



**TESTIMONY OF ELEANOR ACER**

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**HUMAN RIGHTS FIRST**

**On**

**"Asylum Fraud: Abusing America's Compassion?"**

**Submitted to the**

**House Judiciary Committee, Judiciary Subcommittee on Immigration and Border Security**

**February 11, 2014**

Chairman Gowdy, Ranking Member Lofgren and members of the Subcommittee, it is an honor to be here today to offer our views about U.S. asylum policy. We appreciate your focusing attention today on these important issues.

My name is Eleanor Acer, and I direct the Refugee Protection Program at 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 and Washington D.C., and we are opening an office in Houston, Texas this year. 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 who flee persecution. 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. Our clients include countless refugees who have stood up for human rights in their own countries, only to face persecution or torture, and who are able to build new lives and contribute to our communities because this country has granted them the protection of asylum. However, through our work we also 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**

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. 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. In the intervening years, the U.S. asylum system has protected thousands of refugees from being returned to places where they would face political, religious or other persecution. We see these people day in and day out: they are victims of religious persecution; 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 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 for protecting refugees from return to places of persecution. 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 noted in this testimony, 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 – like the high profile charges filed in 2012 against 26 individuals associated with law firms in New York City’s Chinatown - are critical for sending a message that efforts to defraud the immigration systems will not be tolerated.

However, in order to effectively secure the integrity of the system, the agencies responsible for asylum adjudication – USCIS and EOIR – must be properly staffed and resourced to adjudicate cases in a fair and timely manner, and to eliminate backlogs that can be a magnet for abuse. In the immigration courts, over 350,000 immigration removal cases have now been pending for an average of 570 days. While immigration enforcement and related funding have increased significantly in recent years, funding for the immigration courts has lagged well behind. These delays both increase the vulnerability of our immigration system to abuse and prevent refugees from having their cases adjudicated in a timely manner, often leaving refugee families stranded in difficult and dangerous situations abroad. Adequate staffing and resources are essential for maintaining the integrity and effectiveness of the system.

As we seek to strengthen the system, we should also 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.

This country must preserve the integrity of its asylum system. U.S. immigration authorities have the legal and policy mechanisms necessary to detect and address abuse, including to refer for prosecution individuals who attempt to orchestrate fraud on the system. But additional staffing and resources are needed for the asylum, credible fear and immigration court removal systems. 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 not abandon its compassion, but should stand firm as a beacon of hope that will not turn its back on those seeking protection from persecution.

### **Recommendations**

Key steps that the Administration and Congress should take to protect the integrity and effectiveness of the asylum system include:

- **Increase Asylum Office Staffing to Address Backlogs, Provide Timely Referrals into Removal Proceedings, and Conduct Timely In-Person Credible Fear Interviews.** 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 these interviews in person.

- **Increase Immigration Court Staffing to Address Removal Hearing Delays and Eliminate Hearing Backlog.** 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 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.
- **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 below, 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 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. Referrals from immigration authorities have resulted in numerous prosecutions of perpetrators of fraud. Charges were brought in major cases in California, Texas, Florida, Maryland and elsewhere over the last four years, in addition to the highly publicized criminal charges filed against the 26 individuals who worked at law firms in New York City's Chinatown.
- **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.

- **Effectively Implement Asylum Parole Guidance.** Immigration and Customs Enforcement should 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 pro-democracy 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.** Where individual asylum seekers are in need 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. 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 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 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, at some (25 out of approximately 250) facilities used for immigration detention. 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.
- **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 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.”<sup>1</sup> The USCIS Asylum Division should also have increased jurisdiction over asylum and withholding claims, as recommended in the 2012 Administrative Conference of the United States report. By resolving more cases at the asylum office level, the process would be more efficient, decreasing the caseload at the immigration courts.

- **Identify and Address Impunity, Rule of Law Deficits and other Drivers of Flight.** The United States should, through diplomacy and foreign assistance, work with states and the international community to address the impunity, corruption, and rule of law challenges that are contributing to significant increases in the number of individuals fleeing violence and persecution in Central America and Mexico. All steps taken should be consistent with refugee protection and other human rights obligations.

### **The Importance of the U.S. Asylum System**

In the wake of World War II, the United States played a leading role in building an international refugee protection regime to ensure the world’s nations would never again refuse to extend shelter to refugees fleeing persecution and harm. The United States has committed to the central guarantees of the 1951 Refugee Convention and its 1967 Protocol. With strong bipartisan support, the U.S. Congress passed the Refugee Act of 1980, creating the legal status of asylum and a formal framework for resettling refugees from around the world.

In the intervening years, the United States has granted asylum and provided resettlement to thousands of refugees who have fled political, religious, ethnic, racial and other persecution. These refugees have come from Burma, China, Colombia, Guatemala, Iran, Iraq, Liberia, Rwanda, Russia, Sierra Leone, Sudan and other places where people have been persecuted for who they are or what they believe. Many were arrested, jailed, beaten, tortured or otherwise persecuted due to their political or religious beliefs, or their race, ethnicity, sexual orientation or other fundamental aspect of their identity. Over the years, these refugees and their families have been able to rebuild their lives in safety in the United States.

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

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<sup>1</sup> Dr. Richard Land and Elisa Massimino, *Land and Massimino: Immigration: A Closer Look*, Richmond Times Dispatch, April 29, 2013.

the standard for the rest of the world; when American standards erode, refugee face greater risks everywhere.”

### **The Many Hurdles Refugees Already Face in Seeking America’s Protection**

In recent years, so many hurdles and barriers have been added to the asylum system, through round after round of legislation, that many refugees often find their claims for U.S. protection denied or delayed. These impediments and hurdles include: expedited removal, “mandatory detention,” the asylum filing deadline, and the overly broad terrorism-related inadmissibility provisions of immigration law that are leading to denials and delays for thousands of genuine refugees who present no threat to this country. The United States has also dramatically increased its use of immigration detention, and asylum seekers can be left for months or longer in jails and jail-like detention facilities, often without access to counsel or legal information. Human Rights First has documented many of these problems in a series of reports.<sup>2</sup>

Some examples of the many refugees impacted by these hurdles include:

- A Russian man – who fled his country after suffering repeated attacks and beatings because of his sexual orientation – was detained in as U.S. immigration jail for five months, held in solitary confinement for much of that time, and only released recently after being granted asylum;
- A Tibetan man, who for more than a year was detained and tortured by Chinese authorities after putting up posters in support of Tibetan independence, was detained again for nearly a year in a U.S. immigration detention facility;
- A Colombian man who fled persecution in his home country was turned away from a U.S. airport under expedited removal even though he expressed a fear of return. His persecution continued, prompting him to attempt the dangerous journey to flee again. He was eventually granted asylum in the United States after his mistaken expedited removal was corrected; and
- A young woman from Eritrea who was tortured for her Christian beliefs had her request for asylum in the United States denied due to the asylum filing deadline even though a U.S. immigration judge concluded that she faced a clear probability or persecution.

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<sup>2</sup> See Human Rights First, *Is This America? The Denial of Due Process to Asylum Seekers in the United States* (New York: Human Rights First, 2000) available at <http://www.humanrightsfirst.org/our-work/refugee-protection/due-process-is-this-america/>; Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison* (New York: Human Rights First, 2009), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf>; Human Rights First, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, (New York: September 2010) available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf>; Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, 2011) available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf>.

## **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:<sup>3</sup>

**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.

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<sup>3</sup>See 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](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](http://www.uscis.gov/sites/default/files/files/natedocuments/Asylum_Procedures_Manual_2013.pdf).



- **TECS:** They are also screened against TECS, CBP’s primary law enforcement and national security database, which contains enforcement, inspection, and intelligence records. TECS 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.<sup>4</sup>

The recent exemptions to immigration law inadmissibility provisions issued by the Department of Homeland Security in February 2014 – pursuant to authority provided by Congress – 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).<sup>5</sup>

### **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

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<sup>4</sup> 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).

<sup>5</sup> 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.

has left many legitimate asylum seekers without the means to support themselves while they await adjudication of their asylum requests.<sup>6</sup>

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, 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.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>6</sup>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.

<sup>7</sup> 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.aut\\_hcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.aut_hcheckdam.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>

<sup>8</sup> Immigration Court Backlog Tool. Backlog as of December 2013. *Transactional Records Clearing House* available at [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/).

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.<sup>9</sup> Other categories of asylum cases could also be more efficiently resolved if they were referred initially to the USCIS asylum office.<sup>10</sup> 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.”<sup>11</sup>

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.<sup>12</sup>

### **Drivers of Flight and Asylum Filings**

Asylum filings globally often rise and fall in response to conditions in the countries people are fleeing from. Wars, escalations in persecution and violence, and other threats to safety and security lead people to flee in search of protection. Globally for example, the number of refugees fell for a number of years, only to rise again as persecution, violence and war in Syria, Afghanistan, Iraq and other countries has risen.

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<sup>9</sup> 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).

<sup>10</sup> 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>

<sup>11</sup> 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](http://www.uscirf.gov/images/stories/pdf/asylum_seekers/legalAssist.pdf).

<sup>12</sup> Association of Pro Bono Counsel, June 4, 2013, available at <http://www.endthedeathline.org/uploads/pdfs/APBCo-Letter.pdf>.

From a global perspective, the vast majority of refugees are hosted by states neighboring or close to their home countries. For example, the vast majority of the 2.3 million Syrian refugees displaced as a result of the crisis there have been received by neighboring countries such as Lebanon, Jordan, and Turkey, placing a tremendous burden on these host countries.<sup>13</sup> While the United States is a global leader in protecting refugees and a nation of immigrants, it hosts only a small portion of the world's refugees.

Current U.S. asylum filings, as detailed by the Congressional Research Service (CRS) in December 2013 testimony before the House Judiciary Committee, have dropped since the 1990s. CRS noted that there was an uptick in in asylum requests in the early 2000s, and while there has been a slight increase since 2010, the numbers have not reached the levels of the early 2000s.<sup>14</sup>

As detailed in the CRS testimony, there has been a surge in protection requests made during the expedited removal process. In Fiscal Year 2013, the number reached 36,026, more than doubling from 13,931 in Fiscal Year 2012. CRS's analysis shows that a handful of countries were driving this increase – in particular El Salvador, Guatemala, and Honduras. However, as with the general trend, the recent number of asylum applications from Mexicans and Central America are also lower than the numbers seen in the 1990s and early 2000s.

Levels of violence in Central America and Mexico have been rising sharply. A UNHCR study explains that levels of violence generated by organize crime have increased in Central America and Mexico in recent years, and patterns of displacement – including forced displacement – have changed. The report concludes that people who do not give in to the demands of these groups face serious threats and violence.<sup>15</sup> Following a recent visit to Central America, the US Catholic Conference of Bishops explained that violence and a breakdown in the rule of law “have threatened citizen security and created a culture of fear and hopelessness that has also functioned as a primary driver of migration.” Violence and coercion – including extortion, kidnapping, threats, and coercive and forcible recruitment of children into criminal activity – are perpetrated by transnational criminal organizations and gangs.”<sup>16</sup>

### **Expedited Removal and Safeguarding Asylum at the Border**

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<sup>13</sup> Human Rights First, *Refuge at Risk: The Syria Crisis and U.S. Leadership*, November 2013, available at <http://www.humanrightsfirst.org/wp-content/uploads/HRF-Syrian-Refugees-Jordan-Turkey-final.pdf>.

<sup>14</sup> Testimony of Ruth Ellen Wasem, Congressional Research Service, December 12, 2013, for US House of Representatives Committee on the Judiciary Hearing on “Asylum Abuse: Is it Overwhelming our Borders?”

<sup>15</sup> UNHCR and International Centre for the Human Rights of Migrants, *Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America*, May 2012.

<sup>16</sup> U.S. Catholic Conference of Bishops (USCCB). *Mission to Central America: The Flight of Unaccompanied Children to the United States*. November 2013. available at <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>.



### *The History and Purpose of the Credible Fear Process*

In 1996, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress created both “expedited removal” and the credible fear process. Under expedited removal, immigration officers have the power to order the immediate, summary deportation of people who arrive in the United States without proper travel documents. That authority had previously been entrusted to the Immigration Courts. When the expedited removal process was first implemented, the former Immigration and Naturalization Service (INS) applied it only to those who sought admission at a U.S. airport or border entry point without valid documents. Between 2004 and 2006, expedited removal was expanded to apply to those encountered within 100 miles of any U.S. border if they have been in the country for less than 14 days, and the number of individuals subject to this summary process has increased significantly.<sup>17</sup>

Expedited removal policies place the United States at risk of deporting asylum seekers fleeing persecution without giving them a meaningful opportunity to apply for asylum. To summarily deport an asylum seeker would be inconsistent with American values as well as commitments under the Refugee Convention and Protocol which prohibit the return of a refugee to any country in which the refugee’s “life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.” The potential impact on individuals fleeing persecution is so dire that the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States called for repeal of expedited removal in its final report in May 1999.<sup>18</sup>

Recognizing the importance of U.S. commitments to protect those facing persecution, the U.S. Congress created a screening process. Individuals who express a fear of return are supposed to be referred for screening interviews with U.S. Asylum Officers to determine if they have a “credible fear of persecution,” defined as a significant likelihood of establishing a claim to asylum. If an asylum seeker passes that screening process, he or she will be placed into removal proceedings before the Immigration Court to apply for asylum. Those who do not meet the credible fear standard are summarily deported. An individual who expresses a fear of return *must* pass the credible fear process in order to even be allowed to apply for asylum. In adopting the standard ultimately included in the 1996 law, the Conference Committee on the 1996 immigration law declined to include the higher “preponderance of the evidence” standard that had been included in the House version of the bill. In addition, Senator Hatch, a principal sponsor of the legislation, in discussing the Conference Committee’s rejection of the higher standard, confirmed that “[t]he standard adopted . . . is intended to be a low screening standard for admission in the usual full asylum process.” Cong. Rec. S11491 (Sept. 27, 1996)(daily ed.).

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<sup>17</sup> U.S. DEPT. OF HOMELAND SECURITY, IMMIGRATION ENFORCEMENT ACTIONS: 2008 4 (2009), *available at* [http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement\\_ar\\_08.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf)

<sup>18</sup> U.S. Commission on Immigration Reform, *U.S. Refugee Policy: Taking Leadership*, June 1997, at 38; *Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States*, May 17, 1999, at 45.

The “credible fear” process is not an asylum application itself. It is simply a screening process that will determine whether an individual who expresses a fear of return will be allowed to apply for asylum. Some examples of individuals who have been protected from summary deportation by the credible fear process include:

- An Eritrean Pentecostal man who was brutally tortured and detained for three years after being accused of belonging to a political opposition group;
- A Burmese Baptist woman who feared persecution by that country’s military regime because of her protests for democracy and equal treatment of political and religious minorities;
- A Guatemalan family who were persecuted – and the oldest daughter killed – after the father joined an association that stood up to gangs with connections to the police; and
- A pro-democracy activist from Ethiopia who was detained for two years after distributing campaign materials and otherwise peacefully supporting an opposition political party.

#### *Insufficient safeguards in Expedited Removal*

The expedited removal process lacks sufficient safeguards to ensure that asylum seekers are not mistakenly deported. The bi-partisan U.S. Commission on International Religious Freedom (USCIRF), which conducted a comprehensive study of expedited removal, found serious flaws in the implementation of expedited removal. For example, immigration officers failed to inform individuals that they could ask for protection if they feared returning to their countries in about half of the cases observed by USCIRF experts, failed to ask critical questions relating to fear of return in about 5 percent of cases, and actually ordered the deportation of individuals who expressed a fear of return in about 15 percent of the cases observed by USCIRF experts.<sup>19</sup>

Over the years, human rights groups, academic studies,<sup>20</sup> and the press have documented flaws in expedited removal as well as individual cases of asylum seekers who were mistakenly deported to their countries of persecution under expedited removal.<sup>21</sup> Refugee women are particularly

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<sup>19</sup> U.S. Commission on International Religious Freedom (USCIRF). *Report on Asylum Seekers in Expedited Removal*. 2005. P. 54. at <http://www.uscirf.gov/reports-and-briefs/special-reports/1892-report-on-asylum-seekers-in-expedited-removal.html>.

<sup>20</sup> The Expedited Removal Study is a project of the Center for Human Rights and International Justice at the University of California, Hastings College of Law. The Study released comprehensive reports in 1998, 1999, and 2000, and a second report in October 2002 which evaluated a GAO report. The reports are available at [www.uchastings.edu/ers](http://www.uchastings.edu/ers).

<sup>21</sup> See Human Rights First (then Lawyers Committee for Human Rights), *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, Oct. 2002 at 57-58; Eric Schmidt, *When Asylum Requests are*

vulnerable to the risks posed by expedited removal. For example, women who are survivors of rape and gender-related traumas may have great difficulty talking about their traumatic experiences to immigration officers at the border, and some immigration officers still do not recognize that in some cases women are eligible for asylum due to fears of gender-based persecution. In one case documented by Human Rights First, a victim of severe domestic violence and rape was ordered deported under expedited removal because officers who interviewed her mistakenly believed that she would not be able to articulate a claim for asylum. Her deportation was averted after several U.S. Senators complained about the decision, and she was ultimately able to prove that she was eligible for asylum protection through a full asylum hearing.<sup>22</sup>

### *Access to Asylum*

The USCIS asylum office should be adequately staffed to conduct credible fear interviews in a timely and effective manner, and to conduct these important interviews in person rather than by video-conferencing or telephone. The recommendations made by USCIRF to improve the conduct of expedited removal should be implemented. Congress should request that USCIRF conduct an updated study on expedited removal.

### **Detention, Parole and Alternatives**

Asylum seekers who are placed into “expedited removal” are subject to “mandatory detention.” An asylum seeker who passes through the credible fear/expedited removal process, and is placed into regular immigration court removal proceedings, is eligible to be assessed for potential release but only if he or she satisfies the relevant criteria. Those asylum seekers who expressed their fear of return at a U.S. airport or official port of entry, rather than those apprehended between the ports of entry, are considered “arriving” asylum seekers, and may be eligible for release under parole guidance only *if* they meet the relevant criteria. Immigration authorities – over many years, and spanning various administrations – have repeatedly recognized that arriving asylum seekers who pass the credible fear screening process are eligible to be considered for parole.<sup>23</sup>

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*Overlooked*, N.Y. TIMES, Aug. 15, 2001. Articles relating to the Albanian rape survivor appeared *The New York Times* on Sept. 20, 1997 and Jan. 14, 1998.

<sup>22</sup> Human Rights First (then Lawyers Committee for Human Rights), *Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers* (2002).

<sup>23</sup> See Michael A. Pearson, *INS Executive Associate Commissioner for Field Operations, Memorandum, Expedited Removal: Additional Policy Guidance* (Dec. 30, 1997) (hereinafter “1997 Memorandum”); U.S. Immigration and Customs Enforcement, Parole of Arriving Aliens Found to Have a “Credible Fear” or Persecution or Torture,” signed by ICE Assistant Secretary Julie Myers, November 6, 2007; U.S. Immigration and Customs Enforcement, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution nor Torture, signed by Assistant Secretary John Morton, December 8, 2009. Although IIRIRA provides for the mandatory detention of those subject to expedited removal, once an individual seeking asylum has established a credible fear of persecution, he may be released on parole. INA § 235(b)(1)(B)(iv). As the INS at the time confirmed (in the above-referenced Guidance on

In order to be paroled, arriving asylum seekers must satisfy certain criteria. Key factors in assessing parole eligibility have consistently – over many years and various administrations – included that:

- the asylum seeker passes the credible fear screening process,
- the asylum seeker can establish his or her identity;
- the asylum seeker is not a flight risk/has community ties; and
- the asylum seeker does not present a risk or danger to the community.

The current asylum parole guidance for asylum seekers specifically states that “Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or the U.S. national security” and only authorizes release from detention on parole if ICE determines that the individual “poses neither a flight risk nor a danger to the community.”<sup>24</sup>

Despite the possibility of applying for parole, many asylum seekers have been detained for months or years in U.S. immigration detention facilities. Over the years, Human Rights First has repeatedly documented the impact of immigration detention on asylum seekers. Some examples from Human Rights First’s reports<sup>25</sup> include these examples of refugees who were detained, at significant cost to the U.S. government, for months or years in jails or jail-like facilities:

- A Liberian Pentecostal pastor who was detained in the United States for three and half months and denied parole, even though several ministers in the United States confirmed his identity and his religious work in Liberia. In Liberia, he had been targeted by the regime of Charles Taylor because he had criticized the use of child soldiers. He was only released from U.S. immigration detention after he was granted asylum.
- A Baptist Chin woman from Burma was detained in an El Paso, Texas, immigration jail for over two years. ICE denied several parole requests even though she had proof of her

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Expedited Removal) “[o]nce an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria.” See INA § 235(b)(1)(B)(iv); see also *id.* § 212(d)(5)(A) (providing for parole “on a case-by-case basis for urgent humanitarian reasons or significant public benefit” for an alien applying for admission to the United States); 8 C.F.R. § 212.5(b).

<sup>24</sup> 2009 Parole Guidance at pp. 6, 8.

<sup>25</sup> Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison* (New York: Human Rights First, 2009), at pp 2 at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf>; see also Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, 2011) at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf> and Human Rights First, *In Liberty’s Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security*. (New York: Human Rights First, 2004) at [http://www.humanrightsfirst.org/wp-content/uploads/pdf/Libertys\\_Shadow.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/Libertys_Shadow.pdf).

identity and family in the U.S.—only paroling her after 25 months in detention. She was subsequently granted asylum.

The bipartisan U.S. Commission on International Religious Freedom, in its comprehensive 2005 report, made a number of findings and recommendations relating to asylum seekers in immigration detention, including:

- **Asylum Seekers Detained in Facilities with Inappropriate Jail-like Conditions:** The Commission concluded that most asylum seekers referred for credible fear are detained – for weeks or months and occasionally years – in jails or jail-like facilities. The Commission concluded that these facilities are inappropriate for asylum seekers, and the Commission’s experts found that these conditions create a serious risk of psychological harm to asylum seekers. The Commission recommended that asylum seekers be held in “non-jail-like” facilities when detained, and that DHS create detention standards tailored to the needs of asylum seekers and survivors of torture.
- **Parole Reforms Needed to Ensure Parole of Asylum Seekers who Meet Criteria:** The Commission’s 2005 report found wide variations in asylum parole rates across the country based on its analysis of DHS statistics. The report also found no evidence that ICE was applying the parole criteria that were spelled out in the policy guidelines in effect at the time. The Commission recommended that DHS promulgate regulations on the parole of asylum seekers to ensure the release on parole of asylum seekers who meet the relevant standards, including identity and no security risk, and to promote more consistent implementation of parole criteria.

USCIRF subsequently issued “report cards” assessing DHS’s responses to its recommendations, and in April 2013, the Commission issued a Special Report entitled: *Assessing the U.S. Government’s Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms*. In this report, the Commission found that, despite some progress, “[t]he U.S. government continued to detain asylum seekers under inappropriate conditions in jails and jail-like facilities,” and recommended that more be done to “ensure that, when their detention is necessary, asylum seekers are housed only in civil facilities.”<sup>26</sup>

With respect to parole for asylum seekers, the Commission noted that the December 2009 parole guidance was in line with USCIRF’s prior recommendations, and urged additional steps to assure its effective implementation, including codification into regulations. The Commission explained in its 2013 report that:

USCIRF has recommended that asylum seekers with credible fear who do not pose flight or security risks should be released, not detained and that such a policy be codified into regulations. Asylum seekers may have suffered trauma and abuse prior to arrival in the

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<sup>26</sup> USCIRF 2013 report at p. 1.

United States and detaining them after credible fear interviews may be re-traumatizing, with long-term psychological consequences.<sup>27</sup>

Current EOIR statistics indicate that asylum seekers actually appear for their immigration court hearings at high rates. According to statistics that the U.N. High Commissioner for Refugees (UNHCR) has obtained from the EOIR, in Fiscal Year 2012 only five percent of completed asylum proceedings had an in absentia removal order.<sup>28</sup>

### *Alternatives to Detention*

In cases in which additional supervision is needed to assure compliance by an asylum seeker, ICE can use more cost-effective and humane alternatives to detention rather than automatically resorting to detention which is not necessary in many cases to achieve the government's objective of compliance. These alternative mechanisms can greatly enhance appearance rates at both hearings and for deportation.<sup>29</sup> Julie Myers Wood, who previously served as Assistant Secretary of ICE, recently reported that 97.4% percent of participants in the ISAP II alternatives to detention program used by ICE appear at their final immigration court hearing, and 85 percent comply with removal orders.<sup>30</sup> The government may utilize a range of alternatives to detention, similar to alternatives used in criminal justice systems, for immigrants in removal proceedings. 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. Community-based support programs, which often include a strong case management component, have also been reported to be successful in achieving high rates of compliance.<sup>31</sup> Whereas a detention bed costs \$164 per person per day, alternatives can cost as little as 17 cents to \$17. The Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy; the Heritage Foundation; the Pretrial Justice Institute; the Texas Public Policy Foundation (home to Right on Crime); the International Association of Chiefs of Police; and the National Conference of Chief Justices have endorsed alternatives as cost-saving.

### **The Filing Deadline: Barring Legitimate Refugees**

The filing deadline bar on asylum – which was enacted following concerns about fraud and abuse in the asylum system in the early 1990s – is actually barring legitimate refugees with well-

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<sup>27</sup> USCIRF 2013 report at p. 9-10.

<sup>28</sup> Statement of Leslie E. Velez, UNHCR to House Committee on the Judiciary Hearing on “Asylum Abuse: Is it Overwhelming our Borders?,” December 12, 2013.

<sup>29</sup> Martin, Steve and Julie Myers Wood. “Smart alternatives to immigrant detention.” *Washington Times*. March 28, 2013, available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/>.

<sup>30</sup> Obser, Katharina. “How to Renew the Commitment to Immigration Detention Reform.” *Huffington Post*. January 27, 2014. [http://www.huffingtonpost.com/katharina-obser/immigration-detention-reform\\_b\\_4661647.html](http://www.huffingtonpost.com/katharina-obser/immigration-detention-reform_b_4661647.html)

<sup>31</sup> See Human Rights First, *U.S. Detention of Asylum Seekers*, p. 63-67; Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program—Volume I* (New York: Vera Institute of Justice, 2000), p. ii, iii.; Alice Edwards, *Back to Basics*, p. 84; International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Melbourne: International Detention Coalition, 2011), p. 7-9; LIRS, *Unlocking Liberty*.

founded fears of persecution from receiving asylum in the United States. It does not bar cases because they are fraudulent; it bars cases based on the date they filed, regardless of whether or not the individual is credible and regardless of whether or not the individual is a refugee facing well-founded fears of persecution. As detailed above, the U.S. asylum and immigration systems have a wide range of tools and mechanisms to identify and tackle fraud.

The deadline bar also causes very real harm to refugees and their families—preventing refugee families from uniting, undermining their ability to integrate and support their families, and putting refugees at risk of return to persecution. In its 2010 report, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, Human Rights First documented that the filing deadline has barred refugees who face religious, political, and other forms of persecution from receiving asylum in the United States. Some examples of these refugees include a Burmese student jailed for his pro-democracy activities, a gay man who was attacked and tortured in Peru, and a Chinese woman who faced persecution due to her assistance to North Korean refugees.<sup>32</sup> Other examples include:

- **A Congolese nurse and human rights advocate denied asylum because she could not prove her date of entry to the U.S.:** A nurse active in a human rights organization in the Democratic Republic of Congo was falsely accused of involvement with an opposition group, arrested, tortured, and raped by prison guards before she escaped. A U.S. immigration judge ruled that she faced a clear probability of persecution, but denied her asylum based on the filing deadline, stating that she could not prove the date she entered the United States.
- **An evangelical Christian determined to face clear probability of persecution denied asylum based on filing deadline.** An Uzbek evangelical Christian feared returning home after learning of increased attacks against and detentions of evangelical Christians in Uzbekistan documented by the U.S. State Department and U.S. Commission on International Religious Freedom. He was advised by an attorney that he was not eligible for asylum because he had been in the United States more than one year—even though the significant increase in religious persecution should have made him eligible for an exception based on changed circumstances. Eventually he hired a new attorney and submitted an asylum application. But both the immigration court and the Board of Immigration Appeals denied asylum because of the filing deadline.
- **Pakistani human rights advocate denied asylum and separated from family.** This asylum seeker had a long history of human rights activism in Pakistan, representing women, children, and religious minorities through a free legal aid clinic. Islamic extremists threatened his life. He sought refuge in the United States, hiring an attorney to help him apply for asylum within a year of arriving in the U.S. But this attorney and two subsequent attorneys (all now disbarred) mishandled his claim. Despite being found credible and otherwise eligible for asylum, both the immigration court and the Board of Immigration Appeals denied

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<sup>32</sup> *HRF Report Asylum Filing Deadline*, *supra* note 3, at 1-2; 9; 33; 35.

his request for asylum based on the filing deadline. He was extended only withholding of removal, which, unlike asylum, does not allow for his wife and child to join him in the United States, or even allow him to travel to see them in a third country. He has not seen his family in years.

The filing deadline is a particular barrier for women seeking protection from persecution. As detailed in Human Rights First's 2010 report on the filing deadline, women who have fled persecution relating to honor killings, forced marriage, domestic violence, Female Genital Mutilation (FGM) or other gender-related persecution may be unaware, after escaping and coming to the United States, that they may qualify for what is popularly referred to as "political asylum." Victims of sexual and gender-based violence, resulting in severe trauma, will often be unable to discuss and revisit their traumatic experiences, but must do so in order to apply for asylum. A comprehensive statistical study indicated that the people who apply for asylum many years after fleeing to the U.S. are disproportionately women. For instance, about 9% of women asylum seekers (11,000 women in the study's data pool) filed four or more years after entry. 44% of all women who missed the deadline were found to not qualify for an exception to the bar.<sup>33</sup>

Some examples of women affected by the bar include:

- **Rape Survivor with AIDS and paralysis initially denied due to deadline bar, prolonging resolution of her case.** A woman with links to the political opposition in an African country was raped by government soldiers and contracted HIV as a result. Following her arrival in the U.S, she was hospitalized with AIDS and subsequently developed a nerve disorder which left her paralyzed. The woman's asylum request was rejected based on the filing deadline, despite extraordinary circumstances relating to her serious medical conditions and was only granted more than a year later, after litigation in immigration court.
- **Victim of trafficking and rape denied asylum based on deadline bar.** A teenage victim of trafficking and rape applied for asylum while still a minor, thirteen months after entering the country. Despite extensive evidence and testimony attesting to her trauma and difficulties to talk about what had happened to her, both the immigration court and BIA denied her case.

In addition to barring refugees who face religious, political, and other forms of persecution from receiving asylum in the United States, the filing deadline also undermines the efficiency of the asylum and immigration court systems. As detailed in the academic study (referenced above), the filing deadline has delayed the resolution of asylum cases, diverted limited time and resources that could be more efficiently allocated to assessing the actual merits of cases, and led thousands of cases that could have been resolved at the asylum office level to be shifted in to the increasingly backlogged and delayed immigration court system. In testimony before the Committee on the Judiciary, United States Senate, the (then) Chair of the American Bar Association's Commission on Immigration, Karen Grisez stated that, "eliminating the one-year

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<sup>33</sup> Schrag, Philip G., Andrew I. Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach. "Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum." *William and Mary Law Review*. 2010. Vol. 52, No. 3.



deadline will restore fairness to and increase the efficiency of the process, preserving the limited resources available for evaluating asylum cases on the merits.”

## **Conclusion**

Every day at Human Rights First we see the ways in which our nation’s commitment to protecting the persecuted makes a difference in the lives of individual refugees. As a beacon of hope for those seeking protection from persecution, the United States must preserve the integrity of its immigration system and provide asylum to refugees in a timely manner. To detect and address fraud on the system, U.S. immigration authorities have the legal and policy mechanisms necessary as outlined in this testimony. The Administration and Congress can and should take key steps to protect the integrity and effectiveness of the asylum system through measures including additional staffing and resources for the asylum, credible fear and immigration court removal systems; implementation of USCIRF recommendations; effective implementation of the asylum parole guidance; use of cost-effective alternatives to detention; support for Legal Orientation Programs that improve the efficiency of the immigration system; removal of unnecessary impediments that delay cases and block refugees from those country’s protection; and addressing the impunity, rule of law and other challenges that contribute to the increased number of individuals fleeing violence in Central America and Mexico. The Administration and Congress should not implement any changes in law that would further expand or prolong detention for many asylum seekers or risk turning refugees back to persecution. Thank you for the opportunity to testify today and for your consideration of Human Rights First’s views.