

How to Manage the Increase in Asylum Seekers at the Border

During the past few years, the number of people arriving at the southern U.S. border expressing a fear of return to their home countries has increased significantly. To learn more about the increase in protection requests, Human Rights First conducted extensive research visiting key border points, U.S. Border Patrol stations, and immigration detention centers in south Texas, Arizona, and California. We met with government officials, asylum seekers and non-profit lawyers working with asylum seekers. Our direct experience providing pro bono representation to asylum seekers, many of whom initially sought protection at the border, also informed our analysis.

The following are key steps that Congress can take to directly and immediately address this influx:

1. Properly resource the Asylum Office screening processes and the Immigration Courts to reduce backlogs and vulnerability to abuse

While funding for immigration enforcement has quadrupled, funding for the agencies that adjudicate immigration claims and conduct screening interviews, specifically USCIS's Asylum Division and DOJ's Executive Office for Immigration Review, has lagged behind. No one ought to be rushed through screenings and immigration court cases, and individuals should have a several day waiting period before a screening and sufficient time to receive legal orientation and find immigration counsel. However, individuals who cross the border today may wait years for an immigration court hearing – the most recent statistics show that over 360,000 cases are pending for an average of over 570 days. Others who are applying for asylum affirmatively also face month- or year-long delays – because the Asylum Division has had to re-allocate its resources to credible and reasonable fear screenings along the border. These delays leave immigrants and refugees in limbo while making the immigration system vulnerable 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. A timely immigration court removal process is essential for maintaining the integrity of the U.S. immigration enforcement system.

- **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.** These interviews are critical components of expedited removal and reinstatement of removal, tools increasingly used by immigration enforcement officials in recent years.

2. Launch initiative to expand nationwide use of cost-effective and humane alternatives to detention for border cases, in place of immigration detention for those who need additional supervision to support appearance

Cost effective alternatives to detention enjoy broad support in the criminal justice system and have a demonstrated track record of supporting appearance but are under-used on a national level. For border cases where immigration authorities determine there is concern about flight risk and compliance, DHS should step up its efforts to use alternatives to detention instead of increasing use of costly jails and jail-like detention facilities.

- **For those who are determined to need support to assure their appearance, Congress should facilitate more capacity and smarter use of alternatives to detention.** Congress should increase funding for alternatives to detention and grant ICE flexibility between the detention and alternatives budgets so that experienced agency law enforcement officials can make custody determinations on a case-by-case basis. Alternatives to detention cost 17 cents to \$17 per person per day, rather than the \$160 of a detention bed. Groups such as the Heritage Foundation, the Council on Foreign Relations Independent Task Force on Immigration Policy, and the Texas Public Policy Foundation – home to Right

on Crime - have expressed support for the cost-savings alternatives create.

- **Congress should reform the U.S. approach to immigration detention.** Congress should support a transition to civil immigration detention by providing funding to implement more civil detention standards and mandating increased accountability and oversight to ensure proper implementation. The U.S. Commission for International Religious Freedom (USCIRF) concluded that asylum seekers should not be detained in jail-like conditions.

3. Address border arrivals' gaps in accurate information by supporting prompt access to legal information and counsel

Many individuals expressing a fear of return lack critical information about U.S. immigration and asylum laws, the "credible fear" screening process, or the requirements they are expected to fulfill if they are placed into removal proceedings and/or released from detention. The lack of access to information is exacerbated in detention facilities – currently only 25 of ICE's approximately 250 detention centers have a formal Legal Orientation Program (LOP), and nationally around one in five detained immigrants does not have a lawyer in proceedings.

- **Congress should appropriate funds for expansion to all detention facilities of cost-efficient legal information presentations to be provided within a few days of arriving in detention.** LOPs are highly cost-effective, with one DOJ study showing a cost-saving to the government of \$18 million. Immigration judges report that proceedings are more efficient when an individual has representation or, at minimum, has received critical legal information. If provided within days, immigration detainees will receive accurate information from credible non-profit attorneys, rather than relying on potentially inaccurate information from other detainees.
- **Congress should support projects to increase legal counsel for vulnerable populations, including indigent asylum seekers in immigration detention.** A May 2014 study found that the efficiencies created through increased legal representation in court proceedings and reduced detention time gained would mitigate the costs of providing legal representation to indigent immigrants.

4. Enhance tools for detecting and investigating abuse and criminal activity

Human Rights First's research also found that immigration officials at the border were generally pleased with the number of security and background checks, which can help identify fraud and criminal activity, that were available to them. Background checks are conducted at several stages – at apprehension by CBP, during ICE custody (and prior to any release from detention), and by USCIS as part of credible or reasonable fear screenings. ICE trial attorneys have access to all background check and credibility information and can identify concerns or inconsistencies to immigration judges, who themselves have access to anti-fraud programs and resources. Any agency can also refer matters suspecting orchestrated fraud to Homeland Security Investigations (HSI), the FBI, or to federal or state prosecutors for investigation and prosecution.

- **Congress should support, if necessary, a funding increase for ICE to manage its caseload and for USCIS to conduct background checks more quickly. Time to investigate is** the key element many officials identified in fraud detection. ICE officials often carry high caseloads, and the credible fear screenings are required to happen in a short time frame. More resources would not only help with more ability to explain requirements to immigrants in custody but also to research suspected concerns if necessary.

5. Address triggers of flight, and strengthen—rather than weaken—protection mechanisms

Though not a central part of our research, Human Rights First's Blueprint recognizes the strong need to address the instability, insecurity, and violence in some Central American countries and parts of Mexico that have contributed to the increase in migrants arriving in the United States. 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.

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.

The full Human Rights First Blueprint is available at: <http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border>.