



UNITED STATES COMMISSION ON
INTERNATIONAL RELIGIOUS FREEDOM

**STATEMENT OF THE
U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM**

on

ASYLUM: CREDIBLE FEAR AND PAROLE PROCESSES

December 12, 2013

Robert P. George, Chair
Katrina Lantos Swett, Vice-Chair

As the House Judiciary Committee reviews the asylum process during a December 12, 2013 hearing, the U.S. Commission on International Religious Freedom (USCIRF) submits for the record a review of the Commission's work on asylum and the credible fear and parole processes.

USCIRF is an independent, bipartisan advisory body established by the 1998 International Religious Freedom Act (IRFA) to monitor religious freedom conditions around the world and make policy recommendations to the President, Secretary of State, and Congress. USCIRF is not part of the State Department or the Executive branch; it is led by nine private-citizen Commissioners who are appointed by the President and the leadership of both parties in the House and Senate. Five Commissioners are appointed by the party that holds the White House and four by the other party.

IRFA authorized USCIRF to investigate and report on the treatment of asylum seekers under the then-new process of Expedited Removal which had been enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Under Expedited Removal, aliens arriving in the United States without proper documents can be returned to their country of origin without delay, but also without the safeguard of a hearing before an immigration judge (IJ). Aware of the critical importance of protecting individuals fleeing from persecution and concerned by the obvious risk that refugees—who often travel without proper documents—mistakenly might be returned to their persecutors, IIRIRA put in place special procedures for their protection. An alien claiming a fear of return is detained while a preliminary assessment (the “credible fear” determination) is made as to whether his or her case warrants consideration by an IJ. If credible fear is found, the asylum seeker is allowed to appear before an IJ, and may, at the government's

discretion, be paroled (released) while his or her case is pending before the IJ. If credible fear is not found, the alien is put back in the regular Expedited Removal process and removed promptly.

As authorized in IRFA, USCIRF conducted a major research study on these issues in 2003 and 2004, and released its findings in 2005 in the Commission's Report on Asylum Seekers in Expedited Removal (the Study). The Study identified serious flaws placing asylum seekers at risk of being returned to countries where they may face persecution and being detained under inappropriate conditions. To address these concerns, USCIRF issued recommendations, none of which required congressional action, to the relevant agencies in the Departments of Homeland Security (DHS) and Justice (DOJ). The recommendations were geared to help protect U.S. borders and ensure fair and humane treatment for bona fide asylum seekers, the two goals of the law that established the Expedited Removal procedure.

The flaws identified by the Study included: incomplete and unreliable records of initial interviews by immigration officers at ports and credible fear interviews by asylum officers; wildly varying case outcomes among different immigration judges and courts; wildly varying parole rates, perhaps in violation of DHS parole guidelines; and detention of asylum seekers in inappropriately punitive, jail-like conditions. The recommendations to remedy these flaws included: videotaping interviews and employing "testers" to ensure procedures are correctly followed; increased training and supervision of officials and review of decisions; permitting asylum officers to grant asylum at the credible fear interview stage in appropriate cases; codifying the existing parole guidelines into regulations and better documenting and monitoring parole adjudications; and modifying detention practices to better suit a non-criminal, asylum seeking population.

With respect to parole, the USCIRF Study found that the existing criteria—that the alien establish credible fear, community ties, identity, and no security risk—were appropriate but were being inconsistently applied. The Study experts heard stories of asylum seekers being detained for years and found widely varying release rates from city to city. The Study recommended that asylum seekers with credible fear who do not pose flight or security risks should be released, not detained, and that such a policy should be codified into regulations. Many asylum seekers have suffered trauma and abuse prior to arrival in the United States and detaining them after a finding of credible fear risks re-traumatizing them, including the possibility of long-term psychological consequences.

In 2007, contrary to USCIRF's recommendation, DHS' Immigration and Customs Enforcement agency (ICE) issued new parole guidelines that expanded the criteria that must be met to allow asylum seekers to be paroled, rather than codifying the existing criteria as the Commission recommended.

In December 2009, ICE issued new parole guidelines for asylum seekers in Expedited Removal that were in line with the Study's recommendations. Under the new directive, individuals found to have a credible fear of persecution are automatically considered for parole. Parole is not automatically granted, however. Under the new directive, parole may be granted only when asylum seekers establish credible fear, identity, community ties, and that they are not security risks. If the asylum seeker does not meet these long-established criteria, or if ICE determines there are "exceptional overriding factors," then parole is not granted. Additionally, the granting of parole does not automatically mean release. Frequently, a bond is set before release occurs. If the bond cannot be met, then the asylum seeker is not released. In March 2013, ICE informed USCIRF that

in FY 2012 80 percent of asylum seekers found to have a credible fear were granted parole. Among the reasons an asylum seeker with credible fear would remain detained are failure to substantiate community ties or inability to pay for a bond.

USCIRF continues to recommend that the 2009 parole process and criteria be codified into regulations. USCIRF also continues to conclude that parole provides vital protection for asylum seekers who have been found to have credible fear. USCIRF's ongoing monitoring, including visits in 2012 to detention centers, has found that, although ICE has made some positive changes since 2009 that allow it to house more asylum seekers in civil detention facilities, it continues to detain many asylum seekers in jail-like conditions that are inappropriate for non-criminals and present a real risk of re-traumatizing this vulnerable population. (For more information, see USCIRF's April 2013 report, [Assessing the U.S. Government's Detention of Asylum Seekers: Further Attention Needed to Fully Implement Reforms.](#)) USCIRF staff will visit additional detention centers in December 2013.

As Congress recognized when it created the Expedited Removal Process, the United States, in enacting and enforcing its immigration law, has a moral, humanitarian, and international legal obligation to provide protection for individuals fleeing religious and other forms of persecution. If the credible fear and parole processes are being abused, that should be ascertained and stopped, but the processes must be retained. These processes are vital to ensure that asylum seekers are not mistakenly returned to their persecutors or re-traumatized in detention.