



Statement of Human Rights First

U.S. Senate, Committee on Homeland Security and Governmental Affairs

Hearing on Improving Border Security and Public Safety

April 5, 2017

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 New York, Washington D.C., Houston, and Los Angeles, 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 many of the nation's leading law firms. Human Rights First appreciates the opportunity to submit its views for this hearing.

Protecting Refugees While Safeguarding Our Borders

The United States has laws and policies designed to protect refugees from return to persecution. In the wake of World War II, the United States helped lead efforts to draft the Convention Relating to the Status of Refugees and this country has a long history of protecting individuals and families who have fled persecution. Consistent with its ideals, the United States has pledged to comply with the Convention Relating to the Status of Refugees and its Protocol. U.S. laws, passed with bipartisan support over the years, have created standards and procedures for requesting asylum and have endeavored to create mechanisms to safeguard refugees from return to persecution.

The U.S. Department of Homeland Security has been entrusted with administering many of this country's processes relating to asylum. For instance, U.S. Customs and Border Protection is charged with referring individuals who express an intention to apply for asylum or a fear of persecution for screening interviews with USCIS asylum officers. USCIS is charged with conducting asylum interviews, as well as credible fear and reasonable fear interviews. ICE, with its role operating immigration detention, implements DHS authority to parole an asylum seeker from immigration detention.

The United States can both safeguard its borders while also complying with its legal and treaty obligations with respect to refugees and asylum seekers. In the wake of President Trump's January 25, 2017 executive order on Border Security and Immigration Enforcement Improvements, Human Rights First is concerned about a number of DHS policies and practices that thwart access to asylum, undermine U.S. global leadership, and contravene U.S. legal and treaty commitments. These policies include:

Improperly turning away asylum seekers. At a number of official ports of entry along the southern border, some CBP officers have improperly turned away asylum seekers without referring them, as required under section 235(b) of the Immigration and Nationality Act, for protection screening

interviews. CBP has confirmed that its policy regarding receiving and processing asylum seekers remains the same. Human Rights First researchers recently visited areas along the border in Texas and California, as well as in Mexico. The last leg of this research was completed last week, and the organization will issue a report summarizing its findings shortly. Through its research and interviews, Human Rights First identified cases of asylum seekers who were turned away from the U.S. southern border. These included: two transgender asylum seekers from Central America targeted for their gender identity; a journalist who fled Mexico; women from Mexico and Central America who fled severe domestic violence; a former Guatemalan police officer; a Colombian artist fleeing death threats; and a member of the Turkish opposition party, among others.

In some cases, CBP officers reportedly told asylum seekers that the United States is not granting asylum any more. In other cases, asylum seekers who were turned away said that they were told by CBP agents that they would not be granted or were not eligible for asylum. Some asylum seekers indicated that they had been physically blocked from approaching the border by private security contractors, as part of an ad hoc gauntlet arranged by U.S. and Mexican officials. At one port of entry, asylum seekers are told they must come back another day and first go to Mexican officials who will give them an “appointment” ticket, but Mexican officials regularly refuse to provide “appointment” tickets to various categories of asylum seekers.

Asylum seekers turned away at the border are left in difficult and dangerous circumstances. In several Mexican border towns migrants are commonly kidnapped and held for ransom. Many disappear in cartel controlled territory. Drownings in the Rio Grande are reportedly on the rise. Women face near certain sexual assault and rape. Asylum seekers stuck in Mexico largely cannot rely on Mexican authorities for protection, as they may be the very persecutors from which they flee. Others risk being deported back to the persecutors they have fled, in part due to Mexico’s highly inadequate asylum system.

Not only do these practices contravene U.S. law and U.S. treaty commitments, but they are also counterproductive as they leave asylum seekers with the impression that they must attempt to cross the border without authorization rather than to approach a formal port of entry to request asylum.

Unduly high screening standards. A new lesson plan relating to credible fear of persecution or torture, issued by USCIS in February 2017 in the wake of the January 25 executive order, includes revisions that are inconsistent with U.S. law and put people at risk of return to persecution or torture. For example, the revisions appear to shift the credible fear standard set by Congress to a higher-level standard applicable in full asylum hearings with respect to establishing credibility and identity. This approach would turn the credible fear screening process into a full asylum determination, with hardly any of the procedural protections that apply in full asylum adjudications. Credible fear interviews are typically conducted within days of arrival while asylum seekers are held in detention facilities, and without the time necessary to gather evidence and documentation required to meet full asylum standards. Moreover, asylum seekers overwhelmingly do not have legal representation in immigration detention.

Escalating Detention and Failure to Parole eligible asylum seekers. The President’s January 25 executive order calls for an escalation of immigration detention, which is already at an all-time high. While a February 20, 2017 memorandum issued by Secretary of Homeland Security John Kelly confirms that ICE’s parole directive relating to arriving asylum seekers is still in full force and effect, Human Rights First continues to receive reports that ICE is denying parole to asylum seekers who meet the criteria for release – those who do not present a risk of flight or danger, and who can establish their identities

sufficiently – and that some ICE offices appear to have established a moratorium or near moratorium on parole. Human Rights First has detailed these rights-violating practices, as well as the failure to provide access to reasonable bonds that indigent individuals can afford to pay, in a series of reports issued over the last year.

Over the last month, and in the wake of the January 25 executive order and the February 20 DHS memorandum implementing that order, Human Rights First has received reports from non-profit attorneys in locations around the country that eligible asylum seekers continue to be denied parole even when they meet the parole criteria. For example, a Mexican journalist, whose parole application was supported by his U.S. citizen cousin who resides in California and the organization Reporters without Borders, which has documented his persecution in Mexico, was denied in March by the El Paso field office which inexplicably checked a box claiming the journalist was a “flight risk.” A grandmother from Honduras was denied release from detention by ICE in southern California in February, with the “flight risk” box checked on her parole denial, even though her parole application was supported by two U.S. citizen family members. This asylum seeker’s non-profit attorney reported to Human Rights First that ICE had indicated they were not releasing anyone on parole now.

Human Rights First has also received reports that ICE is continuing to detain individuals who have been determined by immigration judges to qualify as refugees and meet the asylum eligibility criteria while ICE pursues appeals. The continued detention of such individuals, who have already been held in detention for many months, is generally not warranted, and is contrary to the policy clarified by DHS in 2004 under the Bush Administration, which generally favors release of individuals once they have been granted asylum, even if ICE appeals the judge’s decision.

Arriving asylum seekers moreover continue to be denied access to immigration court custody hearings, leaving ICE as judge and jailor with respect to decisions relating to their continued and often prolonged detention. These immigration detention policies and practices violate Article 9 of the International Covenant on Civil and Political Rights and Article 31 of the Refugee Convention and Protocol. This nation can both protect its borders while also protecting the persecuted and complying with its legal obligations under U.S. laws and treaties.

Recommendations. The Department of Homeland Security must ensure that all policies and practices comply with U.S. law and U.S human rights and refugee protection treaty commitments. To ensure compliance:

1. CBP officers must stop improperly turning away some asylum seekers at the southern border, and DHS must assure that CBP border officers are better trained to identify and refer asylum seekers for screening interviews.
2. DHS must not pursue any formal arrangement aimed at turning away asylum seekers at the border, including any plan to have them wait in Mexico where they would face grave dangers.
3. USCIS lesson plan guidance with respect to credible fear assessments should be brought into compliance with the Congressional standard, and should call for a screening – not a full blown asylum eligibility assessment – including with respect to identity and credibility.
4. ICE should effectively implement and retain its 2009 directive on the Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture, and should not issue any guidance that calls for

the continued detention of asylum seekers who do not present flight or danger risks and can establish their identities. ICE should generally release asylum seekers from detention after they are ruled eligible for asylum by an immigration judge, as has long been the policy.

5. DHS and the Department of Justice should provide prompt initial access to immigration court custody (bond) hearings for arriving asylum seekers, as well as access to such hearings at six-months of detention and subsequently. While arriving asylum seekers have access to immigration court merits hearings, they are not afforded access to these bond hearings under current regulatory language.