



BARRIERS TO PROTECTION

THE TREATMENT OF ASYLUM SEEKERS IN EXPEDITED REMOVAL

REPORT SUMMARY

Barriers to Protection documents flaws in the U.S. government's treatment of asylum seekers in Expedited Removal. These flaws place vulnerable men, women, and children at risk of being repatriated to endure persecution or torture or being re-traumatized in detention.

Expedited Removal allows the U.S. Department of Homeland Security (DHS) to summarily remove non-citizens who arrive at U.S. ports of entry or cross the U.S. border without proper documentation. Because *bona fide* refugees often are undocumented, the Expedited Removal law includes safeguards to identify those who fear return and allow them to seek asylum. U.S. Customs and Border Protection (CBP) officials are required to advise non-citizens to ask for protection if they have concerns about going home and ask them four questions about fear of return. U.S. Immigration and Customs Enforcement (ICE) detains those who claim fear, and U.S. Citizenship and Immigration Services (USCIS) asylum officers interview them to determine if their fear of persecution or torture is credible. A credible fear finding means the non-citizen may apply for asylum in a Department of Justice (DOJ) immigration court, and, after identity and security checks, ICE may release him or her while the case is pending.

CBP PROCESSING

CBP's processing is rife with problems, including non-compliance with procedures, incorrect record keeping, inadequate training and quality control, lack of privacy, and questionable interpretation practices. USCIRF observed CBP interviewers fail to read the required script; fail to record answers correctly; fail to read back answers to allow the interviewee to fix errors; improperly examine fear claims beyond the four questions; use interviewing "templates" with pre-filled responses; interview asylum seekers together; and misconstrue DHS policy on withdrawals of fear claims. Border Patrol's (BP) internal guidance on Expedited Removal processing is incorrect, instructing agents how to determine credible fear – the role of USCIS asylum officers, not BP agents. Some CBP

officers openly expressed to USCIRF skepticism, if not hostility, toward asylum seekers. Interviewing officers and agents are overwhelmingly male and are not trained to interview vulnerable women and children. CBP refers non-citizens who claim fear for prosecution for illegal entry or re-entry without first allowing USCIS to assess their fear claims.

- **Recommendation:** CBP should video-record Expedited Removal processing interviews and require supervisory and headquarters review of a sampling of the recordings for quality assurance purposes.
- **Recommendation:** CBP should retrain officers and agents on their role in the process, proper interviewing procedures, and the needs and concerns of asylum seekers and other vulnerable populations, and should rescind internal guidance that suggests that CBP officers or BP agents have the authority to reject or assess claims of fear.
- **Recommendation:** CBP should establish a corps of specially-trained, non-uniformed interviewers, including women, to interview women and children to identify fear claims.
- **Recommendation:** CBP, USCIS, and DOJ should develop procedures to allow USCIS to conduct credible fear interviews before non-citizens who express fear are prosecuted for illegal entry or re-entry.

DETENTION

Asylum seekers are detained under inappropriate penal conditions before their credible fear interviews, and in some cases even after credible fear is found. Despite 2009 reforms to move to a civil detention model, ICE uses criminal prisons and jails and private prison-like facilities to hold an increasing number of asylum seekers. The detention of mothers and children is especially problematic; children should not be detained even under civil conditions. ICE's 2009 parole directive (for port-of-entry arrivals) and increased use of Alternatives to Detention

programs have improved release opportunities after credible fear findings, but the parole directive is not codified in regulations. ICE does not have uniform procedures to determine bond amounts, and it extensively uses ankle bracelets without individually assessing an asylum seeker's non-appearance risk.

- **Recommendation:** ICE should hold adult asylum seekers who must be detained, whether before or after a credible fear determination, in civil facilities only.
- **Recommendation:** ICE should hold families that must be detained only in non-secure facilities licensed to care for children, as required by the 1997 *Flores* Agreement, and should individually reassess the need for custody after credible fear is found, with a presumption of release.
- **Recommendation:** ICE should individually re-assess the need for custody for all detainees with positive credible fear findings, apply a presumption of bond for detainees with credible fear who do not fall under the 2009 parole directive, codify the parole directive into regulations, and better document and monitor parole and bond decisions.

INFORMATION

USCIRF's interviews with detained asylum seekers revealed widespread ignorance of what they are experiencing, resulting in fear and anxiety. Released asylum seekers also lack an understanding of their responsibilities and the next steps in their asylum cases. Information required to be provided by CBP, USCIS, and ICE is not written in laypersons terms and may not be available in the person's language. Although Legal Orientation Programs are available in some ICE detention facilities in some languages, DHS has implemented initiatives under which Honduran and Guatemalan adults who do not claim fear remain in BP's custody until just before ICE removes them, denying them access to these programs.

- **Recommendation:** CBP should develop a brief document clearly explaining Expedited Removal, its consequences, the right to seek protection, and the right to request a private interview, and provide it to all individuals, in a language they understand, when they come into CBP custody.

- **Recommendation:** Congress should provide funding to ICE and the Department of Justice's Executive Office for Immigration Review (EOIR) to expand the Legal Orientation Program to all detention facilities housing asylum seekers and provide it before detainees' credible fear interviews.
- **Recommendation:** CBP and ICE should ensure that programs that separately detain nationals of particular countries do not prevent them from learning about the right to seek asylum.

CREDIBLE FEAR

New language in a 2014 training document for asylum officers and a corresponding questionnaire checklist raise concerns that the credible fear screening is approaching a full asylum adjudication.

- **Recommendation:** USCIS should reaffirm that the credible fear standard requires a showing of "significant possibility of eligibility for asylum," not a full assessment of the merits of the case.

THE OVERALL PROCESS

There are longstanding and new concerns about the treatment of asylum seekers in Expedited Removal. The prioritization of CBP and ICE funding has led to delays and backlogs at USCIS and EOIR.

- **Recommendation:** DHS should appoint a high-ranking official with the authority and resources to make and oversee reforms, and its Office of Inspector General should audit Expedited Removal for compliance with laws and policies on the protection of asylum seekers.
- **Recommendation:** Congress should authorize and fund another independent, comprehensive study of asylum seekers in Expedited Removal, and should ask the Government Accountability Office to assess whether non-citizens removed under Expedited Removal have faced persecution or torture after return.
- **Recommendation:** Congress should increase funding for USCIS and EOIR.
- **Recommendation:** USCIS should allow asylum officers to adjudicate appropriate Expedited Removal cases in which credible fear is found as affirmative asylum cases, instead of sending them to immigration court.