

**STUDY ON ASYLUM SEEKERS IN EXPEDITED REMOVAL**  
*As Authorized by Section 605 of the International Religious Freedom Act of 1998*

**A-FILE AND RECORD OF PROCEEDING ANALYSIS OF  
EXPEDITED REMOVAL**

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## TABLE OF CONTENTS

List of Tables.....	46
List of Appendices.....	47
A. Overview .....	48
B. Summary of the Expedited Removal Process.....	51
C. Study Methodology.....	53
D. Study Question 2 – Are immigration officers incorrectly failing to refer asylum seekers for a credible fear interview? .....	57
E. Study Question 3 – Are immigration officers incorrectly removing asylum seekers to a country where they may be persecuted?.....	61
F. Study Question 4 – Are immigration officers detaining asylum seekers improperly or in inappropriate conditions?.....	71
G. Overall Data Limitations.....	84
H. Discussion of findings .....	86

## LIST OF TABLES

Table 1: GAO 2000 and present study - source and number of files reviewed .....	55
Table 2: Documentation regarding fear of return by outcome and manner of entry for national sample .....	61
Table 3. Legal standards for each step of the Expedited Removal process.....	66
Table 4. Use of Expedited Removal records to undermine the asylum seeker's case .....	68
Table 5: Length of detention.....	75
Table 6: Released cases and rates (in percents) by region of origin.....	75
Table 7: Released cases and rates (in percents) by major country.....	76
Table 8: Release rate & rate of recorded relative sponsor/community ties among those with identity established by asylum officer (USCIS) by region of origin.....	82
Table 9: Release rate & rate of recorded relative sponsor/community ties among those with identity established by asylum officer (USCIS) by major country .....	83

## LIST OF APPENDICES

- Appendix A: Summary of APSO Officer/Asylum Office Director Questionnaire
- Appendix B: Parole Guidelines Memo
- Appendix C: Port of Entry Data Collection Instrument
- Appendix D: Additional Analysis of Port of Entry Files National Sample
- Appendix E: Analysis of Port of Entry files from JFK Airport
- Appendix F: Hetfield Letter of 9.23.04
- Appendix G: Analysis of Port of Entry Files National Sample – Canadian Border
- Appendix H: Board of Immigration Appeals Data Collection Instrument
- Appendix I: Additional Analysis of the Board of Immigration Appeals Sample
- Appendix J: Credible Fear Data Collection Instrument
- Appendix K: Credible Fear Files Produced and Not Produced, By Location
- Appendix L: Additional Analysis of Credible Fear Files
- Appendix M: Examples of Parole Decision Documentation
- Appendix N: Examples of Consular Notification

## A. OVERVIEW

The Study of Asylum Seekers in Expedited Removal (Study) was initiated by the United States Commission on International Religious Freedom (USCIRF) to respond to four questions posed by the International Religious Freedom Act (IRFA) of 1998.<sup>1</sup> The four questions address the effects of Expedited Removal procedures on asylum claims. Specifically, the Study is to determine whether immigration officers performing duties under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) (INA) with respect to aliens who may be eligible to be granted asylum are engaging in any of the following conduct:

A) Improperly encouraging such aliens to withdraw their applications for admission.

(B) Incorrectly failing to refer such aliens for an interview by an asylum officer for a determination of whether they have a credible fear of persecution (within the meaning of section 235(b)(1)(B)(v) of such Act).

(C) Incorrectly removing such aliens to a country where they may be persecuted.

(D) Detaining such aliens improperly or in inappropriate conditions.

This file review is one of several components making up the USCIRF Expedited Removal Study. Other elements of the Study included site visits to ports of entry and detention centers throughout the U.S.; direct observations at ports of entry<sup>2</sup>; questionnaires administered to officials at the eight asylum offices<sup>3</sup>; an analysis of conditions of detention<sup>4</sup>; an examination of representation issues<sup>5</sup>; and a statistical survey of the Expedited Removal process.<sup>6</sup> All components of the Study have benefited greatly from the cooperation and assistance of the Department of Homeland Security, the Department of Justice, and detention officials in facilitating our work, as well as from the information and insights they shared with us.

For the file analysis component of the Study, we set the following goals in relation to three of the four Study questions.

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<sup>1</sup> Sec. 605 of the International Religious Freedom Act of 1998 authorized the U.S. Commission on International Religious Freedom (USCIRF) to appoint experts to study the effects of Expedited Removal on asylum seekers, and specified four questions that such a study should address. Pursuant to this authority, USCIRF appointed Prof. Kate Jastram as the lead expert for reviewing A-files and immigration court Records of Proceeding.

<sup>2</sup> Keller, Rasmussen, Reeves & Rosenfeld, *Evaluation of Credible Fear Referral in Expedited Removal at Ports of Entry in the United States*, 2005 (hereinafter Keller 2005).

<sup>3</sup> The questionnaire appears in Appendix A; a compilation of answers are on file at the USCIRF office.

<sup>4</sup> Haney, *Conditions of Confinement for Detained Asylum Seekers Subject to Expedited Removal*, 2005 (hereinafter Haney 2005).

<sup>5</sup> Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices*, 2005 (hereinafter Kuck 2005).

<sup>6</sup> Baier, *Selected Statistical Analyses of Immigration Judge Rulings on Asylum Applications, FY 2000-2003*; Fleming and Scheuren, *Statistical Report on Expedited Removal, Credible Fear, and Withdrawal, FY 2000-2003*; Fleming and Scheuren, *Statistical Report on Detention, FY 2000-2003*; Kyle, Fleming and Scheuren, *Statistical Report on Immigration Court Proceedings, FY 2000-2004* (hereinafter Kyle, Fleming and Scheuren 2005).

We did not attempt to answer the first Study question, which concerns immigration officers improperly encouraging asylum seekers to withdraw their applications for admission. In reviewing files, which are created by the immigration officer, we would not expect the immigration officer's improper behavior, if any, to be self-reported.<sup>7</sup>

The second Study question concerns failure to refer for a credible fear determination. Our goal in analyzing files was to determine if certain questions intended to identify asylum seekers eligible for such a determination were asked and answered. Without asking the questions and recording the answers, immigration officers would not know which aliens should be referred for a credible fear determination and might fail to make the correct referral.

The third Study question concerns whether asylum seekers are being incorrectly removed to a country where they may be persecuted. The decision on whether an asylum seeker is granted protection or is ordered removed from the U.S. is made by an immigration judge.<sup>8</sup> A mistaken decision by an immigration judge could result in the asylum seeker being incorrectly returned to persecution.

We therefore analyzed files containing transcripts of asylum hearings conducted by immigration judges. We examined the use of Expedited Removal records created by immigration officers at ports of entry and during the credible fear determination with the goal of assessing how they were used at the immigration court hearing. These Expedited Removal records do not contain the asylum seeker's full story, and can be inaccurate.<sup>9</sup> Reliance on them increases the risk of an incorrect decision that could return the asylum seeker to persecution.

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<sup>7</sup> This question is more directly addressed by the component of the Study conducted through observations at ports of entry. *See* Keller 2005.

<sup>8</sup> Subject to review by the Board of Immigration Appeals and then a U.S. court of appeals. The immigration judge does not have jurisdiction over the claim until the asylum seeker is referred for a credible fear determination and is found to have a credible fear of persecution. Referral for a credible fear determination relates to the second Study question discussed below as well as to the component of the Study conducted through observations at ports of entry. *See* Keller 2005. Credible fear determinations are made by an asylum officer. We did not analyze these decisions in detail because there is a high rate of positive finding of credible fear. *See* Fleming and Scheuren, *Statistical Report on Expedited Removal, Credible Fear, and Withdrawal (FY2000-2003)*.

<sup>9</sup> The reliability of these records is discussed below and is also addressed by the component of the Study conducted through observations at ports of entry. *See* Keller 2005.

The fourth Study question concerns, in part, the improper detention of asylum seekers.<sup>10</sup> Agency policy favors release of asylum seekers with a credible fear of persecution, provided that the agency determines that the asylum seekers are likely to appear for the removal hearing and do not pose a risk to the community.<sup>11</sup> A decision to detain an asylum seeker who meets the release criteria or to release an asylum seeker who does not meet the criteria would be considered an improper use of DHS discretion. We analyzed files with the goal of understanding rates of release in association with these criteria.

To meet the goals described above, we studied three sets of files created by Department of Homeland Security and Department of Justice officials in the course of implementing Expedited Removal. We had a particular focus on three major steps in the process: denial of admission at ports of entry; hearings on the merits of an asylum claim, and detention release decisions prior to a hearing on the merits of their claim for asylum seekers found to have a credible fear of persecution.

Section B of this report provides a brief sketch of how Expedited Removal works. Section C explains our Study methodology.

Section D sets forth our research on whether immigration officers fail to refer asylum seekers for credible fear interviews. We found that, according to the electronic records that were available for our review that contained appropriate documentation, aliens who received Expedited Removal orders had given negative answers to the questions regarding fear of return. However, the problems we encountered in conducting the review leads to serious concern over

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<sup>10</sup> The law provides that asylum seekers in Expedited Removal must be detained until it is determined that they have a credible fear of persecution. After that point, DHS has the discretion to release them. The statutory basis for release from detention of aliens seeking admission to the U.S. is set forth in INA § 212(d)(5)(A): “The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” The statute is limited by the Regulations in 8 CFR § 235.3(b)(2)(iii): “Detention and parole of alien in Expedited Removal. An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal, except that parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.” and 8 CFR § 235.3(b)(4)(ii): “Detention pending credible fear interview. Pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained. Parole of such alien in accordance with section 212(d)(5) of the Act may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Prior to the interview, the alien shall be given time to contact and consult with any person or persons of his or her choosing. Such consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained, shall be at no expense to the government, and shall not unreasonably delay the process.”

<sup>11</sup> INS Memorandum, *Expedited Removal: Additional Policy Guidance* (Dec. 30, 1997) from Michael A. Pearson, Executive Associate Commissioner for Field Operations, Office of Field Operations, to Regional Directors, District Directors, Asylum Office Directors, reproduced in *75 Interpreter Releases* 270 (Feb. 23, 1998) (although the author’s last name mistakenly appears as “Benson” in the version published in *Interpreter Releases*). The memorandum is attached as Appendix B.

Customs and Border Protection's quality assurance capabilities with respect to this critical step of the Expedited Removal process.

Section E presents our research on whether asylum seekers are incorrectly returned to persecution. We found that immigration judges frequently rely on incomplete and sometimes unreliable records from the port of entry and the credible fear determination in making complex determinations on the substance of the claim. This reliance almost certainly increases the risk of an erroneous decision.

Section F discusses our research on whether asylum seekers are being improperly detained. We found that rates of release before the merits hearing vary. Our analysis revealed that parole criteria information as elicited and recorded by asylum officers appears to have had some correlation with whether an asylum seeker was released prior to the merits hearing. That is, those with identity and community ties information recorded by USCIS were more likely to be released than those with only identity but not community ties information recorded. Analysis further revealed that other factors such as place of origin and port of entry into the U.S. are associated with parole rates as well. We found that information on parole eligibility as elicited and recorded by USCIS is not necessarily reflected in ICE's release decisions. We also found that ICE's consideration of release and detention decisions is not uniformly documented in the files.

Section G sets forth the overall data limitations for our Study. Finally, Section H discusses our findings.

We provided a draft of Sections A through G as well as the Appendices to the concerned entities within the Department of Justice (DOJ) and the Department of Homeland Security (DHS), as well as to the Government Accountability Office (GAO). We are grateful for the very helpful comments received from the Executive Office for Immigration Review (EOIR), United States Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and the GAO, which have been incorporated into the report where appropriate. The DHS Bureau of Immigration and Customs Enforcement (ICE) also received a draft of the report, but did not provide any oral or written feedback.

## B. SUMMARY OF THE EXPEDITED REMOVAL PROCESS

The Expedited Removal provisions of the Immigration and Nationality Act (INA)<sup>12</sup> allow Customs and Border Protection (CBP) inspectors at ports of entry and Border Patrol agents at certain locations near the border<sup>13</sup> to order the immediate removal of aliens they deem inadmissible on certain named grounds.<sup>14</sup> Aliens are subject to Expedited Removal if they

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<sup>12</sup> INA Sec. 235(b).

<sup>13</sup> In August 2004, responsibility for Expedited Removal was extended to CBP Border Patrol agents in certain locations. Our file samples were drawn from periods prior to August 2004, so this report analyzes only the actions of inspectors, not Border Patrol agents.

<sup>14</sup> The grounds are set forth in Sec. 212(a) of the INA [8 U.S.C. 1182] either solely under the subsection relating to lack of valid entry documents (Sec. 212(a)(7)) or in combination with the subsection relating to misrepresentation (Sec. 212(a)(6)(C)). Aliens lack valid entry documents when they have no documents in their possession, when they have counterfeit or doctored documents, or when they are imposters to the documents in their possession. Aliens are

attempt to enter without proper documentation. This can take the form of the alien having no documents or having false documents. It can also take the form of having valid documents that were obtained by misrepresentation, for example, a visitor's visa acquired by an alien whose real intention is to remain in the U.S. and work.

In addition, it is important to know that asylum seekers with valid documents who promptly request asylum at a port of entry are also subject to Expedited Removal.<sup>15</sup> This is because the alien's intention to remain, as evidenced by seeking asylum, is considered by inspectors to invalidate an otherwise legitimate visa.<sup>16</sup>

It is true that many aliens who are not entitled to be in the U.S. and who intend to evade normal immigration procedures will use false documents or documents obtained by misrepresentation. However, many refugees fleeing from persecution will also use these types of documents, since they are often unable to obtain a passport or visa in their own name and must leave their country surreptitiously.<sup>17</sup> Expedited Removal was intended to allow for the prompt and efficient removal of aliens attempting a fraudulent entry, while ensuring that asylum seekers would still have the opportunity to present their claim for protection to an immigration judge.

To address concerns that asylum seekers subject to Expedited Removal could be erroneously returned to their persecutors, inspectors are required to provide certain information to aliens regarding the possibility of obtaining protection in the U.S. and to ask certain questions designed to elicit any fear of return. Any alien expressing a fear of returning to his or her country must be referred to a DHS Citizenship and Immigration Services (USCIS) asylum officer for a preliminary screening interview to determine if he or she has a credible fear of persecution.

If the asylum officer finds that the alien has a credible fear of persecution, the alien is scheduled for a removal hearing before an immigration judge. The immigration judge hears the full claim, and is empowered to grant the asylum seeker's application for protection, or to enter an order of removal. An appeal from this decision may be taken either by the asylum seeker or

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also considered to lack valid entry documents when they have facially valid nonimmigrant documents but are intending to immigrate by applying for asylum.

<sup>15</sup> We had 18 such cases in our file review. See Section F, below. Another example recently in the news was the case of an 81-year-old minister from Haiti who died in DHS custody. According to news accounts, the Rev. Joseph Dantica entered the U.S. with a valid passport and a multiple entry visitor's visa and requested "temporary asylum". He was placed in Expedited Removal and detained in the Krome Detention Center. The Rev. Dantica's request for humanitarian parole was denied; he was taken ill during his credible fear interview and died shortly thereafter. See, Adams, "Haitian Pastor Dies on U.S. Doorstep", *St. Petersburg (Florida) Times*, Nov. 19, 2004 at A1, and Morris, "Asylum Seeker's Death Spurs Outcry", (South Florida), Nov. 18, 2004, at 1A.

<sup>16</sup> According to CBP's interpretation of the law, as articulated by INS, "Even in cases where a fraudulent document is not presented or a formal request for admission is not made, an alien who seeks asylum in the United States at a port of entry in most cases is inadmissible as an intending immigrant and therefore potentially subject to Expedited Removal." Memorandum on "Aliens Seeking Asylum at Land Ports of Entry," from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, to INS Regional Directors, (Feb. 6, 2002).

<sup>17</sup> This necessity is widely recognized and acknowledged. The Swedish diplomat Raoul Wallenberg is still remembered for his heroic rescue of the Jews of Budapest, by providing them with false travel documents to allow escape from the Nazis. States are prohibited from penalizing refugees for their illegal entry or presence by art. 31 of the 1951 Convention relating to the Status of Refugees, which is binding on the U.S. through its ratification of the 1967 Refugee Protocol.

the government to the Board of Immigration Appeals (BIA) and then to the federal circuit courts of appeals.

If the asylum officer does not find the alien to have a credible fear of persecution or torture, the asylum officer will issue an Expedited Removal order. Aliens subject to Expedited Removal are required to be detained by DHS Immigration and Customs Enforcement (ICE), at least until they have established a credible fear of persecution. They are eligible for parole thereafter if they meet certain criteria. An immigration judge can review the asylum officer's determination that the alien does not have a credible fear of persecution, but there is no other administrative or judicial review of CBP, USCIS or ICE actions in Expedited Removal.

## C. STUDY METHODOLOGY

### 1. A-files and Board of Immigration Appeals Records of Proceeding

Between January 2004 and January 2005, we conducted a study of the Expedited Removal process by analyzing samples of Department of Homeland Security (DHS)<sup>18</sup> A-files<sup>19</sup> and Department of Justice (DOJ) Records of Proceeding<sup>20</sup> created in fiscal years 2002 - 2004. We analyzed a total of 855 files.<sup>21</sup>

The A-file contains the full administrative record of the alien's immigration status.<sup>22</sup> A-files are maintained as paper records. In addition, an electronic Enforcement Case Tracking System (ENFORCE) allows for biographical and case data to be incorporated into certain types of records and for that information to be used to complete some of the forms needed for case processing. ENFORCE does not, however, include all of the documents and information that may be contained in the A-file and was not designed for quality assurance purposes.<sup>23</sup>

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<sup>18</sup> The INS was abolished by the Homeland Security Act of 2002 (6 USC 101 et seq.), and its components were absorbed into the Department of Homeland Security March 1, 2003.

<sup>19</sup> An A-file (alien file) is the series of records DHS keeps on certain individuals to document the history of their interaction with DHS in actions prescribed by the Immigration and Nationality Act and other regulations. Not all aliens dealing with DHS have an A-file. DHS may use the information in an A-file to grant or deny immigration-related benefits and to take action against people who violate immigration laws. Letter from Mr. Michael J. Hrinayak (CBP) to Mr. Mark Hetfield (USCIRF), Jan. 21, 2004, on file with the authors.

<sup>20</sup> A Board of Immigration Appeals (BIA) Record of Proceeding (ROP) is the record on appeal from an immigration judge decision, created by the DOJ's Executive Office for Immigration Review (EOIR).

<sup>21</sup> Both types of files are identified by the alien's A-number, a unique eight digit number -- similar to a Social Security number -- assigned for long term identification and tracking.

<sup>22</sup> "Beginning in 1944, Alien Registration records became the foundation document in a new series of INS records, the Alien Files, or A-Files. After April 1, 1944, INS maintained an individual case file on each immigrant to the United States, containing all papers, records, and documents relating to that immigrant. A-Files remain in DHS custody ...." Available at: <http://uscis.gov/graphics/aboutus/history/immrecs/AIReg.html>. All agency actions and decisions with respect to a particular alien, and all applications and petitions filed by or on behalf of an alien, bear the alien's A-number and are recorded in the alien's A-file. The A-file itself follows an alien -- physically when DHS has custody of the alien -- throughout his or her progress within the immigration system, whether the ultimate outcome is deportation or a grant of citizenship or some status in between. When an individual A-file is not in use in one of DHS' offices around the country, it is stored in the National Records Center.

<sup>23</sup> With DHS' nationwide implementation of ENFORCE on October 1, 2003, certain documents generated for specific A-files can be accessed at Headquarters or other offices. The documents may not be complete i.e., they do not contain signatures, handwritten notes, corrections, initials, etc., that may be included on the hard copy original.

Board of Immigration Appeals Records of Proceeding contain the full administrative record of removal proceedings concerning the alien and are maintained as paper records.<sup>24</sup>

## 2. File analysis as a data resource

Review of DHS' and DOJ's own administrative records is an initial step in ascertaining whether the agencies are carrying out their statutory duties with respect to asylum seekers subject to Expedited Removal. The General Accounting Office (GAO) in its 2000 report on Expedited Removal relied on A-file review as an important data source.<sup>25</sup> The GAO report provided valuable information and analysis of the Expedited Removal process, and remains a key reference tool for work on this topic. Its methodology and findings, although subject to their own limitations,<sup>26</sup> provided the starting point for the present Study.

The GAO report addressed the four Study questions from a systems perspective. Pursuant to an agreement with the Congressional committees concerned, it reviewed files to assess Immigration and Naturalization Service management controls over certain aspects of the Expedited Removal process.<sup>27</sup> While we also looked at systems from the perspective of quality assurance, we additionally examined elements of decision-making more closely tied to the statutory Study questions. We reviewed a larger number of files, representing more stages in the Expedited Removal process, and we collected a broader array of data.

Table 1 shows that the GAO examined 585 files of persons who were not referred for a credible fear determination; 45 files of persons who received a negative credible fear determination; and 133 files of persons who recanted ("dissolved") their claims, 39 of which had documentation on the reasons given for dissolving the claim. As detailed below, the present study analyzed 339 port of entry files, most of which were not referred for a credible fear determination; 163 files from the BIA; and 353 files of persons referred for a credible fear determination, including 32 aliens who dissolved their claims.

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Although certain designated personnel have some access to ENFORCE, the system was not designed for quality assurance purposes, nor was it designed to produce documents through mass queries. Officers who have designated access and an event number may access an individual case, if that case was completed in ENFORCE. Letter from Mr. Michael J. Hrinyak (CBP) to Mr. Mark Hetfield (USCIRF), Jan. 21, 2004, on file with the authors.

<sup>24</sup>"The actual contents of the record on appeal vary from case to case, but generally include the following items: charging documents; hearing notices; notices of appearance; applications for relief and any accompanying documents; court-filed papers and exhibits; transcript of proceedings and oral decision of the Immigration Judge, if prepared; written memorandum order or decision of the Immigration Judge; Notice of Appeal; briefing schedules; briefs; motions; correspondence; and any prior decisions by the Board." *BIA Practice Manual*, Ch. 4 Appeals of Immigration Judge Decisions, Section 4.2 Record on appeal. Available at: <http://www.usdoj.gov/eoir/bia/qapracmanual/pracmanual/chap4.pdf>. These records originate in the local immigration court, and are forwarded to the BIA when the immigration judge's decision is appealed. When the BIA is finished with the appeal, the record is returned to the Immigration Court for storage or for further proceedings, depending on the Board's order.

<sup>25</sup>See, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO Report Sept 2000 GAO/GGD-00-176 (hereinafter GAO 2000), Appendix III.

<sup>26</sup>For an analysis of GAO 2000, see Musalo, Gibson, Knight & Taylor *Evaluation of the General Accounting Office's Second Report on Expedited Removal*, Oct 2000.

<sup>27</sup>GAO 2000, pp. 30-31.

**Table 1: GAO 2000 and present study -  
source and number of files reviewed**

	<b>GAO 2000</b>	<b>Present Study</b>
<i>Source and number of files reviewed</i>		
Ports of entry	585	339*
Negative credible fear	45	0**
Dissolves	39***	32
BIA	0	163
Credible fear referrals	0	321

\* An additional 435 port of entry A-files were examined by the observation component of the Study; *see* Keller 2005.

\*\* While not part of this research report, other researchers working with Commission experts also reviewed 50 negative credible fear determinations from FY2003-2004.

\*\*\* Plus an additional 94 files where the reason was not documented.

One goal of our file review, like that of the GAO, was to determine the extent to which required procedures were followed by locating the relevant forms in the files.<sup>28</sup> Maintaining a complete record in order to allow for internal review and quality assurance measures is particularly important given the lack of judicial review for Expedited Removal orders<sup>29</sup> or decisions on release from detention prior to the merits hearing.

Another goal of our file review was to explore how the Expedited Removal process prior to the full merits hearing before the immigration judge had an impact on the hearing itself. We were interested in the nature of the evidence considered by immigration judges in making complex factual and legal determinations. Like the GAO, we did not attempt to determine whether immigration judges applied the correct legal analysis to the facts in reaching a decision on the merits of the asylum claim.

We also sought to assess the factors that appeared to influence detention and release decisions, including the established criteria of identity and community ties, as well as other potential factors such as country of origin, gender, religion and port of entry.<sup>30</sup>

### **3. Procedures for file analysis**

We developed a methodology for analyzing the files in consultation with the other experts appointed by USCIRF.<sup>31</sup> We recruited and trained<sup>32</sup> fifteen legal research associates, all

<sup>28</sup> The GAO found that INS generally followed its procedures for documenting the Expedited Removal process at selected ports and the credible fear process at selected asylum offices, GAO 2000, p. 7.

<sup>29</sup> With the exception of aliens claiming to be lawfully admitted permanent residents, refugees, or asylees. INA Sec. 235(b)(1)(C).

<sup>30</sup> The GAO report, covering some of the same ground, examined detention and release decisions by conducting a mail survey asking INS district offices about their respective detention policies. GAO 2000, p. 34.

of whom were upper level law students at Boalt Hall School of Law, University of California, Berkeley.<sup>33</sup> Our *Desk Procedures for Electronic Data Collection* provided guidance about securing and collecting the data.<sup>34</sup> The randomly distributed files were both spot checked and duplicate coded.<sup>35</sup> After the data collection phase, when we narrowed down the variables to analyze further, one researcher was retained to assist the research coordinator in additional quality assurance work.<sup>36</sup>

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<sup>31</sup> We wish to thank Dr. Fritz Scheuren and Dr. Patrick Baier of NORC for their assistance with the study's overall design and methodology. We particularly thank Mr. Tad Stahnke, Mr. Mark Hetfield and Ms. Susan Kyle on the staff of the USCIRF for their invaluable assistance and support. We also thank Mr. Dominic Lusinchi of Far West Research for statistical analysis and consulting services. Finally, we wish to express our thanks to a great many people in DHS and DOJ, as well as detention officials, who took the time to help us understand their work.

<sup>32</sup> The legal research associates directly involved in analyzing the files received a minimum of 12 hours of specialized training regarding Study goals, past research findings, and relevant legal standards. Some legal research associates participated in site visits to assist in data collection. They were also trained by discussing the data collection instruments during instrument development. This was followed by a session of observing and coding a file with the research coordinator. Training stressed the importance of collecting and reporting information fully and impartially. Unusual cases were brought to the attention of the research coordinator. Outliers, however, were only removed from the sample in the analysis phase if they did not fit the definition of the sample. For example, 2 cases referred for a credible fear determination were removed from the national port of entry sample – defined as Expedited Removal or withdrawal cases. Legal research associates also conducted research on relevant legal standards and other issues pertinent to the Study, and participated in drafting sections of the Study.

<sup>33</sup> We would like to acknowledge the contributions of, and express our appreciation to, the following Boalt Hall students: Mr. Michael Burstein, Ms. Shelley Cavalieri, Ms. Carol Chacon, Ms. Amy Cucinella, Ms. Allison Davenport, Ms. Kathleen Glynn, Mr. Steven Herman, Ms. Olivia Horgan, Ms. Tara Lundstrom, Ms. Lauri Owen, Ms. Kyra Sanin, Ms. Rani Singh, Ms. Rebecca Tanner, Ms. Kaja Tretjak, and Ms. Kristie Whitehorse.

<sup>34</sup> The *Desk Procedures* are on file with the authors. The data collection instructions included general data formatting instructions, such as how to code blanks on a form. It also included specific guidance, such as which forms usually document representation by an attorney. We had weekly meetings to discuss and ensure uniform approaches to the data collection instruments.

<sup>35</sup> 7 percent of the port of entry sample was duplicate coded; 6 percent of the Board of Immigration Appeals sample was duplicate coded; 16 percent of the credible fear sample was duplicate coded. These data were reviewed for clarification and discussion of data entry and coder variability. The research coordinator used this information in individual meetings to inform the researchers of such inaccuracies and to clarify preferred interpretations among differently coded options. Weekly meetings of the research team were opportunities to further smooth out inconsistencies in interpretation. Of the over 500 variables collected many were text (e.g., religion, port of entry) and narrative (e.g., comments about why referred to secondary inspection at port of entry) variables. Others were numeric variables (e.g., did alien express fear according to sworn statement 1=yes/2=no). Fifty-one variables with numeric values were used in this research report (some as the basis for additional categorical variables created during analysis). These variables came from the three different file samples – 7 from port of entry, 31 from credible fear, and 13 from BIA. These duplicate coded numeric variables were analyzed for inter-rater reliability. Reliability was acceptable with Kappa coefficient above .4; only three variables had a Kappa coefficient between .4 and .6. Of the numeric variables reported here, the average inter-rater reliability coefficient for the port of entry sample was .81 (range .73-1.00). For the credible fear sample's numeric variables reported here, the average Kappa coefficient was .90 (range .41-1.00). The average inter-rater reliability coefficient for the BIA sample's numeric variables reported here was .83 (range .41-1.00).

<sup>36</sup> This involved checking the individual variables for coder variability and where necessary continued spot checking for interpretation issues related to coder error or interpretation differences. After clarification with the research coordinator, the researcher recoded where necessary. Additionally, during the analysis phase, the creation of new variables dependent on the original coding provided still another opportunity to review the values for individually coded variables.

## D. STUDY QUESTION 2 - ARE IMMIGRATION OFFICERS INCORRECTLY FAILING TO REFER ASYLUM SEEKERS FOR A CREDIBLE FEAR INTERVIEW?

Customs and Border Protection (CBP) inspectors are responsible for referring aliens who would otherwise receive Expedited Removal orders, or be allowed to withdraw their applications for admission, for a determination of whether they have a credible fear of persecution.<sup>37</sup> Such referrals are based on the alien indicating an intention to apply for asylum or a fear of return. Most Expedited Removal cases do not require or receive such a referral.

We examined electronic records relating to A-files created at ports of entry (POE) to determine whether inspectors had documented their questioning of aliens to see if the aliens feared return to their home countries.<sup>38</sup> Additional insight on reviewing port of entry files emerged when we encountered significant gaps and omissions in files generated electronically by ENFORCE, as detailed below.

The port of entry files ( $n=339$ ) were comprised of two sets:

- one set of files (“national sample”) consisting of a series of random samples drawn from all ports of entry, and
- a second set of files from a single airport (“JFK sample”).

The JFK files were intended to allow comparison of the Expedited Removal process with Visa Waiver Program procedures in place at JFK. We analyzed the two sets of files separately. The national sample is discussed below.<sup>39</sup> The JFK sample is discussed in Appendix E.<sup>40</sup>

### 1. Obtaining the Port of Entry File National Sample

The national sample set of port of entry files consisted of four random samples of Expedited Removal or withdrawal cases. After Customs and Border Protection used the ENFORCE database to generate a list of all aliens subject to Expedited Removal at ports of entry in fiscal year 2004, we requested 240 such files.<sup>41</sup>

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<sup>37</sup> The following describes the authority to refer given to inspectors at ports of entry: “If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7) and the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).” INA Sec. 235(b)(1)(A)(ii).

<sup>38</sup> The data collection instrument for the POE File sample appears in Appendix C.

<sup>39</sup> Additional analysis of the port of entry national sample appears in Appendix D.

<sup>40</sup> We placed our JFK file sample discussion in Appendix E to avoid confusion with our main discussion of the national sample of port of entry files. JFK’s Visa Waiver Program procedures are not part of Expedited Removal procedures. In addition, our national sample already includes randomly selected Expedited Removal cases from JFK.

<sup>41</sup> We requested 20 Expedited Removals of Mexican nationals; 100 Expedited Removals of aliens who were neither Mexican nor Canadian; 20 withdrawals of applications for admission of Mexican nationals; and 100 withdrawals of applications for admission of aliens who were neither Mexican nor Canadian. We deliberately did not sample Canadian nationals subject to Expedited Removal because it would be highly unlikely to find any asylum seekers among them. We chose to under sample Mexican nationals. In FY 2001-FY 2004, approximately 8 percent of aliens

In order to provide access to the records we requested, Customs and Border Protection attempted to use ENFORCE to produce the requested forms and documents, with the caveat that ENFORCE was only newly installed at many ports of entry, that full training had not yet been completed for all officers, and that there might be some systems problems that would result in some forms not being available through ENFORCE. In addition, not all documents used in the inspections process have yet been incorporated into ENFORCE, which was originally designed only for Investigations (now ICE) and Border Patrol cases.<sup>42</sup>

CBP advised us that although accessing case documents entailed many hours of work for them in retrieving this information at the Headquarters level, the alternatives would have been to manually request the A-files from the National Records Center or Files Control Officers and sort through each of those files for the appropriate documents, or send someone, at considerable expense, to the National Records Center to work with us to obtain the documents from the files housed there. CBP attempted to use ENFORCE as the most cost efficient and potentially effective method of assisting the Study. CBP advised us of the potential shortcomings of the ENFORCE system prior to attempting to provide the copies.<sup>43</sup>

Despite CBP's best efforts to respond to our inquiries, their concerns about the limitations of ENFORCE were borne out.<sup>44</sup> A large number of files, between 10 percent to 50 percent of various types of cases requested, contained neither data nor forms, just a cover sheet.<sup>45</sup> This was of concern because the files had been identified by ENFORCE as relevant to the study.

Customs and Border Protection expressed concern at the high percentage of files that were missing documents, and began the process of verifying whether the documentation was indeed available through ENFORCE but had not been generated along with the rest of the file, or was in the paper file, or in fact was missing from the file.<sup>46</sup>

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in Expedited Removal proceedings were of Mexican nationality. Given our resource constraints, to sample them proportionately would have meant that we would have included only insignificant numbers of aliens from major refugee-producing countries.

<sup>42</sup> Letter from Mr. Michael J. Hrinyak (CBP) to Mr. Mark Hetfield (USCIRF), Jan. 21, 2004, on file with the authors.

<sup>43</sup> Id.

<sup>44</sup> For a full chronology of events relating to gathering study data through the ENFORCE system, *see* letter of Mr. Mark Hetfield (USCIRF), to Mr. Salvador Flores (CBP), dated Sept. 23, 2004, in Appendix F.

<sup>45</sup> Specifically, of the 240 files we requested, 148 files were received and 78 files had only a cover sheet. We then requested 88 additional files, of which 62 files were received and one file had only a cover sheet. Finally, we requested an additional 26 files, of which 26 were received. The final total of port of entry national sample files received was 236, over an initial period of three months. Of those 236 files, three were removed from the analysis because they actually resulted in credible fear referrals, and seven files were removed from the sample because, while they were linked to ENFORCE-generated "event numbers" in the sample, they actually related to aliens not on the sample list. Additional files and documents are still being produced at the time of writing, in response to our preliminary finding that many files were missing documents. 41 files were re-sent (1 of the 3 national files previously reflecting a credible fear referral came with documents reflecting a removal order so it was reintroduced into the sample) bringing the total files analyzed to 227.

<sup>46</sup> CBP was able to re-send 41 of the port of entry files which were initially missing sworn statements in 27 cases with Expedited Removal orders, 10 withdrawal of application for admission cases, and 4 credible fear referrals. Of the 41 files re-sent, 7 contained no new documents. CBP generated 31 of the new files with ENFORCE and 10 were collected from the paper record at the National Record Center (including 3 sent in both formats).

A major concern that emerged from our experience with CBP's difficulties in producing all the requested documents from a given file is the ability of CBP to conduct its own quality assurance efforts in a timely and cost-effective manner.<sup>47</sup>

In analyzing the data, we separated out the cases in the national sample where the country of departure was Canada ( $n=43$ ).<sup>48</sup> The remaining national sample ( $n=184$ ) excludes the Canadian cases. It is on this national file sample that we base our conclusions, unless otherwise indicated.<sup>49</sup>

## 2. Documentation regarding fear of return in the port of entry file national sample

Inspectors must take a sworn statement from all aliens subject to Expedited Removal, prior to ordering their removal.<sup>50</sup> Whenever possible, inspectors are to take a sworn statement from aliens who have been offered the possibility of withdrawing their application for admission in lieu of Expedited Removal.<sup>51</sup>

The sworn statement is taken on Forms I-867A Record of Sworn Statement and I-867B Jurat for Record of Sworn Statement. Form I-867A contains information that must be given to

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<sup>47</sup> In this second round of file collection, multiple forms, not limited to the sworn statements, that were initially missing from the ENFORCE file were later produced by ENFORCE. Other files were incomplete in ENFORCE but contained more documentation in paper form at the NRC. We received three examples of files generated by both ENFORCE and NRC for the second round in which the initial and re-sent ENFORCE record lacked the Form I-867 Record of Sworn Statement, yet it was re-sent again by the NRC with the sworn statement. A fourth file even indicated two different case outcomes between the initial and second round receipt. It initially came from ENFORCE, like all the files, and was quite sparse, indicating on one of two pages that the alien was "Detained for removal hearing/credible fear determination" with a check box on the Form I-259 Notice to Detain, Remove, or Present Alien. The file thus summarily indicated a referral for a credible fear determination. When it was re-sent from the National Record Center, however, the more complete file clearly showed the person had been ordered removed. The one common form to the ENFORCE and NRC files in this case was the Form I-296 Notice to Alien Ordered Removed/Departure Verification, yet there were two different versions with two dates and even two different photographs of the alien removed. While our follow up enquiry focused on the Forms I-867A & B and the I-877 (those related to mandatory screening for fear) many of the re-sent files contained other new forms, previously missing, such as the I-275 which documents the encounter at the port of entry. In all, 34/41 of the re-sent files contained different documents than those initially received. The one case received twice and reflecting two different outcomes was unique to those re-sent, but the pattern of the unreliability of ENFORCE was nonetheless present throughout.

<sup>48</sup> The Inspectors Field Manual 17.2.E.4.d.6) h. states that "In some routine land border withdrawal cases, the Form I-160A is used on the northern border." The Form I-160A is an additional form used along the U.S.-Canada border to notify Canadian officials that an alien is being refused admission to the United States. Otherwise the procedures in place for Expedited Removal do not vary from national policy at other ports of entry. The Canadian cases provided only limited information relevant to the study, however, because 36 of the 43 files as printed from ENFORCE contained only Form I-160A, and did not contain Forms I-867A&B or I-877, or other relevant forms.

<sup>49</sup> Further information on the Canadian cases may be found in Appendix G.

<sup>50</sup> 8 CFR 235.3 (b)(2); Inspectors Field Manual 17.15 (b)(2).

<sup>51</sup> CBP noted that the Inspectors Field Manual specifies that such a sworn statement "should" be taken, not that it "shall" be taken. E-mail from Ms. Linda Loveless (CBP) to Mr. Mark Hetfield (USCIRF), Nov. 17, 2004, on file with the authors. However, the CBP Expedited Removal Training Materials instruct that, in withdrawal cases, sworn statements using Forms I-867A and B "should be taken whenever possible... This ensures that all the facts of the case are recorded, especially in potentially controversial cases, and protects against accusations of coercing the alien into withdrawing, especially when there may have been an issue of fear of persecution" Section II(E)(4)(i) of the CBP Expedited Removal Training Outline (September 2003). (emphasis added).

the alien about the Expedited Removal process, including notice that U.S. law provides protection to certain persons facing persecution, harm or torture.<sup>52</sup> It also contains an advisory that the alien must tell the officer about any such concern because the alien may not have another chance. Form I-867B provides the jurat, as well as the required protection-related questions to be included in the sworn statement.<sup>53</sup> We analyzed the port of entry file national sample for the presence and content of the required forms.<sup>54</sup>

Table 2 below shows the outcome, whether ordered removal or withdrawal permitted, for aliens subject to Expedited Removal based on how completely CBP inspectors documented screening them for fear of return. The alien's documented response is indicated in parentheses. Table 2 presents data separated by the manner of entry – air, and land or sea.<sup>55</sup>

The table shows a high rate of files containing documentation regarding screening for fear of return. Only 3 out of 106 cases (2.8 percent)<sup>56</sup> of those who received Expedited Removal orders did not have documentation in the file showing that the person had been screened for fear of return.<sup>57</sup>

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<sup>52</sup> Form I-867A contains the following advisory: "U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear."

<sup>53</sup> Form I-867B contains the following four protection-related questions: "Why did you leave your home country or country of last residence?" "Do you have any fear or concern about being returned to your home country or being removed from the United States?" "Would you be harmed if you are returned to your home country or country of last residence?" "Do you have any questions or is there anything else you would like to add?"

<sup>54</sup> When the I-867B contained all four protection-related questions with answers entered under each one, we considered it "Full Screening." If the questions appeared on the I-867A, we considered that as "Full Screening" as well. When the I-867B included fewer than all four of the protection-related questions or answers, it was considered "Partial Screening." When the I-867B was blank where answers should be recorded or when the pertinent form was missing from the file, it was considered "No Documentation of Screening." In addition to the completeness of the screening for fear of return, we also assessed the alien's response. "No Fear" is based on our assessment that none of the answers recorded on the form indicate fear of return to the alien's home country. "Fear" is based on our assessment that at least one answer recorded on the form indicates fear of return to the alien's home country.

<sup>55</sup> Table 3 also allows the comparison of air arrivals to land or sea arrivals. 91 percent of Expedited Removals, and 89 percent of withdrawals, occur at sea and land ports of entry. However, we deliberately under-sampled Mexican nationals subject to Expedited Removal in the sample. Therefore, the vast majority of aliens in the sample subject to Expedited Removal (79 percent) came to the U.S. by air, and only 21 percent (39/184) came by land or sea.

<sup>56</sup> These three files were generated by ENFORCE, so it is possible that further searching would reveal that the paper files have the missing forms.

<sup>57</sup> The rate of withdrawal files missing documentation regarding screening for fear of return is higher. For this category, 17 out of 78 files (22 percent) did not have such documentation in the file. As noted above, a sworn statement for withdrawals is to be taken whenever possible, but in many cases, especially at land ports of entry, taking a sworn statement is not considered practical in simple cases, such as where an alien left his or her documentation at home and plans to return at a later date.

**Table 2: Documentation regarding fear of return by outcome and manner of entry for national sample**

Manner of Entry	Screening	Ordered Removed	Withdrawal Permitted	Total
Air	Full Screening (No Fear)	79 (96.3%)	59 (93.7%)	136
	No Documentation of Screening (I-867B missing)	2 (2.4%)	4 (6.3%)	6
	No Documentation of Screening (I-867B blank)	1 (1.2%)	0	1
	<b>Total (100%)</b>	<b>82</b>	<b>63</b>	<b>145</b>
Land Or Sea	Full Screening (No Fear)	24 (100%)	2 (13.3%)	26
	No Documentation of Screening (I-867B missing)	0	13 (86.7%)	13
	<b>Total (100%)</b>	<b>24</b>	<b>15</b>	<b>39</b>

### 3. Conclusion

On a positive note, none of the aliens in the national sample had a documented fear response to the protection-related questions. Because the national sample was made up of aliens who were not permitted to enter the U.S., this is a significant finding.

In a small number of cases of aliens expeditiously removed ( $n=3/106$ ), the files did not contain documentation showing that the person had been asked the questions regarding fear of return. For these cases, we cannot determine whether the questions were asked but the answers were not documented in the file, or whether the questions were not asked. Either eventuality leads to a concern that the aliens might have been removed to a country where they fear persecution. Another possibility is that the paper files on these three cases do indeed contain the necessary documentation, but ENFORCE was not able to generate it.

In the process of conducting this review, we learned that ENFORCE is not designed for quality assurance purposes, nor can a paper review based on the files held in the National Records Center provide a timely and cost effective means of monitoring inspectors' work.

### E. STUDY QUESTION 3 - ARE IMMIGRATION OFFICERS INCORRECTLY REMOVING ASYLUM SEEKERS TO A COUNTRY WHERE THEY MAY BE PERSECUTED?

Both U.S. and international law recognize the principle of *non-refoulement*, which prohibits the “[e]xpulsion or return of a refugee from one state to another, especially to one where his or her life or liberty would be threatened.”<sup>58</sup> Respect for the principle of *non-refoulement* informs three of the four Study questions posed by IRFA. For example, the second

<sup>58</sup> Black’s Law Dictionary (1996). The principle of *non-refoulement* with respect to refugees is codified in the 1951 Convention relating to the Status of Refugees, art. 33. The prohibition also appears in the Convention against Torture, art. 3, with respect to persons who face a substantial risk of torture. U.S. legislation protects against both kinds of harm. In addition, the United States has ratified the 1967 Protocol to the 1951 Refugee Convention, as well as to the Convention Against Torture.

Study question, in Section D above, concerns the proper identification of asylum seekers so that they are not mistakenly returned to harm before having a chance to present their claims. We interpreted the third Study question as more directly addressing the actual adjudication of these claims. For this portion of our Study, we chose the Board of Immigration Appeals file sample to illuminate one particular aspect of the hearing process: the relationship between the determination on the merits and the earlier Expedited Removal screening phases.

## 1. Obtaining the Board of Immigration Appeals Records of Proceeding

The Board of Immigration Appeals<sup>59</sup> sample of Records of Proceeding, which included the transcript of the alien's immigration court proceeding, was kept in paper form in Falls Church, Virginia, at the BIA, the appellate body of the Department of Justice's Executive Office for Immigration Review (EOIR).<sup>60</sup> The sample consisted of 170 Records of Proceeding of aliens placed in Expedited Removal proceedings, 163 of which were reviewed.<sup>61</sup> Each Record of Proceeding had the following four characteristics: (1) there was a final order from an immigration judge regarding the asylum seeker's claim for protection<sup>62</sup>, (2) the final order was appealed to the BIA,<sup>63</sup> (3) the Record of Proceeding should have contained a transcript of the

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<sup>59</sup> Information about the BIA is available at <http://www.usdoj.gov/eoir/biainfo.htm>. BIA precedent decisions are binding on all Department of Homeland Security (DHS) officers and immigration judges; they can be modified or overruled by the Attorney General and the federal courts. The BIA has historically followed the precedents set by federal circuit courts for cases arising within that circuit, and declined to follow such precedents outside the circuit jurisdiction when the BIA and circuit positions differ. (Germain, *AILA's Asylum Primer*, 3d ed. (2003) at 16).

<sup>60</sup> The samples were scanned by U.S. Commission on International Religious Freedom (USCIRF) staff between March 29 and May 18, 2004, and were sent to the research team on duplicate CDs. In order to identify which Records of Proceeding to scan, the "A-numbers FY 02-03 List" was sent in electronic form by DHS' Citizenship and Immigration Services (USCIS) Office of Asylum. The electronic file name was "APCLST38.TXT". The file listed 16,633 people who were referred for credible fear interviews during fiscal years 2002-2003. We then randomly ordered the A-numbers and listed them in batches of 50. USCIRF staff scanned the corresponding Records of Proceeding in batches of 50, with the goal of collecting between 150 and 200. The batches of 50 on the sample list did not necessarily yield 50 scanned Records of Proceeding, since they are sent to the immigration court below after the BIA renders its decision and would therefore no longer have been present at the time of scanning.

<sup>61</sup> Seven Records of Proceeding were not reviewed due to time constraints, and the late arrival of files from other samples that had to be coded. The data collection instrument for the BIA Record of Proceeding sample appears in Appendix H.

<sup>62</sup> Relief from removal to a country where an alien may be persecuted or tortured can take the form of asylum, withholding of removal, or protection under the UN Convention Against Torture (CAT). The application for any or all three forms of relief is completed using the same form and is adjudicated at one hearing. The forms of relief differ in their durability, standard of proof, discretionary/mandatory nature, and statutory bars prohibiting their application. The immigration judge order generally addresses each of the three claims separately, and the claims can separately be appealed by the alien or by the government.

<sup>63</sup> Once the BIA finishes an appeal, the Record of Proceeding is returned to the immigration court below for appropriate action. Therefore, since the files were present at the BIA, nearly all of the cases in this sample were still pending a decision by the BIA. Virtually all cases in the Board of Immigration Appeals file sample we reviewed were denials of asylum. This is consistent with the overall appeal rate. For FY 2002-2003, the alien was the appealing party in 98.3 percent of appeals decided by the Board. Kyle, Fleming and Scheuren 2005, at 17. The Board of Immigration Appeals sample was particularly useful in providing insight into how Expedited Removal proceedings might contribute to denials of asylum claims. Of the 163 cases examined, 153 were appeals by the alien from a denial. Two of the alien appeals were based on removal orders that did not involve the merits of the asylum claim, but were instead orders related to the ability to apply for asylum. One involved a missed call-up date for filing an adjustment of status application under the Cuban Adjustment Act; the second involved the inability to prepare the written application for asylum. There were 7 cases of asylum grants appealed by the Department of

hearing before the immigration judge<sup>64</sup>, and (4) the Record of Proceeding was physically located at the BIA at the time the sample was being collected, in order to facilitate collection.<sup>65</sup>

## 2. Reasons for studying the relationship between the three stages of Expedited Removal

The adjudication of asylum claims requires immigration judges to make complex determinations of fact and of probability. It is important for the immigration judge to ascertain why the asylum seeker fled - the factual determination - in order to come to a decision about what might happen if he or she is returned - the probability determination. There is extensive statutory, regulatory, and case law interpreting the refugee definition<sup>66</sup>, which must be applied by immigration judges on a case-by-case basis. The stakes are high - a mistaken decision could mean death, if an asylum seeker is returned to persecution or torture. A key aspect of asylum adjudication is the assessment of credibility, since asylum seekers often lack documentary evidence to corroborate their claims.

The above description applies to all asylum adjudications. Outside of Expedited Removal, asylum adjudication is carried out by USCIS asylum officers for affirmative cases<sup>67</sup>, and by immigration judges in regular removal hearings.<sup>68</sup>

Whether prior DHS administrative records on an asylum applicant are available to asylum adjudicators as evidence varies on the procedural posture of the case. There are

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Homeland Security, and two DHS appeals from orders unrelated to the merits of the asylum claims. One was a termination of proceedings on a jurisdictional ground; the other was an order for the withdrawal of application for admission. One BIA case was appealed both by the government for granting Convention against Torture relief and by the alien for denying protection under the Immigration and Nationality Act. The sample therefore included 93.9 percent cases where the appealing party was the alien, which is consistent with statistics provided by EOIR of all appeals decided by the Board. Cases appealed by both parties are a fractional percent of cases decided by the Board. Appeals by the alien made up 98.3 percent of the appeals decided in fiscal years 2002 and 2003. USCIRF, *Study of Asylum Seekers in Expedited Removal: Statistical Report on Immigration Court Proceedings (FY 2000-2004)*, at 1-17. The high percentage of appeals by the alien does not represent the actual occurrence of denials of asylum claims, which is lower, 72 percent. *Id.* at 1-2. Rather, it shows that many approved cases are not appealed by the government.

<sup>64</sup> While all immigration hearings are audiotape, only those on appeal are transcribed.

<sup>65</sup> Some basic information on the makeup of the Board of Immigration Appeals sample is as follows. Women made up 34.4 percent of the BIA sample; men were 65.6 percent. The percentage of women in the BIA sample is lower than the 42.8 percent of women in the random sample of credible fear A-files used to analyze detention and release, *see* Section F below. The overall rate of release prior to the merits hearing was 77.9 percent. Approximately the same percentage of women (76.8 percent) as men (78.5 percent) in the sample was released prior to the hearing. The top five countries of origin represented were China (32.5 percent), Haiti (17.8 percent), Colombia (12.9 percent), Cuba (4.9 percent), and Iraq (4.9 percent). For further analysis of the sample, *see* Appendix I.

<sup>66</sup> A well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, and political opinion.

<sup>67</sup> "Affirmative" asylum cases refers to people already in the U.S. who voluntarily bring themselves to the attention of DHS by filing an application for asylum. Such asylum seekers may have entered legally, or without inspection. They might also have entered with false documents but were not detected during the inspections process. At the time of filing the application for asylum, they might be in status or might not.

<sup>68</sup> If an asylum officer is not able to approve an affirmative asylum application, the case will be referred to the immigration court for removal proceedings. The asylum seeker may renew his or her application for asylum before the immigration judge. In addition, aliens who have not filed a claim for asylum but who are placed in removal proceedings, may apply for asylum at that time as a defense against removal.

generally not any prior DHS records available to asylum officers deciding on affirmative applications, except perhaps Form I-94 showing the date and place of entry. Immigration judges in regular removal hearings who are hearing asylum claims referred by the asylum office will have the asylum seeker's Request for Asylum in the United States on Form I-589 and the asylum officer's interview notes.<sup>69</sup>

In regular removal hearings immigration judges will also often be able to consider other DHS records such as Form I-213 Record of Deportable/Inadmissible Alien, which are generally introduced so that the government can meet its burden of proof in establishing that the person in proceedings is an alien and is not authorized to enter or to remain in the U.S.<sup>70</sup>

In removal hearings in the Expedited Removal context, however, immigration judges may have additional evidence – the DHS Expedited Removal record – that is not available in other asylum adjudication situations. At first glance, this would seem to be an advantage, allowing the immigration judge to test the asylum seeker's testimony against his or her earlier statements, to help in assessing credibility and to assist in detecting fraud.<sup>71</sup> It might be expected that use of the prior Expedited Removal records would lead to better, more accurate, decisions by immigration judges. However, our research, taken together with the observational component of the Study<sup>72</sup>, shows that reliance on these records is in many cases unwarranted and could instead contribute to erroneous decisions. Nor does the Immigration Judges Benchbook provide any specific guidance to judges on the use of Expedited Removal records, in contrast to particular provisions regarding the use of Forms I-213 or I-589.<sup>73</sup>

### 3. The evidentiary relationship between the three stages of Expedited Removal

After being found inadmissible at a port of entry, an alien in Expedited Removal is questioned on two occasions in order to enter into the asylum process. These interactions are recorded on Department of Homeland Security forms and remain in the A-file.<sup>74</sup> The alien is

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<sup>69</sup> The use of the initial I-589 Request for Asylum and the Asylum Officer's notes by the ICE attorney or the immigration judge when an affirmative case is referred to the immigration court for a *de novo* hearing can be distinguished from the use of Expedited Removal records, since the prior records from Expedited Removal reflect a screening process and not a full assessment of the merits of an asylum claim. Immigration judges in regular removal hearings who are hearing an asylum claim filed for the first time as a defense against removal obviously do not have a prior asylum application to review.

<sup>70</sup> Immigration Judge Benchbook, Part I, Ch. One, II.A.7.a.i. and II.A.7.c. (Oct. 2001).

<sup>71</sup> We are not suggesting that all asylum seekers tell all of the truth all the time. Nor are we suggesting that statements made at the airport are always less reliable than the testimony at the hearing. Some would argue that the real story is *more* likely to come out on the first telling, before the asylum seeker might be coached to describe a particular fact pattern. Others would argue that the real story is *less* likely to come out on the first telling due to the influence of vulnerability, disorientation, exhaustion, fear, poor interpretation, lack of understanding of the process, etc. What we are suggesting is that the Expedited Removal process is not designed to gather the asylum seeker's full story at the earlier screening stages before the merits hearing.

<sup>72</sup> See Keller 2005.

<sup>73</sup> Immigration Judge Benchbook, Part. 1, Ch. One, II.A.7.a.i. and I.II.A.7.c. (Oct. 2001).

<sup>74</sup> The DHS forms I-867A Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act and I-867B Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act record the interaction between the alien and CBP inspector. The DHS form I-870 Record of Determination/Credible Fear Worksheet records the alien's interview by the asylum officer and the outcome of that interview, the credible fear determination.

required to provide minimal information relevant to his or her asylum claim to the inspector at the port of entry during secondary inspection in order to obtain a referral for a credible fear determination.<sup>75</sup> The alien is then required to provide information about his or her claim to the asylum officer during a brief credible fear interview in order to establish a credible fear of persecution.<sup>76</sup> A positive credible fear determination is what allows the alien to proceed to a full removal hearing before an immigration judge where he or she may raise the defense of a claim for protection.

The DHS Expedited Removal record is narrow in scope. The limited screening function of CBP inspectors and the credible fear determinations made by asylum officers require lower standards of proof than the well-founded fear of persecution standard for asylum applied by immigration judges during removal hearings.

Table 3 is a comparison of the legal standard an asylum seeker in Expedited Removal must meet at each step of the removal process. There are three different standards, increasingly complex and difficult to meet, as the alien progresses from the port of entry, to the credible fear determination, and finally to the immigration court itself.

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<sup>75</sup> Regarding the appropriate standard for CBP inspectors, the Office of Programs, INS, Memorandum: Supplemental Training Materials on Credible Fear Referrals (Feb. 6, 1998) instructs inspectors to refer applicants for credible fear interviews based on as little as an affirmative answer to one of the four “protection-related questions” on the form I-867B, “even if the applicant provides no additional information related to the fear of return.” A credible fear referral may also be based solely on non-verbal cues of fear of return. Office of Programs, INS, Memorandum: Supplemental Training Materials on Credible Fear Referrals (Feb. 6, 1998) at 1-2. In most cases, inspectors at ports of entry are only establishing inadmissibility and do not probe the fear issues. Letter from Mr. Michael Hrinyak (CBP) to Mr. Mark Hetfield (USCIS), Jan. 21, 2005, on file with the authors. A Study questionnaire administered to all eight regional asylum offices summarized the general agreement that port of entry statements are brief and do not contain the alien’s full story.

<sup>76</sup> A Study questionnaire, attached as Appendix A, was administered to all eight regional asylum offices in the United States. It found that the average time for a typical credible fear determination, without an interpreter, was 36 minutes; with an interpreter, it was 46 minutes. The average time for a typical affirmative interview, without an interpreter, was 53 minutes; with an interpreter, it was 83 minutes. When asked the purpose of the credible fear write-up (Form I-870) all eight asylum offices answered #1 and #2 but *not* #3.

- #1 To justify the decision of a positive or negative credible fear determination;
- #2 To record just the basics of a positive determination, to show whether the alien has met the threshold for credible fear. The credible fear statement does not generally represent a complete description of the alien’s asylum claim;
- #3 To pursue and record every material detail of the alien’s asylum claim.

**Table 3. Legal standards for each step of the Expedited Removal process**

<b>Stage of the Expedited Removal Process</b>	<b>Legal Standard</b>
Port of Entry/Interior Interview before Secondary Inspector or Border Patrol Officer (DHS Customs and Border Protection)	“If an alien subject to the Expedited Removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with 8 CFR 208.30.” 8 CFR § 235.3(b)(4).
Credible Fear Interview before Asylum Officer (DHS U.S. Citizenship and Immigration Services)	“[A] significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of [title 8].” 8 U.S.C. § 1225 (b)(1)(B)(v).
Merits Hearing before Immigration Judge (DOJ Executive Office for Immigration Review)	<p><i>Refugee Definition:</i> “[A]ny person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is or unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101(a)(42).</p> <p><i>Burden of Proof for Asylum:</i> Well-founded fear: a 'reasonable possibility' that the applicant will be persecuted. <i>INS v Cardoza-Fonseca</i>, 480 US 421 (1987). The Supreme Court has ruled that a well-founded fear may be established “when there is less than a fifty percent chance of the occurrence taking place,” and stated that an asylum applicant could meet his burden of proof even by establishing a one-in-ten chance of persecution. <i>INS v. Cardoza-Fonseca</i> at 440.</p> <p><i>Burden of Proof for Restriction of Removal:</i> Clear probability of persecution: more likely than not. <i>INS v. Stevic</i>, 467 US 407 (1984).</p> <p><i>Burden of Proof for Protection under the Convention against Torture (CAT):</i> substantial grounds for believing the applicant would be in danger of being subjected to torture; more likely than not. 8 CFR 208.16(c)(2). CAT, art. 3(1), and Foreign Affairs Reform and Restructuring Act (FARRA) of 1998, sec. 2242(a).</p>

Given the differing evidentiary requirements of the three stages, it seems likely that the alien would present more information at the merits hearing than was asked for or required at the port of entry or during the credible fear interview. Case law recognizes the practical difference between an asylum seeker adding detail to the information recorded by an inspector or asylum officer and an asylum seeker contradicting the prior administrative record of his or her statements. This distinction divides discrepancies which may be used to impeach an asylum

seeker's credibility (contradiction going to the heart of the claim) from those which may not (addition of detail).<sup>77</sup>

#### 4. Use of Expedited Removal records in asylum adjudication

We read the transcripts of the merits hearings and the oral decisions not to second-guess the immigration judges' decisions on the merits, but to analyze their reliance on Expedited Removal records, given the potential of these records to confuse, rather than clarify, the asylum seeker's claim.<sup>78</sup> The data collection instrument was designed to capture the incidents when the port of entry and credible fear statements were introduced, by the alien or the government, used as the basis of questioning, and compared to the alien's testimony during the removal hearing, either to bolster or impeach that testimony.<sup>79</sup>

The goal was to determine not only when Expedited Removal records were raised during the removal hearing but also when the discussion clearly -- by the judge's own account -- influenced the reasoning of the judge's opinion.<sup>80</sup>

Table 4 describes the use of Expedited Removal records to undermine the asylum seeker's presentation of his or her case. In 81 of the 143 cases with transcripts (56.6 percent) the port of entry and/or credible fear record was used to impeach the alien's testimony. In 56 of the 143 cases (39.2 percent) one or both prior records contributed to the denial of asylum.

It was interesting to note that most of the few cases in our sample that were granted asylum were from the cases where prior statements were not introduced at the hearing. Of the 143 cases with transcripts, 134 were denials of all forms of relief. Only nine cases had outcomes with some form of protection granted – seven were granted asylum relief and two were granted

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<sup>77</sup> See, *Li v. Ashcroft*, 378 F.3d 959 (9th Cir. 2004); *Chen v. Ashcroft*, 376 F.3d 215, 224 (3d Cir. 2004).

<sup>78</sup> We were unable to code the use of prior statements in files that lacked one or both of the transcript of hearing or decision; 16 cases lacked the transcript of the removal hearing and/or the judge's oral decision. Additionally, as described above, there were four cases whose outcomes were not based on adjudication of the asylum claim, so those cases did not provide information on the use of prior statements in adjudicating asylum claims. Because of this makeup of the sample, only 143 files were useful in collecting complete data about the use of port of entry and credible fear statements in asylum adjudication.

<sup>79</sup> It should be noted that the Federal Rules of Evidence (FRE) do not apply in immigration court proceedings, thus we use the term "impeach" to refer to the general concept of calling into question an alien's testimony by contrasting it with prior statements. Another aspect of the inapplicability of the FRE is that there is no requirement to introduce documents formally into evidence. This created the potential for us to underreport the use of the prior statements when the immigration judge simply referred generally to earlier statements without the formal clarification of which document was under discussion.

<sup>80</sup> The data about use of the Expedited Removal administrative record as an element of the asylum denial were collected from the transcribed oral opinion of the immigration judge. We did not attempt to read the judge's mind. We read the transcripts of the judge's decisions to determine if the judge specifically cited as a factor in his or her opinion the port of entry record (Form I-867A&B) and/or the credible fear determination (Form I-870) with respect to the substance of the claim. While the factors on which a judge bases a finding are often set forth in the opinion, the weight given to each factor is completely up to the judge and may not be explicitly explained. When coding the use of the Expedited Removal administrative record as an element of the decision, we counted only when the judge specifically cited the record. We neither quantified how many elements were cited by the judge nor evaluated the weight given to each element. In addition, a judge may not necessarily cite every element influencing his or her decision, so the frequency of use of DHS records may be underreported in our Study.

relief under the Convention Against Torture (CAT). Only three of the 81 cases where Expedited Removal records were used to impeach the alien were granted protection by the Immigration Judge (grant rate 3.7 percent), and two of these were the more limited protection provided by CAT. This is in contrast to the six asylum grants out of 62 cases (grant rate 9.7 percent) where neither prior record was introduced to impeach.

Where the prior records were cited as an element of the decision, protection was almost always denied. Of the seven asylum grants in the sample, the immigration judge in one case cited the Expedited Removal records as part of his positive credibility finding. In the other six asylum grants, the Expedited Removal records were not cited. When the prior Expedited Removal records were cited as an element of a negative credibility finding, the only subsequent grants of protection were two cases that obtained protection under the Convention against Torture (CAT).<sup>81</sup> These two CAT cases occurred out of 56 total cases where a prior statement was used to draw an adverse credibility inference.

**Table 4. Use of Expedited Removal records to undermine asylum seeker's case**

	<b>Used to impeach during hearing</b>	<b>Contributed to denial of asylum</b>
Both I-867 & I-870	37 (25.8%)	27 (18.9%)
I-867 only (port of entry)	31 (21.7%)	16 (11.2%)
I-870 only (credible fear)	13 (9.1%)	13 (9.1%)
<b>Subtotal: one or both DHS records</b>	<b>81*</b> <b>(56.6%)</b>	<b>56***</b> <b>(39.2%)</b>
<b>Neither DHS record</b>	<b>62**</b> <b>(43.4%)</b>	<b>87****</b> <b>(60.8%)</b>
<b>Total</b>	<b>143 (100%)</b>	<b>143 (100%)</b>

\*1 granted asylum; 2 granted CAT protection. \*\*6 granted asylum.

\*\*\*2 granted CAT protection. \*\*\*\*7 granted asylum

In this sample, success at bolstering the credibility of the asylum seeker's testimony with the Expedited Removal records was infrequent ( $n=4/163$ ). Furthermore, the immigration judge's finding that the asylum seeker is credible is not dispositive of the case. Three of the four cases in which prior records successfully aided credibility findings nevertheless resulted in asylum denials.

It is interesting to note that for both impeachment and denial, the port of entry record is used more often than the credible fear determination. This may be because the port of entry

<sup>81</sup> Relief under CAT may be granted even when there is an adverse credibility finding in the asylum context. See, *Taha v. Ashcroft*, 2004 WL 2626547 (9<sup>th</sup> Cir. 2004) (No. 02-73499), citing *Kamalthas v. INS*, 251 F.3d 1279 (9<sup>th</sup> Cir. 2001).

record, although less complete, purports to be the asylum seeker's sworn statement,<sup>82</sup> while the credible fear determination is the asylum officer's worksheet. The port of entry record was used 68 times versus the credible fear record being used 50 times to impeach, and the port of entry record was cited by the judge 43 times versus the credible fear record being cited 40 times to deny protection.<sup>83</sup>

After establishing the prevalence of immigration judges' reliance on Expedited Removal records, we then read the transcribed oral opinions to assess *how* the judges characterized the discrepancies they cited, that is, whether they were basing their decisions on contradictions or the addition of detail. The data show that both port of entry and credible fear records were contrasted with more detailed claims presented at removal hearings to discredit the alien's testimony on the basis of addition of detail.

In 23.3 percent of the cases in which the record made by the inspector was cited by the immigration judge in denying asylum, the judge characterized the discrepancy between the information recorded at the port of entry and the testimony during the removal hearing as the addition of detail.<sup>84</sup> The immigration judge characterized the discrepancy between the administrative record of the credible fear determination and the removal hearing testimony as the addition of detail in 25 percent of the cases in which the record of the credible fear determination was used as an element in the denial.<sup>85</sup>

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<sup>82</sup> However, Keller 2005 documents that in 72 percent of cases observed (268/373) the sworn statement was not in fact reviewed by the alien, interpreter, or interviewing officer prior to the alien signing the form, even though the form indicates that the sworn statement was read by, or back to, and verified by, the alien (as required by the regulations. See 8 CFR 235.3(b)(2)(i)(2004).

<sup>83</sup> In order to assist immigration judges, Citizenship and Immigration Services revised its Form I-870, the Credible Fear Determination Worksheet, as of Nov. 21, 2003, to show that it is a summary of the alien's statement, not a verbatim record. The advisory appears at the beginning of Section III of Form I-870 and states: "The following notes are not a verbatim transcript of this interview. These notes are recorded to assist the individual officer in making a credible fear determination and the supervisory asylum officer in reviewing the determination. There may be areas of the individual's claim that were not explored or documented for purposes of the threshold screening." Customs and Border Protection, in response to a similar recommendation made by the Office of the United Nations High Commissioner for Refugees, declined to revise Forms I-867A and B. CBP did not agree that the form should contain warnings, and stated that trial attorneys or judges may determine the appropriate weight to be given to such statements in subsequent proceedings. U.S. Customs and Border Protection Response to Recommendations in UNHCR Expedited Removal Study, p. 4.

<sup>84</sup> An example of this was an immigration judge who made an adverse credibility determination because an asylum seeker had not told the airport inspector that he had been arrested. When the immigration judge challenged the asylum seeker as to how he could 'forget' that he had been in jail, the asylum seeker testified: "When I was in the Immigration Office, I did not forget that I had been put away in prison for four days. The fact is, they did not ask me about that." The judge determined that the detention had not occurred, and that the asylum seeker was not credible. The claim was denied. BIA Sample Random No. 0.207281716, on file with the authors. Of the 43 cases in which the I-867 was used as an element of the immigration judge's denial of asylum, 10 involved addition of detail between the I-867 and the applicant's testimony, 23 involved contradictions between the I-867 and the testimony, and 8 involved a change of claim between the I-867 and the testimony. Two cases involved usage of the I-867 independently (internal contradiction, lack of nexus).

<sup>85</sup> Of the 40 cases in which the I-870 was used as an element of the immigration judge's denial of asylum, 10 involved addition of detail between the I-870 and the applicant's testimony, 19 involved contradictions between the I-870 and the testimony, 3 involved both addition of detail and contradictions, and 2 involved a change of claim between the I-870 and the testimony. Two cases involved contradictions between the I-867 and I-870. Three involved usage of the I-870 independently. One partial transcript revealed only that the judge cited the I-870 as a factor, but not how it was used.

In addition to the incomplete nature of the prior records for the purpose of the immigration judge's credibility determination, there are also concerns regarding the reliability of these documents. Questioning at the port of entry is rarely videotaped<sup>86</sup> and there is no audio or video tape made of the asylum officer's interview. The port of entry monitoring component of this Study raised concerns relating to the accuracy of some records as compared to the actual exchange that researchers observed between the alien and the inspector.<sup>87</sup>

Overall, the data raise important questions about the extent to which immigration judges are taking into account the limitations of Expedited Removal records. Excessive reliance on these incomplete and sometimes unreliable records could contribute to erroneous decisions.<sup>88</sup>

## 5. Conclusion

Records of Proceeding analysis revealed that immigration judges often rely on Department of Homeland Security Expedited Removal records. Although immigration judges are accustomed to considering prior DHS records in other types of removal proceedings for simple factual determinations on matters such as establishing alienage, the specificity of the fear questions and the question-and-answer format of the port of entry records in the Expedited Removal context lead some judges to an unwarranted reliance on the prior records in the more complex matter of asylum adjudication.

Our findings reveal that the Expedited Removal record created during the Expedited Removal process is in many cases used by immigration judges and DHS trial attorneys to impeach aliens' credibility and undermine their claim. These records, therefore, continue to have an effect throughout the asylum process, despite their lack of reliability. Consequently, to minimize the risk that immigration judges mistakenly order an asylum seeker returned to persecution, it is critical that judges fully appreciate the limitations of the prior records.

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<sup>86</sup> Atlanta, Houston and Las Vegas International Airports have a videotape system in place for secondary inspections. However, the videotapes are typically taped over after 60-90 days, and are usually not available either to the asylum seeker or to the government at the merits hearing. Secondary inspectors at three land ports of entry (Oroville, Washington; Peace Bridge and Champlain, New York) also have a videotape system; again, the videos are retained only for relatively brief periods of time. See Kuck 2005.

<sup>87</sup> Keller 2005 describes the cases of 12 aliens who expressed a fear of return, but were not referred for a credible fear determination. Seven of the 12 files indicated that the fear questions had been answered in the negative. In another 37 cases where at least one of the fear questions was not asked, 32 of the files indicated that the questions had been asked and answered.

<sup>88</sup> Some immigration judges are aware of the limitations of Expedited Removal records and treat them accordingly. One immigration judge stated that he would give "very little, if any, weight to the airport statement because of the lack of safeguards that the Third Circuit has indicated should be in place." Random No. 0.370647298, on file with the authors. The immigration judge was referring to *Balasubramaniam v. INS*, 143 F.3d 157 (3d Cir. 1998) (the airport statement is "not an application for asylum" and *Senathirajah v. INS*, 157 F.3d 210 (3d Cir. 1998) (a summarized record is less reliable than a verbatim account; statements that lack detail are less reliable; an alien who was interrogated in the country of origin might be reluctant to speak, and the record may be less reliable, and; if the record demonstrates a lack of understanding on the part of the asylum seeker, it is less reliable).

## F. STUDY QUESTION 4 - ARE IMMIGRATION OFFICERS DETAINING ASYLUM SEEKERS IMPROPERLY OR IN INAPPROPRIATE CONDITIONS?

Detention is prescribed by statute for asylum seekers referred for a credible fear determination. If found to have a credible fear of persecution, asylum seekers who meet certain other criteria are eligible for release (parole) from detention<sup>89</sup> while their asylum case is under consideration. Agency policy favors the release of eligible asylum seekers who have established a credible fear of persecution.<sup>90</sup>

To be eligible for parole, asylum seekers who have established a credible fear of persecution must also establish their identity, show that they are not a flight risk by demonstrating community ties, and must not be subject to any possible bars to asylum involving violence or misconduct.<sup>91</sup> These criteria are drawn from internal agency guidelines, but are not set forth in regulations. Detention and release decisions are committed to the discretion of the local Immigration and Customs Enforcement (ICE) Detention and Removal Operations (DRO) Field Office Director, and other Department of Homeland Security officials designated by the Secretary of Homeland Security.<sup>92</sup>

The release of eligible asylum seekers carries with it a number of benefits. These include relieving an already vulnerable group of people from the burden of imprisonment<sup>93</sup>, allowing them to benefit from the support of family and community members, facilitating their ability to obtain legal and other assistance,<sup>94</sup> and saving the government a considerable amount of money (thereby allowing scarce resources to be allocated where the need is greater).<sup>95</sup>

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<sup>89</sup> Aliens subject to Expedited Removal who are released prior to their merits hearings are “paroled,” though some DHS offices may refer to this as being released on the alien’s own recognizance or “bonded” out of detention. Our use of the term “release” refers to the period prior to the merits hearing, not to release following an immigration judge’s order.

<sup>90</sup> INS Memorandum, *Expedited Removal: Additional Policy Guidance* (Dec. 30, 1997) from Michael A. Pearson, Executive Associate Commissioner for Field Operations, Office of Field Operations, to Regional Directors, District Directors, Asylum Office Directors, reproduced in *75 Interpreter Releases* 270 (Feb. 23, 1998). The memorandum is attached as Appendix B. See also, GAO 2000, pp. 62-67.

<sup>91</sup> Id.

<sup>92</sup> 8 CFR 212.5(b) (2004).

<sup>93</sup> Our file review revealed instances of the psychological burden of detention: “...I asked him about his adjustment to incarceration. He was observed to become restless and mildly irritable. After complaining about the restrictions on his freedom of movement, responded, ‘I feel like an animal’. . . . He admitted that the uncertainty regarding his future had resulted in feelings of hopelessness, which he thought would disappear once he was released. Several times during the conversation [name redacted] was observed to abruptly duck his head and curl his shoulders and arms inward. The effect was that of someone attempting to make himself appear small.” BIA Sample Random No. 0.319650868, on file with authors, at p. 3-4 (Psychological Evaluation of an alien who was eventually released prior to his merits hearing and later granted asylum).

<sup>94</sup> File review also revealed examples of the impact of detention on the ability to present one’s case. In a letter describing his luggage taken upon arrival an alien writes, “Though I had given thes informations many times from [four months prior], twice in written form and by explaining personally to The INS Officers 4 times now, I once again bring it to your kind notice that this bag contains all my paper works including my [name of country redacted] ID which I require very badly to produce in the courts [within two weeks time].” Credible Fear Sample Random No. 0.056123539 at p. 321; See also, Haney 2005.

<sup>95</sup> See Haney 2005 (stating that the average cost of detention is \$85 per night). .

However, release also carries the risks that the asylum seeker may fail to appear for his or her hearing<sup>96</sup> or may pose a threat to public safety or to national security. Because of these strongly competing considerations, parole criteria necessarily reflect a desire to manage the risks of releasing an asylum applicant prior to the hearing on the merits of his or her claim.

Factors such as the asylum seeker's country or region of origin, gender, religion, and port of entry into the U.S. are not generally elements in the criteria for parole. These factors would not be expected to have an influence on the detention and release decisions made by Immigration and Customs Enforcement. In at least one recent instance, however, the Attorney General has cited country of origin (Haiti) as a relevant factor in whether to exercise discretion to release a detained asylum seeker.<sup>97</sup>

If such factors do appear to be associated with detention and release decisions, it raises the question of whether the decisions are arbitrary and therefore improper. Another example of improper detention would be the continued detention of an alien who is eligible for parole.

Examining A-files of asylum seekers referred for a credible fear determination allowed us to assess release decisions and their association both with information elicited by USCIS relating to parole criteria and with other factors that are not elements in the criteria for parole.

Department of Homeland Security statistics indicate that release decisions are not uniform throughout field offices.<sup>98</sup> Variations in release rates may be due to differences in local parole policies, or differences in eligibility of the detained populations. Variations could also be linked to factors such as port of entry and gender, both of which are related to available bed space in detention facilities, or to the nationality or religion of the asylum seeker.

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<sup>96</sup> The GAO found a rate of decisions issued for failure to appear of 42 percent, although the Department of Justice determined that the rate dropped to 34 percent as time went by, and would eventually be as low as 25 percent when all cases were completed, GAO 2000, p. 9. Statistics put together for this Study indicate a decisions issued for failure to appear rate of 22 percent, varying by nationality from a low of 7 percent for Chinese to 81 percent for Sri Lankans (many Sri Lankans are in transit to Canada). The failure to appear rate with Sri Lankans not considered is 15 percent. EOIR Summary Tables R & S, Kyle, Fleming and Scheuren 2005..

<sup>97</sup> Specifically, the Attorney General found, "(a)s demonstrated by the declarations of the concerned national security agencies submitted by INS, there is a substantial prospect that the release of (undocumented seafaring migrants from Haiti) into the United States would come to the attention of others in Haiti and encourage future surges in illegal migration by sea. Encouraging such unlawful mass migrations is inconsistent with sound immigration policy and important national security interests. As substantiated by the government declarations, surges in illegal migration by sea injure national security by diverting valuable Coast Guard and DOD resources from counterterrorism and homeland security responsibilities. Such national security considerations clearly constitute a "reasonable foundation" for the exercise of my discretion to deny release on bond under section 236(a) (of the INA)." Matter of D-J-, 23 I&N Dec. 572 (A.G. 2003). D-J- involved an undocumented Haitian who arrived by sea. After D-J applied for a bond under 236(a), the Commissioner of the INS ordered that non-Cuban undocumented aliens who arrive by sea would no longer be eligible for bond under section 236(a) of the INA, but would instead be placed in Expedited Removal, pursuant to INS Order No. 2243-02, published at 67 FR 68924 (November 13, 2002). With such aliens now subject to Expedited Removal, it is at the discretion of the Secretary of Homeland Security (DHS), not the Attorney General, whether such aliens may be released from detention. While D-J- was "grandfathered" out of Expedited Removal proceedings, it is interesting to note that the Immigration Judge and the BIA, both of which are within the Department of Justice, granted D-J-'s application for bond, but the Attorney General reversed that determination at the request of the Under Secretary for Border and Transportation Security at DHS. Matter of D-J- at 573.

<sup>98</sup> See DRO Chart 7, Fleming and Scheuren, *Statistical Report on Detention*.

Finally, examining A-files of asylum seekers referred for a credible fear determination allowed us to assess whether and how detention and release decisions are documented.<sup>99</sup> The criteria for release of an asylum seeker prior to the merits hearing are elicited and recorded first by a U.S. Citizenship and Immigration Services (USCIS) asylum officer and later considered by a local Immigration and Customs Enforcement (ICE) Field Office Director. The recording of information relevant to release by USCIS is contained on the same form for every alien who is referred for a credible fear determination (the form I-870). The documentation of release consideration by ICE is not standardized and varies by local field office.

## 1. Obtaining the credible fear files

The credible fear files were drawn from the same list of over 16,663 aliens referred for credible fear determinations during fiscal years 2002-2003 described in Section E above.<sup>100</sup>

In order to facilitate the file collection process, we, along with staff members of the U.S. Commission on International Religious Freedom (USCIRF), traveled to sites<sup>101</sup> with large concentrations of files to scan the files electronically. Nevertheless, despite the considerable resources expended by USCIRF to obtain files, collecting the files was a long and difficult process.<sup>102</sup> Consequently, more than four months after the 491 files were requested, and after dozens of communications between USCIRF and DHS, 88 files were still missing. More than five months after our initial request, U.S. Citizenship and Immigration Services (USCIS) delivered approximately half of the missing files.<sup>103</sup>

Despite our repeated requests to DHS and our readiness to perform the task of scanning the files, at the end of the study period we were still missing nearly 10 percent of the files requested, 45 out of 491. These files were never provided to USCIRF in any form.

To examine detention and release decisions, we fully examined the 353 A-files drawn from the random sampling of all credible fear referral cases that were located in various DHS offices around the country. As detailed below in subsection 2, we first determined how long

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<sup>99</sup> The data collection instrument for the Credible Fear File sample appears in Appendix J.

<sup>100</sup> There was an overlap of three cases between the two samples drawn from the superset list, i.e., there were three A-files from the credible fear files random sample on appeal at the Board of Immigration Appeals at the time that the BIA files sample was drawn. The credible fear A-files were randomly selected to produce a representative sample of aliens going through Expedited Removal who were referred from secondary inspection to the credible fear determination stage. Choosing every 34<sup>th</sup> file of the superset resulted in 491 files, which USCIRF requested on March 8, 2004. After removing extraneous files, the resulting sample size was 461. The extraneous files consisted of 'reasonable fear' cases, another type of determination made by USCIS. Correcting for these caused an adjustment of 30 files.

<sup>101</sup> Sites included Atlanta, Los Angeles, Miami, New York, Newark, Philadelphia and San Diego.

<sup>102</sup> These A-files are not available electronically and DHS does not have an efficient means of accessing copies of files unless they are located at the National Records Center.

<sup>103</sup> The final tally of the 461 credible fear files is as follows: 353 files were received and fully analyzed (we originally received 354 files, one of which proved to be another 'reasonable fear' case, so we excluded it from further analysis); 39 files were provided by USCIS only in 10 point summary form with no identifying information because they pertained to lawful permanent residents who are protected by privacy laws; and 23 files were received too late for review. A table showing which files were produced and not produced, by location of file, is in Appendix K.

asylum seekers in the sample were detained. In subsection 3, we then assessed rates of release prior to the merits hearing against various demographic and geographic variables, followed by an examination in subsection 4 of release rates for those who met the parole criteria as elicited and recorded by asylum officers on Form I-870. We chose to use this form because it reflects the first DHS information relating to parole eligibility factors and because this form is filled out for all asylum seekers in Expedited Removal.<sup>104</sup>

## 2. Length of detention of asylum seekers in sample

Since almost all aliens in Expedited Removal are detained at least until a positive credible fear determination is made, we calculated length of detention based on the date of arrival and the last documented date of detention entered in the file.<sup>105</sup>

Asylum seekers in our sample were detained, on average (mean), for 76 days. The median number of days of detention was 20: in other words, 50 percent of the cases were kept in detention for 20 days or less, and the other 50 percent for over 20 days.<sup>106</sup> The sample of cases shows considerable variation, and although a majority were released within a month (see Table 5 below), a substantial number of cases remained in custody for much longer periods. Fifteen percent of cases remain in custody longer than 6 months (180 days).<sup>107</sup>

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<sup>104</sup> The I-870 Credible Fear Determination Worksheet is filled out for all asylum seekers in Expedited Removal who are referred from secondary inspection to a credible fear determination, unless they dissolve. Although Immigration and Customs Enforcement officers, and not U.S. Citizenship and Immigration Services asylum officers, make decisions on detention and release, file review revealed that there is no one form that is used by ICE officers comparable to the I-870 to record their decision-making process. While we found examples of various types of documents, some of them specific to particular offices, that shed light on ICE detention decisions, systematically mining the files for the detention decision-making process would require a different level of analysis to attempt meaningful comparisons.

<sup>105</sup> For an alien released prior to the merits hearing, the ending date of detention was the date of that release. For an alien not released prior to the merits hearing, the ending date of detention was the date of release due to a final grant or denial of their claim. For the small number of aliens in the sample with pending cases who were still being detained ( $n=4$ ), we calculated the total length of detention as of the date the sample was drawn, with the result that the final length of detention for these aliens is unknown but will be underestimated. These four cases were all pending at the Board of Immigration Appeals level. We excluded cases that dissolved ( $n=32$ ) since they are not representative of what asylum seekers experience in terms of length of detention.

<sup>106</sup> The large discrepancy between the mean (76) and the median (20) indicates that the mean is substantially influenced by cases in the upper end of the distribution. For this particular variable (days in detention), the mean is not a good measure of central tendency: it does not reflect well the “typical” time spent in detention.

<sup>107</sup> Our sample was therefore comparable to Immigration and Customs Enforcement statistics for FY 2003 cited in Haney 2005, p. 1, stating that the average length of detention for released asylum seekers in Expedited Removal was 64 days (our sample average was 76 days), and 32 percent (25.3 percent in our sample) were detained 90 days or longer.

**Table 5: Length of detention**

	Frequency	Percent	Cum. Percent
Never Detained	2	.6	.6
30 days or less	180	56.0	56.6
31-90 days	58	18.1	74.8
91-180 days	33	10.3	85.0
>180 days	48	15.0	100.0
<b>Total</b>	<b>321</b>	<b>100.0</b>	<b>100.0</b>

### 3. Factors associated with release rates

We then examined the release rates of asylum seekers<sup>108</sup> jointly with other relevant (mostly demographic) variables, such as country or region of origin, gender, religion, and port of entry. Overall, 78 percent of the cases were released prior to the merits hearing, and 22 percent were not.

Table 6 presents released cases and rates (in percents) by region of origin. The region with the highest rate of release prior to the merits hearing was East Asia (83/95=87.4 percent). The region with the lowest rate of release prior to the merits hearing was South/Central Asia (2/13=15.4 percent). Two regions out of the 8 had a release rate of less than 50 percent: Sub-Saharan Africa (4/11=36.4 percent) and South/Central Asia. The other 6 regions all had release rates that were higher than 70 percent. The asylum seeker's region of origin had a statistically significant effect on rates of release prior to the merits hearing.<sup>109</sup>

**Table 6: Released\* cases and rates (in percents)  
by region of origin**

Region of Origin	Paroled	Not Paroled	Total (100%)
South America	51 (81.0)	12 (19.0)	63
Central America	4 (80.0)	1 (20.0)	5
Europe	25 (71.4)	10 (28.6)	35
Caribbean	70 (81.4)	16 (18.6)	86
East Asia	83 (87.4)	12 (12.6)	95
South/Central Asia	2 (15.4)	11 (84.6)	13
Middle East/North Africa	11 (84.6)	2 (15.4)	13
Sub-Saharan Africa	4 (36.4)	7 (63.6)	11
<b>Total</b>	<b>250 (77.9)</b>	<b>71 (22.1)</b>	<b>321</b>

\*Release prior to the merits hearing.

<sup>108</sup> Excluding those whose asylum claim was dissolved ( $n = 32$ ).

<sup>109</sup> Results of chi-square test:  $\chi^2 = 39.554$ ,  $df = 5$ ,  $p = 0.000$ .

Table 7 below clarifies the outcome for certain regions by providing release rates for the four major countries. These countries are the ones that supply the largest numbers of asylum seekers: between the four of them, they account for nearly 63 percent of the credible fear sample.<sup>110</sup> Table 7 shows that the release rate for asylum seekers from Cuba was 100 percent, while that of Haitians was 66 percent. Colombia and China fell in the middle, with 75 percent and 87 percent released prior to the merits hearing, respectively. The asylum seeker's country of origin had a statistically significant effect on rates of release prior to the merits hearing.<sup>111</sup>

**Table 7: Released\* cases and rates (in percents) by major country**

Major Country	Paroled	Not Paroled	Total (100%)
China	81 (87.1)	12 (12.9)	93
Colombia	30 (75.0)	10 (25.0)	40
Haiti	27 (65.9)	14 (34.1)	41
Cuba	38 (100.0)	0	38
Other**	74 (67.9)	35 (32.1)	109
<b>Total</b>	<b>250 (77.9)</b>	<b>71 (22.1)</b>	<b>321</b>

\*Release prior to the merits hearing. \*\* Includes all other countries.

As shown by Tables 6 and 7 above, the differences in release rates among regions and among countries could not be attributed to chance alone. In both cases, the asylum seeker's origin appeared to make a difference in terms of the likelihood of being released prior to the merits hearing.

We also found that rates of release prior to the merits hearing varied significantly by gender, religious affiliation, and port of entry to the U.S.<sup>112</sup> As noted above, these factors are usually not elements of the parole criteria. Using region and country of origin as an example, we attempted to examine eligibility for parole as a possible explanation for variations in release rate.

#### 4. Analyzing parole eligibility and release rates

##### a. Reasons for difficulty in analyzing parole eligibility and release rates

One difficulty with analyzing release decisions is the lack of uniform nationwide criteria and documentation. As noted above, internal agency guidelines establish the criteria of a positive credible fear determination, identity, community ties, and the absence of any possible bars to asylum involving violence or misconduct. Wide variations in release rates from district to district indicate that some districts may be applying more restrictive, and others more generous, criteria than those established by internal agency guidelines.<sup>113</sup>

<sup>110</sup> This percentage is based on the entire sample ( $n = 353$ ).

<sup>111</sup> Results of chi-square test:  $\chi^2 = 27.9561$ ,  $df = 3$ ,  $p = 0.000$ .

<sup>112</sup> For additional analysis of the credible fear file sample, see Appendix L.

<sup>113</sup> See DRO Chart 7, Aliens Released Prior to Merits Hearing, Fleming and Scheuren *Statistical Report on Detention*.

Information related to parole criteria is elicited in the first instance by U.S. Citizenship and Immigration Services (USCIS) during the credible fear determination. The asylum officer records information about identity, community ties, and possible bars to asylum on the I-870 Credible Fear Determination Worksheet. The information as elicited may then be considered by Immigration and Customs Enforcement (ICE) at the local field office level when making the discretionary decision whether to release an asylum seeker from detention.

We attempted to assess how the Department of Homeland Security applies the parole criteria. We examined the files for information that would indicate whether the alien was released prior to the merits hearing and for documentation on the decision-making process.<sup>114</sup> Although Immigration and Customs Enforcement (ICE) officers make detention and release decisions, there is no uniformity to the ICE documents in the files relating to these decisions.<sup>115</sup>

*b. Variations in ICE documentation regarding detention and parole*

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<sup>114</sup>A comparison from our file review may illustrate the challenges in analyzing ICE's process. Two men from the same country were each found to have a credible fear based on a religious claim. Each had an affidavit of support from a relative sponsor in the community. Each had an attorney and applied for parole. One was released prior to his merits hearing; the other was not. Credible Fear Sample Random Nos. 0.816431166 and 0.048158208, on file with authors. File review revealed more information about ICE's application of the parole criteria for the one who was *not* released for the duration of his case than for the one who was released within a month of his arrival. With regard to the alien who remained detained until he was granted protection, nine days after his parole application, there was a "Deportation Office Parole Recommendation" for continued custody. The form listed the parole criteria: First, credible fear was established. Second, identity was addressed, "Identity docs presented: Copies of identification card" with a conflicting comment at the bottom of the form that "The subject has not presented any identity documents on his behalf." There was no reference to identity documents in his file from a Western European country where he had previously sought asylum, that had been confirmed by that country. Third, community ties were "not verified." Even though his sponsor's information was listed, a comment indicated "relationship between the subject and the sponsor is not established." Fourth, there was an indication there was no criminal history. In the comments section, a further reason for the denial was that smugglers had been apprehended in one of the countries he transited and the authorities in that country wanted the asylum seeker's cooperation with their prosecution. A final statement on the Parole Recommendation form was, "The subject is likely to abscond or fail to appear for future hearings if he is released." The next document in the file related to his detention was the "Order to Detain or Release Alien" authorizing his release upon being granted withholding of removal. For the alien who *was* released prior to his merits hearing, there was a similar parole application with only an affidavit of support. Confirmation that there was a positive credible fear determination and records of criminal data base checks precede the alien's parole release letter. The letter states, "We have concluded that your client meets the criteria for parole." There was no overall parole recommendation form that applied each of the criteria to the alien's circumstances. The file does not state how identity was established and if or how the relationship with the relative sponsor was verified. The next mention of identity documents in the file occurred six months later in the list of evidence submitted with his asylum application. This is not to suggest that ICE did not establish his identity before his release but that it could not be determined from the file what level of proof they required and how it was satisfied in the particular instance.

<sup>115</sup> The 1997 Guidance, however, may not have provided sufficient clarity as to the establishment and application of parole criteria for asylum seekers subject to Expedited Removal. In a memorandum provided to USCIRF by ICE-DRO, New York INS District Director Edward McElroy stated to INS Commissioner Doris Meissner, (dated Nov. 3, 1999), "I applaud the recommendation to issue written policy guidance from either the Executive Associate Commissioner for Field Operations or from you, Commissioner. I have frequently stated that I would comply with any written directives on the subject of parole...A written standardized review process will yield greater uniformity in the parole decisions made by all District Directors."

Documentation for releases granted prior to the merits hearing varies.<sup>116</sup>

### **1). Documentation of decisions granting parole**

Letters authorizing release might reference the parole criteria as in the following example, although they do not specify how the criteria apply to the individual asylum seeker:<sup>117</sup>

“The decision to release, or parole, an individual from detention is discretionary. Under INS policy, however, an individual found to have a credible fear of persecution should generally be paroled whenever the individual can establish that he or she is likely to appear for all hearings or other immigration matters and that he or she poses no danger to the community.

We have concluded that you meet the criteria for parole.”

Other letters granting release might reference different standards than the criteria of establishing identity, community ties, and no danger to the community. The following excerpt is from a memorandum that both requests and grants parole:

“It is requested that [name redacted] be granted parole into the United States for Significant Public Benefit Parole, Pending Immigration hearing.

I concur with your recommendation for Significant Public Benefit parole of this alien.”

This type of documentation above typically appears in the file of a Cuban arrival by land; sometimes the standard cited is “Humanitarian Parole” instead of “Significant Public Benefit Parole.” The request is made by the supervisory deportation officer, and the approval is by the director for detention and removals.

### **2.) Documentation of decisions denying parole**

Denials of parole requests also vary in their level of documentation.<sup>118</sup> Denials generally go further into detail about the application of the parole criteria to the case at hand than do grants

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<sup>116</sup> In our sample, about 80 percent of those released prior to the merits hearing had authorization for the release in the file. Authorization included letters from district directors, parole review worksheets, orders to release, and others. About 18 percent had something from DHS – post authorization – that documented they were being released. An example of post-authorization documentation of release is the form I-830 Notice to EOIR of New Address. About 2 percent did not have anything from DHS in the file about the release, but the file taken as a whole, e.g. documents from the alien or the alien’s attorney, revealed that the person had been released.

<sup>117</sup> Full redacted examples of parole documentation appear in Appendix M.

<sup>118</sup> It should be noted that about 2/3 of the credible fear files relating to aliens who were not released prior to the merits hearing (excluding dissolved cases) contained neither a parole request nor a parole denial (46/70). In these cases, the absence of documentation on review for parole eligibility allowed no insight into the decision to continue to detain. In 4/70 cases there was no response to a request for parole; in 4/70 cases there was documentation from an immigration judge (DOJ) either denying bond or describing a lack of jurisdiction for the release decision instead of a parole decision by ICE. Therefore, for over 75 percent (54/70) of the cases that remained in custody until the

of parole. Some denials of parole requests include a checklist of criteria as in the following example, although they do not specify how the criteria apply to the individual asylum seeker.

“The decision to release, or parole, an individual from detention is discretionary. Under INS policy, however, an individual found to have a credible fear of persecution should generally be paroled whenever the individual can establish that he or she is likely to appear for all hearings and other immigration matters and that he or she poses no danger to the community.

At the present time, the INS must deny your request for parole for the following reasons:

- You have not sufficiently established your identity and therefore INS cannot be assured that you will appear for immigration proceedings and other matters as required.
- You have not established sufficient ties to the community that assure INS either that you have a place to reside if you are released or that you will appear as required.
- Based on the particular facts of your case, including manner of entry, INS cannot be assured that you will appear for immigration hearings or other matters as required.
- Information in your file suggest that you may be engaged in or are likely to engage in criminal or other activities that may pose a danger to the community.”

Other letters provide even less insight into the application of parole criteria, as in the following example:

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merits hearing, the reason why ICE decided not to release these asylum seekers could not be ascertained. The remaining 16 cases contained clear negative parole determinations, but while some of the files contained supporting evidence either submitted by the alien or generated by ICE, in only 9 percent of files (6/70) did ICE articulate the link between individualized evidence and ICE’s justification for continued custody. It is important to note that procedures for applying for parole are also unclear, and that asylum seekers in Expedited Removal need not necessarily “apply” for parole to be considered. For example, in a memorandum from New York District Director Edward McElroy to INS Commissioner Doris Meissner, dated November 3, 1999, District Director McElroy notes, “As part of the routine review process, deportation officers at WCC (the INS Queens Detention Facility) review all cases granted credible fear for possible parole under emergent medical or humanitarian reasons. They review all evidence the alien and his/her representative presented to the APSO to prove identity and community ties...Further, when a written parole request is received the entire case is reviewed again, including any additional evidence provided in the request...” When ICE-DRO provided this memorandum to USCIRF, however, it advised “ICE is making this document available in order to provide a historical perspective of Expedited Removal releases from detention in the New York district. However, ICE has not at this time adopted the concepts contained in this memorandum as its policy.” Letter from Mr. Victor Cerda, Acting Director of ICE Detention and Removal Operations, to Mr. Mark Hetfield (USCIRF) June 22, 2004, on file with the authors. ICE-DRO has not, however, made it clear to the Expedited Removal Study what concepts it has adopted as its policy.

“After careful review and consideration of all factors pertinent in your case, it does not appear to be in the public interest to parole your client into the United States at this time. Therefore, your request for release from custody is denied.”

*c. Information relevant to parole eligibility elicited and recorded by USCIS*

As noted above, ICE’s documentation of decisions to approve or deny release is not uniform or detailed. In contrast, U.S. Citizenship and Immigration Services (USCIS) asylum officers consistently elicit and record information pertinent to the parole criteria on Form I-870, the Credible Fear Determination Worksheet,<sup>119</sup> making it a more useful form to compare across the sample. We therefore analyzed the files for the I-870 and what it showed about at least the initial USCIS recording of information concerning parole eligibility.

**1.) Identity**

For the purpose of analysis, we examined whether the identity of the asylum seeker was established to an Asylum Officer to a reasonable degree of certainty, and whether the asylum seeker indicated that he or she had a sponsor in the U.S.<sup>120</sup> Analysis shows that of the files containing the I-870, documentation indicated nearly all asylum seekers in the sample (303/305=99 percent)<sup>121</sup> were able to establish their identity to a reasonable degree of certainty. However, approximately 75 percent of asylum seekers in this sample (230/305) were placed in Expedited Removal because they had no documents or were suspected of presenting false documents.<sup>122</sup> Therefore, for many asylum seekers in this sample, identity appeared to be an issue.

ICE and USCIS may be applying different criteria in order to verify identity. USCIS criteria for establishing identity are found in the Asylum Officer Basic Training Course.<sup>123</sup>

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<sup>119</sup> The Asylum Officer Basic Training Course contains formal guidance about identity determination during the credible fear screening. The AOBTC credible fear lesson also cross-references another lesson, “Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; and Eligibility Based on Past Persecution.” E-mail from Ms. Georgia Papas (USCIS) to Mr. Mark Hetfield (USCIRF), Dec.17, 2004.

<sup>120</sup> The analysis of parole information relevant to eligibility is based on  $n=305$ . The 32 dissolved cases were excluded because the aliens dissolved their cases prior to the asylum officers’ recording of information related to the parole criteria, which happens during the credible fear determination. Sixteen other cases were excluded from this analysis because they had a missing ( $n=15$ ) or illegible ( $n=1$ ) record of the credible fear interview.

<sup>121</sup> This rate is in concordance with the rate for the past several years. From FY2000 through FY2004, 93 percent of the cases stored in the credible fear database (APSS) indicated “yes” in the identity established field. The percentage is higher if closed cases are not considered. E-mail from Ms. Georgia Papas (USCIS) to Mr. Mark Hetfield (USCIRF), December 17, 2004.

<sup>122</sup> Of 305 cases in the sample that did not dissolve, and who had legible I-870s in the file, 114 were referred to secondary for suspected false documents (although this number includes those with a false visa in a valid passport), 16 were referred to secondary because of an immediate request for asylum (but had no documents), 100 were referred to secondary inspection because of no documents.

<sup>123</sup> While asylum officers and immigration judges have the benefit of making a face-to-face credibility determination with respect to identity, field offices may require documentary evidence for the purpose of granting parole. Asylum Officer Basic Training Course, p. 10. USCIS criteria for establishing identity are found in the Asylum Officer Basic Training Course, p. 10. In addition, the asylum officer’s assessment of how he or she applied the criteria must be

Consistent with the definition of credible fear as a *significant possibility* that the asylum seeker could establish eligibility for asylum, USCIS criteria for establishing identity to a reasonable degree of certainty state that the officer must elicit information in order to establish that there is a *significant possibility* that the applicant is who he or she claims to be.

We did not have ICE's criteria for establishing identity, nor was it summarized on any of the documentation we reviewed. The criteria may vary as a result of the different institutional responsibilities borne by the two agencies. It is, of course, the responsibility of Immigration and Customs Enforcement to determine the identity of the alien and to assess whether the other parole criteria have been met.<sup>124</sup> This difference in criteria might help explain why one-in-five asylum seekers for whom USCIS elicited and recorded information on both identity and community ties were nevertheless detained by ICE up until the merits hearing.<sup>125</sup>

An interesting issue to note on the question of identity is the existence of asylum seekers who arrive bearing their own valid passports with valid entry visas and who identify themselves as asylum seekers. There were 18 such cases in our credible fear file sample.<sup>126</sup> Despite their candor and cooperation, these 18 asylum seekers, and presumably cases like them, were nevertheless placed into Expedited Removal, and were therefore detained.<sup>127</sup>

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recorded on Form I-870. Section IV of the I-870 reads in pertinent part: "Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies): [ ] Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty). [ ] Passport which appears to be authentic. [ ] Other evidence presented by applicant or in applicant's file (List)." OR "Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)" In our sample, the asylum officer established identity through a valid passport in 16 cases, and through other documentary evidence such as a national identity card or birth certificate in 6 cases.

<sup>124</sup> According to the USCIS Asylum Division Credible Fear Process Procedures Manual (pp. 33-34), "APSOs (Asylum Pre-Screening Officers) do not make parole determinations, nor do they make recommendations on parole. An APSO may, however, gather information during a credible fear determination that a District Director (now known as an ICE Field Office Director) may consider in making a parole determination... Pursuant to 8 CFR 212.5(a), a District Director may exercise discretion to parole an alien from detention for urgent humanitarian reasons or for significant public benefit, assuming that the alien presents neither a security risk nor a risk of absconding." The manual then lists factors which a district director may take into account when making a parole decision, including, "but not limited to," "identity... established with a reasonable degree of certainty;" community ties; likelihood of absconding; medical condition; and whether an APSO found that a mandatory bar to asylum may apply.

<sup>125</sup> 218/274=80 percent release rate for those for whom an asylum officer recorded identity and relative sponsor/community ties.

<sup>126</sup> Six requested asylum in primary inspection, and another twelve volunteered that they were asylum seekers in secondary inspection. Three of these eighteen were detained through their merits hearings. In addition, the number of Transit Without Visa (TWOV) and International-to-International Transit Program (ITI) cases in our sample was 28. Aliens in TWOV or ITI generally travel to a U.S. airport, with a valid passport but without a U.S. visa, for purposes of traveling from one country to another, stopping in the United States only to make a connecting flight. Rather than making the connecting flight, however, these 28 individuals presented themselves for asylum at the airport, resulting in Expedited Removal proceedings. While certain designated nationalities are excluded from these programs, on Aug. 2, 2003, TWOV and ITI was temporarily suspended in their entirety by the Secretaries of State and Homeland Security, citing a "credible security threat" that TWOV/ITI might be used by terrorists to "gain access to the United States or an aircraft en route to the United States...." Suspension of Immediate and Continuous Transit Programs 68 FR 46926-46929 (Aug. 7, 2003). The suspension of TWOV and ITI remains in effect as of Feb. 1, 2005.

<sup>127</sup> According to CBP's interpretation of the law, as articulated by INS, "Even in cases where a fraudulent document is not presented or a formal request for admission is not made, an alien who seeks asylum in the United States at a

## 2.) Community ties

Additionally, the files show that of those who have established their identity to a reasonable degree of certainty ( $n=303$ ), 90 percent provided information to the asylum officer regarding a relative sponsor or some kind of community tie (274/303). Analyzing the combination of identity and sponsorship showed that the observed differences in rates of release prior to the merits hearing were found to be statistically significant.<sup>128</sup> In other words, an asylum seeker with credible fear and identity established by the asylum officer to a reasonable degree of certainty is more likely to be released if he or she indicated to the asylum officer that he or she had a relative sponsor and/or community tie<sup>129</sup> than if the asylum officer did not record information on a relative sponsor/community tie.<sup>130</sup>

## 3.) USCIS information regarding parole eligibility by region and major countries of origin

Table 8 shows, for each region, release rate taken from Table 6 and rate of recorded relative sponsor/community ties for those with identity established to a reasonable degree of certainty by USCIS. Fewer than half of asylum seekers from South/Central Asia indicated having a sponsor or community ties in the U.S.: this was the only group that was below 50 percent. All other regions were above the 50 percent mark in terms of sponsorship information recorded: they varied between a low of 70 percent (Sub-Saharan Africa) to a high of 100 percent (Caribbean and Central America).

**Table 8: Release rate & rate of recorded relative sponsor/community ties among those with identity established by asylum officer (USCIS) by region of origin**

Region of Origin	Paroled	Sponsored
South America	81.0%	95.0%
Central America	80.0%	100.0%
Europe	71.4%	94.1%
Caribbean	81.4%	100.0%
East Asia	87.4%	85.7%
South/Central Asia	15.4%	45.5%
Middle East	84.6%	91.7%
Sub-Saharan Africa	36.4%	70.0%

Table 8 shows that release rates varied significantly from region to region. One possible explanation for these differences could be that regions with lower release rates also have a lower

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port of entry in most cases is inadmissible as an intending immigrant and therefore potentially subject to Expedited Removal.” Memorandum on “Aliens Seeking Asylum at Land Ports of Entry,” from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, to INS Regional Directors, (Feb. 6, 2002).

<sup>128</sup> Result of chi-square test:  $\chi^2 = 5.321$ ,  $df = 1$ ,  $p = 0.021$ .

<sup>129</sup> 218/274=80 percent release rate for those whom an asylum officer recorded information on identity and relative sponsor/community ties.

<sup>130</sup> 18/29=62 percent release rate for those whom an asylum officer recorded information only on identity (not relative sponsor/community ties).

rate of cases eligible for parole. Indeed, Table 8 shows that South/ Central Asia had the lowest rate of release prior to the merits hearing (15.4 percent). Table 8 above shows that they also had the lowest apparent rate of parole eligibility according to the information elicited and recorded by U.S. Citizenship and Immigration Services. However, we would expect their parole rate to be more congruent with the parole information elicited and recorded. In other words, we would expect that somewhere near 45 percent of them would be paroled because 45.5 percent of them had the relevant parole information elicited and recorded by the asylum officer. Instead, what we observe is a 30 point differential between the actual rate of release and the parole information elicited and recorded by USCIS.

Other similar, but less extreme, disparities exist in other regions. For instance, 95 percent of South Americans had information recorded by an asylum officer concerning the eligibility criteria but only 81 percent were released prior to the merits hearing; and 94 percent of Europeans had information recorded by an asylum officer concerning the parole criteria, but only 71 percent were released. Only East Asia has a release rate (87 percent) similar to the information recorded by an asylum officer (86 percent).

Table 9 presents the release rate taken from Table 7 and rate of recorded relative sponsor/community ties for those with identity established to a reasonable degree of certainty by USCIS, broken down by major country. Both Cuba and Haiti had the highest rate of sponsorship information recorded (100 percent), while China had the lowest (85 percent), but all four major countries had a high rate of parole eligibility information recorded.

Table 9 shows that Cuba had the highest rate of release prior to the merits hearing (100 percent), while Haiti had the lowest (65.9 percent). For Cuban asylum seekers, release rate and the parole eligibility information as recorded by U.S. Citizenship and Immigration Services are the same: if the Cuban asylum seeker indicated having a sponsor or community ties, he or she was released. In contrast, for Haitians, the chances of being released prior to the merits hearing (66 percent) were only partially determined by the sponsorship and community ties information recorded (100 percent).

**Table 9: Release Rate & rate of recorded relative sponsor/community ties among those with identity established by asylum officer (USCIS) by major country**

Major Country	Paroled	Sponsored
China	87.1%	85.4%
Colombia	75.0%	97.4%
Haiti	65.9%	100.0%
Cuba	100.0%	100.0%

Only China, along with Cuba, had a rate of release prior to the merits hearing that is compatible with its parole eligibility information recorded (87 percent vs. 85 percent, respectively).<sup>131</sup>

<sup>131</sup> Furthermore, parole eligibility information as recorded by USCIS is not enough, in some cases, to avoid a lengthy period of detention. The asylum seeker's place of origin has a substantial influence on the length of one's detention. While 50 percent of parole eligible Cubans remain in detention for less than 7 days, only 25 percent of parole eligible Haitians stay in detention for about a week. On the high end, 25 percent of parole eligible Cubans remain in detention more than 18 days (none longer than 196 days, the one extreme outlier in the distribution for

## 5. Conclusion

The law mandates the detention of asylum seekers subject to Expedited Removal until the credible fear determination has been made.<sup>132</sup> After that point, agency policy favors release of those who are eligible for parole under internal guidelines. Our file analysis revealed that parole criteria information as elicited and recorded by asylum officers appears to have had some correlation with whether an asylum seeker was released prior to the merits hearing. That is, those with identity and community ties information recorded by USCIS were more likely to be released than those with only identity but not community ties information recorded. Analysis further revealed that other factors such as place of origin and port of entry into the U.S. are associated with parole rates as well.

The files reviewed did not provide a clear and consistent way of comparing the decisions to detain or release made by Immigration and Customs Enforcement. USCIS recording of information pertinent to parole criteria is uniformly documented on one form, the I-870. In contrast, it was not clear upon review what criteria ICE employed and where and how they were applied and documented in the file.

### G. OVERALL DATA LIMITATIONS

There are a number of general limitations in analyzing files. The first is that written records prepared by a participant in a process, such as a Customs and Border Protection inspector, may not reflect what actually occurred in its entirety. A second limitation is that where required forms are missing or required information is not recorded in the file, neither the Department of Homeland Security nor any outside reviewer is able to defend or criticize the actions taken and the decisions made, beyond the failure to document. A third limitation is that the type of improper or incorrect behavior described in some Study questions is not likely to be recorded in official records by those engaged in it, leading to an underestimation of the problem or an inability to document it at all.

A limitation of this file review in particular was the difficulty we experienced in obtaining the files we requested. Because the process of obtaining the files was so lengthy and labor-intensive, we were still negotiating with the Department of Homeland Security over

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Cuba). This is in contrast to the high end of the Haitian distribution where 25 percent of parole eligible Haitians remain in detention longer than 211 days, a higher value than the one extreme outlier for Cuba.

<sup>132</sup> There are some countries which must be notified when an alien is being detained in the U.S. One of the procedures followed, therefore, is the submitting of a Form I-264 Notice to Consular Officer Concerning Detention which identifies the alien and details the present location as well as place of entry to the U.S. and nature of proceedings. (See examples in Appendix N). Because asylum seekers subject to Expedited Removal are mandatorily detained, it is likely that a consular notification of someone charged under the Expedited Removal provisions will in fact also notify the consulate that a national of their country is an asylum seeker. About 10 percent of the credible fear sample (n=37/353) included an I-264 in the file. Not all specified Expedited Removal charges or proceedings, but 27 did. Furthermore, 3 of the forms specified “credible fear” as the nature of proceeding. Beyond the official Form I-264, some ports also employed other means such as voicemail or non-uniform faxes to notify consulates. These similarly could reveal the fact that an alien is seeking asylum.

individual files well after our cut-off date for analyzing individual files had passed. Some of the files we requested are still unaccounted for. The high number of files we received that were incomplete increased our difficulties. All of these factors served to diminish our intended sample size.

With respect to particular file samples, the port of entry records we examined may not have provided an accurate rendering of the events in secondary inspection. An inspector may have filled out the forms as though procedures were followed correctly, when in fact they may not have been. Conversely, an inspector may have taken the correct action but failed to document it. In the latter case, any failures of documentation mean that supervisory and management personnel at Customs and Border Protection cannot be sure that the inspectors' actions and decisions were correct and legally justified.

The asylum seeker is supposed to read and initial the completed form in secondary inspection, with the help of an interpreter if necessary. These requirements, however, are also administered by the inspector. Another limitation is that a written record in question-and-answer form such as the I-867B gives the appearance that the inspector asked all of the questions, and then recorded all of the alien's answers verbatim. However, the forms often provide only a summary of what is said during the inspections process. The form's question-and-answer format resembles a transcript, but inspectors are not always able to write down a complete verbatim record of their verbal interaction with the alien.

With respect to the Board of Immigration Appeals sample, it is important to reiterate that it is representative only of post-credible fear asylum cases on appeal. As post-credible fear asylum seekers are denied relief by the immigration judge 75 percent of the time, but file more than 97 percent of all appeals, this sample is not representative of the post-credible fear caseload of immigration judges. Indeed, while 25 percent of post-credible fear asylum seekers are granted relief by the immigration judge, less than 6 percent of the aliens in this sample were granted relief at their merits hearing. The frequencies cited for this caseload should not therefore be depicted as representative of all post-credible fear asylum hearings before immigration judges. Nevertheless, these files are believed to be reliable indicators of whether prior statements taken by the Department of Homeland Security are used against asylum seekers in immigration court.<sup>133</sup>

A further limitation of the Board of Immigration Appeals sample is that it under-represents the number of detained asylum seekers. This is because detained asylum seekers receive expedited consideration by the BIA, and their files therefore remain at the BIA for a shorter period of time than non-detained asylum seekers. We assumed that this under-representation of detained asylum seekers would not interfere with the validity of the sample for the purpose intended, but it cannot be taken as representative of both detained and non-detained asylum seekers.

Because of the small number of asylum grants in the BIA sample ( $n = 7$ ), it was of limited value for comparing denials with grants. A further limitation is that we did not compare asylum merits hearings for cases that did not originate in Expedited Removal.

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<sup>133</sup> Source of statistics: Kyle, Fleming and Scheuren 2005.

With respect to the credible fear sample, the credible fear A-files are not necessarily well-documented with respect to actions taken on detention and release. Some files concerned asylum seekers who appeared to be eligible for release prior to their merits hearing, but were not released, without any indication of the reasoning. In the case of aliens who were released, it was often unclear what the reasoning had been because, for example, there was no parole determination worksheet included in the file, just a form letter authorizing release.

Similarly, the last documented date of detention in the file does not reflect any subsequent release, or continued detention, so our usage of these dates under-estimates the length of detention. However, all of the files were post-merits hearings, so we knew that the asylum seeker had not been released prior to the merits hearing. Finally, approximately 10 percent of the files requested for the credible fear sample were never provided to us.

## H. DISCUSSION OF FINDINGS

Significant positive findings emerged from our analysis of A-files and Records of Proceedings relating to Expedited Removal. Port of entry files that were fully documented showed the correct disposition of cases by Customs and Border Protection. Files that indicated a positive response to a fear question were referred for a credible fear determination or an asylum-only hearing, as appropriate. Files that indicated a negative response to the fear questions received an Expedited Removal order or an offer of withdrawal.

Records of Proceeding from the Executive Office for Immigration Review were easily obtained and well documented, which greatly facilitated the process of analyzing the transcripts of the hearings and the oral decisions of the immigration judges. The United States Citizenship and Immigration Services Asylum Office recognized that their Form I-870, the Credible Fear Determination Worksheet, is often used in hearings on the merits of an asylum claim, and revised the form in 2003 to advise that it is not intended to serve as a verbatim transcript nor to explore all aspects of the asylum seeker's claim. Page 3 of the form under the Credible Fear Interview section states in bold type: "The following notes are not a verbatim transcript of this interview. These notes are recorded to assist the individual officer in making a credible fear determination and the supervisory asylum officer in reviewing the determination. There may be areas of the individual's claim that were not explored or documented for purposes of this threshold screening."

Information relevant to the criteria for release from detention prior to the merits hearing as elicited and recorded by United States Citizenship and Immigration Services asylum officers was consistently and clearly documented on Form I-870, the Credible Fear Determination Worksheet. Form I-870 is well-designed to allow for documenting information pertinent not only to credible fear, but also to identity, community ties and any potential bars to asylum. Form I-870 also provides for documenting the basis for the information recorded, such as whether identity is established by the asylum seeker's credible testimony or by a seemingly authentic passport or by some other document. Asylum officers routinely complete Form I-870 fully. Such clarity and consistency provide a valuable basis for understanding each individual file and additionally allow for evaluation of the file sample as a whole.

Certain areas of concern also emerged from the file analysis. These include a 3 percent incidence of failure to document that aliens who received an order of Expedited Removal were asked the required fear questions at the port of entry; a 22 percent incidence of failure to document that aliens who were permitted to withdraw their applications for admission were asked the required fear questions at the port of entry<sup>134</sup>; a lack of capacity to produce port of entry A-files relating to Expedited Removal for review in a timely and cost-effective manner; reliance by immigration judges on cursory DHS Expedited Removal records in denying requests for asylum in 39 percent of cases; and a lack of consistency in documenting decisions on detention and release. These areas of concern are discussed more fully below.

Eleven percent of port of entry A-files, including 3 percent where the alien received an Expedited Removal order and 22 percent where the alien withdrew his or her application for admission, lacked any indication that the required questions relating to fear of return had been asked. While it is possible that the screening took place even though there is no documentation of it, the possibility that the screening did not take place cannot be ruled out. What is certain in such cases is that in the absence of critical documentation, CBP supervisors cannot verify the correctness and accuracy of the decisions being made by inspectors.

Insufficient quality control capability follows from the concern about missing documentation. Neither outside reviewers such as ourselves, nor an internal CBP quality assurance team, would be able to perform a prompt, cost-effective spot check of random port of entry files and find all the information needed. The practical difficulties of file review and the considerable institutional resources needed to locate files, and specific forms within files, presumably pose an obstacle to quality assurance efforts.

Forms filled out by CBP inspectors and USCIS asylum officers are cited by immigration judges in denying asylum claims in 39 percent of cases. In the files we analyzed, such records appear to be accepted by some immigration judges as the asylum seeker's definitive 'statement' when they are actually only a summary of some of what the alien said during the preliminary screenings. It is true that inconsistent statements made by an asylum seeker can indicate fraud, that other DHS records are used in regular removal proceedings, and that assessing credibility is a necessary part of the immigration judges' role. However, the Expedited Removal records created by DHS may not serve well the purposes of detecting fraud and determining credibility. Because of the nature of the forms themselves, the documents do not capture all the details of the asylum seeker's story. Yet due to the presence of the fear questions, the records can appear to provide an authoritative rendering of the heart of the claim. These records stand in contrast to other DHS records that are generally introduced in regular removal proceedings to meet the government's burden in establishing alienage. In asylum claims that originate in Expedited

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<sup>134</sup> As discussed above, CBP interprets the Inspectors Field Manual to mean that a sworn statement "should" be taken but that it does not have to document withdrawals to the same extent. The advantage of taking a sworn statement for withdrawal cases is that it "ensures that all the facts of the case are recorded, especially in potentially controversial cases, and protects against accusations of coercing the alien into withdrawing, especially when there may have been an issue of fear of persecution" Section II(E)(4)(i) of the CBP Expedited Removal Training Outline (September 2003) (emphasis added). A disadvantage to requiring sworn statements in all withdrawal cases, however, is that an insistence on full sworn statements may make inspectors less inclined to offer a discretionary withdrawal, which alleviates the five-year bar of an Expedited Removal order.

Removal, it is the asylum seeker's burden to prove his or her story, and reliance on the prior records risks hurting the bona fide applicant more than it helps the judge.

Finally, the decision-making process surrounding detention and release of asylum seekers prior to the hearing on the merits of their asylum claim is difficult to discern from the files. It is not always obvious which parole criteria are used by which field office. Nor is there consistent documentation by Immigration and Customs Enforcement of an individualized detention determination for each asylum seeker. It was interesting to note that although USCIS does not make detention and release determinations, information pertinent to parole criteria is uniformly recorded by asylum officers on Form I-870. Perhaps because of the lack of transparency in ICE detention decisions, such decisions can appear to be highly arbitrary. Detention and release rates vary widely, most notably by the alien's region of origin and the port of entry, and often do not appear to correspond to parole criteria.

## **Summary**

The introduction of Expedited Removal in 1997 and its subsequent administrative expansions has placed new powers and responsibilities on CBP inspectors and Border Patrol agents. While working with limited resources, and under pressures that have only intensified since the terrorist attacks of 2001, inspectors and Border Patrol agents must make quick judgments that will have consequences for national security, immigration enforcement, and refugee protection. Given the stakes of Expedited Removal for both the government and the alien, CBP inspectors and Border Patrol agents should be expected to follow scrupulously the minimal set of required procedures. CBP supervisors should support their efforts with effective quality assurance measures.

Immigration judges responsible for assessing credibility and ruling on the merits of the case must contend with an administrative record that is deeply flawed when purporting to convey the alien's prior 'statements.' The forms filled out by inspectors and asylum officers for screening purposes are often regarded as though they contain comprehensive if not verbatim transcripts of the alien's asylum claim. The alien's own complete and considered testimony is then all too often seen as self-serving embellishment, lacking in credibility. The result is that aliens seeking asylum in Expedited Removal face serious obstacles to establishing their credibility that other asylum seekers do not, obstacles put in their path by the Expedited Removal process itself.

Given the current limitations of the administrative records created in Expedited Removal, immigration judges should limit their use as evidence and assign little, if any, weight to their probative value. To assist immigration judges in this regard, EOIR should include this information in their trainings and in peer review exercises. As noted above, USCIS accepted the suggestion made by UNHCR that an advisory be placed on the Form I-870 to aid in its accurate use. The same suggestion was declined by CBP. CBP should revise Form I-867B to include a prominently placed advisory similar to the one that USCIS has included in Form I-870. This could lead to the more appropriate use of these statements in immigration court.

Finally, ICE officers charged with making detention and release decisions have operated under very difficult circumstances since 2001. With the media criticism and Congressional scrutiny that led to the dismantling of INS itself in the aftermath of the terrorist attacks, the trend of decreasing ICE decisions granting parole to asylum seekers<sup>135</sup> is understandable, yet is still inimical to the proper exercise of the agency's discretion. There are compelling reasons for the detention of some asylum seekers and compelling reasons for the release of others. On the one hand, the government is obliged to protect national security and enforce immigration laws, not least through ensuring that asylum seekers appear for their hearings. On the other hand, there is a humanitarian imperative to release vulnerable asylum seekers who merit release, coupled with a substantial cost savings to the government when unnecessary detention is avoided.

Given these conflicting interests, ICE could serve both of these interests by providing the greatest possible transparency and consistency in detention and release decisions. This can be done by codifying the parole criteria into regulations, creating or modifying standard forms to be used for making detention and release decisions, and documenting the individualized determination in each case. Uniform documentation requirements would assist ICE officers in handling more efficiently the high number of files they are responsible for, and would also provide a basis for quality assurance efforts.

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<sup>135</sup> See DRO Table 7 (showing that in FY2001, 86.1 percent of asylum seekers were released prior to a final determination, but in FY2003 only 62.5 percent were so released) Fleming and Scheuren, *Statistical Report on Detention, FY 2000-2003*.

## APPENDICES

### Appendix A

#### **SUMMARY of APSO (Credible Fear) Supervisor/Asylum Office Director Questionnaire** Monday, September 27, 2004

Participating Asylum Officers: Arlington (VA), Chicago, Houston, Los Angeles, Miami, New York, Newark, San Francisco

Non-Participating Asylum Officers: None

#### **I. Credible Fear Interview Process**

##### A. How long does it take to conduct a Credible Fear Interview:

Longest CFD interviews last:

w/out interpreter:

Range: 50-100 minutes

Average: 68 minutes

w/interpreter:

Range: 45-150 minutes

Average: 92 minutes

Shortest CFD interviews last:

w/out interpreter:

Range: 20-30 minutes

Average: 25 minutes

w/interpreter:

Range: 10-60 minutes

Average: 28 minutes

Typical CFD interview last:

w/out interpreter:

Range: 30-60 minutes

Average: 36 minutes

w/interpreter:

Range: 15-90 minutes

Average: 46 minutes

##### B. How long does it take to conduct an Affirmative Asylum Interview:

Longest Affirmative interviews last:

w/out interpreter:

Range: 105-180 minutes

Average: 140 minutes

w/interpreter:

Range: 120-240 minutes

Average: 161 minutes

Shortest Affirmative interviews last:

w/out interpreter:

Range: 30-45 minutes

Average: 35 minutes

w/interpreter:

Range: 40-60 minutes

Average: 49 minutes

Typical Affirmative interview last:

w/out interpreter:

Range: 45-60 minutes

Average: 53 minutes

w/interpreter:

Range: 60-105 minutes

Average: 83 minutes

- C. How many CFD interviews is an asylum officer expected to do in a day?  
RANGE: The number of CFDs being done varied as much as only 3/wk to 15-20/day.

AVERAGE: On average, most officers do about 3-4 such interviews per day. But, almost all the offices noted that they have seen a significant decrease in the number of CFDs and Affirmative Interviews they have done over the years.

- D. How many affirmative asylum interviews is an asylum officer expected to do in a day?

The typical requirement is 18/ two-week period. This is the MAXIMUM number that can be done in a two week period, and many offices reported that they were seeing less than 9/week.

- E. Are CFD interviews recorded (audio or video?) If sometimes, explain....  
No offices recorded CFD interviews.

- F. What kind of a record is made of the CFD interview (verbatim transcript, summary Q&A, summary notes.....)

All the offices indicated that the main write-up was a summary. Often, this is done solely on the I-870 form. Some offices indicate that the officers will take additional notes as well. These additional notes may be a summary as well or mostly verbatim.

- G. Is there any notation or indication in the record as to whether or not the interview is a verbatim transcript of the interview? Explain.

The I-870 form clearly indicates that it is a SUMMARY. Separate notes taken by the officers are usually not marked whether they are verbatim or a summary. Negative CFDs often have more detailed notes than positive ones.

- H. How do you decide if an interpreter is needed for an interview, and what languages he or she needs to be able to interpret? How are interpreters retained (i.e. AT&T Phone Line, Berlitz or other interpretation agencies, friends/relatives of the interviewee, detention center employees, DHS employees, etc.):

All of the asylum offices use LSA (Language Service Associates) as their main translation service. The translation is done telephonically. The general consensus was that LSA was able to provide adequate service almost all of the time. In instances of rare dialects, the offices will try to work something out with LSA ahead of time or will use another service (AT&T, LLE Links, or Berlitz). In one case, an alien spoke a rare Burmese dialect. It took them a week and a half to find someone who could speak the language—an academic. In another instances, an alien who spoke a rare Mongolian dialect was simply detained until they could accommodate him in the CFD interview.

As for determining whether an interpreter is needed, a variety of ways are used. Officers will ask the alien what language he speaks, refer to the interview done at secondary to see what language was used there, and simply deduce from early conversations with the alien (e.g., orientation meeting) whether the alien needs translation help. In one office, an interpreter is ALWAYS used, even if the applicant says that he speaks English.

- I. What role, if any, do consultants, attorneys or representatives play in the credible fear interview? (are they merely observers, do they advise the applicant, do they make a statement to the asylum officer?)

The percentage of aliens that have representation at the CF stage ranged from less than 5% to about 50%. In many cases, their “attendance” is telephonic.

All offices allowed the representatives to:

- 1) Consult with the alien ahead of time
- 2) Ask questions or make a statement AFTER the main part of the interview was completed.

A few offices allowed the representative to ask questions during the interview.

- J. Does the asylum office play any role in identifying attorneys or representatives for the credible fear process? If so, please describe that role.

Most offices simply provide the alien with a pro-bono list of attorneys at the airport, orientation or both. Only one office, actually works with NGOs to make sure that each alien has representation.

II. **Impact of Detention on Credible Fear Process**

In your opinion, what role does detention play in the alien's ability to:

- i. Obtain representation  
Responses to this question ranged from "no effect" to "some effect." One office responded that it "certainly has an effect" and that aliens might have a hard time calling out to get representation, etc.
- ii. Gather documentation in support of claim  
Most offices indicated that b/c the CFD standard is so low, aliens aren't required or even expected to have documents at this stage, so ultimately, this was not a major concern.
- iii. Articulate claim effectively  
Most offices believed detention had "no effect" on this. One office stated that there was "some effect" due to the stress and anxiety the detainee is under in detention. However, they believed that the effect is minimized by giving the alien time to "gather their thoughts."
- iv. Anything else that matters to the CFD process (specify)  
Other issues mentioned:
  - 1) Detention might make a person more likely to dissolve their claim.
  - 2) Making phone calls and getting representation may be more difficult.
  - 3) Detention may "be traumatizing" and "affect bonafide asylees who may have been traumatized."

III. **Impact of Prior Statements and Actions**

- A. What role does the Alien's Sworn Statement taken by the POE Inspector (Form I-867) play in the CFD?

The offices agreed that the Sworn Statement given in Secondary did not have a strong effect on the CFD. Most used it only as background to get acquainted with the case. Several offices stated that they would ask for clarification if a discrepancy was noted. It was generally agreed that the Port of Entry statements are brief and do not contain the alien's full story. One office did note that the alien might have to account for discrepancies when they go before the IJ.

- B. How does the Alien's presentation of false documents at the POE affect the credibility assessment for purposes of the CFD?

All offices stated that presentation of false documents would have ZERO effect on a CFD.

IV. **Dissolves (Dissolution of Claims to Credible Fear)**

- A. What are the procedures you must follow to process and accept a dissolve (what information must you tell the applicant, how do you convey that information, and what information must the applicant tell you before he can dissolve a claim to credible fear)?

Most offices really stressed making sure that the alien no longer had a fear. Several offices indicated that they would NOT let an alien dissolve if he indicated that he still had a fear but didn't want to be in detention any longer or missed his family. At least one office indicated that if an alien insisted that he be able to dissolve, they would allow him to do so even if he indicated he still had a fear.

The entire step-by-step process (according to one office) is listed below:

- 1) We make sure they have been given information on the credible fear process (M-44 Form)
- 2) We explain the penalty (5-year ban on returning to the country)
- 3) We type a memo to the file describing why they say they are withdrawing. At this point, we discuss their reasons for returning with them and try to make sure they're not afraid to return home.
- 4) We assure them of the right to change their mind and any time and to return to the CFD process.
- 5) We get supervisor approval
- 6) We read the completed forms to the, ask them if they have any questions, and have them sign the form
- 7) We do an I-60 and I-75
- 8) We give them a copy of all the documents
- 9) We close the file

- B. What are the most common reasons aliens give for dissolving their claim to credible fear?

- 1) They don't want to be detained
- 2) Conditions have changed in their country
- 3) Misunderstanding at the POE and they never had a fear.
- 4) Want to go home, miss family.

V.

### **Role of the CFD in the Larger Expedited Removal Process**

A. What is the purpose of the Credible Fear Write-Up (form I-870) (Circle all that apply): All offices answered #1 and #2 and NOT #3.

i. To justify the decision of a positive or negative CFD;

ii. To record just the basics of a positive determination, to show whether the alien has met the threshold for credible fear. The credible fear statement does not generally represent a complete description of the alien's asylum claim;

iii. To pursue and record every material detail of the alien's asylum claim.

B. What would be the benefits, obstacles and drawbacks to replacing the credible fear interview with an expedited asylum interview. Instead of approving or denying Credible Fear, an asylum officer could approve an asylum claim, refer the claim to an immigration judge, or allow the alien to withdraw the claim at the POE.....

One office refused to answer and asked that HQ be contact for this question. Everyone else answered this questions, some with prompting because they felt uncomfortable discussing something hypothetical that would require policy change. Another office mentioned this was suggested by HQ 6-7 yrs ago but never came to fruition. They suggested a middle ground: Have asylum officers refer strong cases on to the affirmative asylum process, and cases with questions continue to refer on to IJs. Another office suggested that aliens should be detained in something resembling a half-way-house if they were to be given the access they needed to document such a claim, and that advocates must be involved.

#### Benefits:

- Asylum Office could grant the best cases asylum, and some aliens would be out of detention faster. (One office notes that only very famous people with very strong cases would be eligible.)
- Save time and manpower
- Decrease burden on court, and provide a more detailed account of alien's case for those referred onto IJ.

#### Drawbacks:

- Require regulatory change
- Detention – limited access to network necessary to prepare claim
  - Limits access to information, documentation, and forms
  - Hinders ability to gain representation, *necessary* for this process
  - Access to translators to assist with completing forms
  - Would need greater detention space
  - Could hinder alien's ability to express full claim
- Time – Affirmative claims take much longer to prepare and do for all parties involved
  - Aliens would be detained longer
  - Aliens needs more time to prepare an affirmative claim

- Asylum officers need more time to conduct in-depth face to face interviews (not all CFD are face to face) and create write-up
- Does not allow for proper work space for asylum officers (open, non-confrontational, creates trust) and asylum database and security system are not available in detention centers, only their office
- Logistically challenging on multiple levels
- Affirmative interview has higher standard than CFD. Also cases referred onto the IJ, the IJ would have a higher threshold to determine such cases compared to CFD referrals.

C. What value does the CFD add to the overall Expedited Removal process?

It allows Expedited Removal to exist, makes it more credible and honest; it provides protection and creates the safety net for refugees or asylum seekers who have a claim. It allows aliens the opportunity to be pulled off the ER track. It allows the attorneys and IJs information about the alien before the trial and allows an alien with fear time in front of a judge; and it collects information on people entering the country (fingerprints, pictures, info.)

Suggestion: CFD could be more tailored for the parole process; it can not be used now for this purpose because it is too indiscriminate.

Appendix B: Parole Guideline Memo

Memorandum

<b>Subject:</b>  Expedited Removal: Additional Policy Guidance	<b>Date:</b>  December 30, 1997
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**To:** Regional Directors  
District Directors  
Asylum Office Directors

**From:** Office of Field Operations

The Expedited Removal Working Group,\* which has been meeting regularly since April 1, 1997, was organized to identify and address policy questions, procedural and logistical problems and quality assurance concerns related to the expedited removal process. Based on recommendations made by the Working Group following a series of site visits, the following guidance and instructions have been approved by the INS Policy Council and endorsed by Field Operations. Please review and take the necessary steps for implementation. Thank you for the tremendous effort you have devoted to ensuring the success of the expedited removal process.

**Expedited Removal Experts:** Each region and each district will appoint an expedited removal "expert." The expedited removal expert should be carefully selected for his or her ability to work effectively with headquarters and within the region or district to ensure close coordination and exchange of information, and to ensure that policy guidance is distributed, fully understood, and implemented. The expert must be available to attend a regional seminar during the second quarter of Fiscal Year 1998, and conduct or facilitate training of all officers involved in the expedited removal process. Experts will be required to remain in close contact with the Expedited Removal Working Group to communicate feedback and ensure distribution and implementation of future policy guidance and memoranda, and to work with each district to ensure that monthly statistics and DACS data entry are completed quickly and accurately. Districts should submit their lists of nominees to the regional director no later than January 16, 1998. The regional director

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\*The Expedited Removal Working Group is chaired by the Director of International Affairs, and is made up of representatives from the Offices of Inspections, Detention and Deportation, Asylum, Field Operations, and General Counsel, as well as specialists on the Deportable Alien Control System (DACs), Freedom of Information Act (FOIA), juveniles, records, and the Office of Policy and Planning.

will then inform Karlee Arey, Office of Field Operations, of the designated experts for each region and district. Karlee Arey can be reached through cc: Mail, or by calling 202-307-2180.

**Withdrawal Guidance:** The decision to issue an expedited removal order or to permit withdrawal of application for admission in lieu of a formal removal must be carefully considered and reviewed by every officer and supervisor handling expedited removal cases. Additional guidance on withdrawals is attached. Districts and asylum offices will ensure that all inspectors and asylum officers receive the memorandum and are properly trained in exercising this important discretionary authority. Training should be completed no later than the end of the second quarter of Fiscal Year 1998.

**Re-Interview of Individuals Prior to Departure:** The Office of International Affairs may, at its discretion, offer a second credible fear interview to any alien even if the alien has not established a credible fear before an asylum officer or after immigration judge review. Deportation officers will be informed of the second interview. Re-interviews will occur when the Office of International Affairs determines that the alien has made a reasonable claim that compelling new information concerning the case exists and should be considered. Districts should cooperate by continuing to detain the alien until the second adjudication, and potentially also a second review by the immigration judge, is completed. Please note that any alien who did not express fear of return at secondary inspection, but expresses a fear or requests asylum at any point before removal, should be referred for a credible fear interview.

**Monthly Reports and Database Entries:** It is critically important that every district and region ensure that monthly statistical reports are submitted in accordance with policy memoranda which have been distributed on this subject. See, Memorandum, "Distribution of guidance on changes to the Deportable Alien Control System (DACS) that are effective April 1, 1997" (March 20, 1997); Memorandum, "Responsibilities and procedures for data entry of expedited removal cases into the Deportable Alien Control System" (March 18, 1997); Memorandum "Inspections' Responsibilities for Tracking of Expedited Removal Cases at Ports-of-Entry" (March 31, 1997); Memorandum "Monitoring Expedited Removal Reports and Quality Control" (July 18, 1997). Adequate statistics are required to document the implementation of the expedited removal program and analyze trends; without such statistics, continuing authority to implement expedited removal could be in jeopardy. Each district should ensure that every port-of-entry in the region is providing the required monthly reports to headquarters not later than the 10<sup>th</sup> of the month for the preceding month's statistics. Each district should also ensure that DACS entries are completed quickly and accurately. Questions concerning the monthly reports should be referred to Linda Loveless (202)616-7489, and questions concerning DACS should be referred to Karen Svegel-Maravich (202)514-3780.

**Parole Consideration for Detainees Who Meet the Credible Fear Standard:** Parole consideration for detainees who meet the credible fear standard, and accurate statistics on parole, are critical to the success of the expedited removal program. Below are basic guidelines on parole which should be implemented immediately:

**The supervisory asylum officer must inform the district director (or the person designated by the district director to make parole decisions) of the outcome of all credible fear cases by faxing the completed I-870 (Record of Determination/ Credible Fear Worksheet) and interview notes as soon as the decision has been served on the applicant.**

The district director (or the person designated by the district director to make parole decisions) should review the I-870 Record of Determination (which includes information on the detainee's identity and community ties), and any accompanying documentation, to make a parole determination. As soon as the parole determination has been made, the "District Director Decision" page of the I-870 should be faxed back to the supervisory asylum officer.

The following factors should be considered in making the parole determination:

Parole is a viable option and should be considered for aliens who meet the credible fear standard, can establish identity and community ties, and are not subject to any possible bars to asylum involving violence or misconduct; for example, the applicant is an aggravated felon or a persecutor. For the purpose of parole determinations, cases involving the firm resettlement bar should receive the same treatment as cases where no bar exists. It should be noted that asylum officers are not making a parole recommendation when they determine that an alien meets the credible fear standard: the parole decision is the sole authority of the district director

If there is some evidence or concern that an alien who meets the credible fear standard may be a security risk or subject to a terrorist bar, or may in some other way be a danger to the community if released, the supervisory asylum officer will inform the district director and district counsel by including a short memorandum with the I-870 Record of Determination, by sending a cc: mail, and by confirming receipt of the information with a telephone call. The supervisory asylum officer will also inform the Office of International Affairs, Asylum Division which will in turn inform Headquarters Field Operations of any evidence of a security risk or terrorist bar. Field Operations will check with Headquarters Intelligence, the FBI, and other appropriate agencies for law enforcement purposes, security measures, and appropriate detention. District directors should exercise extreme caution in considering parole for such cases until they receive information from Field Operations on the outcome of their investigation. The case should be referred for a regular 240 removal hearing and not delayed for the Field Operations investigation. Other bar cases will be flagged on the I-870 and with an accompanying memorandum: if an alien subject to a possible bar (other than firm resettlement) is paroled, the I-870 should be marked to indicate that the parole was for reasons unrelated to the asylum claim, such as a medical emergency.

**Guidance on Access to Interpretation, and Written, Videotaped, and Audiotaped Translations:**

Attached is guidance on access to telephonic interpreters which should be distributed to every port-of-entry and detention facility, with follow-up to confirm that adequate access to interpretation has been secured. Districts should also ensure that every port-of-entry and detention facility has clear copies of the twelve translations of the I-867A&B and M-444, or that the translations have been ordered from the forms centers as outlined in the attached guidance. In addition, the Expedited Removal Working Group will soon complete video and audio tapes of each of the translations of the I-867A&B and M-444. Each port-of-entry and detention facility should have the capacity to play these tapes to aliens in secondary inspection and when they arrive at the detention facility. Each port-of-entry and detention facility which does not already have the necessary equipment should purchase a television/ VCR unit, or an audio-tape player for standard cassette-sized tapes.

**Contingency Planning for Space Needs:** Service Processing Centers and contract facilities should review existing space and install additional telephone lines and jacks to prepare sufficient interview space for an emergency situation (such as boat interdictions) in which a large number of expedited removal cases need to be processed simultaneously. Provisional space should be roughly double the space used currently, on average, to conduct credible fear interviews, orientations, and consultations.

**Michael A. Pearson**  
**Executive Associate Commissioner**  
**for Field Operations**

**Appendix C**  
**Port of Entry Data Collection Instrument**

		<b>Comments on A-No.:</b> _____ (please note row number below)
<b>Date File Coded</b>		
<b>Coder ID</b>		
<b>Start Time</b>		
<b>Random Number</b>		
<b>Part of Subsample? 1=yes; 2=no</b>		
<b>If yes, rate of subsample:</b>		
<b>A-Number (8 digit number)</b>		
<b>Name: Last, First</b>		
<b>Gender 1=male/2=female</b>		
<b>Date of BIRTH MM/DD/YY</b>		
<b>Is the alien an unaccompanied minor? 1=yes/2=no</b>		
<b>Ethnicity</b>		
<b>Religion</b>		
<b>Marital status 1=single; 2=married; 3=legally separated; 4=divorced; 5=widowed</b>		
<b>How many children does alien have?</b>		
<b>Country of Citizenship</b>		
<b>Date of ARRIVAL MM/DD/YY</b>		
<b>Port of Entry</b>		
Entry by 1=air; 2=land; 3=sea		
Country of departure		
Accompanied by:		
Did alien have 'In Transit Without Visa' status? 1=yes; 2=no		
If yes, from where to where?		
Destination country		
<b>FILE INCLUDES I-860 Notice and Order of Expedited Removal (1=yes/2=no)</b>		
A No. (File No.):		
Date		
Inadmissible under section 212(a)(6)(C)(i): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(6)(C)(ii): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(7)(A)(i)(I): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(7)(A)(i)(II): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(7)(B)(i)(I): (1=box checked; 2=box not checked)		

Inadmissible under section 212(a)(7)(B)(i)(II): (1=box checked; 2=box not checked)		
Was Order of Removal activated by supervisory signature? 1=yes; 2=no		
Title of officer		
Was supervisory concurrence telephonic? 1=yes; 2=no; 3=n/a		
<b>FILE INCLUDES I-863 Notice of Referral to IJ 1=yes; 2=no</b>		
Date		
A-No. (A File):		
To immigration judge: (number of box checked 1-7)		
If box 3, which description is marked? (key in)		
Date of Action		
I-863 Comments		
<b>FILE INCLUDES I-867A Record of Sworn Statement (1=yes; 2=no)</b>		
A No. (File No.):		
Place of Interview (At:)		
Date of Sworn Statement MM/DD/YY		
Language		
Interpreter employed by (key in verbatim; UNK = left blank)		
<b>FILE INCLUDES I-867B Jurat for Record of Sworn Statement (1=yes; 2=no)</b>		
Fear 1: Why did you leave...? (key in verbatim)		
Fear 2: Do you have any fear or concern...? (key in verbatim)		
Fear 3: Would you be harmed...? (key in verbatim)		
Fear 4: ...anything else...to add? (key in verbatim)		
From your reading of the 4 Fear questions, did the alien express fear? (1=yes; 2=no)		
If yes, fear of what?		
Comment on and note any other part of the I-867A and B in which the alien expressed a basis for asylum.		
<b>FILE INCLUDES I-877 Record of Sworn Statement (1=yes; 2=no)</b>		
A No. (File No.):		
Place of Interview (At:)		
Date of Sworn Statement MM/DD/YY		
Language		

Interpreter employed by (key in verbatim; UNK = left blank)		
<b>Are Four Fear Questions in narrative of I-877? (1=yes/2=no)</b>		
Fear 1: Why did you leave...? (key in verbatim)		
Fear 2: Do you have any fear or concern...? (key in verbatim)		
Fear 3: Would you be harmed...? (key in verbatim)		
Fear 4: ...anything else...to add? (key in verbatim)		
From your reading of the 4 Fear questions, did the alien express fear? (1=yes; 2=no; 3=n/a)		
If yes, fear of what?		
Comment on and note any other part of the I-877 in which the alien expressed a basis for asylum.		
<b>FILE INCLUDES I-213 Record of Deportable/Inadmissible Alien (1=yes; 2=no)</b>		
A No. (File No.):		
Date of Action		
charges: (key in statutory sections)		
Comments from I-213 Narrative, incl/ why referred to secondary insp.		
<b>FILE INCLUDES I-275 Withdrawal of Application for Admission/Consular Notification (1=yes; 2=no)</b>		
A No. (File No.):		
Date of I-275 (MM/DD/YY)		
Basis for Action: Application for Admission W/drawn 1=box checked; 2=box NOT checked		
Basis for Action: Visa/BCC Canceled 1=box checked; 2=box not checked		
Basis for Action: VWPP Refusal 1=box checked; 2=box NOT checked		
Basis for Action: Ordered removed (inadmissible) by IJ 1=box checked; 2=box NOT checked		
Basis for Action: Ordered removed (inadmissible) by INS 1=box checked; 2=box NOT checked		
Basis for Action: Waiver revoked 1=box checked; 2=box NOT checked		

Basis for Action: Departure required 1=box checked; 2=box NOT checked		
If Basis for Action "Application for Admission Withdrawn," why did CBP exercise discretion to allow?		
EXPIRED VISA - reason placed in proceedings: 1=yes; 2=no		
FORMER OVERSTAY - reason placed in proceedings: 1=yes; 2=no		
IMMIGRANT INTENT - reason placed in proceedings: 1=yes; 2=no		
INADMISSIBLE BASED ON CRIME - reason placed in proceedings: 1=yes; 2=no		
PASSPORT EXPIRING W/IN 6 MONTHS - reason placed in proceedings: 1=yes; 2=no		
IMPROPER NONIMMIGRANT VISA FOR PURPOSE OF VISIT - reason placed in proceedings: 1=yes; 2=no		
FALSE DOCS - reason placed in proceedings: 1=yes; 2=no		
NO DOCS - reason placed in proceedings: 1=yes; 2=no		
FACIALLY VALID DOCS BUT INTENDING TO APPLY FOR ASYLUM - reason placed in proceedings: 1=yes; 2=no		
OTHER GROUND of INADMISSIBILITY:		
Comments from I-275 Narrative, incl/ why referred to secondary insp.		
<b>FILE INCLUDES I-264 Notice to Foreign Consulate (that detaining alien) 1=yes; 2=no</b>		
Is the alien named on the I-264? 1=yes; 2=no; 3=n/a		
Does the I-264 contain charges against the alien or any indication the alien is applying for asylum? 1=yes; 2=no; 3=n/a		
<b>FILE INCLUDES I-862 Notice to Appear 1=yes; 2=no</b>		
A No. (File No.):		
Charges: (key in statutory sections)		
<b>Was alien detained? 1=yes/2=no</b>		
Place of detention		
<b>Summarize Facts of case</b>		

<b>Port Disposition: was the Alien</b> 1=allowed to withdraw application for admission; 2=ordered expeditiously removed; 3=allowed to dissolve claim; 4=referred to credible fear interview; 5=referred to asylum only hearing; 6=other (comment)		
<b>If alien was ordered removed, what form documents the ORDER?</b>		
Officer's bureau/title		
Date of REMOVAL ORDER		
<b>If alien was ordered removed, what form documents the DEPARTURE?</b>		
Officer's bureau/title		
Date of DEPARTURE		
Port of departure		
Country removed to		
Alien barred from entering U.S. for 0=no bar; 1=five years; 2=ten years; 3=twenty years; 4=any time		
<b>Was alien represented</b> at any stage? 1=yes/2=no		
Enter any comments on <b>representation</b>		
Enter any comments on <b>change of claim</b>		
<b>Any additional comments by coder</b> including overall impressions of case; points of interest (Reminder: Note interesting religious claims)		
<b>Finish Time</b>		

## Appendix D Additional Analysis of Port of Entry Files National Sample

The national sample was drawn with the intention of analyzing files of aliens subject to expedited removal who were not referred into the asylum process. In other words, they were expeditiously removed or allowed to withdraw their applications for admission. The national sample's outcome<sup>1</sup> and other demographic information are described below.

Table A below presents the outcome by gender for the port of entry national sample.

**Table A: Outcome (%) by Gender for National Sample**

Gender	Ordered Removed	Withdrawal Permitted	Total
Male	67 (63.2)	45 (57.7)	112 (60.9)
Female	39 (36.8)	33 (42.3)	72 (39.1)
<b>Total (100%)</b>	<b>105</b>	<b>78</b>	<b>184</b>

The sample included 61 percent men and 39 percent women. Men constituted 63 percent of the random sample of aliens who were expeditiously removed, and 58 percent of the random sample of aliens who were permitted to withdraw their applications for admission. Women constituted 37 percent of the removals and 42 percent of the withdrawals.

Table B shows outcomes by major country for the national sample. To protect the anonymity of the results only percentages are provided in this table. Jamaica stands out with a rate of 11.4 percent of removals contrasted with only 1.3 percent of withdrawals.

**Table B: Outcome by Major Country for National Sample**

Major Country	Ordered Removed	Withdrawal Permitted
Mexico‡	14.3%	20.5%
Brazil†	10.5%	10.3%
Jamaica†	11.4%	1.3%
Costa Rica†	4.8%	5.1%
Guatemala†	2.9%	6.4%
El Salvador†	3.8%	2.6%
Balance‡	52.3%	53.8%

‡ Indicates that the sample size for this country is  $n > 20$ .

† Indicates that the sample size for this country is  $n < 20$ .

<sup>1</sup> When withdrawal of the application for admission is permitted, there is no penalty to the alien except visa cancellation. In contrast, the consequences of removal include at least a five year bar to entry. "Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible." INA Sec. 212. [8 U.S.C. 1182] (a)(9)(A)(i).

Table C describes the outcome (removal or withdrawal) by region of origin for those aliens who were not permitted to enter the U.S. With two exceptions, there were not significant differences in the treatment of aliens based on region of origin. The percentage of aliens in the sample from a region of origin ordered removed was generally close to the percentage of aliens from that region who were permitted to withdraw their application for admission.

**Table C: Outcome by region of origin for national sample**

Region of Origin	Ordered Removed	Withdrawal Permitted	Total
South America	23 (21.7)	11 (14.1)	34
Central America	32 (30.2)	30 (38.5)	62
Europe	8 (7.5)	13 (16.7)	21
Caribbean*	20 (18.9)	1 (1.3)	21
East Asia	0	4 (5.1)	4
Other Asia	11 (10.4)	6 (7.7)	17
Middle East	5 (4.7)	6 (7.7)	11
Africa	5 (4.7)	2 (2.6)	7
Pacific/Oceania	0	4 (5.1)	4
Other/Unknown	2 (1.9)	1 (1.3)	3
<b>Total (100%)</b>	<b>106</b>	<b>78</b>	<b>184</b>

\* Statistically significant ( $z = 3.71$ ,  $p = 0.000$ ).

The most notable exception to this generally consistent treatment were aliens from the Caribbean, who constituted almost 19 percent of the national sample of those ordered removed, but only 1.3 percent of the national sample of those permitted to withdraw. In contrast, Europeans were only 7.5 percent of those ordered removed, and 16.7 percent of those permitted to withdraw. Further analysis would be required in order to draw any conclusions as to the factors which may account for these exceptions.

## Appendix E

### Analysis of Port of Entry Files from JFK Airport

#### *Obtaining the port of entry file JFK sample*

The second set of port of entry files ( $n = 112$ ) consisted of electronic records relating to A-files from New York JFK Airport from fiscal year 2004, printed out by Customs and Border Protection staff at JFK from the ENFORCE system between April 2-27, 2004. After reviewing a list of all fiscal year 2004 cases to date at the time of the sample, we requested electronic records representing approximately equal numbers of four types of cases: expedited removal cases, withdrawals<sup>1</sup>, credible fear referrals, and visa waiver cases.<sup>2</sup>

One reason for requesting the JFK sample was to compare JFK Visa Waiver Program (VWP) refusal cases to expedited removal cases. We were interested in examining JFK's practice of asking the expedited removal fear questions of Visa Waiver Program aliens prior to refusing them entry.<sup>3</sup> Nationals of Visa Waiver Program countries do not require a visa to enter the U.S. for less than 90 days as non-immigrant visitors for business or pleasure, and are not subject to expedited removal.<sup>4</sup> If an alien from a VWP country is found inadmissible, he or she is summarily returned home.<sup>5</sup> Inspectors are not required to ask them the fear questions before returning them.

---

<sup>1</sup> As noted in the main report's discussion of port of entry files, CBP advised us that it is not mandatory to ask the protection-related questions in all withdrawal cases, therefore documentation of such screening would not be expected in all files relating to aliens permitted to withdraw their applications for admission.

<sup>2</sup> The JFK files, representing cases from January 1, 2004 to March 31, 2004, consisted of (1) randomly selected A-files representing 33 of the 561 aliens who were expeditiously removed; (2) 30 randomly selected A-files of the 223 aliens subject to expedited removal who withdrew their applications for admission; (3) 30 randomly selected A-files out of the 45 aliens referred for credible fear; and (4) 30 A-files representing all aliens believed to be from non-visa waiver countries but traveling on a VWP passport. Of the 123 files requested, 114 were actually received. Two of these were not included in the analysis (one since it was also included in the national sample, the second because it was a reinstatement of removal case, and was therefore not relevant to the study). To combine the data from these samples, they would have to be re-weighted. Producing combined results was not our purpose here so this has not been done.

<sup>3</sup> While aliens subject to expedited removal are specifically asked whether they fear return, VWP applicants in ports other than JFK and Newark are expected to proactively identify themselves as asylum seekers before being returned. See DHS U.S. Customs and Border Protection Response to Recommendations of the Study of the U.S. Expedited Removal Process by the United Nations High Commissioner for Refugees (Unreleased, 2004).

<sup>4</sup> The Visa Waiver Program currently has 27 countries, designated in part because their nationals have a low rate of refusal for U.S. visas: Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. See [http://www.cbp.gov/xp/cgov/travel/leavingarrivinginUS/nonimmigrant\\_arri\\_dep/vwp.xml](http://www.cbp.gov/xp/cgov/travel/leavingarrivinginUS/nonimmigrant_arri_dep/vwp.xml).

<sup>5</sup> "Generally, a VWP applicant found to be inadmissible by the inspecting officer is refused entry into the United States without further administrative hearing." See [http://www.cbp.gov/xp/cgov/travel/leavingarrivinginUS/nonimmigrant\\_arri\\_dep/vwp.xml](http://www.cbp.gov/xp/cgov/travel/leavingarrivinginUS/nonimmigrant_arri_dep/vwp.xml).

If a Visa Waiver Program alien expresses a fear of return on his or her own initiative, the inspector will make a referral directly to an immigration judge, for an “asylum-only” hearing.<sup>6</sup> The Board of Immigration Appeals has held that an imposter traveling on a false VWP country passport without actually being a national of that country may be processed under VWP procedures, meaning that inspectors are not required to conduct a fear screening.<sup>7</sup> Some ports of entry, including JFK, informed experts working on the Expedited Removal Study that they nevertheless do screen Visa Waiver Program applicants for fear of return in the same manner as they screen aliens subject to expedited removal.

Like the national sample port of entry files, the JFK port of entry files as initially generated by ENFORCE had a significant rate of failure in producing complete files. As noted with respect to the national sample, Customs and Border Protection expressed concern at the high percentage of files that were missing documents, and began the process of verifying whether the documentation was indeed in ENFORCE but had for some reason not been generated along with the rest of the file, or was in the paper file, or in fact was missing from the file. CBP was able to re-send some of these port of entry files which were initially missing sworn statements.

***Outcome by region of origin in the JFK port of entry sample***

The JFK sample was analyzed in two groups: aliens traveling with no visa, but on a passport of a country participating in the Visa Waiver Program (VWP), and aliens subject to expedited removal, i.e. aliens (not traveling on VWP country passports) arriving at the port of entry with false or no documents.

The two outcome categories “Ordered Removed” and “Withdrawal Allowed” were combined for analysis into the outcome “Refused Entry.” The outcome “Referred” means referral for a credible fear determination if the case is part of the expedited removal group, and referral for an asylum-only hearing if the case is part of the Visa Waiver Program group.

Table A below presents the outcome and region of origin distribution for the JFK sample. Note that without weighting the outcome numbers, they do not represent the ratio of “Refused Entry” to “Referred.” The tables merely describe the JFK sample. South America was most heavily represented in the JFK sample, with 25 percent of the cases ( $n=28/112$ ). Cases from the Caribbean comprised 17 percent of the JFK sample ( $n=19/112$ ), followed by 16 percent from Africa ( $n=18/112$ ) and 15 percent from Europe ( $n=17/112$ ). South/Central Asia as a region represented 12.5 percent of cases ( $n=14/112$ ) and East Asia 8 percent ( $n=9/112$ ). Cases from the Middle East comprised 4 percent of the cases ( $n=5/112$ ); Central America had the smallest representation, with 2 percent ( $n=2/112$ ).

**Table A: Outcome and Region of Origin Distribution for JFK Sample**

Region of Origin	Refused Entry	Referred	Total
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<sup>6</sup> While known as an “asylum-only” hearing, any application for asylum before an immigration judge is also considered as an application for relief under “withholding of removal” as well as under the Convention Against Torture. 8 CFR 208.2(b), 208.3(b) (2004).

<sup>7</sup> See *Matter of Kanagasundram*, Int. Dec. 3407 (BIA 1999).

South America*	24 (31.2)	4 (11.4)	28
Central America	2 (2.6)	0 (0.0)	2
Europe	12 (15.6)	5 (14.3)	17
Caribbean	16 (20.8)	3 (8.6)	19
East Asia*	3 (3.9)	6 (17.1)	9
South/Central Asia	8 (10.4)	6 (17.1)	14
Middle East	4 (5.2)	1 (2.9)	5
Africa*	8 (10.4)	10 (28.6)	18
<b>Total (100%)</b>	<b>77</b>	<b>35</b>	<b>112</b>

\* Statistically significant. ( $z = 2.24, p = 0.025$ ).

Table B below presents the outcome and arrival status of the JFK sample. The sample included 27 percent Visa Waiver Program cases and 73 percent expedited removal cases. The Visa Waiver Program group included 30 cases of which 21 were refused entry and 9 were referred for an asylum only hearing. The expedited removal group included 82 files, made up of 56 refusals and 26 referrals.

**Table B: Outcome and Arrival Status Distribution for JFK Sample**

Arrival Status	Refused Entry	Referred	Total
Visa Waiver Program	21 (27.3)	9 (25.7)	30
Expedited Removal	56 (72.7)	26 (74.3)	82
<b>Total</b>	<b>77</b>	<b>35</b>	<b>112</b>

*Documentation regarding fear of return in the port of entry file JFK sample*

In addition to the I-867B Jurat for Record of Sworn Statement used to record the secondary inspection of an alien in expedited removal, we also examined, for the Visa Waiver Program group of the JFK sample, the I-877 Record of Sworn Statement. The latter form records the secondary inspection of an alien arriving from a Visa Waiver Program country where aliens are not routinely asked the protection-related questions. Since Form I-877 does not include the pre-printed protection questions, we analyzed the narrative recorded on the form to see if immigration inspectors at JFK added the questions to the sworn statements recorded for applicants traveling on Visa Waiver Program country passports.

Table C is comprised of the Visa Waiver Program cases, and describes the documentation regarding fear of return for that group by outcome. The applicant's response to the protection-related questions is in parentheses. Although the sample is small, the finding is positive: it shows that none of the aliens who entered via the Visa Waiver Program that were reported to express a fear of return was refused entry, i.e. no one in the "Refused Entry" group had a recorded fear of return response.

However, there was no documentation of the protection-related questions having been asked in 23 percent of the cases; for 7/30 of them, the I-877 form was missing. Full screening for fear of return is documented in only 53 percent of the files (16/30), partial screening with fear of return recorded in 7 percent of the files, and partial screening with no fear of return recorded in 17 percent of the files.

There are four people in the sample whose file did not document screening for fear of return but who were nonetheless referred to an asylum-only hearing. This highlights the issues with ENFORCE in producing these files – it seems unlikely that referrals to an asylum-only hearing would be accomplished with no screening for fear of return taking place. On a positive note, Table C highlights that screening aliens traveling with false visa waiver country passports does not result in “soliciting” asylum claims from most such aliens, yet it does identify aliens who are referred for an asylum hearing after claiming to have a fear of return.

**Table C: Documented Screening for Fear of Return by Outcome for JFK Sample (Visa Waiver Program Group)**

Screening for Fear	Refused entry	Referred	Total
Full Screening (Fear)	0	2 (22%)	2 (7%)
Full Screening (No Fear)	13 (62%)	1 (11%)	14(47%)
Partial Screening (Fear)	0	2 (22%)	2 (7%)
Partial Screening (No Fear)	5 (24%)	0	5 (17%)
No Documentation of Screening (I-877 Missing)	3 (14%)	4 (44%)	7 (23%)
<b>Total (100%)</b>	<b>21</b>	<b>9</b>	<b>30</b>

Table D presents how completely CBP inspectors documented screening for fear of return for the expedited removal group. As with the Visa Waiver Program group, no asylum seeker subject to expedited removal with a documented expression of fear of return was refused entry. In over 10 percent of cases for aliens refused entry, however, it was impossible to establish whether screening for fear took place due to a missing I-867B form.

**Table D: Documented Screening for Fear of Return by Outcome for JFK Sample (Expedited Removal Group)**

Screening for Fear	Refused Entry	Referred	Total
Full Screening (Fear)	0	22 (84.6)	22
Full Screening (No Fear)	50 (89.3)	2 (7.7)	52
No Documentation of Screening (I-867B Missing)	6 (10.7)	2 (7.7)	8
<b>Total (100%)</b>	<b>56</b>	<b>26</b>	<b>82</b>

Table E below presents the outcome and gender distribution for the JFK sample. The sample included 53 percent men and 47 percent women. Note that without weighting the outcome numbers, they do not represent the ratio of “Refused Entry” to “Referred.” The tables merely describe the JFK sample.

**Table E: Outcome and Gender Distribution for JFK Sample**

Gender	Refused entry	Referred	Total
Male	39 (50.6)	20 (58.8)	59 (53.2)
Female	38 (49.4)	14 (41.2)	52 (46.8)
<b>Total (100%)</b>	<b>77</b>	<b>34</b>	<b>111</b>

Table F presents the outcome and gender distribution with the addition of arrival status. In the *Refused Entry* sample of the Visa Waiver Program nearly 62 percent were male. In contrast, in the *Referred* sample among Expedited Removal cases, 72 percent were female. The differences described are statistically significant.<sup>8</sup>

**Table F: Outcome by Gender and Arrival Status Distribution for JFK Sample**

Arrival Status	Gender	Refused Entry	Referred	Total
Visa Waiver Program	Male	13 (61.9)	2 (22.2)	15
	Female	8 (38.1)	7 (77.8)	15
	<b>Total (100%)</b>	<b>21</b>	<b>9</b>	<b>30</b>
Expedited Removal	Male	26 (46.4)	18 (72.0)	44
	Female	30 (53.6)	7 (28.0)	37
	<b>Total (100%)</b>	<b>56</b>	<b>25</b>	<b>81</b>

<sup>8</sup> VWP:  $z = 1.99$ ,  $p = 0.046$  (the test for the difference of proportion for independent samples is less reliable for smaller samples, such as  $n < 30$ ); ER:  $z = -2.13$ ,  $p = 0.033$ .

**Appendix F**  
**Mark Hetfield Letter to CBP on Sept. 23, 2004**



UNITED STATES COMMISSION ON  
INTERNATIONAL RELIGIOUS FREEDOM

September 23, 2004

Mr. Salvador Flores  
Program Manager  
Immigration Policy and Programs, Office of Field Operations  
Bureau of Customs and Border Protection (CBP)  
Department of Homeland Security  
1300 Pennsylvania Avenue, NW  
Room 5.5-37  
Washington, D.C. 20229

Dear Sal –

We are writing to you as our “expert” on the ENFORCE system. As you are aware, the Commission is conducting a study on Expedited Removal. Your familiarity with the ENFORCE system has been very helpful to the Commission in gathering the data for the study. We would, however, like to enlist your help in documenting some persistent problems which we have encountered in attempting to utilize the ENFORCE system for this purpose.

Section 605 of the International Religious Freedom Act of 1998 (IRFA) required the GAO, and authorized experts appointed by the US Commission on International Religious Freedom (USCIRF), to study the effect of Expedited Removal on individuals fleeing persecution. Specifically, IRFA authorized the Commission and the GAO to study whether, in expedited removal proceedings pursuant to section 235(b) of the Act, Immigration Officers were (1) improperly encouraging asylum seekers to withdraw applications for admission; (2) incorrectly failing to refer asylum seekers to credible fear interviews; (3) incorrectly removing asylum seekers to countries where they may be persecuted; and (4) detaining such aliens improperly or under inappropriate conditions.

IRFA provides that the Secretary of Homeland Security (as the Successor to the Attorney General on immigration matters) shall (with narrowly defined exceptions) provide the experts with "unrestricted access to all stages of all proceedings under section 235(b) of the (Immigration and Nationality) Act." Similarly, under section 203(b) of P.L. 106-55, the Commission "may secure directly from any Federal Department or agency such information as

the Commission considers necessary to carry out (its duties). Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission, subject to applicable law."

To address the first three questions posed to the Commission by Congress in Section 605 of IRFA, the Commission has sought to review random selections of (1) A-files of aliens placed in Expedited Removal, as well as (2) files of those who would have been placed in Expedited Removal but who were instead permitted to withdraw their applications for admission to the U.S. In collecting data for this study, the recently implemented ENFORCE system has been a valuable tool. ENFORCE has permitted CBP to generate a list of all aliens subject to Expedited Removal at ports of entry in FY2004, from which the Commission generated its random sample of cases. Once we chose the random sample, CBP used the ENFORCE database to print the forms from which we needed data.

ENFORCE has significantly eased the burden of data collection for both CBP and USCIRF. For credible fear files, USCIRF and DHS had to rely on gathering paper files individually from local DHS offices. In contrast, ENFORCE allowed all of the requested files to be printed at CBP Headquarters.

Nonetheless, we are concerned that, for a large number of the files identified by ENFORCE as being relevant to Expedited Removal, many of the files themselves contained neither data nor forms – just a cover sheet. In the Commission report, which we are currently in the process of writing, we will need to explain the cause of this deficiency. Consequently, we would greatly appreciate it if you would investigate this matter and advise us on the explanation for this occurrence. We will need to document the reason for the “data gaps” in the Study.

Below is a chronology of events relating to gathering study data through the ENFORCE system.

**May 3, 2004:** USCIRF asks its Point of Contact at CBP, Linda Loveless, to provide lists of all aliens who (1) withdrew their applications for admission or (2) were expeditiously removed from ports of entry during FY2004 (From October 1, 2003 to present).

**June 20, 2004:** USCIRF receives spread sheets, run from ENFORCE, of all Expedited Removal, 29,957 (“ERs”), and Withdrawals Subject to Expedited Removal, 20,724 (“ER-WDs”), through May 19, 2004.

**July 26, 2004:** USCIRF provides CBP with a request for 240 files, including:

20 Mexican ERs

100 “Other-Than Mexican or Canadians” (“OTMC”) ERs

20 Mexican ER-WDs

100 OTMC ER-WDs.

These files were randomly selected by USCIRF methodologist Fritz Scheuren from the list provided by CBP on June 20, 2004.

**August 16, 2004:** CBP notifies USCIRF that ENFORCE was able to print only 148 of the 240 files requested, providing only cover sheets for the missing files.

18/20 ER-WD Mexican  
18/20 ER Mexican  
33/100 ER-WD OTMC  
79/100 ER OTMC

**August 16, 2004:** USCIRF submits an additional random sample of 1559 OTMC WD-ER and 40 OTMC ER cases to ensure 2 samples of 100 each, to ensure a statistically significant sample. CBP is asked to keep printing files down the list until it reaches a total of 100 OTMC ER-WDs and 100 OTMC ERs, including those files already printed.

**August 23, 2004:** USCIRF receives additional files from CBP to produce 100 file samples for each OTMC sample requested. However, an audit determines that, while CBP now has a sample of 100 ER OTMC files, it still only has 74/100 ER files.

**September 9, 2004:** USCIRF requests that CBP continue to run down the OTMC ER-WD list provided on August 16 until the number of OTMC ER-WD cases successfully printed reaches 100.

The Commission is currently awaiting the additional 26 files from CBP to complete its sample of 100 OTMC ER-WDs. I understand that those files will be ready for the Commission this afternoon.

To date, of the 20 Mexican ER files requested, 18 files printed for a 10% fail rate. Of the 20 Mexican WD files requested, 18 files printed for a 10% fail rate. Of the 123 OTMC ER files requested, 100 files printed for a 19% fail rate. Of the 150 OTMC ER-WD files requested, 74 files printed for a 50% fail rate. A report of the files printed and not printed by ENFORCE is attached, as well as a report of all of the files requested to date.

USCIRF is currently drafting the Expedited Removal Study requested by Congress, and expects to release the report before the end of the calendar year. CBP will have the opportunity to review applicable sections of the report prior to its finalization and release. In order to complete the first draft of the report, however, it is important for the Commission to understand why ENFORCE – which seems to have such tremendous potential as a quality assurance tool – had such a high failure rate in printing cases (particularly since the list of cases itself was generated by ENFORCE).

We look forward to hearing from you, and appreciate all of the assistance CBP has given us throughout the Study.

Sincerely,  
Mark Hetfield  
Immigration Counsel

Enc.

**Appendix G**  
**Analysis of Port of Entry Files National Sample – Canadian Border**

As noted in the report, we separated Canadian border cases from the rest of the national sample due to much more limited file receipts. The Canadian cases are briefly described below in Tables A and B. Table A describes the country of origin of aliens subject to expedited removal who attempt entry to the United States from Canada. The regions have been sorted in order of frequency. It is evident from Table A that aliens who attempt entry at the Canadian border ports of entry represent a variety of regions, some containing refugee-producing countries.<sup>1</sup>

**Table A: Region of Origin (Canada Group)**

Region of Origin	Frequency	Percent
East Asia	11	25.6
Other Asia	7	16.3
Africa	7	16.3
Europe	5	11.6
Central America	3	7.0
Caribbean	3	7.0
South America	2	4.7
Middle East	2	4.7
Unknown	2	4.7
Pacific/Oceania	1	2.3
<b>Total</b>	<b>43</b>	<b>100.0</b>

Table B presents the results of the screening for fear process by outcome for the Canada group. Our file review revealed one case of an alien expressing fear who was refused entry. That person, however, was not returned to his country of origin in the Middle East, but was returned to Canada pursuant to the agreement between the U.S. and Canada. Table B shows that with the limited forms generated by ENFORCE it is not possible to tell whether inspectors at Canadian land borders are taking sworn statements from those who are refused admission to the U.S.

**Table B: Documentation regarding fear of return by Outcome (Canada Group)**

Screening for Fear	Ordered Removed	Withdrawal Permitted	Total
Full Screening (Fear)	1	0	1
Full Screening (No Fear)	1	0	1
No Documentation of Screening (I-867B Missing)	1	40	41
<b>Total</b>	<b>3</b>	<b>40</b>	<b>43</b>

<sup>1</sup> As discussed in the report, the national sample deliberately excluded cases concerning Canadian nationals.

**Appendix H**  
**Board of Immigration Appeals Data Collection Instrument**

		<b>Comments on A-No.:</b> _____ (please note row number below)
<b>Date File Coded</b>		
<b>Coder ID</b>		
<b>Start Time</b>		
<b>Random Number</b>		
<b>A-Number</b>		
<b>Name: Last, First</b>		
<b>Gender 1=male/2=female</b>		
<b>Date of BIRTH MM/DD/YY</b>		
<b>Is the alien an unaccompanied minor? 1=yes/2=no</b>		
<b>Ethnicity</b>		
<b>Religion</b>		
<b>Marital status 1=single; 2=married; 3=legally separated; 4=divorced; 5=widowed</b>		
<b>How many children does alien have?</b>		
<b>Country of Citizenship</b>		
<b>Date of ARRIVAL MM/DD/YY</b>		
<b>Port of Entry</b>		
Entry by 1=air; 2=land; 3=sea		
Country of departure		
Accompanied by:		
Did alien have 'In Transit Without Visa' status? 1=yes; 2=no		
If yes, from where to where?		
Destination country		
<b>Charge(s) (from I-862, I-863, or I-860; key in charge and from which form)</b>		
<b>FILE INCLUDES I-867A Record of Sworn Statement (1=yes; 2=no)</b>		
<b>FILE INCLUDES I-867B Jurat for Record of Sworn Statement (1=yes; 2=no)</b>		
<b>FILE INCLUDES I-870 Record of Determination/ Credible Fear Work Sheet (1=yes; 2=no)</b>		
<b>FILE INCLUDES I-589 Application for Asylum and for Withholding of Removal 1=yes; 2=no</b>		
A-Number		
Part A.I.16 Religion: key in		

Part B.1. Basis for asylum grounds-Race: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds-Religion: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds- Nationality: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds-Political opinion: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds- Membership in a particular social group: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds-Torture Convention: 1=box checked; 2=box not checked		
Comments about claim from I-589 and attached Declaration		
<b>FILE INCLUDES transcript of MASTER CALENDAR hearing(s): 1=yes; 2=no</b>		
A-number		
IJ name		
Location of Imm Ct		
Date of first <b>Master Calendar hearing</b>		
Was alien <b>detained</b> at time of first Master Calendar Hearing? 1=yes; 2=no		
If alien was detained at time of first Master Calendar Hearing, where? (Detention Center and City)		
Was alien <b>represented</b> at first Master Calendar Hearing?		
If represented at first Master Calendar Hearing, name of attorney (note if attorney in different state than alien)		
If represented at Master Calendar Hearing, was attorney present?		
Was first Master Calendar Hearing 1=live; 2=video; 3=audio		
If first Master Calendar Hearing was by video or audio, where were applicant, attorney, and judge?		
<b>Total Number of Master Calendar Hearings/ Continuances before Merits/Individual Removal hearing</b>		
Number of Continuances requested by Alien		
Number of Continuances requested by DHS		
Number of Continuances requested by IJ		
Explain Continuances		

Was alien <b>represented</b> at times continuances were requested?		
Was alien <b>detained</b> at times continuances were requested?		
Was a <b>Change of Venue</b> requested? 1=yes; 2=no		
Change of Venue requested by 1=alien; 2=DHS		
Change of Venue 1=granted; 2=denied		
If Change of Venue denied, explain		
<b>FILE INCLUDES transcript of IJ ORAL DECISION: 1=yes; 2=no</b>		
<b>FILE INCLUDES transcript of MERITS/ INDIVIDUAL (REMOVAL) HEARING: 1=yes; 2=no</b>		
A-number		
IJ name		
Location of Imm Ct		
Date of <b>Merits/ Individual Hearing</b>		
Was alien <b>detained</b> at time of Merits/Individual Hearing? 1=yes; 2=no		
If alien was detained at time of Merits/Individual Hearing, where? (Detention Center and City)		
Was alien <b>represented</b> at Merits/Individual Hearing?		
If represented at Merits/Individual Hearing, name of attorney (note if attorney in different state than alien)		
If represented at Merits/Individual Hearing, was attorney present?		
Was Merits/Individual Hearing 1=live; 2=video; 3=audio		
If Merits/Individual Hearing was by video or audio, where were applicant, attorney, and judge?		
<b>I-867</b> (Airport Statement) cited in IJ merits opinion as element of decision: 1=yes; 2=no		
Transcript Page		
Summarize		
I-867 entered as exhibit: 1=yes; 2=no		
Transcript Page		
I-867 entered as exhibit by 1=alien; 2=government		
objection raised: 1=yes; 2=no		
objection raised by 1=alien; 2=government		
questioning re: I-867 allowed: 1=yes; 2=no		
Transcript Page		

questioning re: I-867 allowed by 1=alien; 2=government; 3=judge	change to who questions	
I-867 used to impeach alien: 1=yes; 2=no		
Transcript Page		
I-867 used to buttress alien: 1=yes; 2=no		
Transcript Page		
<b>I-870</b> (Credible Fear interview) cited in IJ merits opinion as element of decision: 1=yes; 2=no		
Transcript Page		
Summarize		
I-870 entered as exhibit: 1=yes; 2=no		
Transcript Page		
I-870 entered as exhibit by 1=alien; 2=government		
objection raised: 1=yes; 2=no		
objection raised by 1=alien; 2=government		
questioning re: I-870 allowed: 1=yes; 2=no		
Transcript Page		
questioning re: I-870 allowed by 1=alien; 2=government; 3=judge		
Transcript Page		
I-870 used to impeach alien: 1=yes; 2=no		
Transcript Page		
I-870 used to buttress alien: 1=yes; 2=no		
Transcript Page		
<b>Other statement by alien</b> (I-589 or other) cited in IJ merits opinion as element of decision: 1=yes; 2=no		
If yes, which statement?		
Transcript Page		
Does judge criticize alien for <b>translation</b> of documents? (1=yes; 2=no)		
Transcript Page		
Summarize		
Does judge criticize alien for <b>lack of evidence of asylum</b> claim? 1=yes; 2=no		
Transcript Page		
Summarize		
If criticized for lack of evidence of asylum claim, what evidence was submitted?		
If criticized for lack of evidence of asylum claim, what evidence was missing?		
Does judge determine alien's <b>identity</b> ? (1=yes/2=no)		
Was identity established by the alien's credible testimony? (1=yes/2=no)		
Was identity established with passport? (1=yes/2=no)		

Was identity established with other evidence? (1=yes/2=no)		
List other evidence		
Does judge criticize alien for <b>lack of evidence of identity</b> ? (1=yes; 2=no)		
Transcript Page		
Summarize		
If criticized for lack of evidence of identity, what evidence was submitted?		
If criticized for lack of evidence of identity, what evidence was missing?		
Does judge criticize alien for <b>failing to authenticate</b> original documents? (1=yes/2=no)		
Transcript Page		
Summarize		
Does judge criticize alien for <b>poorly completed forms</b> ? (1=yes; 2=no)		
Transcript Page		
Summarize		
<b>Asylum</b> relief: 1=granted; 2=denied; 3=n/a		
<b>Withholding</b> of Removal relief: 1=granted; 2=denied; 3=n/a		
<b>Torture Convention</b> relief: 1=granted; 2=denied; 3=n/a		
<b>FILE INCLUDES Order of IJ re: Removal Proceedings 1=yes; 2=no</b>		
A-number		
IJ Name		
Location of Imm Ct		
Date of decision		
Disposition: key in text of order		
Appeal 1=waived; 2=reserved		
<b>FILE INCLUDES Appeal to BIA 1=yes; 2=no</b>		
A-number		
Date of appeal		
Basis for appeal		
Appealing Party 1=alien; 2=DHS		
Was alien detained at time of Appeal? (1=yes; 2=no)		
If alien was detained at time of Appeal, where? (Detention Center and City)		
Was alien represented at time of Appeal?		
If represented at Appeal, name of attorney (note if attorney in different state than alien)		

<b>FILE INCLUDES Order of BIA 1=yes; 2=no</b>		
Date of BIA decision		
Order of IJ was 1=affirmed; 2=vacated		
BIA ordered alien:		
BIA streamlining: 1=dismissed upon "initial screening"; 2=affirmance without opinion; 3=brief order affirming 4=brief order modifying; 5=brief order remanding		
BIA streamlining: 1=one judge; 2=three judge panel; 3=en banc		
<b>Summarize Facts of case</b>		
<b>Summarize Procedural History/ Posture</b> - what happened to the Alien and what is pending? Incl/ dates of master hearings and merits hearings		
<b>Last authority alien appeared in front of:</b> 1=CBP (Airport Inspector); 2=CIS (Asylum Officer); 3=EOIR (IJ Level); 4=EOIR (BIA Level); 5=other		
<b>Alien's case is pending at:</b> 1=CBP (Airport Inspector); 2=CIS (Asylum Officer); 3=EOIR (IJ Level); 4=EOIR (BIA Level); 5=other		
<b>Case Disposition: was the Alien</b> 1=allowed to withdraw application for admission; 2=ordered removed; 3=allowed to dissolve claim; 4=granted asylum; 5=other (e.g. case not yet resolved, comment)		
<b>Any additional comments by coder</b> including overall impressions of case; points of interest (Reminder: Note interesting religious claims)		
<b>Finish Time</b>		

## Appendix I

### Additional Analysis of the Board of Immigration Appeals Sample

The regional makeup of the Board of Immigration Appeals sample, including the top five countries of origin, appears in Table A. The largest regional representation was from Asia, with 36.8 percent of the sample. The high number of Chinese cases accounts for the majority of the Asian cases. Caribbean cases, 22.7 percent, were from Cuba and Haiti. Central and South America made up 17.2 percent of the sample. Europe was 9.8 percent of the sample; Africa 8.0 percent; Middle Eastern cases 5.5 percent.

**Table A. Gender and Detention Status of the BIA Sample – Regions of Origin**

	Asia (China & South Asia)	Caribbean	Central & South America	Europe	Africa	Middle East	Total
Detained Men	8 (34.8%)	6 (26.1%)	2 (8.7%)	3 (13.0%)	2 (8.7%)	2 (8.7%)	23 (100%)
Paroled Men	33 (39.3%)	14 (16.7%)	19 (22.6%)	6 (7.1%)	5 (6.0%)	7 (8.3%)	84 (100%)
Detained Women	4 (30.8%)	5 (38.4%)	1 (7.7%)	1 (7.7%)	2 (15.4%)	0	13 (100%)
Paroled Women	15 (34.9%)	12 (27.9%)	6 (13.95%)	6 (13.95%)	4 (9.3%)	0	43 (100%)
Total:	60 (36.8%)	37 (22.7%)	28 (17.2%)	16 (9.8%)	13 (8.0%)	9 (5.5%)	163 (100%)

Rates of release prior to the merits hearing for the top five countries of origin in the sample show that Haitians have by far the lowest rate, 62.1 percent. Cuba's rate of release is 100 percent, while Colombia is 95.2 percent, Iraq is 87.5 percent, and China is 84.9 percent.

**Appendix J**  
**Credible Fear Data Collection Instrument**

		<b>Comments on A-No.:</b> _____ (please note row number below)
<b>Date File Coded</b>		
<b>Coder ID</b>		
<b>Start Time</b>		
<b>Random Number</b>		
<b>Part of Subsample? 1=yes; 2=no</b>		
<b>If yes, rate of subsample:</b>		
<b>A-Number (8 digit number)</b>		
<b>Name: Last, First</b>		
<b>Gender 1=male/2=female</b>		
<b>Date of BIRTH MM/DD/YY</b>		
<b>Is the alien an unaccompanied minor? 1=yes/2=no</b>		
<b>Ethnicity</b>		
<b>Religion</b>		
<b>Marital status 1=single; 2=married; 3=legally separated; 4=divorced; 5=widowed</b>		
<b>How many children does alien have?</b>		
<b>Country of Citizenship</b>		
<b>Date of ARRIVAL MM/DD/YY</b>		
<b>Port of Entry</b>		
Entry by 1=air; 2=land; 3=sea		
Country of departure		
Accompanied by:		
Did alien have 'In Transit Without Visa' status? 1=yes; 2=no		
If yes, from where to where?		
Destination country		
<b>FILE INCLUDES I-860 Notice and Order of Expedited Removal (1=yes/2=no)</b>		
A No. (File No.):		
Date		
Inadmissible under section 212(a)(6)(C)(i): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(6)(C)(ii): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(7)(A)(i)(I): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(7)(A)(i)(II): (1=box checked; 2=box not checked)		

Inadmissible under section 212(a)(7)(B)(i)(I): (1=box checked; 2=box not checked)		
Inadmissible under section 212(a)(7)(B)(i)(II): (1=box checked; 2=box not checked)		
Was Order of Removal activated by supervisory signature? 1=yes; 2=no		
Title of officer		
Was supervisory concurrence telephonic? 1=yes; 2=no; 3=n/a		
<b>FILE INCLUDES I-863 Notice of Referral to IJ 1=yes; 2=no</b>		
Date		
A-No. (A File):		
To immigration judge: (number of box checked 1-7)		
If box 3, which description is marked? (key in)		
Date of Action		
I-863 Comments		
<b>FILE INCLUDES I-867A Record of Sworn Statement (1=yes; 2=no)</b>		
A No. (File No.):		
Place of Interview (At:)		
Date of Sworn Statement MM/DD/YY		
Language		
Interpreter employed by (key in verbatim; UNK = left blank)		
<b>FILE INCLUDES I-867B Jurat for Record of Sworn Statement (1=yes; 2=no)</b>		
Fear 1: Why did you leave...? (key in verbatim)		
Fear 2: Do you have any fear or concern...? (key in verbatim)		
Fear 3: Would you be harmed...? (key in verbatim)		
Fear 4: ...anything else...to add? (key in verbatim)		
From your reading of the 4 Fear questions, did the alien express fear? (1=yes; 2=no)		
If yes, fear of what?		
Comment on and note any other part of the I-867A and B in which the alien expressed a basis for asylum.		
<b>FILE INCLUDES I-877 Record of Sworn Statement (1=yes; 2=no)</b>		
A No. (File No.):		

Place of Interview (At:)		
Date of Sworn Statement MM/DD/YY		
Language		
Interpreter employed by (key in verbatim; UNK = left blank)		
<b>Are Four Fear Questions in narrative of I-877? (1=yes/2=no)</b>		
Fear 1: Why did you leave...? (key in verbatim)		
Fear 2: Do you have any fear or concern...? (key in verbatim)		
Fear 3: Would you be harmed...? (key in verbatim)		
Fear 4: ...anything else...to add? (key in verbatim)		
From your reading of the 4 Fear questions, did the alien express fear? (1=yes; 2=no; 3=n/a)		
If yes, fear of what?		
Comment on and note any other part of the I-877 in which the alien expressed a basis for asylum.		
<b>FILE INCLUDES I-213 Record of Deportable/Inadmissible Alien (1=yes; 2=no)</b>		
A No. (File No.):		
Date of Action		
charges: (key in statutory sections)		
Comments from I-213 Narrative, incl/ why referred to secondary insp.		
<b>FILE INCLUDES I-275 Withdrawal of Application for Admission/Consular Notification (1=yes; 2=no)</b>		
A No. (File No.):		
Date of I-275 (MM/DD/YY)		
Basis for Action: Application for Admission W/drawn 1=box checked; 2=box NOT checked		
Basis for Action: Visa/BCC Canceled 1=box checked; 2=box not checked		
Basis for Action: VWPP Refusal 1=box checked; 2=box NOT checked		
Basis for Action: Ordered removed (inadmissible) by IJ 1=box checked; 2=box NOT checked		
Basis for Action: Ordered removed (inadmissible) by INS 1=box checked; 2=box NOT checked		

Basis for Action: Waiver revoked 1=box checked; 2=box NOT checked		
Basis for Action: Departure required 1=box checked; 2=box NOT checked		
If Basis for Action "Application for Admission Withdrawn," why did CBP exercise discretion to allow?		
EXPIRED VISA - reason placed in proceedings: 1=yes; 2=no		
FORMER OVERSTAY - reason placed in proceedings: 1=yes; 2=no		
IMMIGRANT INTENT - reason placed in proceedings: 1=yes; 2=no		
INADMISSIBLE BASED ON CRIME - reason placed in proceedings: 1=yes; 2=no		
PASSPORT EXPIRING W/IN 6 MONTHS - reason placed in proceedings: 1=yes; 2=no		
IMPROPER NONIMMIGRANT VISA FOR PURPOSE OF VISIT - reason placed in proceedings: 1=yes; 2=no		
FALSE DOCS - reason placed in proceedings: 1=yes; 2=no		
NO DOCS - reason placed in proceedings: 1=yes; 2=no		
FACIALLY VALID DOCS BUT INTENDING TO APPLY FOR ASYLUM - reason placed in proceedings: 1=yes; 2=no		
OTHER GROUND of INADMISSIBILITY:		
Comments from I-275 Narrative, incl/ why referred to secondary insp.		
<b>FILE INCLUDES I-264 Notice to Foreign Consulate (that detaining alien) 1=yes; 2=no</b>		
Is the alien named on the I-264? 1=yes; 2=no; 3=n/a		
Does the I-264 contain charges against the alien or any indication the alien is applying for asylum? 1=yes; 2=no; 3=n/a		
<b>FILE INCLUDES I-870 Record of Determination/ Credible Fear Work Sheet (1=yes; 2=no)</b>		
District Office Code		
Asylum Office Code		
A Number		
1.3 Date of detention		
1.4 Place of detention		

1.5 Date of AO orientation		
1.6 explain delay		
1.7 Date of interview		
1.9 Date M-444 signed		
1.10 consultants? 1=yes; 2=no		
1.13 Consultant(s) present at interview (1=box checked; 2=box not checked)		
1.14 other(s) present at interview (1=box checked; 2=box not checked)		
list others		
1.15 No one other than applicant and AO present at interview (1=box checked; 2=box not checked)		
1.16 Language used by applicant in interview (key in)		
1.17 Interpreter Service used? 1=yes; 2=no		
Time Started		
Time Ended		
2.10 race/ethnicity		
2.11 religion		
2.13 Marital status 1=single; 2=married; 3=legally separated; 4=divorced; 5=widowed		
2.14 spouse arrived w/ (1=yes; 2=no)		
2.15 spouse included in claim (1=yes; 2=no)		
2.17 Children 1=yes; 2=no		
2.18 Did any children arrive with alien? 1=yes; 2=no		
2.18 Are any children included in alien's claim? 1=yes; 2=no		
2.18 list locations of children		
2.19 medical condition 1=yes; 2=no		
2.22 Relative, sponsor or other community ties? 1=yes; 2=no		
2.23 Relationship		
3.1a alien or family mistreated in country of return? 1=yes; 2=no		
Comments from 3.1a (verbatim)		
3.1b fear harm in country of return? 1=yes; 2=no		
comments from 3.1b (verbatim)		
3.1c if YES to a or b, reason Race? (1=box checked; 2=box not checked)		
3.1c if YES to a or b, reason Religion? (1=box checked; 2=box not checked)		
3.1c if YES to a or b, reason Nationality? (1=box checked; 2=box not checked)		

3.1c if YES to a or b, reason Membership in a particular social group? (1=box checked; 2=box not checked)		
3.1c if YES to a or b, reason Political Opinion? (1=box checked; 2=box not checked)		
comments from 3.1c (verbatim)		
4.1 applicant credible (1=box checked; 2=box not checked)		
4.2 Applicant NOT Credible: 1=box checked; 2=box not checked		
4.3 Testimony internally inconsistent: 1=box checked; 2=box not checked		
4.4 Testimony lacked detail: 1=box checked; 2=box not checked		
4.5 Testimony not consistent with country conditions: 1=box checked; 2=box not checked		
4.6 Nexus Race: 1=box checked; 2=box not checked		
4.7 Nexus Religion: 1=box checked; 2=box not checked		
4.8 Nexus Nationality: 1=box checked; 2=box not checked		
4.9 Nexus Membership in a Particular Social Group: 1=box checked; 2=box not checked		
4.9 Define Social Group (verbatim)		
4.13 Nexus Political Opinion: 1=box checked; 2=box not checked		
4.11 Nexus Coercive Family Planning: 1=box checked; 2=box not checked		
4.12 No nexus: 1=box checked; 2=box not checked		
Any comments on Nexus handwritten in (e.g. "imputed" next to political opinion) - key in verbatim		
4.13 Credible fear of persecution established: 1=box checked; 2=box not checked		
4.14 Credible fear of torture established: 1=box checked; 2=box not checked		
4.15 Credible fear of persecution NOT established + no significant possibility w/holding or CAT eligible: 1=box checked; 2=box not checked		
4.16 Applicant could be subject to Bar(s): 1=yes; 2=no		

4.17 Particularly Serious Crime: 1=box checked; 2=box not checked		
4.18 Security Risk: 1=box checked; 2=box not checked		
4.19 Aggravated Felon: 1=box checked; 2=box not checked		
4.20 Persecutor: 1=box checked; 2=box not checked		
4.21 Terrorist: 1=box checked; 2=box not checked		
4.22 Firmly Resettled: 1=box checked; 2=box not checked		
4.23 Serious Non-Political Crime: 1=box checked; 2=box not checked		
4.24 Applicant does NOT appear subject to bar(s) 1=box checked; 2=box not checked		
4.25 Identity determined w/ reasonable certainty: 1=box checked; 2=box not checked		
4.26 Applicant's credible statements: 1=box checked; 2=box not checked		
4.27 Passport: 1=box checked; 2=box not checked		
4.28 Other evidence: 1=box checked; 2=box not checked		
4.28 List other evidence		
4.29 Applicant's identity NOT determined w/ reasonable certainty: 1=box checked; 2=box not checked		
5.3 Decision date		
5.5 Signed by Supervisory AO? 1=yes; 2=no		
5.6 Date supervisor approved decision		
<b>Version of I-870 used</b> (enter date at bottom right of form) <b>Note: If 1997 version</b> , continue with 9.25 - 9.40, Summary and Details of DD Release Decision. <b>Note: If 1999 version</b> , continue with 7.01 - 7.19, DD Release Decision. <b>(end worksheets)</b>		
<b>FILE INCLUDES I-869 Record of Negative CF Finding/Request for Review by IJ 1=yes; 2=no</b>		
File No.:		
found not credible 1=box checked; 2=box not checked		
testimony internally inconsistent 1=box checked; 2=box not checked		

testimony not consistent with country conditions 1=box checked; 2=box not checked		
testimony not consistent with documentation 1=box checked; 2=box not checked		
testimony vague/lacked detail 1=box checked; 2=box not checked		
not established of 1=box checked; 2=box not checked		
not expressed of 1=box checked; 2=box not checked		
harm not persecution 1=box checked; 2=box not checked		
harm not well-founded 1=box checked; 2=box not checked		
harm not on account of 1=box checked; 2=box not checked		
subject to bar(s) 1=box checked; 2=box not checked		
aggravated felony 1=box checked; 2=box not checked		
other bar 1=box checked; 2=box not checked		
other reason 1=box checked; 2=box not checked		
Review by IJ 1=requested; 2=not requested		
<b>File includes HQ Review of CF Finding 1=yes; 2=no</b>		
Reason for HQ Review		
CF Finding 1=affirmed by HQ; 2=vacated by HQ		
HQ Review comments		
<b>FILE INCLUDES Order of IJ re: CF Review Proceedings 1=yes; 2=no</b>		
Location of Imm Ct		
A-Number 8 digits		
Date of decision		
CF Finding 1=affirmed IJ; 2=vacated by IJ		
IJ Name		
IJ Review comments incl/ reasoning		
<b>FILE INCLUDES form: Request for Dissolution of Credible Fear Process (no form#) 1=yes; 2=no</b>		
A-Number 8 digits		

Stated reason - key in verbatim		
Date of Dissolve (Date AO signs)		
Signed by Supervisory AO? 1=yes; 2=no		
Date signed by Supervisory AO		
Language		
interpreter used:		
Reasons for Dissolving Claim: 1=recanted fear; 2=avoid detention; 3=reunite family; 4=other		
<b>FILE INCLUDES I-862 Notice to Appear 1=yes; 2=no</b>		
A No. (File No.):		
Charges: (key in statutory sections)		
<b>FILE INCLUDES I-589 Application for Asylum and for Withholding of Removal 1=yes/2=no</b>		
A-Number		
Part A.I.16 Religion: key in		
Part B.1. Basis for asylum grounds-Race: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds- Religion: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds- Nationality: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds-Political opinion: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds- Membership in a particular social group: 1=box checked; 2=box not checked		
Part B.1. Basis for asylum grounds-Torture Convention: 1=box checked; 2=box not checked		
Representation: EOIR-28 on file? 1=yes; 2=no		
Comments about claim from I-589 and attached Declaration		
<b>FILE INCLUDES transcript of IJ Hearing on the Merits/Removal Proceedings: 1=yes; 2=no</b>		
type of hearing		
IJ name		
Location of Imm Ct		
Date of hearing		

I-867 cited in IJ opinion as element of decision: 1=yes; 2=no		
I-867 entered as exhibit: 1=yes; 2=no		
I-867 entered as exhibit by 1=alien; 2=government		
objection raised: 1=yes; 2=no		
objection raised by 1=alien; 2=government		
questioning re: I-867 allowed: 1=yes; 2=no		
questioning re: I-867 allowed by 1=alien; 2=government; 3=judge		
I-867 used to impeach: 1=yes; 2=no		
I-867 used to buttress: 1=yes; 2=no		
I-870 cited in IJ opinion as element of decision: 1=yes; 2=no		
I-870 entered as exhibit: 1=yes; 2=no		
I-870 entered as exhibit by 1=alien; 2=government		
objection raised: 1=yes; 2=no		
objection raised by 1=alien; 2=government		
questioning re: I-870 allowed: 1=yes; 2=no		
questioning re: I-870 allowed by 1=alien; 2=government; 3=judge		
I-870 used to impeach: 1=yes; 2=no		
I-870 used to buttress: 1=yes; 2=no		
Asylum relief: 1=granted; 2=denied		
Withholding of Removal relief: 1=granted; 2=denied		
Torture Convention relief: 1=granted; 2=denied		
<b>FILE INCLUDES Order of IJ re: Hearing on the Merits/Removal Proceedings 1=yes; 2=no</b>		
IJ Name		
Location of Imm Ct		
A-Number 8 digits		
Date of decision		
Disposition: key in text of order		
Appeal 1=waived; 2=reserved		
<b>FILE INCLUDES Order of BIA 1=yes; 2=no</b>		
Date of BIA decision		
Order of IJ was 1=affirmed; 2=vacated		
BIA streamlining: 1=dismissed upon "initial screening"; 2=affirmance without opinion; 3=brief order affirming 4=brief order modifying; 5=brief order remanding		
BIA streamlining: 1=one judge; 2=three judge panel; 3=en banc		

<b>Was alien detained? 1=yes/2=no</b>		
Place of detention		
Detention start date		
<b>Was alien released from detention? 1=yes; 2=no</b>		
<b>If alien was released</b> from detention, what is the documentation?		
What were the grounds for release?		
What was the <b>date</b> of release? (Detention end date)		
Who authorized the release, incl/ title?		
What was the Bond amount (\$) if any?		
<b>If alien was not released</b> from detention, what is the last documented date of detention?		
Describe documentation		
<b>Summarize Facts of case</b>		
<b>Summarize Procedural History/Posture</b> - what happened to the Alien and what is pending? Incl/ dates of master hearings and merits hearings		
<b>Last authority alien appeared in front of:</b> 1=CBP (Airport Inspector); 2=CIS (Asylum Officer); 3=EOIR (IJ Level); 4=EOIR (BIA Level); 5=other		
<b>Alien's case is pending at:</b> 1=CBP (Airport Inspector); 2=CIS (Asylum Officer); 3=EOIR (IJ Level); 4=EOIR (BIA Level); 5=other		
<b>Port Disposition: was the Alien</b> 1=allowed to withdraw application for admission; 2=ordered expeditiously removed; 3=allowed to dissolve claim; 4=referred to credible fear interview; 5=referred to asylum only hearing; 6=other (comment)		
<b>Case Disposition: was the Alien</b> 1=allowed to withdraw application for admission; 2=ordered removed; 3=allowed to dissolve claim; 4=granted asylum; 5=other (e.g. case not yet resolved, comment)		
<b>If alien was ordered removed</b> , what form documents the ORDER?		
Officer's bureau/title		
Date of      REMOVAL ORDER		

<b>If alien was ordered removed, what form documents the DEPARTURE?</b>		
Officer's bureau/title		
Date of DEPARTURE		
Port of departure		
Country removed to		
Alien barred from entering U.S. for 0=no bar; 1=five years; 2=ten years; 3=twenty years; 4=any time		
Enter any comments on <b>change of venue and continuances</b>		
<b>Was alien represented</b> at any stage? 1=yes/2=no		
Enter any comments on <b>representation</b>		
Enter any comments on <b>change of claim</b>		
<b>Any additional comments by coder</b> including overall impressions of case; points of interest (Reminder: Note interesting religious claims)		
<b>Finish Time</b>		

**Appendix K****Credible fear A-files produced and not produced from Department of Homeland Security for USCIRF Study, by location of file**

<b>Location</b>	<b>Complete Files Received</b>	<b>Complete Files Outstanding</b>	<b>LPR Summaries</b>
Arlington	1	0	0
Atlanta	7	2	0
Baltimore	0	1	0
Boston	4	2	0
Burlington	1	0	0
Chicago	4	1	0
Cincinnati	1	0	0
Cleveland	1	0	0
Denver	1	0	0
Detroit	4	0	0
El Paso	1	0	0
Harlingen	0	1	0
Hartford	0	0	1
Houston	4	0	0
Las Vegas	0	1	1
Los Angeles	18	0	0
Los Angeles Asylum	2	0	0
Lost	0	2	0
Miami	56	3	16
Miami Asylum	1	0	0
National Record Center	171	21	14
New Orleans	0	1	0
New York	65	0	0
Newark	8	2	1
Newark Asylum	1	1	0
Philadelphia	5	0	0
Phoenix	1	0	1
San Diego	12	0	0
San Francisco	3	2	0
San Juan	1	0	0
Seattle	3	0	0
Texas Service Center (SSC)	0	5	4
Vermont Service Center (ESC)	1	0	1
Total	377	45	39

**Appendix L**  
**Additional analysis of Credible Fear Files**

Males constitute 57 percent of the asylum seekers in the credible fear sample; their rate of release (134/183=73 percent) (see Table A) is significantly<sup>1</sup>, lower than that of female asylum seekers (116/138=84 percent).

**Table A: Released\* cases and rates (in percents)  
 by gender**

Gender	Paroled	Not Paroled	Total (100%)
Male	134 (73.2)	49 (26.8)	183
Female	116 (84.1)	22 (15.9)	138
<b>Total</b>	<b>250 (77.9)</b>	<b>71 (22.1)</b>	<b>321</b>

\*Release prior to the merits hearing.

Table B presents the results of release rates by religious affiliation.<sup>2</sup> Christians are the largest category, representing 57 percent of the total (183/321). The second largest category is Buddhists (56/321=17 percent). Buddhists have the highest rate of release prior to the merits hearing (50/56=89.3 percent) among asylum seekers who indicate a religious affiliation. Muslims<sup>3</sup> have the lowest rate of release (5/12=41.7 percent): the only religious group with a rate below 50 percent. The differences in release rates between religious groups are statistically significant; they cannot be attributed to chance alone.<sup>4</sup>

**Table B: Released\* cases and rates (in percents)  
 by religious affiliation**

Religious Affiliation	Paroled	Not Paroled	Total (100%)
Buddhist	50 (89.3)	6 (10.7)	56
Christian	140 (76.5)	43 (23.5)	183
Hindu	9 (56.3)	7 (43.8)	16
Muslim	5 (41.7)	7 (58.3)	12
Other	4 (57.1)	3 (42.9)	7
None	36 (92.3)	3 (7.7)	39
Unknown	6 (75.0)	2 (25.0)	8
<b>Total</b>	<b>250 (77.9)</b>	<b>71 (22.1)</b>	<b>321</b>

\*Release prior to the merits hearing.

<sup>1</sup> Results of chi-square test:  $\chi^2 = 5.361$ ,  $df = 1$ ,  $p = 0.021$ .

<sup>2</sup> Religious affiliation was self reported during the credible fear determination and asylum application. None refers to the indication “none” on the I-870 Credible Fear Determination Worksheet and I-589 Application for Asylum ( $n=39$ ). Unknown refers to the absence of a recorded religious affiliation ( $n=8$ ).

<sup>3</sup> Muslims make up the second smallest contingent of religious asylum seekers after “Other”.

<sup>4</sup> Results of chi-square test:  $\chi^2 = 24.427$ ,  $df = 4$ ,  $p = 0.000$ .

As Table B above illustrates, there is a relatively large contingent of asylum seekers with no religious affiliation (39/321=12 percent). This contingent has the highest rate of release (36/39=92.3 percent) in the credible fear sample.

The final variable examined in combination with release rates is the asylum seeker's port of entry.<sup>5</sup> Table C displays a summary of this crosstabulation. Of the six major ports of entry, 4 are airports<sup>6</sup> and 2 are land ports.<sup>7</sup> The entire credible fear sample was distributed among 41 ports of entry. Nearly three-quarters of asylum seekers arrived in the U.S. by air (74 percent), followed by land entry (21 percent), and last, by sea (5 percent).

Forty-two percent of asylum seekers in the sample<sup>8</sup> entered the U.S. through Miami International Airport. All of the six major ports of entry, with the exception of JFK, have rates of release prior to the merits hearing that are above the average: from a low of 84 percent (MIA) to a high of 100 percent (Brownsville, TX). JFK, which receives only 2.5 percent (8/321) of asylum seekers, is characterized by a low rate of release. Only 25 percent of asylum seekers arriving at JFK are released prior to the merits hearing (2/8). The release rate at JFK is statistically different from the ones in the other five major ports of entry, but those five are not different from one another in terms of release rate.<sup>9</sup>

**Table C: Released\* cases and rates (in percents)  
by port of entry**

Port of Entry	Paroled	Not Paroled	Total (100%)
Miami	114 (83.8)	22 (16.2)	136
Los Angeles	32 (91.4)	3 (8.6)	35
San Ysidro, CA	24 (85.7)	4 (14.3)	28
Brownsville, TX	22 (100.0)	0	22
Chicago	17 (89.5)	2 (10.5)	19
JFK	2 (25.0)	6 (75.0)	8
Other Air	19 (50.0)	19 (50.0)	38
Other Land	16 (88.9)	2 (11.1)	18
Seaport	4 (23.5)	13 (76.5)	17
<b>Total</b>	<b>250 (77.9)</b>	<b>71 (22.1)</b>	<b>321</b>

\*Release prior to the merits hearing.

Land ports of entry, which receive 21 percent of asylum seekers, have the highest rate of release (62/68=91 percent, not shown in table) compared to other modes of entry. Brownsville, Texas,

<sup>5</sup> The port of entry variable was created by first listing the major ports of entry (defined by those with ten or more cases in the credible fear sample) as separate categories (77 percent of asylum seekers). The remainder was then classified by their mode of entry: air, land, or sea. After removing the dissolved cases ( $n=32$ ) from analysis, the six major ports of entry included one (JFK) with less than ten cases in the sample.

<sup>6</sup> Miami International Airport, Los Angeles International Airport, Chicago O'Hare International Airport, and New York JFK International Airport.

<sup>7</sup> San Ysidro, California and Brownsville, Texas.

<sup>8</sup> Excluding the dissolved cases ( $n=32$ ).

<sup>9</sup> Results of chi-square test:  $\chi^2 = 26.205$ ,  $df = 4$ ,  $p = 0.000$ .

one of the major border entry points, has the highest release rate in the credible fear sample (22/22=100 percent). The average rate of release prior to the merits hearing for airports is 78 percent (184/236, not shown in table). Five percent of all asylum seekers in the sample entered the U.S. by sea. Only the combined seaports have a rate of release lower than JFK in the credible fear sample. Their rate of release prior to the merits hearing is the lowest by type of entry with 23.5 percent (4/17).

## **Appendix M**

### **Examples of Parole Decision Documentation**

Appendix M contains a collection of letters from the credible fear sample documenting individual decisions release or continued custody. The letter quoted in the report sub-section, “Variations in ICE documentation regarding detention and parole,” are in this appendix, as well as other examples, including denial documentation for Random No. 0.048158208 (third from last letter, dated April 11, 2003, with documentation). Where there is supporting documentation such as a parole recommendation form, it is attached behind the decision letter. It should be noted that the last two letters in the appendix, dated April 30, 2003, and May 28, 2003, which apply two different sets of criteria, are from the same A-file.



United States Department of Justice  
Immigration and Naturalization Service

[REDACTED]

A [REDACTED]

Dear ~~Mr.~~ Mrs [REDACTED],

We have considered you for release from INS custody. A review of your file indicates that you attempted to enter the United States on [REDACTED] and were found inadmissible because you did not possess valid immigration documents. On [REDACTED] an INS Asylum Officer determined that you had a credible fear of persecution.

The decision to release, or parole, an individual from detention is discretionary. Under INS policy, however, an individual found to have a credible fear of persecution should generally be paroled whenever the individual can establish that he or she is likely to appear for all hearings or other immigration matters and that he or she poses no danger to the community.

We have concluded that you meet the criteria for parole. Your release from custody is conditioned on the following requirements:

1. That you appear in person at the time and place specified, upon each and every request of the Service.
2. That you furnish written notice to the Service office handling your case of any change in residence within 48 hours of such change.
3. That you abide by all local, state and federal laws, regulations and ordinances.

Sincerely

[REDACTED]

[REDACTED]

Acting District Director



U.S. Department of Justice  
Immigration and Naturalization Service

[REDACTED]

January 15, 2003

MEMORANDUM FOR [REDACTED]  
ACTING DIRECTOR  
FOR DETENTION AND REMOVALS

FROM: Supervisory Deportation Officer [REDACTED]

SUBJECT: Significant Public Benefit Parole, Pending Immigration hearing

On [REDACTED] presented himself for admission into the United States at the Port of Entry, [REDACTED]. The subject stated that he feared to return to [REDACTED] and that he wanted to apply for asylum. He was then processed and sent to the [REDACTED] to await a hearing before an asylum officer.

It is requested that [REDACTED] be granted parole into the United States for Significant Public Benefit Parole, Pending Immigration hearing.

*Significant Public benefit*

I concur with your recommendation for ~~humanitarian~~ parole of this alien.

[REDACTED]  
[REDACTED]  
[REDACTED]  
ADDR

CC:Afile



U.S. Department of Justice  
Immigration and Naturalization Service

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attorney at Law

[REDACTED]

[REDACTED]

RE: A# [REDACTED]

In Service Custody

Dear Mr. [REDACTED],

We have considered you for release from INS custody. A review of your file indicates that you attempted to enter the United States on [REDACTED] and were found inadmissible

[REDACTED]

[REDACTED] You expressed a fear of returning to [REDACTED]. On [REDACTED] an INS Asylum Office determined that you had a credible fear of persecution. Your court hearing with the Immigration Judge is scheduled on [REDACTED]

The decision to release, or parole, an individual from detention is discretionary. Under INS policy, however, an individual found to have a credible fear of persecution should generally be paroled whenever the individual can establish that he or she is likely to appear for all hearings and other immigration matters and that he or she poses no danger to the community.

At the present time, the INS must deny your request for parole for the following reasons:

- You have not sufficiently established your identity and therefore INS cannot be assured that you will appear for immigration proceedings and other matters as required.
- You have not established sufficient ties to the community that assure INS either that you have a place to reside if you are released or that you will appear as required.
- Based on the particular facts of your case, including manner of entry, INS cannot be assured that you will appear for immigration hearings or other matters as required.

Page 2

[REDACTED]

A [REDACTED]

- Information in your file suggest that you may be engaged in or are likely to engage in criminal or other activities that may pose a danger to the community.

You may renew your request for parole at any time. If you wish to renew your request, you should submit additional material that responds to the ground for denial of your present request, as identified in this letter. For example, proof of identity is routinely established through documents such as passports, birth certificates or identity cards. It can also be established through affidavits that provide specific information about you, such as where you lived, or who your family or clan is, who the leaders of your community are, and other specific information that will help the INS verify your nationality, clan membership or other relevant identity issue.

If you need to demonstrate that you have established community ties, you should provide specific information from relatives or other persons in the United States who are willing to provide for you and who can ensure that you will appear for all immigration hearings. If the INS believes you may pose a danger to the community, you should provide specific information about your manner of entry or activities that show that you will not pose a risk to the community.

Finally, parole may in some cases be granted based on a medical condition or other urgent humanitarian need. You should include any relevant information about your health or other special needs you may have in any subsequent request.

Sincerely,

  
[REDACTED]  
[REDACTED]

District Director

[REDACTED]



U.S. Immigration  
and Customs  
Enforcement

[REDACTED]

December 4, 2003

Law Office [REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED]

Dear Mr. [REDACTED]

We have considered your client, Mr. [REDACTED] for release from DHS custody. A review of his file indicates that he has been found inadmissible.

The decision to release or parole an individual from detention is discretionary. Under DHS policy an individual should generally be paroled however, the individual must establish that he or she is likely to appear for all hearings or other immigration proceedings and that he or she poses no danger to the community.

At the present time, the DHS must deny your request for parole for the following reasons:

You have not sufficiently established your identity and therefore DHS cannot be assured that you will appear for immigration proceedings and other matters as required.

You have not established sufficient ties to the community that assures DHS either that you have a place to reside if you are released or that you will appear as required.

Based on the particular facts of your case, including manner of entry, DHS cannot be assured that you will appear for immigration hearings or other matters as required.

Information in your file suggests that you may be engaged in or likely to engage in criminal or other activities that may pose a danger to the community.

Other: There is other sufficient information to indicate your asylum claim may be suspect.

You may renew your request for parole at any time. If you wish to renew your request, you should submit additional material that responds to the ground for denial of your present request, as identified in this letter. For example, proof of identity is routinely established through documents such as passports, birth certificates or identity cards. It can also be established through detailed affidavits that provide specific information about you, such as where you lived, who your family or clan is, who the leaders of your community are, and other specific information that will help the DHS verify your nationality, clan membership or other relevant identity issue.

If you need to demonstrate that you have established community ties, you should provide specific information from relatives or other persons in the United States who are willing to provide for you and can ensure that you will appear for all immigration hearings. If the DHS believes that you may pose a danger to the community, you should provide specific information about your manner of entry or activities that show that you will not pose a risk to the community.

Finally, parole may in some cases be granted on a medical condition or other urgent humanitarian need. You should include any relevant information about your health or other specific needs you may have in any subsequent request.

Sincerely,

[REDACTED]

[REDACTED]

Interim Field Office Director

[REDACTED]

PAROLE, WAIVER & DEFERRAL APPROVAL FORM

The following individual has been checked in the following data base systems prior to Approval by the authorizing official, (ADD Inspections, ADD Examinations, if appropriate, DDD or DD) for a

Expedited Removal of Civil Fees  
(Type of action)

Name of Applicant [REDACTED]

Date of Birth [REDACTED]

Country of Citizenship [REDACTED]

Permanent Resident  Yes  No A# [REDACTED]

RESULTS

	NEGATIVE	POSITIVE
IBIS (TECS)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NCIC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NIIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAILS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DACS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CLAIMS 3 (Service Center Application)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Data base systems checks performed by Officer [REDACTED]

Approval Granted by: \_\_\_\_\_  
Authorizing Official & Title

Check if approval granted telephonically

Date \_\_\_\_\_ Time of approval \_\_\_\_\_



U.S. DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

[REDACTED]  
[REDACTED]

March 27, 2003

[REDACTED]  
Attorney at Law  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED]  
[REDACTED]

Dear [REDACTED]:

This letter is in response to your request for release on parole/bond for your client, [REDACTED]. Title 8 C.F.R. 212.5 states the guidelines for which the District Director may grant parole.

After careful review and consideration of all factors pertinent in your case, it does not appear to be in the public interest to parole your client into the United States at this time. Therefore, your request for release from custody is denied.

Sincerely,

[REDACTED]  
[REDACTED]

*for* Interim Director

U.S. Department of Justice  
Immigration and Naturalization Service

[REDACTED]  
[REDACTED]  
APR 11 2003

[REDACTED]  
Attorney at Law  
[REDACTED]  
[REDACTED]

Re: [REDACTED]  
A [REDACTED]

Dear Mr. [REDACTED]:

We have considered your client, [REDACTED], for release from the Bureau of Immigration and Customs Enforcement's (BICE) custody. A review of your client's file indicates that he attempted to enter the United States on [REDACTED] and was found inadmissible pursuant to Section 212(a)(6)(C)(i) and Section 212 (a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended. On [REDACTED], an Asylum Officer determined that your client had a credible fear of persecution.

The decision to release, or parole, an individual from detention is discretionary. Under BICE policy, however, an individual found to have a credible fear of persecution should generally be paroled whenever the individual can establish that he or she is likely to appear for all hearings and other immigration matters and that he or she poses no danger to the community.

At the present time, the BICE must deny your client's request for parole for the following reasons:

- X Your client has not sufficiently established his identity and therefore BICE cannot be assured that he will appear for immigration proceedings and other matters as required.
- X Your client has not established sufficient ties to the community that assure BICE either that he has a place to reside if he is released or that he will appear as required.

Re: [REDACTED]

Page 2

A [REDACTED]

Based on the particular facts of your client's case, including manner of entry, BICE cannot be assured that he will appear for immigration hearings or other matters as required.

Information in your client's file suggests that he may be engaged in, or is likely to engage in, criminal or other activities that may pose a danger to the community.

Other:

You may renew your client's request for parole at any time. If you wish to renew his request, you should submit additional material that responds to the ground for denial of your present request, as identified in this letter. For example, proof of identity is routinely established through documents, such as passports, birth certificates or identity cards. It can also be established through detailed affidavits that provide specific information about your client, such as where he lived, who your client's family or clan is, who the leaders of his community are, and other specific information that will help the BICE verify his nationality, clan membership or other relevant identity issue.

If you need to demonstrate that your client has established community ties, you should provide specific information from relatives or other persons in the United States who are willing to provide for your client and who can ensure that he will appear for all immigration hearings. If the BICE believes your client may pose a danger to the community, you should provide specific information about his manner of entry or activities that show that he will not pose a risk to the community.

Finally, parole may in some cases be granted based on a medical condition or other urgent humanitarian need. You should include any relevant information about your client's health or other special needs he may have in any subsequent request.

Sincerely,

[REDACTED]  
[REDACTED]  
[REDACTED]  
Interim District Director for Interior Enforcement

# NOTICE TO ALIENS

## DETAINED BY THIS SERVICE UNDER A FINAL ORDER OF REMOVAL/DEPORTATION

**CONTINUATION OF CUSTODY FOR INADMISSIBLE OR CRIMINAL ALIENS, 8 CFR Sec. 241.4:** The district director may continue in custody any alien inadmissible under section 212(a) of the Immigration & Nationality Act (ACT) or removable under sections 237(a)(1)(C), 237(a)(2), or 237(a)(4) of the Act, or who presents a significant risk of noncompliance with the order of removal, beyond the removal period, as necessary, until evidence that the release would not pose a danger to the community or a significant flight risk, the district director may, in the exercise of discretion, order the alien released from custody on such conditions as the district director may prescribe, including bond in the amount sufficient to ensure the alien's appearance for removal. The district director may consider, but is not limited to considering, the following factors:

- 1.) The nature and seriousness of the alien's criminal convictions;
- 2.) Other criminal history;
- 3.) Sentence(s) imposed and time actually served;
- 4.) History of failures to appear for courts (defaults);
- 5.) Probation history;
- 6.) Disciplinary problems while incarcerated;
- 7.) Evidence of rehabilitative effort or recidivism;
- 8.) Equities in the United States; and
- 9.) Prior immigration violations and history;

I ACKNOWLEDGE RECEIPT OF  
THIS NOTICE

(DATE)

**CONTINUATION OF CUSTODY FOR OTHER ALIENS:** Any alien removable under any section of the Act other than section 212(a), 237(a)(1)(C), 237(a)(2), or 237(a)(4) may be detained beyond the removal period, in the discretion of the district director, unless the alien demonstrates to the satisfaction of the district director that he or she is likely to comply with the removal order and is not a risk to the community.

**DETAINEES MAY PROVIDE CLEAR AND CONVINCING EVIDENCE IN WRITING THAT THEIR RELEASE WOULD NOT POSE A DANGER TO THE COMMUNITY OR A SIGNIFICANT FLIGHT RISK.**

CONSULAR NOTIFICATION

8 CFR 236.1 (e)

(e) Privilege of communication. Every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of his or her nationality in the United States. Existing treaties with the countries listed below require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in removal proceedings, whether or not requested by the alien and even if the alien requests that no communication be undertaken in his or her behalf. When notifying consular or diplomatic officials, Service officers shall not reveal the fact that any detained alien has applied for asylum or withholding of removal.

- Albania 1/ Antigua Armenia
- Azerbaijan Bahamas Barbados
- Belarus Belize Brunei
- Bulgaria China (People's Republic of) 2/ Costa Rica
- Cyprus Czech Republic Dominica
- Fiji Gambia, The Georgia
- Ghana Grenada Guyana
- Hungary Jamaica Kazakhstan
- Kiribati Kuwait Kyrgyzstan
- Malaysia Malta Mauritius
- Moldova Mongolia Nigeria
- Philippines Poland Romania
- Russian Federation St. Kitts/Nevis St. Lucia
- St. Vincent/Grenadines Seychelles Sierra Leone
- Singapore Slovak Republic South Korea
- Tajikistan Tanzania Tonga
- Trinidad/Tobago Turkmenistan Tuvalu
- Ukraine United Kingdom 3/ U.S.S.R. 4/
- Uzbekistan Zambia

Consulate Notification made

Date: [REDACTED] Time: 03:53

Officer: [REDACTED]

*Chase*

ALL OTHER COUNTRIES: alien advised of above rights to communicate with Consulate

Name: [REDACTED]

A# [REDACTED]

Served by: [REDACTED]

Date: [REDACTED]

DEPORTATION OFFICE. PAROLE RECOMMENDA. ON

DETAINEE NAME: [REDACTED]

A # [REDACTED] NATIONALITY [REDACTED]

DOCUMENTS AT ARRIVAL: Impostor to a United States passport

CREDIBLE FEAR ESTABLISHED:      Date of CF: [REDACTED]  
IDENTITY DOCS PRESENTED: Copies of identification card

COMMUNITY TIES: Not verified

NAME: [REDACTED]

RELATION: Cousin

ADDRESS: [REDACTED]

[REDACTED] Home #     

LPR      USC XXXXXX OTHER     

FINGERPRINTS CLEARED NEGATIVE: Yes

NEXT COURT HEARING [REDACTED] Master      Individual XXXXXXX

PAROLE RECOMMENDATION:      CONTINUE CUSTODY XXXXXXXXXX

COMMENTS: Subject arrived on [REDACTED] applied for admission as a USC. The subject was an impostor to a US passport in the name of [REDACTED]. The subject has claimed asylum in [REDACTED] prior to arriving in the United States. The subject was smuggled through [REDACTED] and the authorities there have the smuggler apprehended and would like to question the subject to help their prosecution case against the smuggler. The subject has not presented any identity documents on his behalf. The relationship between the subject and the sponsor is not established. The subject is likely to abscond or fail to appear for future hearings if he is released. Continued custody is recommended.

PAROLE RECOMMENDATION

PAGE 2

A # [REDACTED]

[REDACTED]  
DEPORTATION OFFICER

I DO / ~~DO NOT~~ CONCUR

[REDACTED]  
SUPERVISORY DEPORTATION OFFICER

I DO / ~~DO NOT~~ CONCUR

[REDACTED]  
ASSISTANT OFFICER-IN-CHARGE

I DO / ~~DO NOT~~ CONCUR

[REDACTED]  
OFFICER-IN-CHARGE



United States Department of Justice  
Immigration and Naturalization Service

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear Mr. [REDACTED]  
A [REDACTED]

April 30, 2003

We have considered you for release from INS custody. A review of your file indicates that you attempted to enter the United States on [REDACTED] and were found inadmissible because you were not then in possession of valid entry documents. On [REDACTED] an INS Asylum Officer determined that you had a credible fear of persecution.

The decision to release, or parole, an individual from detention is discretionary. Under INS policy, however, an individual found to have a credible fear of persecution should generally be paroled whenever the individual can establish that he or she is likely to appear for all hearings and other immigration matters and that he or she poses no danger to the community.

At the present time, the INS must deny your request for parole for the following reasons:

- You have not sufficiently established your identity and therefore INS cannot be assured that you will appear for immigration proceedings and other matters as required.
- You have not established sufficient ties to the community that assure INS either that you have a place to reside if you are released or that you will appear as required.
- Based on the particular facts of your case, including manner of entry, INS cannot be assured that you will appear for immigration hearings or other matters as required.
- Information in your file suggests that you may be engaged in, or are likely to engage in, criminal or other activities that may pose a danger to the community.
- Other:

You may renew your request for parole at any time. If you wish to renew your request, you should submit additional material that responds to the ground for denial of your present request, as identified in this letter. For example, proof of identity is routinely established through documents, such as passports, birth certificates or identity cards. It can also be established through detailed affidavits that provide specific information about you, such as where you lived, who your family or clan is, who the leaders of your community are, and other specific information that will help the INS verify your nationality, clan membership or other relevant identity issue.





US Department of Justice  
Immigration and Naturalization Service

[REDACTED]

May 28, 2003

Law Office of [REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED]  
A [REDACTED]

Dear Mr. [REDACTED]

This letter is in response to your request for parole for [REDACTED].

Section 212(d)(5)(A) of the Immigration and Nationality Act, reads, in part, "The Attorney General may, in his discretion, parole into the United States temporarily, under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit, any alien applying for admission..." Title 8 CFR, Section 212.5(a) adds that an alien could be paroled, "provided the aliens present neither a security risk nor a risk of absconding.

Mr. [REDACTED] last entered the United States on or about [REDACTED] at or near [REDACTED]. At that time, Mr. [REDACTED] was not in possession of any valid entry documents. Mr. [REDACTED] requested asylum and his case was referred to the asylum unit at [REDACTED]. On [REDACTED] an asylum officer determined that Mr. [REDACTED] had established a credible fear of return and referred his case to the Immigration Court. Mr. [REDACTED] is scheduled to appear before the Immigration Judge on [REDACTED].

The facts of the case do not provide an urgent humanitarian reason or significant public benefit that would allow parole to be granted in this matter. Accordingly, your request for parole for Mr. [REDACTED] is denied. If you have any additional questions, please contact deportation officer [REDACTED].

Sincerely,

[REDACTED]

Officer In Charge

*For*

[REDACTED]

**Appendix N**  
**Examples of Consular Notification**

Notice to Consular Officer Concerning Detention

File No.

Date: 7/23/02

To: Colombian Consulate

The person identified below claims to be a national of your country and is being detained by this Service. He or she may be contacted at the following address:

United States Immigration and Naturalization Service

International  
Airport

INS contact officer:

Watch officer

Telephone.

Name	Date of birth
Place of birth	Sex <u>M</u>
Nature of Proceedings <u>EIZF Credible Fear hearing</u>	
Date of entry to U.S. <u>July 23, 2002</u>	Place of entry to U.S.
Present location <u>Detention Center</u>	
Evidence of nationality	
Name of father	
Address of father	
Name of mother	
Address of mother	

Sincerely,

UNITED STATES DEPARTMENT OF JUSTICE  
 IMMIGRATION AND NATURALIZATION SERVICE  
 INTERNATIONAL AIRPORT

NOTICE TO

PLEASE ADDRESS REPLY TO

Mr.  
 People's Republic Of China

AND REFER TO THIS FILE NO.

The person identified below claims to be a national of your country and is being detained by this Service.

NAME:	DATE OF BIRTH:
PLACE OF BIRTH:	SEX: M
NATURE OF PROCEEDINGS: Credible Fear Er	
DATE OF ENTRY TO U.S.: 4/18/2002	PLACE OF ENTRY: I
PRESENT LOCATION:	DETENTION CENTER
DOCUMENTARY PROOF OF NATIONALITY (if any):	
NAME OF FATHER (if living):	ADDRESS:
NAME OF MOTHER (if living):	ADDRESS:

Sincerely yours, ✓

Supervisory Immigration Inspector

**PRIVILEGE OF COMMUNICATION NOTIFICATION**

As a non- U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials? *Please circle "yes" or "no"*

YES

NO

\_\_\_\_\_  
Signature of person being arrested/detained

4-19-02  
Date

\_\_\_\_\_  
(name of interpreter) certify that I am fluent in both CHINESE and English language, that I interpreted the above information from English to CHINESE completely and accurately, and that the recipient understood my interpretation.

\_\_\_\_\_  
Signature of Interpreter

04/19/02  
Date

\_\_\_\_\_  
Signature/Title

04/19/02  
Date

**CONSULAR NOTIFICATION ( Mandatory)**

Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible. Do you understand what I have stated to you? *Please circle "yes" or "no"*

**YES**

**NO**

\_\_\_\_\_  
**Signature of person being arrested/detained**

4-19-02  
**Date**

(name of interpreter) certify that I am fluent in both CHINESE and English language, that I interpreted the above information from English to CHINESE completely and accurately, and that the recipient understood my interpretation.

\_\_\_\_\_  
**Signature of Interpreter**

04/19/02  
**Date**

\_\_\_\_\_  
**Signature/Title**

04/19/02  
**Date**

7-4x(1)

U.S. Department of Justice  
Immigration and Naturalization Service

**Notice to Consular Officer Concerning Detention**

File No. \_\_\_\_\_  
Date: January 27, 2003

To [ **Consulate of  
GEORGIA** ]  
[ **FAX** \_\_\_\_\_ ]

*FAST*

The person identified below claims to be a national of your country and is being detained by this Service. He or she may be contacted at the following address:

United States Immigration and Naturalization Service  
International Airport  
\_\_\_\_\_  
\_\_\_\_\_

INS contact officer: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name	Date of Birth
Place of Birth	Sex <b>F</b>
Nature of Proceedings	212(a)(6)(C)(i) 212(a)(7)(A)(i)(I)
Date of entry to U.S. <b>January 27, 2003</b>	Place of entry to U.S.
Present location	<u>Service Processing Center,</u>
Evidence of nationality	_____
Name of father	_____
Address of father	_____
Name of mother	_____
Address of mother	_____

Sincerely,

**Notice to Consular Officer Concerning Detention**

File No. \_\_\_\_\_  
Date: September 12, 2003

To: [ **Consulate of  
CHINA**  
  
**FAX** \_\_\_\_\_ ]

The person identified below claims to be a national of your country and is being detained by this Service. He or she may be contacted at the following address:

United States Immigration and Naturalization Service  
International Airport  
\_\_\_\_\_  
\_\_\_\_\_

INS contact officer: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name	_____	Date of Birth	_____
Place of Birth	_____	Sex	M
Nature of Proceedings	212(a)(7)(A)(i)(I)		
Date of entry to U.S.	September 12, 2003	Place of entry to U.S.	_____
Present location	Service Processing Center, _____		
Evidence of nationality	NONE		
Name of father	_____		
Address of father	_____		
Name of mother	_____		
Address of mother	_____		

Sincerely, *A*

164 went through at 19:57