



Statement for the Record of Eleanor Acer

Director, Refugee Protection

Human Rights First

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“Interior Immigration Enforcement Legislation”

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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, 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. For the reasons outlined below, Human Rights First strongly opposes the "Asylum Reform and Border Protection Act" (HR 5137), as well as the "Protection of Children Act" (HR 5143) and the "Strengthen and Fortify Enforcement Act" - commonly known as the "SAFE Act" (HR 2278).

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. The U.S. asylum system has protected thousands of refugees from being returned 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.

A Strong System is Staffed Adequately to be Timely, Fair, and Effective

A strong asylum and immigration system that adjudicates cases in a fair and timely manner and includes effective tools for fighting abuse is essential both for ensuring the integrity of the U.S. immigration process as well as protecting refugees from return to places of persecution. However, in order to effectively secure the integrity of the system, the agencies responsible for asylum adjudication – the Department of Justice's Executive Office of Immigration Review (EOIR) and the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) – must be properly staffed and resourced to adjudicate cases in a fair and timely manner, and to eliminate backlogs that can leave the system vulnerable to abuse.

According to the most recent data, about 430,000 immigration removal cases have now been pending for an average of 585 days in the U.S. immigration courts. While immigration enforcement and related funding have increased significantly in recent years, funding and staffing for the immigration courts has lagged well behind. 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. This funding imbalance needs to be righted as outlined in our recommendations below.

Not only can delays increase the vulnerability of our immigration system to abuse and prevent refugees from having their cases adjudicated in a timely manner, but they often leave refugee families stranded in difficult and dangerous situations abroad. For example:

- **Wife and Children of Christian Missionary Stranded, Hiding from Boko Haram.** “Joshua” is a Christian missionary and social outreach worker from Nigeria, married and the father of young children. He was targeted by Boko Haram militants because of his religious activities and his assistance in providing information about Boko Haram crimes to the police. Boko Haram militants are believed to have shot Joshua’s brother along with another guest at Joshua’s home in Joshua’s absence. Boko Haram militants later kidnapped Joshua himself. Released by security forces who stopped his captors’ vehicle, but unable to find protection in Nigeria, Joshua fled to the United States after a period in hiding. At his first hearing in immigration court, in late 2013, Joshua was scheduled for a hearing on the merits of his case in 2016. Joshua’s wife and children are currently in hiding. Joshua, who already blames himself for the death of his brother, fears for their safety but cannot petition to reunite with them until his asylum case is heard.
- **Family of Syrian torture survivor, stranded and threatened in Syria.** “Hisham”* was detained and tortured repeatedly by both governmental and non-governmental armed forces in Syria, each of which wrongly believed him to be supporting the other side. All factions also abused him very severely for challenging what they were doing. His hands were permanently damaged by the torture. Hisham finally fled Syria. Since arriving in the United States, his sole priority has been to secure the protection of asylum so that he can get his wife and adolescent son out of Syria. He applied for asylum without the assistance of counsel and was referred to an immigration court that is severely backlogged. When he first appeared in court without counsel, his case was adjourned for nearly a year. Meanwhile, there have been threats against his family back home, and his son, who has been unable to attend school for months because of these threats, will be called up for military service in a little over a year, and his Syrian passport will expire, meaning that the boy must be gotten out of Syria before then. If Hisham cannot get his case heard in immigration court in time to petition for his family, all his efforts to gain protection will be meaningless to him.
- **Separation from Family Prolonged for Tibetan Persecuted for Religious Activity.** S.T. is Tibetan and a lay monk in a sect of Buddhism. He was beaten and imprisoned for over two years by the Chinese government for performing religious ceremonies at which he praised the Dalai Lama and some attendees expressed a desire for a free Tibet. He fled to the United States and applied for asylum. His case has been pending before the immigration court since 2009. During this time, S.T. has been living here alone, with no legal status and no friends or family. His family is still in Tibet, and he is afraid to contact them for fear of jeopardizing their safety. He wants to contact them once he has asylum so that he can try to arrange for a safe exit for them to join him in the United States, but they have now been separated for years, S.T. has been completely cut off from those he cares about, and at this point the family does not even know if he is dead or alive.

*The names of these asylum seekers have been changed for security reasons.

The Proposals in H.R. 5137 Would Send Legitimate Refugees and Children Back to Danger

The provisions included in H.R. 5137, the Asylum Reform and Border Protection Act of 2014, would severely undermine access to asylum and protection in the United States. The bill 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. The bill is inconsistent with American ideals and would erode the United States' legacy as a global leader in protecting refugees and victims of trafficking.

The bill seeks to make it harder for those fleeing persecution and torture to file for asylum in the United States, a process already fraught with obstacles. The bill appears to eliminate the statutory basis for release on parole for detained asylum seekers, including children, which would leave asylum seekers in jails and facilities with conditions similar to jails despite the existence of more cost-effective and humane alternative measures that result in compliance and appearance at hearings. The bill would also eviscerate the limited procedural protections available to unaccompanied children in the immigration system. It would overturn provisions that protect children from return to traffickers and would subject them to expedited removal proceedings entirely unsuited to their age, making it difficult for them to access the asylum and immigration process.

Among many changes to law, the bill would:

- **Raise the expedited removal screening standard for those seeking this country's protection at the border to an unduly high standard.** 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 that it is more likely than not that his or her statements are true. This standard is inappropriate for what is intended to be a screening, and the conditions under which these interviews are conducted – in immigration detention facilities and jails, sometimes over the phone, with traumatized applicants speaking to government officials they sometimes cannot see, communicating through interpreters of variable quality, at times with young children present in the same room – would lead to the deportation of many asylum seekers with legitimate claims to protection.
- **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.

- **Overtake provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA) that protect children from return to traffickers or persecution by putting all unaccompanied children into expedited removal proceedings.** The bipartisan U.S. Commission on International Religious Freedom has documented substantial flaws in the implementation of expedited removal and other studies have detailed deficiencies in the screenings of children at the border, all of which leave vulnerable individuals – adults and children – at risk of return to persecution and harm.
- **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 a month rather than being transferred to the more appropriate care of the Department 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 subjects the most vulnerable of the vulnerable to an already arbitrary bar from 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. Studies have confirmed that representation encourages appearance for court and saves the government money. Children – including babies and toddlers - the mentally disabled, and other vulnerable people cannot represent themselves in our complex immigration system.
- **Allow asylum applicants, including 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.**

A Note on Expedited Removal

As outlined above, the bill seeks to further heighten the credible fear screening standard – which is used to determine whether an asylum seeker who has been put into expedited removal will be allowed to apply for asylum. (It is not the standard for asylum itself, but simply a screening process to weed out cases that should not even be allowed to submit an application for asylum.)

However, even under the current statutory screening standard, we regularly learn of reports of legitimate asylum seekers who are denied “credible fear” – and the chance to even file an application for asylum - even though they should meet the standard and may be eligible for asylum. In some cases, interviews are sometimes rushed, essential information is not identified due to lack of follow up questions, and/or other mistakes are made that block genuine asylum seekers from even applying for asylum and having a real chance to submit evidence and have their case fully considered. The bipartisan U.S. Commission on International Religious Freedom has documented the prison-like conditions used to detain asylum seekers during this process, and

found that safeguards put in the system to protect asylum seekers from mistaken deportation under expedited removal were often not implemented. Here are just a few examples of the mistakes that occur under the current credible fear screening process.

- **LGBT Human Rights Activist Nearly Deported Under Expedited Removal:** “Toni” is a gay man with a female gender identity from El Salvador who suffered severe physical and mental harm at the hands of the Salvadoran government and others. Toni worked to improve the plight of the LGBT community in El Salvador through work with a human rights organization. During the course of that work, police beat Toni. Eventually, Toni was forced to flee El Salvador due to threats against his life. After seeking protection at the U.S. southern border in 2014, Toni was put into immigration detention. Toni was nearly deported back to danger under expedited removal without even being allowed to apply for asylum. The Asylum Office initially denied Toni’s credible fear interview, without examining any of the country conditions evidence documenting the extreme violence perpetrated against the LGBT community in El Salvador. An immigration court failed to vacate this decision despite letters from LGBT human rights organizations explaining the risks Toni would face if returned. After the intervention of pro bono counsel and a reconsideration request, Toni was finally allowed to apply for asylum.
- **Woman Persecuted Due to Ethnicity Deported Under Expedited Removal.** A Guatemalan woman and indigenous language speaker detained at the Karnes family detention center in Texas was deported under expedited removal based on a credible fear interview conducted in Spanish, a language in which she was not fluent. It was clear to a Human Rights First staff attorney who met with her that she did not have the vocabulary to express her thoughts. For example, the notes from her credible fear worksheet showed that the asylum officer understood an event to have happened ten times, while in fact she was referring to the number of perpetrators. The Human Rights First attorney who met with her was unable to complete a full interview due to the language difficulties, but based on the information communicated, there appeared to be sufficient basis to pass the credible fear screening, as the woman was persecuted on account of her indigenous ethnicity. This woman was deported from the United States under expedited removal before she could secure legal counsel.

The System Already has Many Strong Measures for Identifying, Prosecuting Fraud

Some have pointed to the increase in the numbers of individuals from three Central American countries who requested U.S. protection as evidence of “fraud” in the system. However, multiple studies and media reports have documented the devastating escalation of violence and persecution in the three Central American countries – El Salvador, Guatemala, and Honduras. A study conducted by the U.N. Refugee Agency concluded that about 60% of children interviewed from these countries had potential claims to asylum or other international protection.

Certainly, if individuals or groups are defrauding the asylum system, it hurts everyone, and steps should be taken to counter those abuses and punish the perpetrators. U.S. authorities have a range of effective tools to address abuses. As outlined in Appendix A to this statement, U.S. agencies conduct multiple identity and background checks, have personnel in multiple agencies charged

with detecting and investigating fraud, and have the ability to refer for prosecution individuals who perpetrate and orchestrate fraud. Many of these tools have been enhanced over the years, and the prosecution of criminal charges is critical for sending a message that efforts to defraud the immigration systems will not be tolerated.

The use of these tools, tailored to identifying and addressing abuse, are the answer – rather than sweeping proposals – like those included in H.R. 5137 – that would cause the United States to turn away, and send back to danger, legitimate refugees with credible asylum claims. The bottom line is that U.S. immigration authorities have the legal and policy mechanisms necessary to detect and address abuse, including referring for prosecution individuals who attempt to orchestrate fraud on the system. While additional staffing and resources are needed for the asylum, credible fear, and immigration court removal systems, additional changes to laws – to make it even more difficult for refugees to access the asylum system – are inconsistent with our values and make the system more inefficient by leading to mistaken decisions to deport legitimate refugees.

Strengthen Rather than Weaken Protections

As we seek to strengthen the system, we should address the many ways in which our current asylum system fails to provide protection in a manner consistent with this country's commitments and legal obligations to protect refugees fleeing persecution. Over the years, so many barriers and hurdles have been added to the asylum system through multiple rounds of legislation that refugees who seek the protection of the United States often find themselves denied asylum, delayed in receiving protection, or lingering for months in jails and jail-like immigration detention facilities. In addition to supporting a fair and timely decision-making process for those seeking this country's protection, Congress should eliminate unjust barriers that deny or delay U.S. protection to refugees and implement the recommendations of the U.S. Commission on International Religious Freedom relating to expedited removal and detention.

Changes in law that would further prolong detention for many asylum seekers or risk turning refugees back to persecution are not necessary, and are inconsistent with this country's commitments and values. America should stand firm as a beacon of hope that will not turn its back on those seeking protection from persecution.

As the Council on Foreign Relations Independent Task Force on Immigration Policy, co-chaired by former Florida Gov. Jeb Bush and former Clinton White House chief of staff Thomas "Mack" McLarty, pointed out: "The treatment of refugees and asylum seekers is [a] dimension of immigration policy that reflects important American values." That task force's report also stressed the example that the United States sets for the world: 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."

Recommendations

Congress should not pass proposals, like those included in H.R. 5137, 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, 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, and a subsequent set of recommendations focused on families seeking asylum.

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:

- **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 300 additional immigration judge teams – significantly more than the administration's fiscal 2016 request for 55 additional immigration judge teams. 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 Wall Street Journal and other media have recently reported on immigration court delays, which have led non-priority non-border cases to be calendared for their hearings in late November 2019 – nearly five years from now. 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. The USCIS asylum office should also have sufficient resources to conduct prompt and effective credible fear and reasonable fear interviews, and to conduct its interviews in person. These interviews are integral components of the enforcement tools of expedited removal and reinstatement of removal, and should be funded commensurately with the funding provided to CBP to conduct these summary removal processes.
- **Utilize Multiple Existing Anti-Fraud Tools.** ICE and USCIS should continue and increase where needed their use of the many available tools for combatting fraud and abuse in the immigration and asylum systems. As detailed in Appendix A, these include training, enhanced background biographical and biometric checks, fraud detection and investigation

capacities, and referral of cases for criminal prosecution. If additional resources are needed, the Administration should request and Congress should appropriate funding to ensure that DHS and DOJ have the resources required to adequately combat fraud. Prosecutors should also prioritize prosecutions of individuals who orchestrate schemes that defraud the immigration and asylum systems. Prosecuting the perpetrators of fraudulent schemes will reduce fraud and abuse and enhance the integrity of the asylum and immigration systems, as well as protect the immigrants who are often victims of these schemes. The American Bar Association, the New York Immigrant Representation Study Group, and others have recommended strict penalties for those who engage in unauthorized practice of law.

- **Implement U.S. Commission on International Religious Freedom (USCIRF) Recommendations on those fleeing religious and other forms of persecution and Request Updated USCIRF Study.** Department of Homeland Security and Immigration and Customs Enforcement should implement U.S. Commission on International Religious Freedom recommendations, including: using detention facilities that do not have jail-like conditions when asylum seekers are detained; maintaining, effectively implementing, and codifying the existing parole guidance into regulations; and expanding legal orientation presentations. Congress should request and support an updated USCIRF study on the conduct of expanded removal and its impact on asylum seekers.
- **End the Detention of Children and their Families, Effectively Implement Parole and Release Procedures.** Immigration and Customs Enforcement 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. ICE should end its submission of materials and arguments relying on the flawed reasoning of former Attorney General John Ashcroft in *Matter of D-J-*, and should instead base bond positions on true assessments of the circumstances of the individual in question. ICE 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.
- **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. Alternatives have been demonstrated to produce high appearance rates – with ICE’s current contracted supervision program reporting a 97.4 percent appearance rate at final hearings and an 85 percent compliance rate with final orders where case management is utilized. As Alex Nowrasteh of the Cato Institute has pointed out, the family detention facility in Dilley, Texas

will cost the U.S. government about \$300 a day per person to operate—amounting to roughly \$260 million each year. By contrast, community-based support programs and other alternative measures, proven to uphold appearance for immigration hearings and deportation, are much more fiscally prudent, costing only 17 cents to \$17 a person a day. The U.S. Conference of Catholic Bishops and Lutheran Immigration and Refugee Services have also piloted and are willing to run 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 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. Approximately 80 percent of detained individuals do not have representation in their immigration proceedings. 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.

APPENDIX A

Mechanisms in the System for Addressing Fraud

The U.S. asylum system and U.S. law contain many measures that are specifically aimed at, and closely tailored to, identifying fraud and protecting the integrity of the system. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) contained strict security provisions, including a requirement that identity checks be conducted against federal government databases and records for all individuals applying for asylum. Section 208(d)(5)(a)(i) of the INA requires that “asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State ... to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum.” These checks can help identify fraudulent cases as well as any individual who might present a security risk. Anti-fraud and security check measures continue to be strengthened, as well new ones initiated, and many additional steps have been added since both 1996 as well as in the years since the study on fraud, based on a sample of cases from 2005, reported on in the *Washington Times* on February 6, 2014. Outlined below are just some of the mechanisms that are designed to protect the immigration and asylum systems from abuse.

In December 2013 written testimony, DHS stated that: “Before individuals are granted asylum, they must all establish identity and pass all requisite national security and law enforcement background security checks. Each asylum applicant is subject to extensive biometric and biographic security checks. Both law enforcement and intelligence community checks are required – including checks against the FBI, the Department of Defense, the Department of State, and other agency systems.” Some of the key measures that the USCIS Asylum Division uses to prevent abuse of the asylum system include: ¹

Mandatory Biographical Checks (Checks Using the Applicant’s Name, Date of Birth, and Aliases): These include checks in USCIS Central Index System; CBP TECS; ICE ENFORCE Alien Removal Module; FBI Name Checks; and DOS Consular Consolidated Database.

Mandatory biographical checks are conducted in multiple databases, using the applicant’s name, date of birth, and aliases.

- **USCIS Central Index System:** In conducting background screenings, asylum applicants are first checked against the USCIS Central Index System to determine if they have previously been issued an alien number.
- **TECS:** They are also screened against TECS, CBP’s primary law enforcement and national security database, which contains enforcement, inspection, and intelligence records. TECS

¹See Department of Homeland Security (DHS), Combined Testimony of DHS before the House Judiciary Homeland Security Committee for a hearing on “Asylum Abuse: Is it Overwhelming Our Borders?” (December 12, 2013) available at http://judiciary.house.gov/_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf; fact sheet from U.S. Citizenship and Immigration Services (USCIS) on file with Human Rights First; USCIS, Affirmative Asylum Procedures Manual (November 2013) available at http://www.uscis.gov/sites/default/files/files/natedocuments/Asylum_Procedures_Manual_2013.pdf.

contains various types of information from a variety of Federal, state, local, and foreign sources, and the database contains records pertaining to known or suspected terrorists, wanted persons, and persons of interest for law enforcement and counterterrorism purposes.

- **EARM – ENFORCE Alien Removal Module:** This ICE database contains records of aliens in detention, exclusion, and removal processes.
- **FBI name check:** The FBI searches for the applicant’s name(s) and date(s) of birth in their records.
- **CCD – Consular Consolidated Database:** Asylum office personnel access the Department of State’s web-based CCD to obtain information about the identity, previous travel history, method of entry into the U.S. and/or background of an asylum applicant.

Mandatory Biometric Checks (Checks Using the Applicant’s Fingerprints and Photograph): These checks include FBI fingerprint check, US-VISIT/IDENT, and DOD/ABIS vetting for certain applicants.

- **FBI Fingerprint Checks:** With respect to affirmative asylum applications, as described in DHS’s testimony from December 2013: “A USCIS Application Support Center takes a complete set of fingerprints and biometrics (signature, photograph and index print) of asylum applicants between the ages of 12 years 9 months and 79 years. The FBI electronically searches the fingerprints within the Integrated Automated Fingerprint Identification System.” Asylum officers and immigration judges are not authorized to grant asylum until the applicant’s fingerprints have been run through the FBI database and the results are received and reviewed.
- **US-VISIT/IDENT:** US-VISIT/IDENT is a DHS system managed by the National Protection and Programs Directorate’s (NPPD) Office of Biometric Identity Management (OBIM), and includes biometric information related to the travel history of foreign nationals and Watchlist information. It also contains visa application information owned by the Department of State. This system is used to confirm identity, determine previous interactions with government officials and detect imposters. The 10 fingerprints – referenced above in connection with the FBI fingerprint check - are also electronically submitted to the US-VISIT/IDENT database, where they are stored and matched to existing fingerprint records. This system is used to confirm identity and determine previous interactions with government officials. Through the US-VISIT SIT tool, asylum officers have the ability to verify that the person who went to the Application Support Center (ASC) for fingerprinting is the same person appearing at the asylum office for interview.
- **DOD Automated Biometric Identification System:** A biometric check against the Department of Defense (DOD) Automated Biometric Identification System (ABIS) is conducted for certain cases.
- **National Counterterrorism Center:** The Asylum Division also screens the biographic information of new asylum applicants against the National Counterterrorism Center’s terrorism holdings.

For protection requests that enter the system through the credible fear process, the DHS testimony explains that USCIS Asylum Officers conduct a mandatory check of both TECS (described above) and US-VISIT/IDENT (referenced above) during the credible fear process. These checks help to confirm identity and inform lines of questioning. In addition, with respect to cases that enter the system through the credible fear process, asylum officers – at the credible fear stage - also ensure that the Federal Bureau of Investigation (FBI) name check and fingerprint checks have been initiated. DHS, in its December testimony, stated that “The USCIS asylum officer’s determination as well as information on the individual’s identity, including how he or she established it, results of the security checks, and any adverse information is recorded and placed in the alien’s file upon completion of the credible fear process. This information is then provided to ICE.” As a result, ICE will have this information with respect to individuals who pass the credible fear screening process and are put into immigration court removal proceedings and to consider in detention determinations.

Fraud Detection and National Security Teams

USCIS’s Office of Fraud Detection and National Security aids in identifying fraudulent asylum claims by training asylum officers and providing technical support. Through this office, asylum officers may refer suspected fraudulent applications to ICE for criminal investigation and prosecution. These specially trained officers review asylum files to monitor the asylum caseload for fraud and they liaise with various law enforcement entities. These officers also help train asylum officers on detecting and addressing fraud. The FDNS officers also conduct in-depth vetting on cases with national security concerns. This includes liaising with local Joint Terrorism Task Forces regarding these cases. Asylum Offices also have on their staff trained document experts, Forensic Document Laboratory Certified Document Instructors (FDLCDIs), who have been trained by the Department of Homeland Security’s Forensic Document Laboratory. FDLCDIs examine for fraud documents submitted to the Asylum Office by asylum applicants and train Asylum Office staff on how to recognize certain documents for irregularities and fraud indicators.

Asylum Officer Training and Mandatory Supervisory Review of all Asylum Decisions

Affirmative asylum interviews and credible fear interviews are conducted by specially trained USCIS asylum officers who are trained and dedicated full-time to the adjudication or screening of protection claims. They are, as DHS has explained in recent testimony, extensively trained in national security issues, the security and law enforcement background check process, eligibility criteria, country conditions, interview techniques, making proper credibility determinations, and fraud detection. During an asylum interview, “The asylum officer fully explores the applicant’s persecution claim, considers country of origin information and other relevant evidence, assesses the applicant’s credibility and completes required security and background checks. The asylum officer then determines whether the individual is eligible for asylum and drafts a decision.” Supervisors review 100 percent of asylum officers’ determinations prior to issuance of a final decision, and they also review 100 percent of credible fear determinations.

Government-Funded Interpreter Monitors

Current regulations require that asylum applicants provide interpreters at their own expense when they cannot proceed effectively in English at the asylum interview. The Asylum Division uses neutral, government-funded interpreters to monitor the interpretation of asylum interviews at all Asylum Offices, in order to ensure that interpreters brought by applicants are correctly interpreting interview questions and answers. Procedures for securing an interpreter monitor apply in all affirmative asylum cases where the applicant does not speak English.

When cases are referred from the USCIS Asylum office into the immigration courts, the information used by the asylum office to make a determination on the individual's claim, including the interview notes, biographic information, completed security checks and decisional documents, is placed into the individual's file and is available for use by ICE attorneys during immigration court removal proceedings.

Applicants Who Knowingly Make a Frivolous Application Permanently Barred

INA 208(d)(6) provides that "If the Attorney General determines that an alien has knowingly made a frivolous application for asylum, the alien shall be permanently ineligible for any benefits under the Act."

Asylum Applications Signed Under Penalty of Perjury

When the legacy Immigration and Naturalization Service (INS) overhauled the asylum system in 1995, it revised the asylum application form to require both the asylum applicant and the individual preparing the application to sign the application "under penalty of perjury" that the application and the evidence submitted with it are true and correct. In addition, the asylum applicant is put under oath at the Asylum Office interview, and must execute a record of that oath. The interpreter must also be placed under oath and execute a record of oath as well.

Fraudulent Filers, Preparers, and Attorneys Can Be Prosecuted

Individuals who seek to defraud the immigration and asylum system can be and have been prosecuted. Unscrupulous "notarios" and attorneys take advantage of immigrants by untruthfully telling them they are eligible for certain benefits and then preparing fraudulent applications – including asylum applications – for large fees. To facilitate prosecution of fraudulent filers, USCIS is a member of the Immigration and Customs Enforcement's (ICE) Document and Benefit Fraud Task Force, which coordinates with U.S. Attorney's Offices to identify and prosecute fraudulent immigration benefit claims. Charges have been brought against such preparers in many states, including California, New York, Texas, Florida, and Arizona. On June 9, 2011 the Federal Trade Commission with the Departments of Justice and Homeland Security announced a multi-agency, nationwide initiative to combat immigration services scams.

Identification and Response to Fraud and Abuse in the Immigration Court System

As noted above, asylum applicants can only be granted asylum if the identity of the applicant has been checked against all appropriate records or databases. EOIR also has a Fraud Program designed to assist court judges and staff with identifying fraudulent cases and systemic evidence

of schemes to defraud the system. In addition, ICE trial attorneys are charged with identifying potential fraud. In cases before the immigration court, where ICE trial attorneys may present evidence if the government suspects fraud, Immigration Judges have the authority to find a case fraudulent or frivolous, a finding that comes with severe consequences for the applicant.

In addition, as described by EOIR Director Juan Osuna in November 2013 testimony before the House Committee on Oversight & Government Reform Subcommittee on National Security: “EOIR has a robust and active program for identifying and referring claims of fraud encountered by immigration judges and the BIA. . . .The complaints and requests for assistance the Fraud and Abuse Program receives each year are almost evenly divided between unauthorized practice of immigration law (UPIL) complaints and fraudulent claims perpetrated against the government.” That testimony also stated that: “Because EOIR has no authority to conduct investigations or prosecute, UPIL complaints are referred to federal, state and local law enforcement, and bar associations for investigation and prosecution. EOIR also files complaints of UPIL fraud with the Federal Trade Commission’s Consumer Sentinel Network (Sentinel) and collaborates with USCIS’s Fraud Detection and National Security Directorate and other government agencies in combating fraudulent immigration activity. EOIR consistently is among the top-ranked government agencies in referring UPIL fraud to Sentinel.” EOIR also regulates the professional conduct of immigration attorneys and representatives, EOIR’s Disciplinary Counsel investigates complaints involving alleged misconduct associated and can initiate formal disciplinary proceedings. Since the program’s inception in 2000, EOIR reports that it has disciplined more than 1,100 attorneys.

Wrongdoers and Security Threats Excluded from Protection

In addition, the Refugee Convention’s “exclusion clauses” require host countries to exclude from the Convention’s protections any person who has committed heinous acts or grave crimes that make him undeserving of international protection as a refugee, even if that individual has a well-founded fear of persecution. A separate provision of the Convention allows the return of a refugee who poses a danger to the security of the host country. The United States incorporated into its law the Refugee Convention’s promise to provide protection to refugees, but also codified bars to asylum and withholding of removal intended to reflect the Convention’s exceptions.

U.S. immigration laws prohibit granting asylum and any form of refugee protection to: people who engaged in or assisted in or incited the persecution of others; people who have been convicted of a particularly serious crime in the United States; people who have committed a serious non-political crime abroad; people who have engaged in terrorist activity; people who are representatives of foreign terrorist organizations; or people who otherwise pose a threat to the security of the United States.²

The recent exemptions to immigration law inadmissibility provisions issued by the Department of Homeland Security in February 2014 – pursuant to authority provided by Congress –

² INA § 208(b)(2) (8 U.S.C. § 1158(b)(2)) (bars to asylum); INA § 241(b)(3)(B) (8 U.S.C. § 1231(b)(3)(B)) (bars to withholding of removal).

specifically exclude a long list of individuals including anyone who poses a danger to the safety and security of the United States or has not passed all relevant security and background checks. These exemptions do not apply to situations involving groups that are actually listed or designated as “terrorist organizations” by the United States government. These inadmissibility provisions have ensnared refugees with no real connection to terrorism, such as a refugee from Burundi who had a rebel group rob him of four dollars and his lunch and an Iraqi former interpreter for the U.S. Marine Corps was informed that his past connection to a Kurdish group allied with the United States and opposed to Saddam Hussein made him inadmissible. These exemptions do not address the situation of individuals who had innocent interactions with designated or listed groups – like for instance, an Iraqi widow who had a member of a designated terrorist organization buy flowers in her flower shop (incidentally while the group was under U.S. military protection).³

The Importance of a Timely and Effective Process in Deterring Abuse

The integrity of any system is protected by its ability to operate fairly and in a timely manner. In the 1990s, the asylum system was under-resourced and under-staffed. Faced with a large number of asylum filings prompted by a wave of brutal civil wars and human rights abuses in Central America, the asylum system developed a substantial backlog. This multi-year backlog and lack of adequate staffing left the U.S. asylum system vulnerable to abuse. Some individuals sought to exploit the system. Some people were told by unscrupulous lawyers or others that they could sign a form and would then be allowed to remain in the United States for years with work authorization. This backlog had a devastating impact on the cases of many bona fide asylum seekers. Their lives were in limbo for years, and the delays in their asylum grants left many separated from their children and spouses for years.

The U.S. Immigration and Naturalization Service (INS) launched a major reform effort and took a number of steps to address these challenges. These steps included quicker adjudications, quicker referrals to deportation proceedings for those not granted asylum after an asylum interview, and increased staffing to ensure timely adjudication. The INS also terminated the automatic grant of work authorization to asylum applicants at the time they apply – a step that has left many legitimate asylum seekers without the means to support themselves while they await adjudication of their asylum requests.⁴

As a result of the asylum processing improvements that were put in place at the time, and continued for many years after, individuals who applied for asylum would generally have their asylum interviews within a month or two of filing. Individuals who applied for asylum saw their cases promptly put into removal proceedings if they were not found eligible for asylum by the asylum office. However, in recent years, due to inadequate funding and increased demand,

³ For more background, see Human Rights First, *Refuge at Risk: The Syria Crisis and U.S. Leadership*, November 2013; Human Rights First, *Denial and Delay: The Impact of the U.S. Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States*, 2009.

⁴ Human Rights Watch and the Seton Hall University School of Law’s Center for Social Justice “At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States,” November 2013.

backlogs and delays have been allowed to grow in both the asylum and immigration court systems.

At USCIS, the asylum division has redeployed its asylum officers to address the escalating number of credible fear interviews at the border. Backlogs in the asylum office have risen over the last two years and some asylum seekers are now waiting many months and sometimes longer for their interviews. While prompt conduct of credible fear interviews should be a top priority, USCIS needs the resources and staffing to conduct prompt in-person credible fear interviews as well as to conduct affirmative asylum interviews in a timely manner. Adequate staffing and resources are essential for maintaining the integrity of the asylum system.

The immigration court system, which is within the Department of Justice's Executive Office for Immigration Review (EOIR), has for a number of years been widely acknowledged to be overstretched, backlogged, and underfunded.⁵ In recent years, resources for immigration enforcement have escalated or remained high, leading many more cases to be placed into immigration court removal proceedings. At the same time, the resources for the immigration court system have lagged behind leaving the immigration courts under-staffed. Over 350,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 570 days.⁶

The Administrative Conference of the United States (ACUS), based on its study of the immigration court system, concluded in June 2012 that the immigration court backlog and "the limited resources to deal with the caseload" present significant challenges. In 2010, the American Bar Association's Commission on Immigration, in its comprehensive report on the immigration courts, concluded that "the EOIR is underfunded and this resource deficiency has resulted in too few judges and insufficient support staff to competently handle the caseload of the immigration courts."

The delays and burden on the immigration courts can be exacerbated when cases that could or should be granted at the asylum office level are put into the immigration court system. As documented by a comprehensive statistical study on the asylum filing deadline, thousands of asylum cases have been placed into the immigration court system unnecessarily due to the asylum filing deadline.⁷ Other categories of asylum cases could also be more efficiently resolved

⁵ American Bar Association, *Reforming the Immigration Detention System* (2010), pp. 2-16 available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.aucthcheckdam.pdf; Administrative Conference of the United States (ACUS), "Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012," available at <http://www.acus.gov/wp-content/uploads/downloads/2012/05/Proposed-Immigration-Rem.-Adj.-Recommendation-for-Plenary-5-22-12.pdf>

⁶ Immigration Court Backlog Tool. Backlog as of December 2013. *Transactional Records Clearing House* available at http://trac.syr.edu/phptools/immigration/court_backlog/.

⁷ Philip G. Schrag, Andrew I. Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach. "Rejecting Refugees: Homeland Security's Administration of the One-year Filing Deadline." *William and Mary Law Review*. 52, No. 3 (2010); Human Rights First. *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Government Efficiency* (November 2010).

if they were referred initially to the USCIS asylum office.⁸ The lack of legal counsel for asylum seekers and other immigrants, in part exacerbated through detention practices that inhibit access to counsel, also impacts the efficiency and fairness of the immigration court system. EOIR itself has explained that: “Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge.”⁹

Court backlogs and extended asylum processing times also have a grave impact on asylum seekers themselves. While they wait – sometimes two to three years - to have their claims heard, many remain separated from spouses and children who may be in significant danger in their home countries. Without access to work authorization for months or longer while awaiting their immigration court hearings, many asylum seekers are unable to support themselves and their families. Some become homeless or destitute. As the pro bono leaders at some of the nation’s leading law firms wrote in June 2013, the backlog in the immigration courts is resulting in years-long delays and making it increasingly difficult to recruit pro bono counsel.¹⁰

⁸ Administrative Conference of the United States (ACUS), “Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012,” available at <http://www.acus.gov/wp-content/uploads/downloads/2012/05/Proposed-Immigration-Rem.-Adj.-Recommendation-for-Plenary-5-22-12.pdf>

⁹ Charles H. Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices* (Dec. 2004), available at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/legalAssist.pdf.

¹⁰ Association of Pro Bono Counsel, June 4, 2013, available at <http://www.endthedeathline.org/uploads/pdfs/APBCo-Letter.pdf>.