

The U.S. Asylum System: Protecting the Persecuted, Fighting Fraud

The United States has a long history of protecting people who flee political, religious or other persecution. In the wake of WWII, the international community developed treaties to protect those who face persecution. The United States upholds these commitments through its asylum system. The last two years have seen an increase in protection requests made both at the U.S. border and from within the United States. Though these requests are not at an historic high, the increase has created practical challenges as U.S. government agencies struggle to manage the uptick, and has generated concerns on how to best maintain the integrity of our asylum system.

Human Rights First works with many asylum seekers requesting protection and needing legal assistance. In the last month, our researchers have visited border posts and detention facilities at the U.S. – Mexico border, meeting with officials from multiple government agencies as well as with asylum seekers and non-profit lawyers. This fact sheet aims to clarify some of the misperceptions and inaccuracies in the reporting on asylum requests.

Claim: Passing a credible fear interview constitutes legal status, “temporary asylum,” or some other relief or protection.

Fact: Passing a credible fear screening interview does not constitute a grant of asylum, provisional asylum, or any other legal status.

- Passing a credible fear interview means only that the individual has passed through the screening process and will be put into removal proceedings where he or she can apply for asylum. The asylum application process is separate from – but follows – the credible fear process. The standard to demonstrate eligibility for asylum is much higher and the process more complex than a credible fear screening. In the first half of Fiscal Year 2014, fear was found in 80% of credible fear cases.
- Many cases going through the credible fear screening process have been persecuted or faced violence based on sexual orientation, political, religious, or other identity, or are victims of domestic violence.

Claim: The asylum system, including the credible fear process, is exploited by individuals with criminal histories or others seeking to exploit the system and “disappear” into the country.

Fact: Security checks, background checks, and other measures to detect domestic and international security concerns have increased, not decreased, substantially in recent years. However, immigration courts and asylum offices need additional funding.

- An extensive and growing number of security and background check measures, many of which have been implemented in recent years, are in place to prevent fraud and abuse. The government uses extensive biographical and biometric checks; employs fraud detection and national security teams; mandates supervisory review of all decisions; and uses government-funded interpreter monitors.
- For individuals apprehended at or near the border, biographical and biometric checks are conducted by multiple agencies of jurisdiction, including by U.S. Customs and Border Protection and Immigration and Customs Enforcement.
- Perpetrators of fraud – including unscrupulous lawyers and notarios – can be and have been criminally prosecuted. Individuals found to have submitted a fraudulent application are permanently barred from any immigration benefit.
- While funding for immigration enforcement efforts overall has increased, funding allocations for immigration courts and asylum offices who adjudicate asylum claims have not kept pace – resulting in lengthy backlogs that could make the system more vulnerable to fraud. These systems need additional resources to reduce backlogs for individuals awaiting adjudication of their cases.

Claim: The majority of asylum cases are fraudulent.

Fact: There is no evidence supporting the claim that 70 percent of asylum cases are fraudulent.

- A 2009 Fraud Detection and National Security Directorate draft report, which studied a sample of cases in 2005, found “proven fraud” in a small number of successful asylum applications (12 cases, or 5% of the study’s sample).

- In another 58% of cases, the study found “indicators” of “possible fraud,” rather than “strong indicators” or “likely fraud” sometimes used to describe the draft study’s findings. The indicators were not detailed, though appeared to include discrepancies in oral and written testimony – discrepancies that Human Rights First’s pro bono program often sees with our own clients as a result of mistranslation, trauma, or poor initial legal advice.
- Since 2005, the year when the cases in the draft report were studied, U.S. Citizenship and Immigration Services (USCIS) and other agencies have added additional security and background check measures.

Claim: Exemptions relating to the immigration law’s terrorism-related inadmissibility provisions allow terrorists to receive asylum.

Fact: These exemptions simply allow case-by-case assessments of cases in which refugees have been caught up in overly-expansive definitions under U.S. immigration law. Individuals who present a threat to the United States are excluded.

- U.S. inadmissibility provisions often ensnare refugees with no real connection to terrorism because they are so broadly written. These provisions define any rebellion against any established government as “terrorist activity,” and characterize any group of two or more people that engages in, or has a sub-group that engages in, the use of armed force as a non-designated (sometimes called Tier III) terrorist organization. This means that anyone who has given support to the Free Syrian Army in its struggle against the brutal Assad regime is inadmissible to the United States. These provisions have excluded individuals like a florist in Iraq who sold flowers to members of a terrorist organization who came into her shop.
- The recent February 2014 exemptions to immigration law inadmissibility provisions are the latest in a series of exemptions issued by the Department of Homeland Security under Republican and Democratic administrations pursuant to authority explicitly provided by Congress. Congress established the exemption authority to prevent perverse outcomes such as freedom fighters being categorized as terrorists or victims of terrorists being grouped with their attackers.
- These exemptions specifically exclude individuals who meet any one of a long list of criteria, 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. For more information, see Human Rights First’s [TRIG Fact Sheet](#).

Claim: Because asylum seekers are not currently detained for the duration of their cases, increasing detention is the only effective deterrent to fraudulent asylum applications made at U.S. borders.

Fact: Many individuals face a real fear of return, present no danger and flight risk, and do not need to be detained while awaiting a hearing to adjudicate their asylum application. Individuals should not be released without an establishment of identity and without an assessment of flight risk, public safety risk, and other factors. However, it is critical to address backlogs and information gaps in the system.

- The amount of time an asylum seeker may stay in immigration detention can vary. After an individual is found to have a credible fear of return, the government may be able to assess some individuals for parole, bond (which are often high), or placement into an alternative to detention program. Many will remain in costly detention for the duration of their case, often lasting many months or even years.
- Many individuals do not pose a public safety or flight risk and do not require any conditions on release to facilitate appearance and compliance. If necessary, the government may also utilize a range of alternatives to detention, similar to those used in criminal justice systems. Alternatives to detention include electronic monitoring, telephonic or in-person reporting requirements, and other tools in order to support appearances in immigration court and removal proceedings. Alternatives have been reported to be successful in achieving high rates of compliance.
- Given backlogs and delays in the immigration courts, it is critical that immigration courts are properly staffed so that cases are adjudicated in a timely manner. Furthermore, given that many immigrants do not have legal counsel or never receive legal information on the asylum and immigration process, it is critical to increase access to counsel and legal information about the requirements of the asylum application and adjudication process.

Claim: Asylum-related provisions in the Senate immigration reform bill would weaken the asylum process safeguards.

Fact: Asylum-related improvements in the Senate immigration reform bill, S. 744, would eliminate unnecessary and costly barriers to protection. These provisions do not alter any standards or safeguards in the asylum system. All asylum seekers would continue to undergo rigorous security background checks and show that they are admissible to the United States.

For more information, contact Corinne Duffy at DuffyC@humanrightsfirst.org or 202-370-3319.