - the mentally disabled, and other vulnerable people cannot represent themselves in our complex immigration system. Studies have confirmed that representation encourages appearance for court and saves the government money.
- **Allow asylum applicants, unaccompanied children, to be bounced to third countries** in the absence of any agreement between the United States and the countries in question for the reception of asylum seekers. This would lead to “refugee ping pong.” The transit country would be likely to return the person to his home country despite fears of persecution, attempt to send him to another country, or bounce him back to the United States.

Recommendations

Congress should not enact legislation that undermines the ability of those fleeing violence and persecution to secure U.S. protection. Congress should not pass proposals, like those included in H.R. 1153 that would prevent refugees from accessing or receiving asylum from persecution. Instead, Congress should take the steps outlined below. These recommendations are informed by Human Rights First's multiple visits to key border points, border patrol stations, and immigration detention facilities in Arizona, California, New Jersey, New Mexico, Pennsylvania 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.

In addition to supporting efforts to address the human rights conditions in Central America prompting many to flee their homes, Congress should take steps to strengthen the asylum system, including:

- **End the Detention of Children and their Families, Effectively Implement Parole and Release Procedures.** Department of Homeland Security should end the detention of families, a policy that runs contrary to American values and sets a poor example for the rest of the world. DHS should also effectively implement the existing asylum parole guidance, ensuring that eligible arriving asylum seekers are assessed for parole under the specified criteria, and released when they meet those criteria; and – in accordance with that guidance – not releasing any individual who presents a danger to the community or flight risk. Human Rights First has assisted many individuals who fled persecution and arbitrary detention for their prodemocracy or human rights advocacy only to languish in jail-like facilities in the United States while awaiting adjudication of their asylum requests. The traumatizing effects of detention on a torture survivor are immense and have been well documented.
- **Rather than invoking expedited removal, DHS should refer all families directly into removal proceedings before an immigration judge.** The children and families fleeing the Northern Triangle countries to seek protection in the United States are part of a recognized refugee crisis. Rather than subjecting children and their parents to expedited removal, DHS should refer children and their parents into normal removal proceedings before an immigration judge under section 240 of the Immigration and Nationality Act and refrain from detaining families. By eliminating the use of expedited removal against children and families, the due process impediments associated with expedited removal will be avoided. It will also save government resources that have been dedicated to expedited removal—a process that has proven needless for the vast majority of families who pass protection screening interviews and are subsequently referred to regular removal proceedings anyway.
- **Immigrant families seeking asylum should have their claims heard by the Asylum Office, rather than by an immigration judge.** Preparing and presenting a claim for asylum is often a traumatic experience for refugees, who often have to rehash horrific events from the past. The adversarial setting of immigration court can exacerbate the stress and trauma associated with making a claim for asylum, particularly for children. The affirmative asylum

process, which involves one asylum officer asking questions of the applicant, allows for a more child-friendly and less traumatizing approach than a courtroom setting.

- **Increase Immigration Court Staffing to Address Removal Hearing Delays and Eliminate Hearing Backlog.** To address the incoming removal caseload and the backlog, the immigration courts will need at least 280 additional immigration judge teams – significantly more than the 55 additional immigration judge teams added in the FY16 budget. Both the American Bar Association and the Administrative Conference of the United States (ACUS) have expressed concern that the immigration courts do not have the resources necessary to deal with their caseloads. The delays and backlogs resulting from insufficient staffing and resources undermine the integrity of the system by exposing it to potential abuse and by leaving individuals who are desperately awaiting their asylum hearings in limbo for years.
- **Increase Asylum Office Staffing to Address Backlogs, Provide Timely Referrals into Removal Proceedings.** As asylum officers have been redeployed to conduct credible fear interviews, delays and backlogs for affirmative asylum interviews have grown. A timely and effective asylum office interview process is essential for maintaining the integrity of the U.S. asylum system and will ensure that those who are not eligible for asylum are promptly referred into immigration court removal proceedings. Delays also undermine the ability of refugees to rebuild their lives and bring stranded spouses and children to safety in this country. While the use of expedited removal should be limited, when expedited removal is used, the USCIS asylum office should have sufficient resources to conduct timely and effective credible fear and reasonable fear interviews, and to conduct its interviews in person. These interviews are integral components of expedited removal and reinstatement of removal, and when those procedures are invoked, these interview components should be funded commensurately with the funding provided to CBP to conduct these summary removal processes.
- **Use Cost-Effective Alternatives to Detention rather than more detention.** Where individual asylum seekers are in need, based on an assessment of their individual circumstances, of supervision and/or case management to assure their appearance, Immigration and Customs Enforcement should utilize cost-effective alternatives to detention. Family detention costs \$1,029 per day for a family of three—Human Rights First has estimated that the Administration's family detention policy could cost taxpayers \$400 ~~260~~ million over the course of a year.¹⁶ By contrast, community-based support programs and other alternative measures, proven to uphold appearance for immigration hearings and deportation, are much more fiscally prudent. Past studies show that even intensive community-based programs come at only 20 percent of the cost of detention. The U.S. Conference of Catholic Bishops and Lutheran Immigration and Refugee Services have also piloted community-based appearance support programs that can help make sure immigrants show up for hearings. Groups from across the political spectrum, including the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy, the International Association of Chiefs of Police, and the Texas Public Policy Foundation (home to Right on

¹⁶ Human Rights First, Family Detention: Still Happening, Still Damaging (October 2015).

Crime), have recommended alternatives to detention for their cost-savings. Many states are increasingly turning to the use of alternatives in the criminal justice system, prompted by Right on Crime and other reform experts. Congress should shift funding from detention to alternatives, or at least support flexibility in funding, so that Immigration and Customs Enforcement can utilize these alternatives to save costs in cases where detention is not necessary to meet the government's need for appearance, where additional supervision would assure appearance, and the individual poses no danger.

- **Support Legal Orientation Programs and Access to Counsel Measures that Improve Fairness and Efficiency of the Immigration System.** Legal Orientation Programs (LOP), which have been praised for their cost-effectiveness and for increasing immigration court efficiency, currently provide legal information and, in some cases, referrals to counsel, to some but not all immigration detainees. A recent analysis of government data found that 86 percent of individuals in immigration detention were unrepresented.¹⁷ LOPs – and quality legal counsel - can help non-represented individuals understand their eligibility, and in some cases lack of eligibility, for asylum and other potential forms of immigration relief. Congress should sufficiently fund DOJ to ensure that LOPs are funded and in place at all facilities used for immigration detention. According to a 2012 DOJ report, LOP reduced the amount of time to complete immigration proceedings by an average of 12 days. Factoring in the savings – primarily to DHS through reduced length of time spent in detention – LOP has been shown to have a net savings of approximately \$18 million. Rather than seeking to restrict funding for legal representation, Congress should support increased funding for counsel. Recent studies have confirmed that counsel in immigration proceedings encourages appearance for hearings, and saves government money.
- **Remove Unnecessary Impediments that Delay Cases and Block Refugees from this Country's Protection.** This includes elimination of the asylum filing deadline which bars legitimate refugees from asylum, and needlessly adds to the number of cases in the immigration courts. As Dr. Richard Land, President of Southern Evangelical Seminary, has described, “When people escape horror and come to the United States in desperate need of freedom and safety, we shouldn't turn them away because of a bureaucratic technicality.” Under no circumstances should this flawed deadline be applied to the asylum requests of children.

¹⁷ Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," 164 U. Penn. L. Rev. 1 (2015).