



STATEMENT FOR THE RECORD

On

**“An Administration-Made Disaster:
The South Texas Border Surge of Unaccompanied Minors”**

Submitted to the

House Judiciary Committee

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About Human Rights First

Human Rights First is an independent advocacy organization that challenges America to live up to its ideals. We are a non-profit, nonpartisan international human rights organization based in New York, Washington D.C., and Houston. To maintain our independence, we accept no government funding. 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. Through that program, we see day in and day out the ways in which current U.S. immigration laws and policies are denying or delaying protection to refugees who seek this country's protection from political, religious and other persecution.

Overview

Over the last few months, national attention has focused on the increase in Central American migrants apprehended in the Rio Grande Valley after crossing the southern border. Primarily from El Salvador, Guatemala, and Honduras, these migrants include unaccompanied children, parents with children, and adults. Some are seeking to reunite with family in the United States. Many are fleeing violence and persecution in their home country and have requested asylum or other protection in the United States. A rise in murders, rape, violence against women, kidnappings, extortion, and other brutalities is prompting many people to flee their homes, often in fear of violent gangs and drug cartels. It is also true that predatory elements are seeking to exploit the situation, with smugglers spreading misinformation to lure some families into paying them to transport them or their unaccompanied children to the border.

On June 20, 2014, World Refugee Day, the Obama administration announced a series of steps to address the surge at the border. In addition to announcing new aid for programs in Central America and Mexico to address gang violence, rule of law deficiencies and reintegration of returned migrants, the administration announced “additional steps to enhance enforcement and removal proceedings.” While the details were not specified, the administration stated that it was “surging government enforcement resources to increase our capacity to detain individuals and adults who bring their children with them and to handle immigration court hearings – in cases where hearings are necessary – as quickly and efficiently as possible while also protecting those who are seeking asylum.” This announcement signaled a rise in detention of children and their families as well as the potential for rushed asylum hearings.

How to Protect Refugees and Prevent Abuse at the Border

Human Rights First recently visited key border points, border patrol stations and immigration detention facilities in Arizona, California and Texas, to research the increase in the last two years of adult asylum seekers. Since our visits, even greater increases in the number of families – in particular single parents with children – crossing the border and seeking protection have been reported. We published our findings in a comprehensive *Blueprint on How to Protect Refugees and Prevent Abuse at the Border* that expands on many of the findings and recommendations below.

The Obama Administration and the U.S. Congress have the tools to confront the complex challenges at the border, but they need to act quickly to do so. While effectively confronting the influx at the border will require addressing the impunity and rule of law deficits that are driving many to flee in search of protection, the immediate response of the administration and Congress to the challenges posed by the increase in unaccompanied children, families and other migrants at the border should also ensure effective implementation of safeguards for asylum seekers, victims of trafficking, and others with protection concerns. The United States has a strong interest in maintaining the integrity and effectiveness of its immigration and asylum systems and safeguarding them from abuse.

The following are key steps that the Administration and Congress can take to directly and immediately address the increase in families, unaccompanied children, and other vulnerable populations crossing the border. Human Rights First recommends that the Administration and Congress maximize the use of alternatives to detention, increase access to legal information and counsel, strengthen protection safeguards, and reduce backlogs and vulnerability to abuse, specifically including the following steps:

Maximize use of alternatives to detention

Asylum seekers have traditionally appeared for their immigration court hearings at relatively high rates. 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. Additional measures could support appearance. 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, as detailed in Human Rights First's Blueprint. 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.

The current situation at the border is particularly complicated because so many of those crossing are families, including mothers or fathers with children who are, in some cases, infants and toddlers. The United States currently detains family units in only one facility, a relatively small

shelter in Pennsylvania. In 2009, the administration shut down the other, much larger facility it used at the time due to serious allegations of abuse and inappropriate conditions. Despite the increase in families today, costly immigration detention facilities are not appropriate settings for children and parents with children, particularly given that alternatives are much more cost-effective. 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.

To address the increase in asylum seekers, including families with children, the administration and DHS should 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.

- **Children and families should not be detained, especially in existing detention facilities.** In 2009, DHS ceased using its primary detention facility for families after multiple reports of inappropriate conditions for and treatment of children and their parents. The United States should not detain children, including infants and small children. Families should only be held for processing in custody for short periods of time and in conditions appropriate for family detention. Per legal requirements of the *Flores* agreement on treatment of children in DHS custody, DHS should always place children in the least restrictive setting appropriate.
- **Implement a nationwide initiative of alternatives to detention** for border cases that need supervision, including by building on community-based models of alternatives. DHS does not currently maximize use of alternatives to detention for cases of border arrivals. Alternatives to detention cost 17 cents to \$17 per person per day and enjoy a broad range of support for their cost-savings from groups including the Council on Foreign Relations Independent Task Force on Immigration Policy, chaired by Jeb Bush and the Texas Public Policy Foundation – home to Right on Crime. The most recent statistics from the contract currently used by ICE show a 97.4 percent appearance rate for final hearings.

Increase access to legal information and counsel

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.

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 does not mean that the asylum seeker’s request is fraudulent. The most crucial tool to address the absence of critical information by those crossing the border is access to legal information and counsel. Currently, the highly cost-efficient government funded Legal Orientation Programs, which provide for non-profit attorneys to present basic legal information presentations to detained individuals in certain facilities, reach 25 of ICE’s approximately 250 detention facilities across the country. In addition to the due process and fairness increased by providing some legal information, 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. Although EOIR has received additional funding to expand the program, the program will still reach only a fraction of detention facilities

- **Congress should appropriate funds to expand cost-efficient legal information presentations to all detention facilities 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. These presentations allow immigration detainees to receive accurate information from credible non-profit attorneys, rather than relying on potentially inaccurate information from other detainees.
- **Congress should support and the administration should expand 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 would mitigate the costs of providing legal representation to indigent immigrants.

Strengthen – do not weaken – protection safeguards

Many apprehended at or after crossing the border are placed into expedited removal, through which individuals can be deported without a court hearing. To protect asylum seekers, Congress created the “credible fear” screening process. As it addresses the influx, DHS should strengthen, rather than weaken, safeguards to identify and protect asylum seekers, victims of trafficking, vulnerable children and others with protection concerns and Congress should support staffing and resources for timely in person protection screening.

- **Customs and Border Protection officials should effectively implement safeguards to identify individuals who should be referred to a credible fear interview.** USCIS should conduct credible fear interviews in person, and in a timely manner. These interviews should occur within 14 days of arrival, but also allow for a short several day waiting period for asylum seekers to recover from their travels and receive a legal orientation presentation. USCIS should request, and Congress allocate, the resources needed to meet the credible fear caseload without taking resources from the affirmative process. DHS should implement protection safeguards recommended by the U.S. Commission on International Religious Freedom.
- **Revise Flaws in Credible Fear Lesson Plan.** USCIS should revise the February 2014 Credible Fear Lesson so that credible fear screenings do not use an incorrectly high standard and do not require inappropriate levels of evidence for an initial screening. To monitor that credible fear screenings are done correctly, USCIS should immediately intensify supervisory review of credible fear determinations under the plan, and should invite UNHCR to observe the conduct of credible fear interviews during this surge.
- **Immigration hearings should take place in a timely manner while allowing proper time for immigrants to receive legal information, obtain counsel, and adequately prepare a case.** Any attempt to expedite hearings in order to address the increased caseload at the border should not rush cases through the system undermining access to justice. Individuals require time to obtain legal counsel and to prepare and present a case for asylum or other relief.

Reduce backlogs and vulnerability to abuse

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 percent between 2002 and 2013, funding for the immigration courts has lagged far behind, increasing by only 70 percent. Over 366,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 578 days. 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. For families and asylum seekers whose cases originate at the border, these delays prevent their cases from being resolved in a timely manner.

- **Congress should appropriate funds to increase nationally the number of immigration court judges and related resources to address removal hearing delays, eliminate backlogs and conduct timely hearings.** A timely, but not rushed, immigration court removal process is essential to maintain the integrity of the U.S. immigration system.
- **Congress should appropriate funds to increase asylum office resources to conduct timely in-person credible fear and reasonable fear screening interviews** after individuals have had a short, several day waiting period, crucial for many who have fled persecution and survived often traumatizing journeys. These interviews are critical components of expedited removal and reinstatement of removal; these tools raise protection concerns and should not be used unless screening measures are effectively implemented and properly resourced.

Conclusion

America is a global leader in protecting the persecuted, a commitment President Obama affirmed in his statement on World Refugee Day. 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, refugees face greater risks everywhere.” The U.S. government and Congress should take

the appropriate and necessary steps to address this influx in a manner that protects the vulnerable and is consistent with American ideals. America can and should stand firm as a beacon of hope for those fleeing persecution.

The full Human Rights First Blueprint is available at:

<http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border>.