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

**EVALUATION OF CREDIBLE FEAR REFERRAL IN EXPEDITED  
REMOVAL AT PORTS OF ENTRY IN THE UNITED STATES**

FEBRUARY 2005

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## OVERVIEW

Between May and July of 2004, the Bellevue/NYU School of Medicine Program for Survivors of Torture conducted a study of Credible Fear referral in the Expedited Removal process. Section 605 of the International Religious Freedom Act of 1998 authorized the United States Commission on International Religious Freedom (USCIRF) to appoint experts to study the treatment of asylum seekers subject to Expedited Removal. Pursuant to this authority, the Commission appointed Dr. Allen Keller as the “lead” expert with regard to monitoring ports of entry. Under Dr. Keller’s supervision, and employing a methodology developed by the authors of this report in consultation with the other experts appointed by the Commission, two dozen trained research assistants observed more than 400 cases over several months in seven ports of entry (airports and border crossings) in the continental United States. The study integrated data from observations of Secondary Inspection interviews, independent interviews with aliens conducted by our research staff, and a review of official records from these interviews (A-files). A draft of this report was reviewed by Customs and Border Protection (CBP) administrators and port directors, and their comments were used in making revisions.

Our findings suggest that when procedures are followed, appropriate referrals are more likely to be made. However, there was frequent failure on the part of CBP officers to provide required information to aliens during the Secondary Inspection interview and occasional failures to refer eligible aliens for Credible Fear interviews when they expressed a fear of returning to their home countries. In addition, researchers noted a number of inconsistencies between their observations and the official records prepared by the investigating officers (A-files). Finally, on a handful of occasions, researchers observed overt attempts by CBP officers to coerce aliens to retract their fear claim and withdraw their applications for admission.

The results of this study shed light on the first three of the four questions posed to the Experts by the Congress in Section 605 of IRFA. Those questions are, whether immigration officers exercising authority pursuant to the Expedited Removal provisions (Section 235(b)) of the Immigration and Nationality Act are, with respect to aliens who may be eligible for asylum, (1) improperly encouraging such aliens to withdraw their applications for admission; (2) 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; (3) incorrectly removing such aliens to a country where they may be persecuted; or (4) are detaining such aliens improperly or under inappropriate conditions.

## BACKGROUND

In 1996, the United States Congress passed the Illegal Immigration Reform and Immigration Responsibility Act. One of the results of this law was the creation of the Expedited Removal process for aliens entering the country by fraudulent means, misrepresentation, or without proper travel documents. The Expedited Removal process, which was implemented in April of 1997, was intended to expeditiously identify and remove improperly documented aliens at ports of entry but, at the same time, ensure that bona fide asylum seekers would have access to an asylum hearing (GAO, 2000). All aliens entering the U.S. without proper travel documents or under fraud or misrepresentation are subject to immediate return (Expedited Removal) and are subsequently barred from entering the U.S. for a minimum of five years. However, if at the port of entry (i.e., during the Secondary Inspection interview) the alien states that he/she wishes to seek asylum or expresses fear of returning to the country he or she left, then the person is entitled to further consideration to determine the validity of his or her claim. This process begins with a referral for a Credible Fear interview with an asylum officer, who is charged with assessing the legitimacy of the alien's claimed fear. This initial screening process at ports of entry has been the subject of debate among legal scholars and human rights activists.

One of the primary concerns raised by critics of the Expedited Removal process is the possibility that individuals with a genuine asylum claim may not be identified by the screening procedures and will be erroneously returned to their native country, possibly facing further danger or even death (U.N. High Commissioner for Refugees, 2003). Human rights organizations have provided anecdotal reports of individuals fearing persecution who were removed at the time of entry into the U.S. (ABA, 2004; Lawyers Committee for Human Rights, 2000), and several lawsuits have been brought alleging mistreatment at ports of entry (Wang, personal communication, July 2004). The General Accounting Office (GAO) reviewed 365 case files randomly selected from 47,791 fiscal year 1999 case files of aliens who attempted entry at Los Angeles, John F. Kennedy, and Miami airports, and San Ysidro border station and were charged under the Expedited Removal provisions (GAO, 2000). Although this study showed that inspectors at these ports generally complied with established procedures, the reliance on archival data (i.e., official records or A-files) presupposes that official records provide a reliable account of the actual procedures, behaviors and interactions that occurred.

The present study was designed to overcome some of the limitations of GAO's methodology by integrating observational data and independent interviews in order to analyze the practices of Department of Homeland Security (DHS), Customs and Border Protection (CBP) officers at airport and land port border crossings across the U.S. This represents the first systematic study of the Expedited Removal process using direct observations of CBP officers and aliens during Secondary Inspection interviews and comparing these data with the official records generated from these interviews. The goals of this study were to assess the extent to which existing procedures enabled the identification of aliens with a credible fear of returning to their home country, to assess potential obstacles to accurate identification, and to assess the accuracy of data contained in the official records of these interviews. CBP administrators and port directors were consulted in the implementation of the study (e.g., optimal hours for collecting data) and, after reviewing a draft of the report, provided feedback.

## I. STUDY METHODOLOGY

Data were collected from seven sites across the country: Atlanta Hartsfield International Airport, Houston International Airport, John F. Kennedy International Airport (JFK), Los Angeles International Airport, Miami International Airport, Newark Liberty International Airport, and the San Ysidro Border Station. These sites were selected because of both the high volume of Secondary Inspections conducted and to obtain a representative cross-section of aliens entering the U.S. Across these sites, four sources of data were collected, some of which were integrated for subsequent analysis and others that were analyzed separately. Data collection involved a) observation of Secondary Inspection interviews conducted by CBP officers at several ports across the U.S. (JFK, Los Angeles, Miami, Newark, and San Ysidro), b) observation of videotaped Secondary Inspection interviews (Atlanta and Houston), c) interviews with aliens following a completed Secondary Inspection interview but prior to ultimate disposition (at JFK, Los Angeles, Miami, Newark, and San Ysidro), and d) review of official documents generated by CBP officials for all aliens who were interviewed or observed at the above-named locations (all sites). The decision to use live observation versus videotape was based on the availability of videotaped interviews at the sites as well as the amount and type of access provided to research staff.<sup>1</sup> When videotaped observations were reviewed, we provided extra videotapes to the ports of entry in order to permit retention of those videotapes that had been coded in case further review was necessary.<sup>2</sup> Prior to initiating data collection, the observational rating scale developed for this study was pilot-tested using videotaped Secondary Inspection interviews conducted at Houston International Airport. Because study investigators were prohibited from interfering with the tasks of CBP officers, no data were collected directly from the CBP officers (i.e., we did not interview officers about their opinion or decision-making).

In order to complete this large, multi-site research project, 26 research assistants were recruited and trained by the Principal Investigators (Drs. Keller and Rosenfeld), Project Coordinator (Dr. Rasmussen), and Site Supervisor (Ms. Reeves). Research assistants were recruited from local universities and graduate schools, and participated in an initial two-day orientation and training regarding immigration policies, study goals, past research findings, and the instruments and design involved in the current investigation. In addition, on-site supervision was provided on a regular basis by supervisory staff (Dr. Rasmussen and Ms. Reeves) in order to supplement this initial training and address general and site-specific research issues that arose during the course of the study. Efforts were made to recruit researchers that had experience with social and policy research, and were fluent in languages relevant to the particular ports of entry. In addition to English, the languages spoken by research staff included Spanish, French, Mandarin, Haitian Creole, Farsi, Serbo-Croatian, and German. When research interviews required fluency in a language that was not spoken by the available study personnel, telephonic interpreters were used. Study design logistics are presented in Table 1.1.<sup>3</sup>

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<sup>1</sup> We requested permission to videotape all interviews at each site. Unfortunately, approval was given by DHS after data collection had already been completed at most sites.

<sup>2</sup> Standard procedure at both Atlanta and Houston was to retain videotapes for 90 days in case a need for review arose (although review reported to be extremely rare). All tapes were re-used after this 90 day period.

<sup>3</sup> Because this study presents data that concern individuals who may be in danger if they are identified or have been returned to their country of origin, data are presented with as little identifying information as possible.

Table 1.1: Study Design

Study Site	Data	Study Period (# Weeks)	Number of Cases
Atlanta Int'l Airport	Video Obs.	All videotaped interviews conducted from May 30 to June 7, 2004 were reviewed	43
Houston Int'l Airport	Video Obs. Interview	A random subset of all videotaped interviews conducted from May 4, 2004 to June 20, 2004 were reviewed	27
JFK Int'l Airport (JFK)	Direct Obs. Interview	June 16 to July 7, 2004 (3 wks) Weds-Mon, 2pm-10pm	13
Los Angeles Int'l Airport	Direct Obs. Interview	July 7 to 25, 2004 (3 wks) Weds-Mon, 2pm-10pm	27
Miami Int'l Airport	Direct Obs. Interview	May 19 to June 27, 2004 (6 wks) Thurs-Mon, 6am-10pm	110
Newark Int'l Airport	Direct Obs. Interview	May 5 to June 13, 2004 (6 wks) Weds-Sun, 2pm-10pm	32
San Ysidro Border Station	Direct Obs. Interview	May 26 to July 5, 2004 (6 wks) Weds-Sun 9am-10pm	191

Research assistants monitored the study sites for over 1500 hours, generating data on several hundred cases (described in detail below). The amount of time spent collecting data and the number of staff available varied across sites, ranging from a minimum of two researchers at Atlanta for a two-week period to a maximum of six researchers at Newark, Miami, and San Ysidro for six-week periods at each site. In all ports where live observation and interviews were conducted, staff were present during the hours and days in which the maximum volume of Secondary Inspections were conducted. As a result of space constraints and concerns about interference with port operations, USCIRF agreed to CBP requests to limit both the number of research assistants who could be present in a given site at any time, as well as the number of weeks that research staff could collect data.

National estimates of the number of aliens sent to Secondary Inspection per year approximate 10 million, and 90 percent of these individuals are ultimately allowed to enter the U.S. after being processed through an initial triage, usually at a counter in a large waiting room (Congressional Research Service Analysis of INS Workload Data, 2004). Our focus was confined to the 10 percent not allowed past this triage stage—i.e., those sent to Secondary Inspection interviews. Research assistants observed as many Secondary Inspection interviews that time and personnel restrictions allowed (provided they were informed that these interviews were occurring), and conducted independent interviews with aliens after the Secondary Inspection interviews were complete whenever possible. The length of observations ranged from 3 to 386 minutes, with an overall average of 54 minutes, although there was considerable variation across ports of entry. Interviews averaged 18 minutes at San Ysidro (range: 3 to 150) compared to 2 hours and 53 minutes at Houston (range: 79 to 380). Post-inspection interviews lasted, on average, one hour each. Roughly 10 percent of all observations were observed simultaneously by two researchers in order to assess the reliability of the ratings generated. Variables that could not be reliably rated were not used in subsequent data analysis (described below).

In sites where live observation was used to collect data (JFK, Los Angeles, Miami, Newark, and San Ysidro), aliens were asked to consent to allow research assistants to observe the Secondary Inspection interview. Of the aliens who were asked to consent to live

observations, only two (0.4 percent) refused to allow an observer to be present. A substantially larger proportion of aliens refused to consent to an individual interview after completion of the Secondary Inspection interview, as 64 of the 266 aliens (24 percent) approached refused. The most common reason cited for refusing to participate in an individual interview was feeling tired (n=8), although 21 people did not offer an explanation for refusing to participate in the research interview. Because researchers at Atlanta and Houston reviewed videotaped Secondary Inspection interviews that had already been completed, no individual interviews were conducted at Atlanta and only four were conducted at Houston. Once interviews or observations were complete, researchers requested official immigration files (A-Files) prepared on the basis of these same secondary interviews in order to compare the A-Files of the Secondary Inspection interview and the direct observations of our research team. Thus, a maximum of three data sources were available for analysis: observation (direct or videotaped) of the Secondary Inspection interview, independent interview with the alien and official records produced on the basis of the Secondary Inspection interviews (A-files).

Although the study methodology centered around obtaining a consecutive sample of Secondary Inspection interviews conducted at the research sites, we deliberately under-sampled Mexican cases processed at San Ysidro. Because of the high volume of Mexicans involved in Expedited Removal at San Ysidro, and the potential for these data to dwarf data collected at the other sites, we included data from only a subset of all Mexican cases and prioritized observations and interviews of non-Mexican aliens. This under-sampling was handled in several ways. First, after collecting observational data on 200 Mexican cases (far exceeding the volume of cases from other sites), we stopped conducting individual interviews with individuals from Mexico in order to focus our resources on interviews with non-Mexican aliens (although direct observation of Secondary Inspection interviews continued). Second, in order to reduce the disparity between Mexican aliens and those from other countries, we included only a random subset of these cases in the dataset analyzed (roughly one fourth of all Mexican cases observed; n=150). Finally, a number of analyses were conducted twice, once using the total sample and once after eliminating the San Ysidro sample. The analyses excluding San Ysidro are noted throughout the report and can be found in Appendix C. Thus, although the sample described below still contains a large number of Mexican aliens interviewed or observed at San Ysidro, it contains only a fraction of all Mexican cases for which data were collected.

Logistical difficulties also hindered data collection at some sites. For example, JFK has five terminals that process international flights and most regularly conduct Secondary Inspection interviews at counters rather than in individual rooms. Because these factors presented methodological challenges not present at other sites, we were unable to collect a sufficient amount of data to estimate an accurate picture of the frequency of behaviors and processes at this site. We observed cases at one terminal only (Terminal Four), and scheduled our research assistants to be present during the late afternoon and evening (high traffic periods). Because of the limited number of cases, JFK data are excluded from port-by-port statistical analyses, although they are included in analyses using the total sample.

In several data collection sites (Atlanta, Houston, and San Ysidro), Secondary Inspection interviews (live or videotaped) were observed by two researchers in order to establish inter-rater reliability. At San Ysidro and Houston, two researchers observed every 10<sup>th</sup> secondary

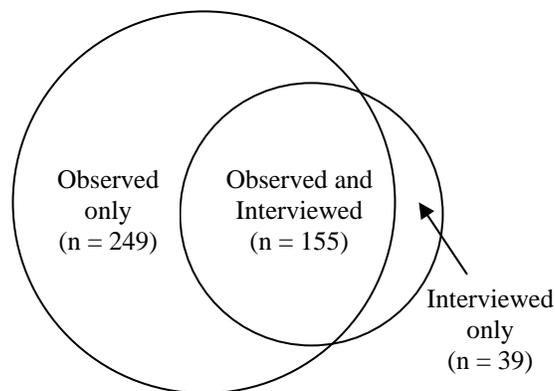
investigation interview while at Atlanta every interview was observed by two raters. In total, 93 paired ratings were available for analysis. Inter-rater reliability varied across the data collected with many variables being reliably assessed and others that were more difficult to establish reliable coding. When reliability was unacceptable (Kappa coefficient below .4 or intraclass correlation coefficient below .6), variables were excluded from subsequent data analysis.<sup>4</sup> Of the data reported here, the average inter-rater reliability coefficient for dichotomous variables (Kappa) was .63 (range .42-1.00) and for variables with more than two categories (intra-class correlation coefficients) was .90 (range .65-1.00).

All data were initially entered into an Excel spreadsheet. Supervisory staff (Dr. Rasmussen and Ms. Reeves) monitored data entry, reviewing all data for incorrect entries and comparing 10 percent of all records against original sources to insure data accuracy. Excel spreadsheets were then converted to SPSS for subsequent data analyses.

## Participants

In total, data were analyzed for 443 different cases across the seven data collection sites. These cases included 404 direct observations of Secondary Inspection interviews (341 live observations and 63 observations of videotaped interviews; because the same data was available from these two sources, these were collapsed into a single “observation” dataset for most analyses) and 194 individual interviews with aliens. Both interview and observation data were available for 155 cases; 39 cases had only an interview with our staff without direct observation of the CBP secondary investigation interview. A-files were available for 435 of these 443 cases (A-files were not provided for 8 cases). Figure 1 presents a schematic representation of the overlap between the three data sources.

Figure 1.1: Participant cases observed and interviewed



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<sup>4</sup> This process resulted in the exclusion of relatively few variables with the exception of observational ratings of several officer behaviors (described in Section IV), where a moderate number of potential variables were excluded because of inadequate reliability. Much of the difficulty in establishing reliability for these variables was attributable to the low frequency of the behaviors although some were also subjective in nature, increasing the potential variability in rater coding. Variables that were analyzed are found in Section IV of this report.

Because some important differences emerged across sites while other issues were consistent across all or most sites, data are described in some places for the entire sample and in other instances are reported for specific sites.

Demographics for the three samples are presented in Appendix A. Males comprised 58 percent of the sample. Participants came from 56 countries, although the vast majority originated from Central and South America and the Caribbean (roughly 80 percent). Over half the cases from each sample resulted in an Expedited Removal while another 24 percent were labeled Withdrawals (i.e., the alien voluntarily returned to his or her country of origin without requesting asylum or being banned from re-entry); roughly one sixth of all cases resulted in a referral for a Credible Fear interview. The initial intent of this study was to focus on both Expedited Removal proceedings as well as the processing of aliens bearing documentation from a Visa Waiver Program (VWP) country who were suspected of actually being from a non-VWP country.<sup>5</sup> However, because only a small number of VWP refusal cases (i.e., where an individual bearing documentation from a VWP country was refused entry because of suspected fraud or misrepresentation) were found (n=19), these data were excluded from analyses.<sup>6</sup>

### *Basis for Secondary Inspection and Case Outcome*

Because many aliens were unaware of the basis for their Secondary Inspection interview, data on the reasons for Secondary Inspection across the different ports of entry were taken only from cases in which direct observation of Secondary Inspection interviews occurred. Of note, these data were missing in five percent of cases (n=20). The most common reasons for a Secondary Inspection interview included clearly false or missing documents, cases in which the travel visa appeared suspicious or may have misrepresented the alien’s intent, or when the alien had overstayed his or her visa during a previous visit to the U.S. Cases in which the CBP officer characterized the alien’s documents (passport and/or visa) as false (i.e., were clearly

Table 1.2: Basis for the Secondary Inspection Interviews by Port of Entry

Port of Entry	Objective	Discretionary	Prior Overstay	Other <sup>a</sup>	Total
Atlanta	3 (7.1%)	17 (40.4%)	8 (19.0%)	14 (33.0%)	42
Houston	6 (23.0%)	16(61.6%)	2 (7.7%)	2 (7.7%)	26
Los Angeles	10 (50.0%)	4 (20.0%)	2 (10.0%)	4 (20.0%)	20
Miami	34 (36.2%)	15 (16.0%)	36 (38.3%)	9 (9.6%)	94
Newark	16 (53.4%)	4 (13.3%)	7 (23.3%)	3 (10.0%)	30
San Ysidro	107 (62.2%)	52 (30.3%)	1 (.6%)	12 (7.0%)	172
Total	176	108	56	44	384

<sup>a</sup> Other reasons included attempting to evade inspection, being arrested during prior visa extensions, and failing to register with immigration authorities on a prior visit.

<sup>5</sup>Under the standing interpretation of DHS regulations, aliens who use false passports from visa waiver countries will be returned unless they step forward and identify themselves as asylum-seekers. In contrast, aliens who use other false documents are subject to expedited removal, and must be asked if they have any fear of return before they can be expeditiously removed. (See 8 CFR 217.4; DHS Inspector Field Manual Section 15.7 (2003), In re Kanagasundram, BIA Interim Decision 3407 (1999)).

<sup>6</sup> Of the 19 VWP cases observed in the course of this study, three were referred for an “asylum only” interview (i.e., three requested asylum upon interview). Although this sample is small, the findings highlight the possibility that some individuals seeking asylum enter the U.S. bearing documentation from a VWP country.

fraudulent) or were absent (i.e., no passport) were subsequently classified as “objective” reasons for Secondary Inspection whereas cases in which a legal passport was presented but the CBP officer suspected that the visa did not accurately reflect the alien’s intent (e.g., an adult traveling on a student visa who is suspected of intending to remain indefinitely) or that the alien committed a material misrepresentation as “discretionary” reasons for a Secondary Inspection interview. In addition, we categorized Prior Overstay as a separate category since these decisions are often at the discretion of the CBP officer, although the bases for such decisions are typically more objective than cases of misrepresentation. Ports of entry differed in reasons offered for a Secondary Inspection interview, with Houston and Atlanta being more likely to refer aliens based on discretionary reasons than other ports of entry (see Table 1.2).

Case outcome also varied by port of entry. In most ports, Expedited Removal comprised the vast majority of case outcomes although both Atlanta and Houston had much higher rates of withdrawals. The proportion of Credible Fear referrals was also much higher in Miami than in the other ports of entry studied (see Table 1.3).

Table 1.3: Case Outcome by Port of Entry

Port of Entry	Expedited Removal	Withdrawal	Credible Fear Referral	Total
Atlanta	13 (30.2%)	30 (69.8%)	0	43
Houston	11 (40.7%)	14 (51.9%)	2 (7.4%)	27
Los Angeles	11 (40.7%)	7 (25.9%)	9 (33.3%)	27
Miami	38 (34.5%)	34 (30.9%)	38 (34.5%)	110
Newark	12 (37.5%)	12 (37.5%)	8 (25.0%)	32
San Ysidro	168 (88.0%)	10 (5.2%)	13 (6.8%)	191
Total	253	107	70	430

### *Use of Interpreters and Bilingual Officers*

Less than one fifth of all cases (16.7 percent) were processed solely in English (i.e., when the alien spoke English). Cases were processed in 27 other languages, with the most common languages being Spanish (61.6 percent of all cases analyzed), followed by Portuguese (5.7 percent), Mandarin (4.1 percent), Haitian Creole (4.5 percent), and Arabic (1.1 percent). Information regarding the use of interpreters and bilingual officers are presented in Table 1.4 and 1.5. There was only one case processed during the study period in which a non-English speaking alien reported (during the interview with research staff) that no interpreter had been provided despite the inability of the interviewing officer to speak his language, however direct observation of this case did not occur<sup>7</sup>.

Table 1.4: Interpreters, Bilingual officers, and interviews in English

	Frequency	Percent
Interpreter used	131	30.6
Interview done in English	79	18.5
Interview done by bilingual officer only	218	50.9
Total	428	100.0

<sup>7</sup> There were two cases where aliens were provided interpreters but only after repeated requests by the alien. In a third case, it is unclear whether an interpreter was provided after repeated requests by the alien.

Table 1.5: Number of cases and languages in which officers were bilingual

	Frequency	Percent
Spanish	199	91.3
Haitian Creole	13	6.0
Mandarin	4	1.9
Russian	1	0.5
French	1	0.5

Types of interpreters used for those cases conducted in a language not shared between officer and alien by ports of entry are presented in Table 1.6. Clearly there were differences across sites, with Miami relying on telephonic interpretation, Atlanta on in-person staff, and Los Angeles, using all methods available.

Table 1.6: Type of Interpreters by Ports of Entry

	Atlanta	Houston	Los Angeles	Miami	Newark	San Ysidro	Total
Interviewing officer <sup>a</sup>	2 (6.7%)	1 (33.3%)	4 (19.0%)	2 (4.1%)	2 (22.2%)	1 (7.7%)	12 (9.6%)
Another CBP officer	0	1 (33.3%)	3 (14.3%)	1 (2.0%)	1 (11.1%)	1 (7.7%)	7 (5.6%)
Telephonic interpreter	0	0	5 (23.8%)	46 (93.9%)	5 (55.6%)	11 (84.6%)	67 (53.6%)
Airline employee	3 (10.0%)	0	5 (23.8%)	0	1 (11.1%)	0	9 (7.2%)
In-person interpreter	24 (80.0%)	0	3 (14.3%)	0	0	0	27 (21.6%)
Unknown	1 (3.3%)	1 (33.3%)	1 (4.8%)	0	0	0	3 (2.4%)
Total cases	30	3	21	49	9	13	125

<sup>a</sup>Interviewing officers both interviewed aliens themselves and interpreted for the primary officer

### *Representativeness of study samples*

Most ports of entry provided basic demographic and case outcome information for cases that were processed during the study period but were not included in our study. Reasons for the failure to observe a Secondary Inspection interview or conduct a separate interview with the alien included the lack of research investigators on site at the time a case was processed, a volume of cases processed that exceeded the number of study investigators available, or a refusal on the part of the alien to participate in the study. Because the data provided varied somewhat across the study sites, comparisons were made on a port-by-port basis rather than using the aggregated dataset. Moreover, comparison data were not provided prior by Newark, and at Atlanta there was no comparison data because observations included all of the cases that were processed during the study period. Detailed data comparing cases observed during the course of the study versus those cases processed but not observed or interviewed are presented in Appendix B.

Across the sites that provided basic demographic data on Secondary Inspection interviews (Houston, JFK, Miami, San Ysidro), there were no significant differences in the gender or age of aliens who were observed or interviewed by our research staff compared to those processed but not included in our study. Case outcome differed between cases processed and those not observed at some ports of entry but not others. The proportion of Credible Fear referrals in our sample was greater at Miami and San Ysidro compared to cases not studied (i.e., we observed a disproportionately greater number of cases that resulted in a referral for Credible Fear interview) but there were no differences at the other sites. The proportion of Expedited Removals was greater among cases observed compared to those not observed at Houston but did

not appear to differ at other sites. There were no differences with regard to case outcome between cases included in this study and cases processed but not included at JFK and Los Angeles. Region of origin for aliens included in our study differed from those processed but not included at San Ysidro but not at the other study sites. At San Ysidro, the proportion of aliens from Latin America was lower in our sample than in the group not observed or interviewed, although this discrepancy was deliberate, due to our intentional under-sampling of Mexicans described above. Country of origin data were not available for JFK or Los Angeles. Given the modest, and non-systematic differences (with the exception of region of origin at San Ysidro), the data collected in the present study appears to provide a representative sample of the population of cases processed at these ports during the study period.

Relative to national statistics for 2000-2003 (summarized in Fleming and Scheuren, Statistical Report on Expedited Removal, Credible Fear, and Withdrawal, FY 2000-2003), our sample includes a higher proportion of women, of Expedited Removal cases at airports, and includes four of the top ten countries of origin for Credible Fear cases for 2000-2003. In addition, the patterns of case outcomes at particular ports of entry were similar.

## II. USE AND ADHERENCE TO THE I-867 FORMAT

The I-867A form provides information to arriving aliens concerning the Expedited Removal process, the consequences of providing false information, and the protections given by the U.S. for those individuals fleeing persecution. The I-867B form consists of questions designed to assess whether or not the alien has any fear of returning to his or her country—the “fear questions.” CBP Expedited Removal Training Materials (September, 2003) state that “Form I-867A&B must be used in every case in which an alien is determined to be subject to Expedited Removal. It is not an optional form” (p. 15; emphasis in original). Box 2.1 reproduces the text provided in the I-867A and B forms.

Box 2.1: Information that officers are obliged to read to aliens

<b>I-867A</b>	2 <sup>nd</sup> paragraph	You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, barred from reentry for a period of 5 years or longer.
	3 <sup>rd</sup> paragraph	This may be your only opportunity to present information to me and the Immigration and Naturalization Service [sic.] to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.
	4 <sup>th</sup> paragraph	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.
<b>I-867B Fear Questions</b>	Question 1	Why did you leave your home country or country of last residence?
	Question 2	Do you have any fear or concern about being returned to your home country or being removed from the United States?
	Question 3	Would you be harmed if you are returned to your home country or country of last residence?

Although reading the I-867A form is a required element of every Secondary Inspection interview in which Expedited Removal will be applied, we observed many cases in which the requisite information was not provided to the alien. In many other cases the alien was simply handed a photocopy containing the necessary information but was not read the information or offered any further explanation (see Table 2.1). The column labeled “Not read but presented in text” refers to cases in which the I-867A form was given to the alien without instructions or explanation of its content (i.e., placed in front of them). This was a common practice at Houston, which accounted for virtually all of the cases in which this material was presented in written form (see Table 2.1).

Table 2.1: Information conveyed and questions asked from the I-867A and B forms

Obligatory Statements	Read or Paraphrased	Observation		A-File	
		Not read	Not read but presented in text	Question/response in record	Question/response not in record
I867A 2 <sup>nd</sup> paragraph	278 (75.3%)	72 (19.5%)	19 (5.1%)	--	--
I867A 3 <sup>rd</sup> paragraph	206 (56.0%)	142 (38.6%)	20 (5.4%)	--	--
I867A 4 <sup>th</sup> paragraph	164 (44.1%)	188 (50.5%)	20 (4.5%)	--	--
I867B: Why did you leave...?	325 (89.8%)	37 (10.2%)	--	376 (95.2%)	22 (5.5%)
I867B: Do you have any fear...?	336 (94.1%)	21 (5.9%)	--	379 (95.2%)	19 (4.8%)
I867B: Would you be harmed..?	311 (87.1%)	46 (12.9%)	--	379 (95.2%)	19 (4.8%)
I867B: At least one fear question asked	362 (95.0%)	19 (5.0%)	--	379 (94.8%)	21 (5.3%)

To examine the use and adherence to the I-867 format at each port of entry, these figures were obtained for each port of entry. Table 2.2 presents the same information as Table 2.1 port-by-port.<sup>8</sup>

Table 2.2: Information presented from the I-867A and B forms by Port of Entry

Item Read or Paraphrased	Atlanta	Houston	Los Angeles	Miami <sup>9</sup>	Newark	San Ysidro
I867A 2 <sup>nd</sup> paragraph	37 (94.9%)	22 (91.7%)	12 (75.0%)	86 (97.7%)	19 (67.9%)	120 (69.4%)
I867A 3 <sup>rd</sup> paragraph	35 (89.7%)	23 (95.8%)	12 (75.0%)	87 (97.8%)	14 (50.0%)	55 (32.2%)
I867A 4 <sup>th</sup> paragraph	35 (89.5%)	23 (95.8%)	11 (68.8%)	86 (96.6%)	13 (46.4%)	17 (9.7%)
Why did you leave..?	34 (91.4%)	20 (87.0%)	17 (85.0%)	71 (98.6%)	25 (83.3%)	157 (88.2%)
Do you have any fear..?	34 (89.5%)	22 (91.7%)	18 (90.0%)	69 (97.2%)	29 (96.7%)	163 (94.2%)
Would you be harmed..?	33 (89.2%)	20 (83.3%)	17 (85.0%)	70 (98.6%)	26 (86.7%)	144 (82.8%)
At least one fear question asked	34 (91.4%)	22 (91.6%)	18 (90%)	95 (96.9%)	29 (96.7%)	169 (94.4%)

Rates of reading information in the three paragraphs of the I-867A form varied across ports of entry,<sup>10</sup> as did the rate associated with asking the third fear question (“Would you be harmed...?”).<sup>11</sup> While rates for conveying this information were lower in Newark and Los Angeles than Miami, Houston and Atlanta, the lowest rates of compliance with I-867 requirements were observed at San Ysidro. At this site, aliens were read the 2<sup>nd</sup> paragraph from

<sup>8</sup> The number and corresponding percentages vary somewhat because of missing data.

<sup>9</sup> Language limitations of research assistants resulted in a number of missing cases for this variable at Miami.

<sup>10</sup> Categorical association was measured using chi-square analysis;  $\chi^2=36.12$ ,  $p<.001$ ;  $\chi^2=121.70$ ,  $p<.001$ ; and  $\chi^2=213.09$ ,  $p<.001$ ; for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> paragraphs, respectively.

<sup>11</sup> Categorical association was measured using chi-square analysis;  $\chi^2=12.75$ ,  $p<.05$

the I-867A form in roughly two thirds of all cases but only one in ten aliens were read the 4<sup>th</sup> paragraph pertaining to U.S. providing protection to those fleeing persecution.<sup>12</sup> San Ysidro personnel reported (after data collection had been completed) that staff periodically show an informational video that contains I-867A content (in both Spanish and English) to aliens awaiting Secondary Inspection in lieu of reading the information. San Ysidro personnel reported that officers are expected to read the I-867A to the alien when this video is not shown. Because this video was not observed by our research staff, we could not determine whether aliens watched this video when officers did not read the I-867A, and there is no information in A-files to indicate whether or not the video was shown. Moreover, it is not clear if officers conducting Secondary Inspection interviews are aware of whether or not this video has been shown to an alien when they begin their Secondary Inspection interviews. For subsequent analyses, we compared those cases in which the officer was observed to read the I-867A information versus those that were either not read or presented only with a written copy of the information (consistent with CBP policy and DHS regulations that require officers to read this information to the aliens out loud, IFM 17.15(b)(2003) and 8 CFR 235.3(b)(2)(2004)).

In order to judge whether officers' adherence to the I-867A and B differed when a live observer was present versus when observations were videotaped, we compared data from videotaped observation sites (Atlanta and Houston) to those where live observation was used. Contrary to our expectation that the presence of study interviewers would result in greater compliance with established policies, two of the three I-867A paragraphs (the 2<sup>nd</sup> and 4<sup>th</sup>) were actually read more often in videotaped observations compared to direct observation.<sup>13</sup> There was no significant difference in the rates of asking the I-867B fear questions. These findings were largely unchanged when data from San Ysidro were excluded (see Appendix C).

Officer utilization of the I-867B questions was substantially greater than provision of the I-867A information, as these questions were only omitted in between six and 13 percent of all cases (see Table 2.1). However, despite the observation of a number of cases in which the I-867B Fear questions were not asked, official documents prepared during these interviews (A-files) indicated that questions were asked and answered in most of the cases in which our research team did not observe any such questioning (see Tables 2.3-2.5). Notably, in some cases where the file did *not* indicate that the question had been asked or answered, our observers documented that the question had actually been asked. In 37 of 356 cases observed, the first question regarding why the individual left his or her home country or country of last residence was not read to the individual being interviewed (data were missing in 48 cases). Yet in 32 of those 37 cases (86.5 percent), the A-file incorrectly indicated that the question had been asked and answered. Of note, there was no indication in any of these files that this question was deliberately omitted because the information had been offered spontaneously during an earlier portion of the interview. Moreover, for the subset of these 37 cases in which a second researcher observed the same interview, both observers agreed that the question had not been asked.

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<sup>12</sup> All but 10 cases in the study sample at San Ysidro were subject to Expedited Removal proceedings. While there are ports of entry that regularly provide I-867 material to Withdrawal cases, there is some disagreement whether or not this practice is required. In any case, the 10 cases at San Ysidro (which were not provided I-867 information) are too few to substantially influence study results.

<sup>13</sup> The association between observation type and proportion of cases in which I-867A information was read to the alien was analyzed using the chi-square test of association;  $\chi^2=5.38$ ,  $p < .05$ ;  $\chi^2=0.37$ ,  $p = .54$ ; and  $\chi^2=6.61$ ,  $p < .01$  for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> paragraphs, respectively.

Table 2.3: "Why did you leave..."

		Question in file		Total
		Yes	No	
Question observed	Yes	304 (95.3%)	15 (4.7%)	319
	No	32 (86.5%)	5 (13.5%)	37
Total		336	20	356

Table 2.4: "Do you have any fear..."

		Question in file		Total
		Yes	No	
Question observed	Yes	324 (98.2%)	6 (1.8%)	330
	No	10 (47.6%)	11 (52.4%)	21
Total		334	17	351

Table 2.5: "Would you be harmed..."

		Question in file		Total
		Yes	No	
Question observed	Yes	300 (98.0%)	6 (2.0%)	306
	No	34 (75.6%)	11 (24.4%)	45
Total		334	17	351

Because records of Secondary Inspection are relied upon in Credible Fear determinations and subsequent asylum hearings, we looked closely at any information concerning the consistency of A-files and observations of these cases. Although not asked to specifically note inconsistency in case notes, research assistants noted seven cases (out of 69 referred for a Credible Fear interview) in which, upon review of A-files, there were marked differences between what was observed and the information contained in the official records. In five cases considerable detail about the aliens' fears was not present in the A-file despite having been offered by the alien (and in one of these cases the officer specifically instructed the alien not to give details and to simply respond "yes" or "no" to questions). In three cases, the information recorded in A-files was qualitatively different from the responses observed in Secondary Inspection (e.g., one person responded to a fear question that "Falun Gong teaches me to help people" and the file states that this person simply answered "yes"). It should be emphasized that research assistants' notes were not structured to investigate inconsistency between A-file and observations, and therefore these discrepancies are likely to represent a conservative estimate of the actual magnitude of this phenomena.

### Relationship between I-867 and Credible Fear Referrals

In order to investigate the impact of reading I-867 materials, we explored the relationship between providing this information and Credible Fear referrals. There was no association between whether the interviewing officer read the 2<sup>nd</sup> paragraph (pertaining to the potential for removal and a 5-year bar on re-entry) and Credible Fear referral. However, Credible Fear referrals were significantly associated with reading the 3<sup>rd</sup> and 4<sup>th</sup> paragraphs of the I-867 ("This may be your only opportunity to present information ..." and "U.S. law provides protection to certain persons who face persecution, harm or torture ..." respectively). These data are detailed in Tables 2.6 and 2.7. For the 3<sup>rd</sup> paragraph, the likelihood of being referred for a Credible Fear interview was four times greater when the information was read to aliens compared to cases in

which this information was not provided.<sup>14</sup> The odds of being referred for a Credible Fear interview increased seven times when the 4<sup>th</sup> paragraph was read to aliens relative to when it was not.<sup>15</sup>

Table 2.6: Association between 3<sup>rd</sup> paragraph (“This may be your only opportunity to present information...”) and referral for Credible Fear

	Referred	Not referred
Read 3 <sup>rd</sup> paragraph	51 (24.8%)	155 (75.2%)
Not read 3 <sup>rd</sup> paragraph	13 (8.0%)	149 (92.0%)

Table 2.7: Association between reading the 4<sup>th</sup> paragraph (“US law provides protection...”) and referral for Credible Fear

	Referred	Not referred
Read 4 <sup>th</sup> paragraph	51 (31.1%)	113 (68.9%)
Not read 4 <sup>th</sup> paragraph	13 (6.3%)	195 (93.8%)

With cases from San Ysidro excluded, associations between reading these paragraphs and referral showed a similar pattern of results, although the associations were no longer statistically significant because of the reduced sample size (see Appendix C).

In order to investigate whether the failure to ask the I-867 questions pertaining to fear had an impact on case outcome, we analyzed rates of referral for a Credible Fear interview among three sub-groups of individuals: those who were asked *both* fear-related questions (“Do you have any fear of returning ...” and “Would you be harmed if you returned ...”; n=327), those who were asked *neither* of these questions (n=20), and a third group who were asked only one of the two questions (n=35). As evident from Table 2.8, the likelihood of a Credible Fear referral increased with each additional fear question asked.<sup>16</sup>

Table 2.8: Fear inquired about directly by officer

	Referred	Not Referred
Both "Fear" and "Harm" asked	59 (18.0%)	268 (82.0%)
Either "Fear" or "Harm" asked	3 (8.6%)	32 (91.4%)
Neither Fear Question asked	1 (5.3%)	18 (94.7%)

Of the 54 cases in which one or both of the fear questions were not asked, only four were referred for a Credible Fear interview. Eighteen of the 19 cases in which neither fear question was read either withdrew their application for admission to the U.S. or were ordered removed; only one was referred for a Credible Fear interview. Of the 35 cases in which one of the two questions were asked, 32 were ordered removed or withdrew their application for admission, and three were referred for a Credible Fear interview. With San Ysidro cases removed from the sample, these effects were roughly comparable (although again, the association was no longer statistically significant). In both the analyses with and without San Ysidro data, the likelihood of referral for a Credible Fear interview was roughly doubled for each fear question asked (i.e., the

<sup>14</sup> This association was measured using the chi-square test of association; effect size was estimated with an odds ratio (OR);  $\chi^2=17.67, p<.01, OR=3.77$ .

<sup>15</sup> This association was measured using the chi-square test of association; effect size was estimated with an odds ratio (OR);  $\chi^2=34.83, p < .001, OR=7.09$

<sup>16</sup> Spearman’s Rho ( $\rho$ )=.10,  $t=1.97, p < .05, OR=2.14$

likelihood was 4 times greater for individuals who were asked both fear questions compared to those who were asked neither question).<sup>17</sup>

### Confirming statements made in Secondary Inspection interviews

The statements taken during Secondary Inspection interviews and recorded in the I-867 form comprise an official record of the content of interviews between officers and aliens. Following the conclusion of the Secondary Inspection interview, aliens are asked to sign a statement attesting that the transcript of the statements made is correct. Confirming the accuracy of the statements is thus a required step for those referred for a Credible Fear interview, since these statements may be introduced as evidence during subsequent proceedings. According to the regulations:

Following questioning and recording of the alien’s statement regarding identity, alienage, and inadmissibility, the examining immigration officer shall record the alien’s response to the questions contained on the Form I-867B, and have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction. 8CFR 235.3(b)(2)(i)

Table 2.9: Observed being asked to confirm statements

	Frequency	Valid Percent
Yes	319	84.4
No	59	15.6
Total	378	100.0

Table 2.10: Confirming statements and Referral for Credible Fear

	Referred	Not referred
Asked to confirm	44 (13.8%)	275 (86.2%)
Not asked to confirm	15 (25.4%)	44 (74.6%)

Overall, 84.4 percent of aliens observed were asked to confirm the truth of statements recorded by officers during Secondary Inspection. However, *every* statement was signed by aliens being interviewed – 15.6 percent were simply not informed of the reason for their signature. Being asked to confirm the truth of their statements was significantly *less* common for individuals who were referred for a Credible Fear interview hearing compared to cases in which the alien was being removed.<sup>18</sup> More than a quarter of all aliens referred for a Credible Fear interview were not asked to confirm their statements, despite the potential use of these statements in subsequent asylum proceedings. With cases from San Ysidro removed, the rate of being asked to confirm statements was lower still (73.3 percent; the association between being asked to confirm statements and Credible Fear referral was not statistically significant when these data were excluded from the analysis; see Appendix C).

We also analyzed whether aliens actually read or had their statements read to them during the process of confirming the statement. In only 28.2 percent of cases, aliens were observed to

<sup>17</sup> Ordinal association was measured by Spearman’s Rho;  $\rho=.10$ ,  $p=.16$ ; OR=1.91.

<sup>18</sup>  $\chi^2=5.11$ ,  $p < .05$ , OR=.47. This finding is particularly worrisome given that Credible Fear referrals are precisely those instances in which the sworn statement may become relevant.

read their statements or had their statements read to them before signing the confirmation.<sup>19</sup> When analyzing only those cases in which aliens were actually asked to confirm their statements (319 cases, or 84.4 percent of all observations), the rate of reading statements is only slightly higher (29.8 percent). Reading statements to aliens was a problem identified at all ports of entry studied. There was no association between being informed of the content of statements and referral for a Credible Fear interview. Of note, when asked during our interviews whether the content of statements was accurate, several of the aliens who reported having read the statements indicated that they had identified errors in their accuracy. Unfortunately, because videotaped interviews were not possible in most ports of entry, and A-file records were not available during the time when research staff reviewed videotaped interviews, it was not possible to compare written statements against the actual interview transcript.

Table 2.11: Were the statements read and by whom

	Frequency	Valid Percent
Alien read statements	34	9.1
Interpreter read statements	36	9.7
Officer read statements	30	8.0
Statements not read	268	71.8
Total	373	100.0

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<sup>19</sup> Despite short Secondary Inspection interviews at San Ysidro, the rate of confirming statements was higher. However, when cases from San Ysidro were excluded the rate of reading statements was also higher, (46.2%; see Appendix C).

### III. EXPRESSING FEAR AND REFERRAL

Referral for a Credible Fear interview is triggered when an alien expresses a fear of returning to his or her country of origin. In the process of this study we became aware of a significant discrepancy between DHS Regulations (8 CFR 235.3, 2004) and the CBP Inspectors' Field Manual (CBP, 2003) as to whether or not there are types of fear that need not result in a Credible Fear referral (versus a presumption that *any* expression of fear must result in a Credible Fear referral). Specifically, Federal Regulations require that a Credible Fear referral occur regardless of the nature of the fear expressed. The CBP Field Manual, however, indicates that instances where the fear would clearly not qualify an individual for asylum need not necessarily be referred. Because this study could not resolve these complex policy issues, we sought to analyze the relationship between Credible Fear referrals and the nature of fears expressed by the aliens.

Among all cases for which data were available, we identified 69 cases where a referral for a Credible Fear interview occurred.<sup>20</sup> Interestingly, in two of these cases no fear was expressed during the interview but the individual was referred for a Credible Fear interview nonetheless. Not surprisingly, the likelihood of a Credible Fear referral was significantly higher when an alien expressed some type of fear compared to cases in which he or she did not.<sup>21</sup> However, in roughly one sixth of cases in which an alien expressed a fear of returning to his or her native country, no referral for a Credible Fear interview was made and the alien was either ordered removed or allowed to withdraw his or her application for entry. Of note, these data reflect the combined sample of interview and/or observational data (i.e., including the 39 individuals for whom a research interview was available but were not observed in the secondary investigation interview conducted by CBP). Table 3.1 presents the relationship between expressed fear and Credible Fear referrals. This association was essentially unchanged when San Ysidro cases were excluded (see Appendix C).

Table 3.1: Expressing fear to officer and Referral for Credible Fear Interview

	Referred	Not referred
Fear expressed to officer	67 (84.8%)	12 (15.2%)
No fear expressed to officer	2 (0.6%)	309 (99.4%)

Twelve individuals who expressed a fear of returning to their native country to officers were nonetheless returned without a referral for a Credible Fear interview (i.e., to determine if the fear expressed was sufficiently severe and valid as to warrant an asylum hearing in front of an immigration judge). These cases represented roughly three percent of all cases observed by our research staff but nearly one sixth of all cases in which a fear was expressed to officers. In seven of these 12 cases, the A-file did not indicate that any fear had been expressed. These 12 cases were no more or less likely to have been read I-867A information, or to be directly asked about their fear. In addition, there were 10 cases in which aliens expressed fear during our research interview when they had not mentioned any fear to the interviewing officer when asked.

<sup>20</sup> This total did not include the 3 "Asylum Only" referrals of individuals arriving from Visa Waiver Program countries.

<sup>21</sup> Categorical association was measured using chi-square analysis and effect size estimated with an odds ratio (OR);  $\chi^2=306.47, p < .0001, OR=862.63$

All of these individuals, when asked if they wanted to alert the CBP officer of their fear, declined (these cases are thus not included in among “Fear expressed to officer” in Table 3.1).<sup>22</sup>

In response to CBP concerns that aliens may be “prompted” to express fears to officers by the I-867B fear questions, we further examined A-files of the 79 cases in which aliens were observed to express fear directly to officers. For six cases, either A-files were missing Q & A records (n=4) or the entire A-files were missing at the time of review (n=2). For 73 cases we were able to determine whether or not fear was expressed before the I-867B questions had been asked, or was only stated in response to the fear questions. According to A-files, 50 of these individuals (63.3 percent) spontaneously expressed a fear of returning to their home country during the question and answer session or in response to the question “Why did you leave your home country or country of last residence.” Three quarters of these (n=38), however, had been told that US provides protection to persecuted individuals (i.e., they were read the 4<sup>th</sup> paragraph of the I-867A). In another 17 cases (21.5 percent) aliens’ fear claims appear in records only in response to asking directly about fear, and for six cases, no fear was recorded in the A-files (these individuals were all returned to their countries of origin). It should be noted that interpreting these findings as evidence that most aliens (at least two-thirds) who claim fear are not prompted by the fear questions must be done in light of our previous findings of considerable discrepancies between direct observation and the A-files (see Section II). Nevertheless, there was little evidence that aliens are prompted to claim fear by the I-867 information and questions.

Types of fear expressed by those individuals who expressed a fear to officers are presented in the Table 3.2, and abbreviated descriptions of the 12 individuals who expressed fear yet were not referred for a Credible Fear interview, as well as the ten individuals who expressed fear to our research assistants only, are provided in Appendix D. It should be noted that among the countries to which the 12 aliens who expressed fear were returned, five of them (of nine) are noted to have extrajudicial killings and human rights abuses in recent reports from the US Department of State and Amnesty International, and two of the countries have significant limitations on religious expression as cited in reports by the US Commission on International Religious Freedom.<sup>23</sup>

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<sup>22</sup> Seven of the ten individuals who expressed fear in the research interview but did not express their fear to interviewing CBP officer were asked to explain why they withheld this information. Two with a fear of economic hardship reported that their understanding of the officers’ questions were that they pertained only to “physical damage” and “life being in danger.” A third with an economic fear stated that he thought the officers would not care and were going to deport him anyways. A woman who was afraid for her sick child reported that she thought “there was nothing [the officer] could do about” her situation. Another reported that he thought he actually had informed the officer of his fear but then declined the opportunity to relate his fear to the officers when given the opportunity. Two did not provide an explanation as to why they did not inform the officer of their fear, although both expressed considerable distrust of the interviewing officers. One indicated a belief that the officers were lying to him and the second reported that officers “screamed” at her while she was waiting for her interview and that they were “very inconsiderate” during the interview (the research assistant observing the interview corroborated this report, noting that an officer in the secondary waiting area was “sarcastic, demeaning” and “repeatedly shouted at her”). Three cases were missing information as to why they did not express their fear.

<sup>23</sup> Because of concerns about the confidentiality of the participants, the countries are not identified—regions of origin for these participants are presented in Appendix D.

Table 3.2: Expressed Fear for those referred to a Credible Fear Interview

	Referred	Not referred
Political Persecution	29 (43.3%)	1 (8.3%)
Coercive Family Planning	5 (7.5%)	0
Religious Persecution	9 (13.4%)	0
Membership in a Particular Social Group <sup>a</sup>	9 (13.4%)	1 (8.3%)
Nationality	2 (3.0%)	0
Race	2 (3.0%)	0
Not Specified	4 (6.0%)	3 (25.0%)
Economic Hardship	2 (3.0%)	3 (25.0%)
Other	5 (7.5%)	4 (33.3%)
Total	67	12

<sup>a</sup> This includes domestic violence and female genital mutilation.

In many of the cases in which fear was expressed during the Secondary Inspection interview but no referral was made, the nature of the fear expressed may not have been sufficient justification for an asylum hearing.<sup>24</sup> For example, three of the 12 cases in which aliens expressed fear directly to officers involved fears that were best characterized as economic hardship and one individual expressed a “fear” that concerned the health of a family member living in the U.S. However, two individuals articulated fears that may have formed the basis for a legitimate asylum claim, such as a fear of the government or concern about persecution by religious fundamentalists (one of these two individuals eventually declined referral for a Credible Fear interview after a lengthy discussion with interviewing officers).<sup>25</sup> Other cases involved individuals whose fears were more ambiguous, such as cases where the nature of the fear was not described or where the individual expressed fear of harm because of debts owed or using a false passport to leave the country.

In order to gauge the prevalence of referring cases which may have formed the basis of an asylum claim, we identified instances involving a clearly articulated fear of political persecution, coercive family planning, religious persecution, persecution based on nationality or racial discrimination, membership in a particular social group (including violence against women). Of the 58 cases that fell into these six categories, two aliens (3.4 percent) were not referred for a Credible Fear interview. In addition, there were seven cases in which the nature of the fear was not specified, and three of these individuals were also returned. When these two groups were combined (i.e., possibly “legitimate” fears based on asylum law and those cases in which the

<sup>24</sup> Although our research methodology was not intended to ascertain the “validity” of fears expressed, we attempted to differentiate cases on the basis of the apparent legitimacy of the fears expressed in order to assess whether Credible Fear referral decisions were influenced by similar judgments made by CBP officers.

<sup>25</sup> One man from South Asia characterized himself as a political activist and expressed fear of Islamic fundamentalists who had threatened him in the past. He acknowledged having applied for asylum during a previous visit but had been denied and subsequently removed. The research team observer noted that this individual clearly articulated a fear of returning to his country because of political persecution but also stated that he did not want to be detained. He indicated that he would prefer to return to his country rather than face detention in the U.S. The investigating officer informed the man that he could not be returned if he claimed fear, and was asked a second time whether he indeed feared returning. Upon this second inquiry the man denied having a fear of harm and was subsequently returned. Another individual, a male from Central America, expressed a fear of the government. When the CBP officer asked for more information this man was unable to give further explanation and subsequently retracted his claim. Of note, the A-file from this case indicated that the man’s concern pertained to his sons who were U.S. citizens and his wife who was ill. The file noted that his reply to the question about fear of harm was “it could be possible.”

legitimacy of the fear could not be determined due to a lack of information) the rate of return was 7.7 percent (five of 65).<sup>26</sup> A more general reading of U.S. Expedited Removal policies, in which anyone answering affirmatively to one of the “fear questions” should be referred for a Credible Fear interview, would result in a substantially higher rate of erroneous removals (roughly 15 percent, 12 of 79).

### **Officers encouraging aliens to retract their fear claims**

While most individuals who expressed fear during Secondary Inspection were referred for a Credible Fear interview, there were four cases (all at Houston) in which CBP officers appeared to encourage aliens to withdraw their applications for admission after they had expressed a fear of returning to their home country and one case (at San Ysidro) in which officers encouraged an alien to retract his fear claim and removed him. In two of these cases aliens withdrew their application for entry into the US. One case in which an alien withdrew involved a woman from Central America who spontaneously expressed a fear of her ex-husband, crying and asking the officer to help her. The interviewing officer repeatedly told her that if she did not cooperate she would be “in trouble” and refused to answer her questions. Before asking the I-867B fear questions, the officer warned her that she would not see her family for a long time if she made a fear claim. The A-file indicated that the alien’s response to being asked about fear was, “Not a real fear. My ex-husband does not like me.” Another woman from Central America claimed a fear but did not specify the basis of that fear. The CBP officer handling the case informed her that she needed to state a reason for her fear and added “we can’t let everybody in.” The alien asked how long she would be in custody and what would happen to her son. The officer reportedly responded, “If you say you’re afraid you will go into detention for an unknown number of days until you have a hearing” and that she would not be able to have contact with her son (who lived in her home country).

Two other aliens were encouraged to retract their fear claims but did not and were ultimately referred for a credible fear interview. In one case a CBP officer told an African man that because he had tried to obtain an R-1 (Religious Worker) Visa, he *must not* have a fear of returning to his native country. This man had already expressed a fear of government officials because of his prior associations with Americans working in his country of origin. In addition, officers described in detail negative aspects of detention and repeatedly asked whether he had a fear of returning (despite his having already expressed such a fear), seemingly attempting to elicit a different (negative) response. The man maintained his request for admission and was eventually referred for a Credible Fear interview. Another potential withdrawal case involved a Central American man who feared being harmed by his in-laws, who had threatened him repeatedly. The officer told him, “What you are experiencing is a personal problem, not one the US offers people asylum for” and that “I know for sure you will be deported.” The officer then told the alien that if he claimed fear he would be in detention for three months. The alien maintained his claim and was referred.

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<sup>26</sup> Extrapolating from our sample, the “error rate” among expedited removal cases at these ports of entry (which are the busiest in the U.S.) , using this more conservative estimate and excluding cases that appear unlikely to justify a legitimate asylum claim, would likely fall between 1 and 13 percent (95% confidence interval: .01, .13).

There was one case in which officers encouraged an alien to retract his fear and then removed him via Expedited Removal (i.e., without the option of withdrawing). This South Asian man (who is referenced above in footnote 25) was a political activist and feared of Islamic fundamentalists who had threatened him in the past. He had reportedly applied for asylum during a previous visit but his application had been denied and he was subsequently removed. He clearly articulated a fear that “enemy parties would kill” him, stated that he also feared being detained in the US, and asked the officer for advice. The officer said she could not help him make a decision and that he had already taken up too much of her time. The supervisor told the officer to ask the “fear” question again and the alien then said no. The officer told him that he would be processed for removal, not for political asylum because he already asked for political asylum and had been denied.

In addition to the cases described above, there were cases in which CBP officers told aliens about other negative consequences of pursuing asylum claims that could have been prohibitive. Two were told that because they entered illegally they might not have a chance to present their cases. Five were told they would be held in detention for three weeks or more and three of these were told that detention would last at least one month. Because it was sometimes difficult to differentiate between appropriate factual responses to alien questions and deliberate attempts to discourage fear claims, we did not consider these disclosures to reflect deliberate coercion.

In addition to the above incidents, our researchers were informed of two incidents at San Ysidro in which asylum seekers were reportedly turned away at Primary Inspection. Five aliens we interviewed reported having been turned away at the border the previous day. These cases involved two African men and one African woman who claimed to be fleeing political persecution and two Middle Eastern man expressing fears of religious persecution by “people in power.” These aliens reported having approached the CBP officer at Primary Inspection and requesting asylum but being told to “go away.” One of the Africans stated that the CBP officer “told us to go back from where we came from,” forcing them to return to Mexico. The next day, Primary Inspection officers stopped and handcuffed them briefly until the aliens refused to leave. One African reported that he cried and begged the officer to allow him to enter and all three were subsequently brought to the Secondary Inspection area. A Middle Eastern man described a similar incident, stating that a CBP officer at Primary Inspection refused him entry, telling him that he and his companion would need a Visa in order to proceed. The next day they returned and were brought to the Secondary Inspection area. In all of these cases, a referral for Credible Fear interview was subsequently made, albeit on the second attempt to enter the U.S.

#### IV. UNDERSTANDING THE RESULT OF SECONDARY INSPECTION INTERVIEWS

In our interviews with aliens, research assistants also asked about the individual’s understanding of what would happen to them after completion of the Secondary Inspection interview. This question is particularly important because section 17.15(a) of the Inspector Field Manual requires that the inspector “must be absolutely certain...that the alien has understood the proceedings against him or her.” Nonetheless, nearly one third of the aliens we interviewed (n=56) reported having no knowledge of what was going to happen to them after the Secondary Inspection interview, despite having signed the statement (see Table 4.1). Understanding of the outcome of their interview did not vary by port of entry.

Table 4.1: Aliens’ reports of what will happen to them next

	Frequency	Valid Percent
Expected to be returned to country of origin	88	48.4
Expected to be detained	12	6.6
Expected another interview	8	4.4
Did not know	56	30.8
Other	12	6.6
Expected nothing	6	3.3
Total	182	100.0

Aliens’ expectations regarding the outcome of their case was not associated with their case outcomes (see Table 4.2). Indeed, many aliens expected to be removed despite the fact that a large proportion of these individuals were actually going to be referred for a Credible Fear interview. More than half of the aliens referred for a Credible Fear interview expected to be returned to their country of origin while only one individual actually expected to have another interview. Conversely, less than half of the individuals being removed were aware that this would be the outcome of their interview (despite having signed a statement indicating that they had been informed). Even among the subset of individuals who withdrew their application for admission to the U.S., roughly a third did not realize that they were going to be returned to their country of origin. In short, our interviews with aliens revealed considerable confusion about what was going to happen to them and this confusion was present regardless of the actual outcome of the case.

Table 4.2: Aliens’ reports of what will happen to them next by case outcome

	Credible Fear referral	Expedited Removal	Withdrawal
Expected to be returned to country of origin	23 (53.5%)	41 (39.8%)	24 (66.7%)
Expected to be detained	2 (4.7%)	8 (7.8%)	2 (5.6%)
Expected another interview	1 (2.3%)	6 (5.8%)	1 (2.8%)
Did not know	11 (25.6%)	38 (36.9%)	7 (19.4%)
Other	5 (11.6%)	6 (5.8%)	1 (2.8%)
Expected nothing	1 (2.3%)	4 (3.9%)	1 (2.8%)
Total	43	103	36

## V. OFFICERS' BEHAVIOR DURING SECONDARY INSPECTION INTERVIEWS

Research assistants were also instructed to note a number of behaviors that might arise during Secondary Inspection interviews. These behaviors included several behaviors thought to be consistent with aggressive or intimidating interrogation procedures, as well as behaviors that reflected positive or helpful behaviors on the part of the officer.<sup>27</sup> The frequency of these behaviors is presented in Tables 4.3 and 4.4.

Table 5.1: Aggressive or Intimidating Behaviors Observed during Secondary Inspection

Behavior	All cases	Cases referred for Credible Fear
Raising voice	41 (10.4%)	13 (19.7%)
Interrupting	40 (10.1%)	10 (15.2%)
Grabbing/threatening touches	1 (0.3%)	0
Accusations	28 (7.1%)	4 (6.1%)
Verbal threats	20 (5.1%)	2 (3.0%)
Sarcasm/Ridicule	37 (9.4%)	7 (10.6%)
Being demanding	36 (9.1%)	5 (7.6%)
Standing over alien	9 (2.3%)	1 (1.5%)
Leaving room without explanation	63 (15.9%)	9 (13.6%)

Table 5.2: Helpful Behaviors Observed during Secondary Inspection Interviews

Behavior	All cases	Cases referred for Credible Fear
Offering comforting words	41 (10.4%)	8 (12.1%)
Friendly joking	61 (15.4%)	14 (21.2%)
Small talk	44 (11.2%)	3 (4.6%)
Explaining actions	96 (24.3%)	16 (24.2%)

Most of the behaviors characterized as aggressive or intimidating behaviors were observed relatively infrequently, rarely exceeding ten percent of all cases. Helpful behaviors, on the other hand, were more frequent. In addition, our observers noted a number of occasions where interviewing officers engaged in helpful or comforting behaviors that were not systematically coded in the study. For example, research assistants were particularly impressed with a number of the CBP officers in Miami, who appeared to go to great lengths to make the aliens being interviewed more comfortable. On one occasion, an officer interviewing a pregnant Caribbean woman, appeared particularly sensitive to her physical condition and was both reassuring and helpful. At Newark, officers took special care to explain the Credible Fear process to two African men fleeing ethnic violence, and offered refreshments at several points during the interview. At Houston, an officer took time to discuss personal concerns about removal with a woman from South America. At San Ysidro, the Middle Eastern men (discussed above in Section III) were offered refreshments almost immediately after their arrival in the Secondary Inspection area.

However, a number of other aggressive or intimidating behaviors that were not systematically assessed were also noteworthy. For example, while not necessarily inappropriate

<sup>27</sup> Some of these behaviors were not reliably coded, either because of ambiguous descriptions or because of exceptionally low frequency, and were excluded from subsequent analyses.

for criminal aliens, multiple occasions of shackling aliens being processed for Expedited Removal was observed at JFK. This practice was not observed at any other port of entry during the study period. It should be noted that during the preparation of this report, the CBP New York Field Office informed our staff that CBP has since issued clear guidelines as to the use of physical restraint and that shackling is now extremely rare at JFK. In Houston, there were a number of incidents observed (on videotape) that appeared to reflect frankly inappropriate behaviors. One Central American man was told that he was a “woman,” and a “sissy,” and that he sat “like a girl.” In another incident, also at Houston, an officer referred to an alien who was not in the room as a “motherfucker” to a second officer, but in the presence of another alien who was involved in his own Secondary Inspection interview (which was occurring in English).

Of course, it is often difficult to accurately assess the appropriateness of officer behaviors outside of the context in which it occurs. Although not the focus of this study, we also coded aggressive or seemingly inappropriate behaviors on the part of the aliens being interviewed. Although inappropriate behavior on the part of aliens was occasionally noted, these behaviors typically comprised interruptions of the interviewing officers, raised voices, and a demanding tone. We did not observe any aggressive physical behaviors, disruptive behaviors, or threatening behaviors by aliens during the Secondary Inspection interview.<sup>28</sup>

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<sup>28</sup> It is possible that problematic alien behaviors occurred outside of the Secondary Inspection interview itself. However, our observers, who were present for extended periods of time, did not record any such behaviors.

## VI. DISCUSSION OF FINDINGS

Inspectors who work for the Bureau of Customs and Border Protection are the United States' first line of defense at the border, charged with the challenge of ensuring that inadmissible aliens are not permitted to enter. At the same time, inspectors are required to ensure that individuals fleeing persecution, including torture, are offered the opportunity to seek protection, in accordance with U.S. laws and treaty obligations toward refugees and asylum seekers. In guidance in implementing Expedited Removal, the Department of Homeland Security (and its predecessor, the Immigration and Naturalization Service) emphasizes to its inspectors the importance of both of these missions:

"Because of the sensitivity of the program and the potential consequences of a summary (expedited) removal, you must take special care to ensure that the basic rights of all aliens are preserved, and that aliens who fear removal from the United States are given every opportunity to express any concerns at any point during the process. Since a removal order under this process is subject to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her." (Inspector's Field Manual 17.15(a) (2003)."

Many inspectors who were observed during this study appeared to take this responsibility very seriously. In one particularly busy port of entry, Miami, in all but a very small number of cases observed, officers consistently demonstrated that most required procedures directly relating to the Credible Fear referral process were adhered to (one exception concerned reading sworn statements back to aliens, a problem area for all ports of entry). In other ports, however, inspectors' adherence to these procedures was more variable, with some requirements being fulfilled the majority of the time and others frequently being neglected.

This study is the first systematic evaluation of the Expedited Removal process utilizing direct observation of Secondary Inspection interviews with arriving aliens. This study attempted to address a number of important issues in the Expedited Removal process, including the extent to which required information is being presented to aliens, whether official documents (e.g., A-files) accurately recount the Secondary Inspection interview, and whether a significant risk of erroneous removals of aliens who might otherwise qualify for an asylum hearing exist. Shortcomings observed in this study include the frequent failure on the part of CBP officers to provide required information to aliens during the Secondary Inspection interview, occasional failures to refer eligible aliens for Credible Fear interviews when they expressed a fear of returning to their home countries, inconsistencies between the official records prepared by the investigating officers and the observations made by our research team, and on a handful of occasions, overt attempts to coerce aliens to retract their fear claim and withdraw their applications for admission.

In a large proportion of cases observed, CBP officers did not provide information contained in the I-867A form to aliens who were being processed. For example, in roughly half of all cases observed, officers did not read the obligatory paragraph informing aliens that U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. These statements are particularly important given that many aliens may not

understand the purpose of the Secondary Inspection interview and may not realize that this interview is their primary, if not sole opportunity to express concerns or seek asylum. The importance of these paragraphs is evident in the association between providing the I-867A information and referral for a Credible Fear interview, as individuals who did not receive this information were significantly less likely to be referred for a Credible Fear interview.

Although far less common, the finding that CBP officers did not specifically inquire about fear of returning to their country in approximately five percent of the cases observed may be of even greater concern. Given the potential importance of these questions in eliciting aliens' fears, it is unclear why some officers would fail to ask these questions. Particularly given the length of time typically used in Secondary Inspection interviews at the airports, the failure to ask these important and mandatory questions is simply inexplicable. Not surprisingly, the likelihood of a Credible Fear referral increased with each of the fear questions asked. If officers fail to provide an explanation and opportunity for aliens to express their concerns, this crucial step in the asylum process may not occur.

Even when the alien expressed a fear of return, referral for a Credible Fear interview was not guaranteed. One in six aliens who expressed a fear of return during the Secondary Inspection interview were placed in Expedited Removal or allowed to withdraw their application for admission. However, understanding the failure to refer aliens who expressed fear is complicated by the apparently conflicting positions expressed in different CBP guidelines. While some DHS regulations (8 CFR 235.3(b)(4)) indicate that any alien who expresses a fear must be referred for a credible fear interview, the Inspectors' Field Manual instructs that the case should not be referred if "the alien asserts a fear or concern which is clearly unrelated to an intention to seek asylum or a fear of persecution." Indeed, many of the cases that we observed in which an alien expressed fear but was not referred appeared to be "unrelated to an intention to seek asylum" (e.g., cases in which the alien expressed primarily economic concerns<sup>29</sup>). On the other hand, we observed some cases that appeared to be unequivocal cases of CBP error, returning precisely the sort of individuals that U.S. policy is designed to protect (e.g., a South Asian man who expressed fear of retaliation from religious fundamentalists because of his political affiliation). Although we would not deign to assess the credibility of the claims made by these individuals, it is clear that clarity is needed within CBP as to precisely when referral for a Credible Fear interview is warranted. When only the cases of fears voiced in Secondary Inspections that clearly fell into categories set out by asylum law were analyzed, we found an error rate of 3.4 percent, suggesting that a substantial number of individuals seeking asylum risk being returned, despite expressing a fear of return precisely as they are required (this rate increased to 7.2 percent when cases in which the nature of fear was not articulated were included). In essence, these findings suggest that some CBP officers make *de facto* assessments of the legitimacy of expressed fears, returning aliens that they perceive to be inappropriate and referring those that they perceive as warranting asylum (including two individuals who did not express any fear, but were from countries where legitimate fears are common). These practices suggest an important gap in the Expedited Removal process that should be addressed. However, even with absolute clarity regarding the procedures and policies (as apparently exists for the reading of the I-867 paragraphs and

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<sup>29</sup> However, we should note that economic hardship may occur within a broader context of persecution, as acknowledged by the USCIS Credible Fear Manual: "The statement by an applicant that 'I left my country because I can't work' is insufficient to judge the merits of a case and should lead to further inquiry." (Eligibility, Part I, p. 24)

questions), our data suggest that errors will likely remain, albeit perhaps less frequently.

The lack of congruence between the observations of our research assistants and the official records prepared by the investigating officers (A-files) suggests that the asylum process itself may be compromised by the use of these documents as official transcripts. We found that when CBP officials failed to ask the relevant fear questions, the official record frequently indicated that these questions had been asked and answered, typically containing just the word “no” in response to fear questions that had not been asked. Likewise, on some occasions the A-files did not indicate that the relevant questions had been asked (i.e., were left blank) when our observers noted that they had been, or contained only a portion of the information that had been disclosed in response to a given question. These discrepancies, however, only reflect the most simplistic level of analysis, since the A-files might have provided incorrect information in many more cases but could not be detected because of our inability to simultaneously observe Secondary Inspection interviews and compare them with A-files. Nevertheless, these data demonstrate that A-files do not necessarily present an accurate record of Secondary Inspection interviews, despite the temptation to assume their accuracy. This issue is particularly important given the evidence observed in other studies in this report that the content of A-files is relied upon during the Credible Fear interview and subsequent Asylum hearings. Officials may present statements from the Secondary Inspection interview as evidence to impeach an aliens’ testimony, citing contradictions between their statements and the official records as evidence of a changing story (see Jastram and Hartsough, A-file and Record of Proceeding Analysis of Expedited Removal, this report), when the “evidence” is an erroneous official record.

The safeguard against inaccurate A-file records, asking aliens to attest to the accuracy of their statements, also appears inadequate as currently implemented. Roughly one in six cases in which statements were taken by CBP officers and recorded in A-files were not confirmed by aliens, despite the presence of signatures in the required place. When they were asked to confirm their statements, most aliens were neither asked to read the statements, nor had their statements read to them, but were simply told to sign forms. Aliens were often told to sign documents with little or no explanation of what they were signing or what the implications might be, and in most cases these documents were written in a language they were not able to read (English). Failure to confirm statements was more common in cases where the individual was referred for Credible Fear interviews, despite the fact that these statements have the potential to be used in subsequent Asylum Interviews and Hearings.

It is impossible to know how the presence of our observers influenced the behavior of CBP officers. It certainly seems likely that compliance with required policies could be greater and inappropriate behaviors would be fewer when observers were monitoring their interviews. Thus, the rates of problems observed in this study likely underestimate the actual rate of problem behaviors and failures to adhere to established policies. We attempted to investigate the effect of our presence by comparing cases in which live observation was used to those in which videotaped interviews were reviewed. In this analysis, when the data from San Ysidro were excluded (since the border crossing is quite different in many respects from the airports), although different rates of reading required material remained, we found no significant differences in the rates of failure to ask required questions, or the frequency of referrals for a Credible Fear interview. This may reflect the fact that 24-hour video surveillance of the

interview rooms is not markedly different than live observation, indicating that both are vulnerable to the Hawthorne effect (where observers, by their mere presence, influence the behavior under investigation). Alternatively, officers may simply have behaved as they normally do, despite the presence of our research team. If so, the port-by-port variation observed in some variables may reflect differences in the training and supervision practices across ports. Ultimately, of course, we cannot know what the behavior of officers would be like without any form of observation. Nevertheless, given that it is virtually unimaginable that officers would have deliberately violated policies or required procedures *more often* while being monitored, it is likely that our observations represent some degree of underestimation of the problems observed in this study.

Perhaps most surprising is that, despite the presence of researchers observing Secondary Inspection interviews, our observers witnessed a number of incidents of seemingly serious problem behaviors. For example, our observers noted that on more than one occasion aliens were refused interpreters at Houston, even when they requested them. The report that aliens who claimed to have expressed a fear of persecution were initially turned away at the San Ysidro border crossing is an additional concern. In addition, aggressive or hostile interview techniques, sarcasm and ridicule of aliens, and verbal threats or accusations, while not common, were not infrequent in our sample. The fact that these behaviors occurred *while observers were present* suggests that such behavior may not even be perceived as problematic by some CBP officers.

### **Study Limitations**

In addition to the possibility that officer behavior and adherence to policies improved simply because our research team was present, a number of methodological issues limit the conclusiveness of this study. Perhaps the most significant issue pertains to sample size. Although our initial intent was to have researchers present in each site for three to four months, USCIRF and CBP agreed to limitations in terms of both the volume of research staff that could be present as well as the length of time that study investigators could remain in each site. Thus, many of the study sites yielded an inadequate sample to permit reliable comparisons across sites or to allow for an accurate estimate of the prevalence of problems observed. Estimates of the frequency with which aliens are removed despite having expressed a seemingly legitimate fear are thus limited (particularly when only the airport study sites are considered). Nonetheless, this study represents the largest systematic analysis of the Expedited Removal process and the only study to apply a multi-method approach to these important issues.

A second limitation to our study concerns the small number of Visa Waiver Program (VWP) refusal cases that were observed by our researchers. Our initial intent was to systematically analyze this subset of VWP cases along with ER cases, particularly because of our expectation that individuals with a legitimate asylum claim may enter the U.S. with documentation from a VWP country. That we observed three (of 19) VWP cases in which aliens were referred for an “asylum only” hearing to determine the legitimacy of their claim offers some support for this belief. However, the small number of VWP cases observed was inadequate to reliably assess the frequency with which this occurs or whether different problems exist in the processing of ER and VWP cases. Further research focusing specifically in VWP cases is necessary to clarify differences and similarities between these types of cases.

Another limitation in the present study was our reliance on live observations or one-time viewings of videotaped observations for most aspects of data collection. Our original intent was to videotape all Secondary Inspection interviews at all ports of entry during the study periods (i.e., to install cameras in those ports that did not already videotape and to archive videotapes in ports that already routinely videotape).<sup>30</sup> We also hoped to retain these videotapes after completion of the study, in order to permit re-analysis of the data whenever questions or important findings occurred. Such a method would have allowed, among other things, for a more detailed analysis of the accuracy of A-files, as well as help resolve observations that our researchers were unsure how to code. Although our inter-rater reliability data indicated that our researchers were quite consistent in their application of our coding system, reliability would have been further improved by the availability of videotapes (i.e., to review interactions that occurred too rapidly for the observer to perceive or when translation issues made comprehension difficult). Unfortunately, DHS administrators did not approve our request to videotape in advance of our required study timeline.<sup>31</sup>

At some sites, CBP officers themselves imposed additional study limitations. The most notable example was in Houston, where CBP officials were initially quite receptive.<sup>32</sup> Once data collection began, however, Houston CBP officers were less cooperative. Early in the data collection process it became clear that many aliens had been interviewed in the Secondary Inspection area but that CBP staff had not notified our research assistants. This omission was brought to the attention of the Chief, and we were permitted to remain in Houston for an additional week of data collection. However, our research assistants were still not informed when aliens were present to be interviewed, resulting in only four post-inspection interviews during the 4-week study period in which dozens of aliens were processed. Moreover, our researchers described a number of overtly hostile behaviors, including one incident where a CBP supervisor attempted to physically remove a research assistant, grabbing her arm and escorting her from an area that had been previously designated as open to our personnel. Although it is not clear how or if this tension impacted our study findings, it is possible that this small sample of interviews with aliens arriving at Houston was not representative of all arrivals to this port.

Data collection at JFK was also limited, largely by the structure of the Secondary Inspection facilities. Because JFK utilizes a counter with several interview stations, and processes a large volume of cases of which Expedited Removal cases comprise only a small subset, we were unable to determine which among the many cases in Secondary Inspection were Expedited Removal interviews. These logistical difficulties preclude us from drawing any conclusions about the frequency of behaviors or problems at JFK.

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<sup>30</sup> Although Houston and Atlanta routinely videotape each Secondary Inspection interview, these videotapes are only archived for 2-3 months and then taped over. We requested these ports maintain copies of the videotapes our researchers reviewed, in case further review was desired, but we were not permitted to retain copies ourselves.

<sup>31</sup> CBP officials eventually approved videotaping but not until two months after data collection had begun and our time constraints did not permit the application of this technology (i.e., we were unable to install and test equipment in the limited time left for data collection).

<sup>32</sup> During the study design phase, Houston CBP staff allowed us to pilot our measurement instruments on videotaped Secondary Inspections and provided our research team with suggestions on how to best coordinate file review and live observations.

A final limitation concerns the prohibition to measure the opinions of the CBP officers themselves. As those charged with carrying out the credible fear referral provisions of Expedited Removal policy, it may be that there are some officers who rely on their opinions of asylum and asylum seekers rather than the provisions as set forth in regulations. While our researchers reported that most of the officers they encountered were professional and did not seem to let preconceptions about the legitimacy of the asylum process or asylum seekers affect their work, further research addressing officer knowledge, attitudes and behaviors and the relationship between Expedited Removal practices would be helpful.

## **Conclusions**

Our findings suggest that when procedures are followed, appropriate referrals are more likely to be made. These findings present a picture of a system that, with several notable exceptions, generally seems to function by the rules set out for it. This conclusion is applicable to each port of entry in our study to varying degrees. Research assistants often expressed admiration for officers who were able to balance the twin duties of interrogating aliens without proper documents and then providing protection to them when necessary. This conflicting dual nature of CBP officers' role in the Expedited Removal process cannot be stressed enough, and it is with appreciation for the difficulty of this job, particularly in an era of heightened awareness and need for vigilance against international terrorism, that these findings are presented. While we cite shortcomings in the implementation of Expedited Removal, it is our hope that these observations will be perceived not as a criticism of CBP Inspectors, but as encouragement to better enforce those rules which are clear, and to more clearly articulate those which are not. This is particularly important with the creation of the Department of Homeland Security, in which INS inspection duties are being absorbed by many individuals who formerly worked as Customs or Agricultural inspectors.

This study identified a number of strengths and several disconcerting weaknesses in the Expedited Removal process concerning Credible Fear referral. Many ports employed practices which, if adopted by other ports, may result in much better compliance with CBP rules and reduce the chances that asylum seekers are returned to places where they may face persecution. For example, in Houston and Atlanta, the practice of videotaping all secondary inspections was associated with a higher tendency to comply with the requirement of explaining the Expedited Removal process to the alien, as articulated on the Form I-867A. In Atlanta and Los Angeles, the use of professional on-site interpreters was noteworthy, and may reduce the likelihood of communication problems during the interviews. Given that some asylum seekers come to the U.S. bearing documentation from Visa Waiver Program countries, the practices described by Newark and JFK personnel, in which all Visa Waiver Program cases are asked fear questions, appear appropriate and useful in identifying possible asylum seekers. Despite the high volume and short amount of time allotted for Secondary Inspection interviews, many San Ysidro officers were more diligent than some of those at airports. Finally, Miami International Airport deserves further study as a model. Without employing any of the above tools, Miami was much more compliant than any other port of entry in following the rules to ensure that asylum seekers are identified, and that aliens subject to Expedited Removal understand the nature of the proceedings.

As is clear in this report, DHS procedures designed to identify and refer asylum seekers subject to Expedited Removal are not always followed by immigration inspectors. Since these procedures are not always followed, it is impossible not to conclude that some proportion of individuals with a genuine asylum claim are turned away. Given the vulnerable nature of many aliens who seek asylum in the U.S., adherence to established protocol should be a minimum requirement.

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## APPENDICES

### Appendix A: Demographic characteristics of samples

	Observed		Interviewed		File	
	#	Valid %	#	Valid %	#	Valid %
Gender						
Male	237	58.7	110	56.7	253	58.2
Female	167	41.3	84	43.3	182	41.8
Region of Origin						
Africa	13	3.2	9	4.6	15	3.4
Americas	332	82.2	160	82.5	358	82.3
Asia	49	12.1	20	10.3	52	12.0
Europe	9	2.2	5	2.6	9	2.1
Pacific Islands	1	.2			1	.2
Race:						
Black	49	12.4				
White	256	64.6				
Asian	38	9.6				
Native Am.	9	2.3				
Mestizo	44	11.1				
Latino ethnicity						
Not Latino	117	29.0				
Latino	286	71.0				
Marital status						
Single	93	48.2	120	61.9		
Married	100	51.8	74	38.1		
Religion						
Buddhist			6	3.1		
Christian			162	83.9		
Hindu			4	2.1		
Jewish			7	3.6		
Muslim			10	5.2		
None			4	2.1		
Other			6	3.1		
Education						
No High School			81	42.0		
High School			50	25.9		
Some College			29	15.0		
College Degree			23	11.9		
Graduate/Professional Degree			7	3.6		
No Education			3	1.6		
Case outcome						
Credible Fear referral	67	16.6	50	25.8	69	15.9
Expedited Removal	241	59.7	102	52.6	261	60.0
Withdrawal	96	23.8	42	21.6	105	24.1
Mean age (SD)	33.3 (10.7)		34.0 (11.1)			

## Appendix B: Participant cases versus non-participant cases

### Houston

Case outcome	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Credible Fear referral	0	0.0	2	7.4
Expedited Removal	3	10.3	11	40.7
Withdrawal	26	89.7	14	51.9
Total	29	100.0	27	100.0

The case outcomes between the two samples were significantly different<sup>33</sup>. Specifically, in our sample there were more Expedited Removal cases and fewer Withdrawals. In addition, there were two Credible Fear referral cases in our sample.

Gender	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Male	19	65.5	19	70.4
Female	10	34.5	8	29.6
Total	29	100.0	27	100.0

Gender between the two samples did not differ.

	Mean	Std. Deviation	Mean	Std. Deviation
Age	32.86	11.04	32.70	11.00

These samples did not differ by age.

Global Region	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Africa	1	3.4	1	3.7
Americas	22	75.9	22	81.5
Asia	6	20.7	4	14.8
Total	29	100.0	27	100.0

Global region of origin did not differ between the two samples.

### John F. Kennedy

Case outcome	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Credible Fear referral	18	11.4	1	7.7
Expedited Removal	94	59.5	11	84.6
Withdrawal	46	29.1	1	7.7
Total	158	100.0	13	100.0

The case outcomes between the two samples were not significantly different.

<sup>33</sup>  $\chi^2=10.14$ ,  $p < .01$

Gender	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Male	100	63.3	9	69.2
Female	58	36.7	4	30.8
Total	160	100.0	14	100.0

Gender between the two samples did not differ.

Age and global region information was not available from JFK records.

#### Los Angeles

Case outcome	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Credible Fear referral	21	29.6	9	33.3
Expedited Removal	22	31.0	11	40.7
Withdrawal	28	39.4	7	25.9
Total	71	100.0	27	100.0

Case outcome between the two samples did not differ. Gender, age, and global region information was not available from Los Angeles records.

#### Miami

Case outcome	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Credible Fear referral	96	22.0	38	34.5
Expedited Removal	176	40.3	38	34.5
Withdrawal	165	37.8	34	30.9
Total	437	100.0	110	100.0

The proportion of Credible Fear cases among those we interviewed was higher than among those we did not interview<sup>34</sup>.

Gender	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Male	262	60.0	55	50.0
Female	175	40.0	55	50.0
Total	437	100.0	110	100.0

Gender between the two samples did not differ.

	Mean	Std. Deviation	Mean	Std. Deviation
Age	36.10	12.54	35.72	11.77

These samples did not differ by age.

<sup>34</sup>  $\chi^2=7.55, p < .05$

Global Region	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Africa	4	0.9	0	0
Americas	386	88.3	96	87.3
Asia	36	8.2	11	10.0
Europe	11	2.5	3	2.7
Total	437	100.0	110	100.0

The two samples did not differ with regards to global region of origin.

#### San Ysidro

Case outcome	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Credible Fear referral	9	1.7	13	6.8
Expedited Removal	531	98.2	168	88.0
Withdrawal	1	0.2	10	5.2
Total	541	100.0	191	100.0

The two samples differed by case outcome<sup>35</sup>, with higher proportions of Credible Fear referrals and Withdrawals among the group we observed or interviewed.

Gender	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Male	295	62.5	117	61.3
Female	177	37.5	74	38.7
Missing	69		0	0.0
Total	541	100.0	197	100.0

The two samples did not differ on gender, although missing data on the group that was not observed or interviewed may have biased this finding.

	Mean	Std. Deviation	Mean	Std. Deviation
Age	29.82	9.13	30.78	9.61

These samples did not differ by age.

Global Region	Not observed/interviewed		Observed/Interviewed	
	Frequency	Valid Percent	Frequency	Valid Percent
Africa	1	0.2	4	2.0
Americas	530	98.0	179	93.4
Asia	7	1.3	8	4.1
Europe	2	0.4	0	0.5
Pacific Islands	1	0.2	0	0.0
Total	541	100.0	191	100.0

The two samples differed by global region of origin<sup>36</sup>, with a higher proportion of cases from Latin America among those we did not observe or interview.

<sup>35</sup>  $\chi^2= 37.95, p < .001$

<sup>36</sup>  $\chi^2= 14.68, p < .01$

**Appendix C: Data analyses excluding San Ysidro** (Tables correspond to tables in the report)

Table 2.1a: Information conveyed and questions asked from the I-867A and B forms

Obligatory Statements	Observation	
	Read or Paraphrased	Not Read
I867A 2 <sup>nd</sup> paragraph	158 (80.6%)	38 (19.4%)
I867A 3 <sup>rd</sup> paragraph	151 (76.6%)	46 (23.4%)
I867A 4 <sup>th</sup> paragraph	147 (74.6%)	50 (25.4%)
Why did you leave...?	168 (91.3%)	16 (8.7%)
Do you have any fear...?	173 (94.0%)	11 (6.0%)
Would you be harmed..?	167 (91.3%)	16 (8.7%)
At least one fear question asked	196 (95.1%)	10 (4.9%)

Table 2.2a “Why did you leave...”

Question	Question in file	Total	
		yes	no
yes	158 (97.5%)	4 (2.5%)	162
no	13 (81.3%)	3 (18.8%)	16
Total	171	7	178

Table 2.3a “Do you have any fear...”

Question	Question in file	Total	
		yes	no
yes	165 (98.8%)	2 (1.2%)	167
no	8 (72.7%)	3 (27.3%)	11
Total	173	5	178

Table 2.4a “Would you be harmed...”

Question	Question in file	Total	
		yes	no
yes	160 (98.8%)	2 (1.2%)	162
no	11 (73.3%)	4 (26.7%)	15
Total	171	6	177

Table 2.6a: Association between 3<sup>rd</sup> paragraph (“This may be your only opportunity to present information...”) and referral for Credible Fear<sup>37</sup>

	Referred	Not referred
Read 3 <sup>rd</sup> paragraph	44 (29.1%)	107 (70.9%)
Not read 3 <sup>rd</sup> paragraph	8 (17.4%)	38 (82.6%)

Table 2.7a: Association between reading the 4<sup>th</sup> paragraph (“US law provides protection...”) and referral for Credible Fear<sup>38</sup>

	Referred	Not referred
Read 4 <sup>th</sup> paragraph	43 (29.3%)	104 (70.7%)
Not read 4 <sup>th</sup> paragraph	9 (18.0%)	41 (82.0%)

<sup>37</sup>  $\chi^2= 2.51, p = .11, OR = 1.95$

<sup>38</sup>  $\chi^2= 2.43, p = .12, OR = 1.88$

Table 2.8a: Fear inquired about directly by officer<sup>39</sup>

	Referred	Not Referred
"Fear" and "Harm" asked	49 (26.2%)	138 (73.8%)
"Fear" or "Harm" asked	1 (12.5%)	7 (87.5%)
Fear not asked	1 (10.0%)	9 (90.0%)

Table 2.9a: Observed being asked to confirm statements

	Frequency	Valid Percent
No	52	26.7
Yes	143	73.3
Total	195	100.0

Table 2.10a: Confirming statements and Referral for Credible Fear

	Referred	Not referred
Asked to confirm	34 (72.3%)	109 (73.6%)
Not asked to confirm	13 (27.7%)	39 (26.4%)

Table 2.11a: Were the statements read and by whom: Observational sample.

	Frequency	Valid Percent
Alien read statements	32	16.4
Interpreter read statements	36	18.5
Officer read statements	22	11.3
Statements not read	105	54.1
Total	195	100.0

Table 3.1a: Expressing fear and referral for Credible Fear Interview<sup>40</sup>

	Referred	Not referred
Fear expressed	54 (93.1%)	4 (6.9%)
No fear expressed	2 (1.3%)	153 (98.7%)

Table 4.1a: Aliens' reports of what will happen to them next

	Frequency	Valid Percent
Will be removed	63	56.8
Will be detained	4	3.6
Will have another interview	4	3.6
Nothing will happen	3	2.7
Do not know	29	26.1
Other	8	7.2
Total	111	100.0

<sup>39</sup>  $r_s = .10, p = .16$

<sup>40</sup>  $\chi^2 = 183.60, p < .0001, OR = 1032.75$

Table 5.1a: Aggressive or Intimidating Behaviors Observed during Secondary Inspection Interviews

Behavior	All cases	Cases referred for Credible Fear
Raising voice	35 (16.4%)	13 (24.1%)
Interrupting	35 (16.4%)	10 (18.5%)
Grabbing/threatening touches	1 (0.5%)	0
Accusations	25 (11.7%)	3 (5.6%)
Verbal threats	18 (8.5%)	1 (1.9%)
Sarcasm/Ridicule	30 (14.1%)	7 (13.0%)
Being demanding	33 (15.4%)	5 (9.3%)
Standing over alien	9 (4.2%)	1 (1.9%)
Leaving room without explanation	58 (27.1%)	9 (16.7%)

Table 5.2a: Helpful Behaviors Observed during Secondary Inspection Interviews

Behavior	All cases	Cases referred for Credible Fear
Offering comforting words	33 (15.4%)	7 (13.0%)
Friendly joking	48 (22.4%)	11 (20.4%)
Small talk	33 (15.5%)	2 (3.8%)
Explaining actions	75 (35.0%)	16 (29.6%)

## Appendix D: Aliens who expressed a fear and were not referred

Port of Entry	Gender	Region of origin	Fear expressed to officer	Fear recorded in file	Case Outcome
Newark	female	South America	Economic Hardship	no	Expedited Removal
Miami	male	South America	Economic Hardship	no	Expedited Removal
Houston	female	Central America	Not specific	no	Withdrawal
Houston	female	Central America	Fears ex-husband (Social Group)	Fears ex-husband	Withdrawal
San Ysidro	male	Central America	Not Specific	no	Expedited Removal
San Ysidro	male	Central America	Police will harass him at border (Other)	“Yes, on the border because of police”	Expedited Removal
San Ysidro	male	East Asia	Economic Hardship	no	Expedited Removal
San Ysidro	male	Central America	Scared of government (Not Specific)	“It could be possible”	Expedited Removal
San Ysidro	male	Central America	Economic Hardship	“Yes, there’s no jobs back home”	Expedited Removal
San Ysidro	female	Central America	Ill child in US (Other)	“My daughter is sick”	Expedited Removal
San Ysidro	male	South Asia	Threats by fundamentalist political party (Political Persecution)	no	Expedited Removal
San Ysidro	male	Central America	Does not know Mexico (Other)	no	Expedited Removal

Port of Entry	Gender	Region of origin	Fear expressed to researcher only	Fear recorded in file	Case Outcome
Newark	female	West Africa	Passport problems (Other)	no	Withdrawal
Miami	male	South America	Economic Hardship	no	Expedited Removal
Miami	female	South America	Not specific	no	Expedited Removal
Miami	male	South America	Economic Hardship	no	Expedited Removal
Miami	female	South America	Ill child in US (Other)	no	Expedited Removal
JFK	male	South America	Police would learn about US immigration case (Other)	no	Expedited Removal
JFK	male	Caribbean	Economic Hardship	no	Expedited Removal
San Ysidro	female	Central America	Economic Hardship	no	Withdrawal
San Ysidro	female	South America	Economic Hardship	no	Expedited Removal
San Ysidro	male	Central America	Economic Hardship	no	Expedited Removal

**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**

FEBRUARY 2005

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## 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.

**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.

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<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]

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]

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 Card Fee  
(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]

March 27, 2003

[REDACTED]  
Attorney at Law

[REDACTED]

RE: [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]

*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

04/19/020  
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** \_\_\_\_\_ ]

*KAH*

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 F
Nature of Proceedings 212(a)(6)(C)(i) 212(a)(7)(A)(i)(I)	
Date of entry to U.S. <u>January 27, 2003</u>	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

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

**REPORT ON CREDIBLE FEAR DETERMINATIONS**

FEBRUARY 2005

Mark Hetfield

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# REPORT ON CREDIBLE FEAR DETERMINATIONS

By Mark Hetfield

## “Well Founded Fear” and the Role of the Asylum Corps

One of the Study questions asked in Section 605 of the International Religious Freedom Act of 1998 (IRFA) is whether immigration officers, exercising Expedited Removal authority, are incorrectly removing bona fide asylum seekers to countries where they may be persecuted. To prevent this from happening, Congress designed the “credible fear” screening, to ensure that any alien who expressed a fear of return or intention to apply for asylum would be referred to an asylum officer for a “credible fear screening.” Any alien found to have a “credible fear” of persecution would not be involuntarily removed without a full asylum hearing.

The credible fear determination established a new role for asylum officers. Under the regulations, if an alien is in non-expedited removal proceedings, any asylum claim must be raised with an immigration judge in an adversarial hearing, with government counsel present to cross-examine the alien. However, if an asylum seeker is in the United States and is not in proceedings, regardless of his or her manner of entry and current immigration status or lack thereof, the Asylum Corps (“the Corps”) has primary jurisdiction over the asylum application.<sup>1</sup> The asylum officer, after a non-adversarial interview with the applicant, will grant asylum to the applicant if the officer finds that the alien is otherwise eligible and meets the refugee definition.<sup>2</sup> If not, the asylum officer will usually initiate removal proceedings, and refer the alien to an immigration judge.<sup>3</sup>

Asylum officers are specialists in asylum and refugee law, and are trained in international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles. Moreover, U.S. Citizenship and Immigration Services (USCIS), which houses the Corps, must ensure that asylum officers have access to information pertinent to the persecution or torture of persons in other countries to enable them to make well-informed decisions on asylum applications.<sup>4</sup> According to recent DHS statistics, the Asylum Corps has a 29 percent approval rate for asylum applications.<sup>5</sup>

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<sup>1</sup> 8 CFR 208.2(a) and (b) (2004).

<sup>2</sup> The applicant must meet the refugee definition in section 101(a)(42) of the Immigration and Nationality Act (INA), 8 USC 1101(a)(42) (2004), and be otherwise eligible for asylum in accordance with section 208 of the Act, 8 USC 1158 (2004). Under the INA, a “refugee” is “any 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 a person last habitually resided, and who 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...”

<sup>3</sup> There are some instances, however, in which an asylum officer will deny the application and not refer the alien to an immigration judge. *See* 8 CFR 208.14(c) (2004).

<sup>4</sup> *See* 8 CFR 208.1(b) (2004).

<sup>5</sup> For fiscal years 2000-2004. *See* Appendix C in Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices*, Feb 2005.

## New “Credible Fear” Responsibilities of the Asylum Corps under IIRIRA

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), however, gave asylum officers a new statutory responsibility: to interview arriving aliens without proper travel documents, who were not expeditiously removed by the inspector because they expressed a “fear of return”<sup>6</sup> to the immigration inspector. Under IIRIRA, asylum officers are now to determine whether that fear is “credible,” and whether it is tied to either torture or one of the five grounds for protection under the refugee definition.<sup>7</sup> Thus, asylum officers are not to adjudicate the asylum claim of an arriving alien subject to Expedited Removal, but rather are to determine whether the claim warrants a full hearing before an immigration judge.

While an asylum officer may not grant asylum under current Expedited Removal regulations, if the asylum officer does not find credible fear he or she is to order the alien removed. The negative credible fear determination may then be reviewed by an immigration judge.<sup>8</sup> In other words, when the asylum officer finds credible fear, the alien will have the opportunity to present his or her asylum claim before an immigration judge. And when an asylum officer denies credible fear, the alien will still have an opportunity to have an immigration judge review the negative credible fear finding. There are, therefore, protections in place to help ensure that a *bona fide* asylum seeker will not be returned to a country where he or she may face persecution.

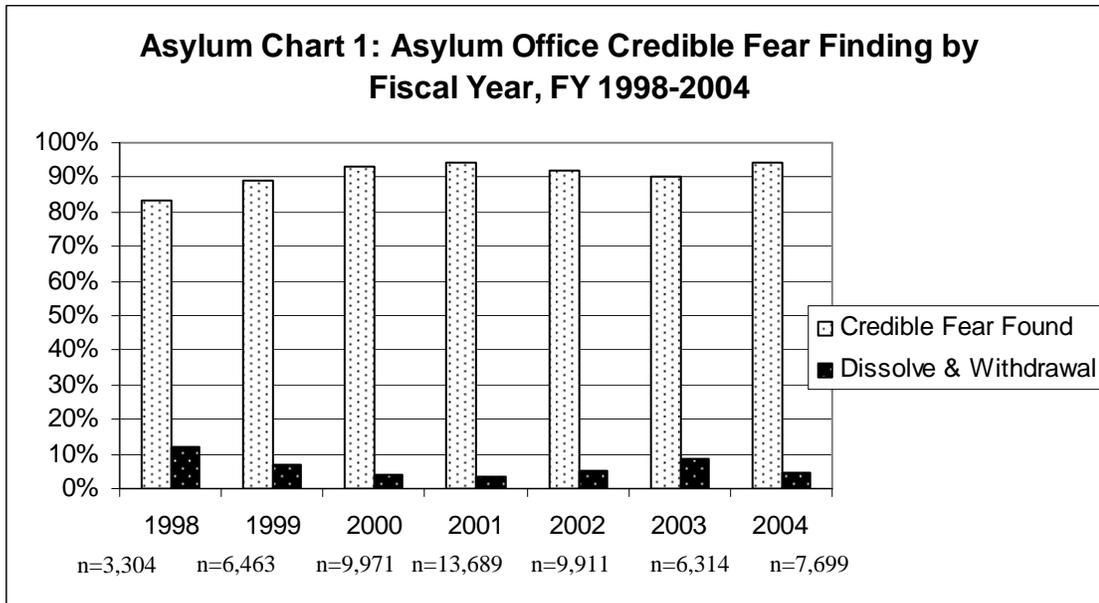
As Asylum Chart 1 shows, in the first years of Expedited Removal, the credible fear approval rates of asylum officers were initially at 83 percent in FY98 and at 89 percent in FY99. Since that time they have stabilized at around 93 percent. Asylum Chart 1 below provides summary information for each fiscal year, FY1998 to FY2004, on credible fear adjudications by the Asylum Corps.

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<sup>6</sup> Or an “intention to apply for asylum.” Section 235(b)(1)(A)(ii) of the Immigration and Nationality Act, 8 USC 1225(b)(1)(A)(ii) (2004).

<sup>7</sup> “Credible Fear” is defined as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and other such facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.” Section 235(b)(1)(B)(v) of the Immigration and Nationality Act, 8 USC 1225(b)(1)(B)(v) (2004)

<sup>8</sup> 8 CFR 208.30(g)(ii) (2004).



Based on Asylum Table 1.0.

Similarly, negative credible fear rates have also stabilized - asylum officers have found negative credible fear in only 1-2 percent of cases referred to them. A larger number of cases, however (ranging between 3 percent to 8 percent), decide to "dissolve"<sup>9</sup> their asylum claims. In such "dissolved" cases, no credible fear determination is made by the asylum officer.

According to Senator Orrin Hatch, who chaired the Senate Judiciary Committee when it considered the legislation, "The (credible fear) standard... is intended to be a low screening standard for admission into the usual full asylum process."<sup>10</sup> The primary benefits to the alien from a positive credible fear screening are (a) a delay in removal in order to have a full asylum hearing and (b) eligibility to be considered for release from detention. Furthermore, as some DHS officials and asylum advocates remarked to the Study, the non-adversarial credible fear interview is the first time that the asylum seeker has had the asylum process explained to him or her, and that it helps give them a better understanding of this process.<sup>11</sup> The screening, however, is also designed to benefit the Government, by allowing it to avoid expending unnecessary detention or immigration court resources for aliens who do not have a credible asylum claim.

<sup>9</sup> A "dissolve" is when an applicant referred for a credible fear determination indicates that he does not wish to pursue an asylum claim.

<sup>10</sup> 142 Cong. Rec. S11491-92 (September 27, 1996).

<sup>11</sup> In a survey which the Study conducted of all eight asylum offices, Asylum Office Directors and APSO (Asylum Pre-Screening Officer) supervisors were asked what value the credible fear determination (CFD) adds to the overall Expedited Removal process. The answers were that the CFD allows expedited removal to exist, and makes the process more credible and honest; provides protection and creates the safety net for refugees or asylum seekers who have a claim; allows aliens the opportunity to be "pulled off the Expedited Removal track;" allows attorneys and immigration judges to gather information before the asylum hearing and allows an alien with a fear of return to appear in front of a judge; and is a useful exercise in collecting information of arriving aliens. The suggestion was also made that, if Credible Fear Determinations were less "indiscriminate" they would be more useful for making parole determinations. Appendix A, Jastram and Hartsough, *A-file and Record of Proceeding Analysis of Expedited Removal*, Feb 2005.

## “Not Manifestly Unfounded” vs. “Credible Fear”

To better understand the “credible fear” standard, it is useful to compare it to the international asylum screening standard known as “not manifestly unfounded.” At one point during the consideration of the IIRIRA legislation, the Senate version included the latter standard.<sup>12</sup> This standard, while not ultimately enacted by the Congress, is the screening standard frequently cited by the United Nations High Commissioner for Refugees (UNHCR).

The credible fear standard ultimately enacted by Congress constitutes a higher standard than the “not manifestly unfounded” screening standard favored by the UNHCR,<sup>13</sup> which applies criteria of (1) “not clearly fraudulent” (as opposed to the credible fear criterion of “a significant possibility that the applicant would be found to be credible”) and (2) “not related to the criteria for the granting of refugee status” (as opposed to the USCIS criterion requiring that the applicant show a “significant possibility” that the applicant can establish nexus between the fear alleged and a protected ground (race, religion, nationality, membership in a particular social group, coercive family planning, or political opinion) or to torture.

### CHART: Comparison of Requirements for “Credible Fear” and “Not Manifestly Unfounded” Standards

	“Not Manifestly Unfounded” Standard	“Credible Fear” Standard
<b>Credibility Requirement</b>	“Claim not clearly fraudulent”	“Significant possibility applicant would be found credible in asylum hearing”
<b>Nexus Requirement</b>	“Claim related to criteria for refugee status”	“Significant possibility applicant can establish nexus to a protected ground (race, religion, nationality, membership in a particular social group, coercive family planning, or political opinion, ) or to torture”

According to USCIS guidance, form I-870, and as documented in all 321 positive credible fear files and all 50 negative credible fear findings reviewed for the Study,<sup>14</sup> the credible

<sup>12</sup> “...in light of statements and evidence produced by the alien in support of the alien's claim, and of such other facts as are known to the officer about country conditions, a claim by the alien that the alien is eligible for asylum under section 208 *would not be manifestly unfounded.*” (emphasis added) 1995 H.R. 2202; 104 H.R. 2202 §236(b)(8), as amended and approved by the Senate on May 2, 1996.

<sup>13</sup> UNHCR Executive Committee Conclusion No. 30 (1983) established the standard of “manifestly unfounded” to identify asylum claims that “are considered so obviously without foundation as not to merit full examination at every level of the procedure.” The Conclusion defines “manifestly unfounded” applications as “clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention...nor to any other criteria justifying the granting of asylum.”

<sup>14</sup> Jastram and Hartsough, *A-file and Record of Proceedings Analysis of Expedited Removal*, Feb 2005.

fear determination includes (1) screening for credibility as well as (2) nexus between the harm alleged and the 5 grounds for asylum (plus torture).

From the documentation collected in the Study, it appears that each positive credible fear determination, and every negative credible fear determination reviewed by our researchers, was well-documented in the file on Form I-870, with the asylum officer making findings on (1) the applicant's credibility and (2) specifying the protected ground with nexus to the fear claim.

### **The High Credible Fear Rate May be Attributable to Procedures, not Standards**

Credible fear findings, positive and negative, are documented in the file as applying screening criteria which take into account nexus and credibility. Nevertheless, there are some procedural issues that warrant further discussion. These procedures may result in disproportionately high findings of credible fear, in spite of an appropriate screening standard.

Specifically, from the onset, negative credible fear findings have been subject to 100 percent quality assurance review by the Asylum Unit at Headquarters, as opposed to random quality assurance reviews for positive credible fear determinations. Since the beginning of FY2002, positive credible fear determinations have been subject to little or no review by Headquarters, but negative credible fear determinations are still reviewed in 100 percent of all cases, with 20 percent of negative findings changed after Headquarters review.<sup>15</sup>

In addition, in July 2000, procedures were "streamlined." Prior to that date, asylum officers were required to write a complete account of all credible fear interviews in a Q&A format. Since July 2000, only negative credible fear determinations were subject to such extensive documentation requirements.<sup>16</sup> Furthermore, in certain circumstances, particularly when an alien is being detained at a remote site which would be costly or difficult for an asylum officer to travel to, the asylum officer may interview the alien by telephone. A positive credible fear determination may be made in a telephonic interview. Once, however, it becomes evident that the alien does not have a credible fear of persecution or torture, the telephonic interview must be terminated and an "in-person" interview must be scheduled and conducted.<sup>17</sup>

While the Form I-870 Record of Determination/Credible Fear Worksheet is a useful instrument for quality assurance purposes, it is not, nor does it pretend to be, a transcript of the credible fear interview. The extra documentation required for a negative credible fear

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<sup>15</sup> E-mail from Georgia Papas, USCIS Asylum Division to Mark Hetfield, USCIRF, November 10, 2004. The USCIS Asylum Office informed the Study on February 2, 2005, however, that Headquarters is currently reviewing 100 percent of credible fear determinations made by asylum officers interviewing aliens placed in Expedited Removal after being apprehended by the Border Patrol, under the inland procedures announced on August 11, 2004. See 69 Federal Register 154, p. 48877 (August 11, 2004).

<sup>16</sup> See Form I-870, which instructs the asylum officer, "Typed Question and Answer (Q&A) interview notes and a summary and analysis of the claim must be attached to this form for all negative credible fear determinations. These Q&A notes must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues and that the applicant was given every opportunity to establish a credible fear." According to USCIS, the rationale for retaining this requirement only for negative credible fear determinations was to assist the immigration judges in their review of the decision.

<sup>17</sup> USCIS Credible Fear Manual, p. 12 (April 2002).

determination - the typewritten Question and Answer (Q&A) Format - is substantially more labor-intensive for the asylum officer. Under USCIS rules, at the conclusion of an interview which will result in a negative credible fear determination, the asylum officer must read the Q&A back to the applicant, and make any corrections requested by the alien.<sup>18</sup> Neither the I-870 nor the Q&A, however, is backed by any recording of the conversation, nor by the certification of any witness to the interview (An interpreter may be present, but neither the interpreter nor any other witness certifies that the asylum officer followed the procedure requiring that (s)he read the summary of the claim back to the applicant).

When the streamlining change took effect in July 2000, most asylum offices were already denying less than 2 percent of all credible fear cases. The one exception, however, was Houston, which was denying 14 percent of credible fear referrals (See Asylum Table 1.3). The year that "streamlining" went into effect, however, Houston's negative credible fear rate dropped from 14 percent to 2 percent, and has remained below 1 percent since that time.

It is important to note, however, that in spite of the high screen-in rate and the scrutiny to which negative credible fear determinations are subject, immigration judges reviewing negative credible fear determinations still find credible fear in approximately 10 percent of cases they review.<sup>19</sup> This demonstrates that EOIR review provides a meaningful quality assurance check on the credible fear process.

## **Conclusion**

The credible fear process would be much more effective by subjecting negative and positive determinations to similar quality assurance procedures to ensure against bias built into the credible fear decision-making process. Under current policy, negative credible fear determinations are subject to 100% Headquarters review, and require considerable additional time and effort by the asylum officer. Positive credible fear determinations, however, are subject to virtually no Headquarters review and are much faster for the asylum officer to complete, given the lack of a Q&A.

Under these circumstances, there may be an incentive for asylum officers to approve disproportionate numbers of credible fear claims. Modification of quality assurance procedures is necessary to help ensure that asylum officers are not biased toward improper findings of credible fear, so that aliens without a credible and colorable asylum claim will not unnecessarily remain in the United States - in detention at government expense - awaiting an asylum hearing. The credible fear definition is an appropriate screening standard as defined by Congress and described on the Form I-870, but the review procedures seem to encourage positive credible fear findings even where a negative one may be warranted.

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<sup>18</sup> USCIS Credible Fear Manual, p. 12 (April 2002).

<sup>19</sup> Kyle, Fleming, and Scheuren, *Statistical Report on Immigration Court Proceedings, FY2000-2004*, (February 2005), Chart 5.

**Asylum Table 1.0: Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2004**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	2747	83%	125	4%	394	12%	38	3304
1999	5762	89%	144	2%	446	7%	111	6463
2000	9285	93%	150	2%	392	4%	144	9971
2001	12932	94%	119	1%	433	3%	205	13689
2002	9124	92%	112	1%	535	5%	140	9911
2003	5681	90%	48	1%	531	8%	54	6314
2004	7241	94%	31	0.4%	370	5%	57	7699
Total	52772	92%	729	1%	3101	6%	749	57351

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other  
 (\*) equals values of 3 or less, suppressed for confidentiality.  
 (-) equals values of 0.

**Asylum Table 1.1: Arlington Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	55	81%	6	9%	7	10%	-	68
1999	71	76%	4	4%	12	13%	6	93
2000	191	75%	5	2%	52	20%	7	255
2001	303	77%	-	-	89	23%	*	395
2002	199	67%	*	*	97	33%	-	298
2003	136	68%	*	*	63	31%	*	201
Total	955	73%	15	1%	320	24%	13	1310

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other  
 (\*) equals values of 3 or less, suppressed for confidentiality.  
 (-) equals values of 0.

**Asylum Table 1.2: Chicago Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	206	93%	*	*	*	-	2	222
1999	578	92%	10	2%	-	-	24	625
2000	1008	97%	12	1%	-	-	5	1041
2001	831	95%	18	2%	21	2%	4	874
2002	611	98%	*	*	8	1%	*	621
2003	199	92%	*	*	12	6%	5	217
Total	3433	95%	45	1%	81	2%	41	3600

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other

(\*) equals values of 3 or less, suppressed for confidentiality.

(-) equals values of 0.

**Asylum Table 1.3: Houston Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	148	76%	34	17%	12	6%	*	195
1999	224	74%	41	14%	35	12%	*	303
2000	679	90%	15	2%	58	8%	5	757
2001	559	81%	*	*	31	5%	96	687
2002	2011	96%	8	0.4%	60	3%	7	2086
2003	1335	95%	*	*	72	5%	*	1410
Total	4956	91%	101	2%	268	5%	113	5438

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other

(\*) equals values of 3 or less, suppressed for confidentiality.

(-) equals values of 0.

**Asylum Table 1.4: Los Angeles Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	523	73%	49	7%	113	16%	27	712
1999	1565	93%	32	2%	53	3%	25	1675
2000	3321	96%	26	1%	32	1%	72	3451
2001	4316	97%	39	1%	47	1%	31	4433
2002	2159	93%	9	0.4%	44	2%	108	2320
2003	693	88%	*	*	68	9%	24	787
Total	12577	94%	157	1%	357	3%	287	13378

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other

(\*) equals values of 3 or less, suppressed for confidentiality.

(-) equals values of 0.

**Asylum Table 1.5: Miami Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	627	90%	9	1%	60	9%	4	700
1999	1717	94%	13	1%	77	4%	26	1833
2000	2495	97%	40	2%	37	1%	5	2577
2001	5185	99%	27	1%	9	0.2%	32	5253
2002	3105	96%	80	2%	48	1%	10	3243
2003	2524	95%	23	1%	92	3%	6	2645
Total	15653	96%	192	1%	323	2%	83	16251

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other

(\*) equals values of 3 or less, suppressed for confidentiality.

(-) equals values of 0.

**Asylum Table 1.6: Newark Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	470	90%	5	1%	48	9%	*	524
1999	483	74%	26	4%	131	20%	17	657
2000	642	80%	27	3%	104	13%	32	805
2001	818	82%	23	2%	124	12%	37	1002
2002	609	74%	10	1%	186	23%	13	818
2003	425	70%	17	3%	148	24%	15	605
Total	3447	78%	108	2%	741	17%	115	4411

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other

(\*) equals values of 3 or less, suppressed for confidentiality.

(-) equals values of 0.

**Asylum Table 1.7: New York Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other Number	Total Adjudicated <sup>a</sup> Number
	Number	Percent	Number	Percent	Number	Percent		
1998	497	76%	13	2%	140	21%	*	653
1999	759	87%	13	1%	94	11%	*	869
2000	550	82%	12	2%	90	13%	18	670
2001	532	83%	9	1%	99	15%	*	641
2002	255	77%	*	*	76	23%	*	333
2003	165	70%	*	*	67	29%	*	235
Total	2758	81%	49	1%	566	17%	28	3401

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other

(\*) equals values of 3 or less, suppressed for confidentiality.

(-) equals values of 0.

**Asylum Table 1.8: San Francisco Asylum Office Credible Fear Finding by Fiscal Year, FY 1998-2003**

Source: CIS Asylum Office

FY	Credible Fear Found		Credible Fear Not Found		Dissolve & Withdrawal		Other	Total Adjudicated <sup>a</sup>
	Number	Percent	Number	Percent	Number	Percent	Number	Number
1998	221	96%	6	3%	*	1%	-	230
1999	305	91%	4	1%	21	6%	4	334
2000	399	96%	13	3%	3	1%	-	415
2001	388	96%	*	*	13	3%	*	404
2002	175	91%	*	*	16	8%	-	192
2003	204	95%	*	*	9	4%	-	214
Total	1692	95%	27	2%	65	4%	5	1789

<sup>a</sup>Total cases adjudicated includes Credible Fear Found, Credible Fear Not Found, Dissolves, Withdrawals, and Other

(\*) equals values of 3 or less, suppressed for confidentiality.

(-) equals values of 0.

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

**CONDITIONS OF CONFINEMENT FOR DETAINED  
ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL**

FEBRUARY 2005

Craig Haney, Ph.D.

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## CONDITIONS OF CONFINEMENT FOR DETAINED ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

Detention is a critical issue for asylum seekers subject to Expedited Removal in the United States. In FY2003, asylum seekers constituted only 6 percent of the 230,000 aliens in the custody of the Department of Homeland Security (DHS).<sup>1</sup> However, all asylum seekers subject to Expedited Removal are, by law, detained until a credible fear determination has been made in their case.<sup>2</sup> Even after the Credible Fear determination, which normally occurs between two and fourteen days after an alien's arrival, it is at the discretion of the DHS Bureau of Immigration and Customs Enforcement (ICE) Office of Detention and Removal Operations (DRO) to determine whether to release an asylum seeker prior to his or her hearing before an immigration judge. According to ICE, the average length of detention for released asylum seekers in Expedited Removal was 64 days, and 32 percent were detained for 90 days or longer.<sup>3</sup>

Detention is clearly a significant factor in an asylum seeker's experience in the Expedited Removal process. Consequently, Congress authorized the United States Commission on International Religious Freedom to appoint experts to examine the conditions under which these asylum seekers are confined.<sup>4</sup> This report attempts to describe those conditions.

### I. THE DETENTION OF ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

The rationale for detaining asylum seekers who are subject to Expedited Removal has several components. For one, section 235 (b) (1) (B) (iii) (IV) of the Immigration and Nationality Act provides that any alien subject to Expedited Removal procedures "shall be detained pending a final determination of credible fear of persecution and, if found to have such a fear, until removed." If credible fear is found (a process that can take between 48 hours to two weeks), ICE District Directors may parole at their discretion those aliens who meet the credible fear standard, can establish identity and community ties, and who are not subject to possible bars to asylum involving violence or other misconduct.

Since, by definition, aliens who are placed in Expedited Removal proceedings either have no documents, faulty documents, or ones that an immigration inspector has determined were fraudulently obtained, detention serves the purpose of detaining aliens until their identity can be determined. Moreover, since ICE is charged with the responsibility of insuring that asylum seekers subject to Expedited Removal actually appear for their asylum hearings, and that they appear for their removals (if asylum is not granted), detention helps to insure that both goals are met.

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<sup>1</sup> Fact Sheet – ICE Office of Detention and Removal (May 4, 2004) (available at [www.ice.gov](http://www.ice.gov)); and Report to Congress, Detained Asylum Seekers, Fiscal Year 2003, Prepared by U.S. Immigration and Customs Enforcement Office of Detention and Removal and the Department of Homeland Security, Management Directorate, Office of Immigration Statistics.

<sup>2</sup> Section 235(b)(1)(B) of the Immigration and Nationality Act ("The INA"), 8 USC 1225(b)(1)(B) (2004).

<sup>3</sup> Report to Congress, Detained Asylum Seekers, FY2003.

<sup>4</sup> Section 605 of the International Religious Freedom Act of 1998, 22 USC 6474 (2004).

However, it also is possible that asylum seekers who are subject to Expedited Removal are held in detention unnecessarily (i.e., when less onerous measures could accomplish the same goals equally well), for too long a period of time (i.e., when they otherwise could be paroled pending the adjudication of their asylum hearings), or that the conditions under which they typically are detained are inappropriate (i.e., the nature of their confinement may be psychologically harmful or otherwise interfere with their successful integration into U.S. society or the home country to which they are removed). This report addresses the latter concern—the nature and appropriateness of the actual conditions under which asylum seekers subject to Expedited Removal are detained.

It is important to acknowledge at the outset that this report analyzes the conditions of confinement for post-credible fear asylum seekers largely in reference to their similarity with traditional correctional environments. There are several reasons for this. For one, the issue of whether the detention of asylum seekers subject to Expedited Removal “criminalizes” them—by treating them in much the same way as criminals are treated in our society—has been the subject of much controversy in the United States and abroad.<sup>5</sup> Examining whether and to what extent the conditions under which post-credible fear asylum seekers are kept approximates conditions in the nation’s penal system helps to clarify that debate.

In addition, both the letter and spirit of the DRO detention standards appear to embody a traditional correctional system approach to the housing and treatment of post-credible fear asylum seekers. These standards clearly model those in use in traditional prisons and jails and, in fact, explicitly refer to the Bureau of Prisons and American Correctional Association (ACA) Standards for Adult Local Detention Facilities.<sup>6</sup> The use of traditional correctional standards for the detention of asylum seekers in the Expedited Removal process contributes to the sense that they are being criminalized by the nature of the conditions in which they are confined.

On the other hand, despite their heavy reliance on a traditional correctional approach, the DRO standards and guidelines also were designed to be flexible in their application. That is: “Since the standards as written could not be imposed on IGSA (Intergovernmental Service Agreement) facilities, which house diverse groups of individuals, the format of the standards was altered so that they could be more flexible. The new standards will be required for all facilities holding INS detainees, but they include flexibility to allow IGSA’s to use alternate means of

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<sup>5</sup> The Executive Committee of United Nations High Commissioner for Refugees (UNHCR), of which the United States is a member, in its Conclusion 44 (1986), expressed that, “in view of the hardship which it involves, detention (of asylum seekers) should normally be avoided.” *See* Appendix E. It also stressed “the importance for national legislation and/or administrative practice, to make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens,” and that “refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals...” The UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999) reiterated that the detention of asylum seekers is “inherently undesirable...(and) should only be resorted to in cases of necessity;” emphasizing the importance of “the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups.” *See* Appendix F.

<sup>6</sup> “The standards are based on current INS detention policies, Bureau of Prisons’ Program Statements, and the widely accepted ACA Standards for Adult Local Detention Facilities, but are tailored to serve the needs of INS detainees.” INS News Release, INS to Adopt New Detention Standards, November 13, 2000.

meeting the standards if necessary.”<sup>7</sup> Thus, at the same time the DRO standards incorporate a traditional corrections approach to detention, and some of the facilities in which aliens are detained are actual jails, they seem to contemplate the possibility of using different, alternative approaches to the handling of asylum seekers subject to Expedited Removal.

Moreover, it is clear that the specific conditions of confinement in DRO detention facilities are not dictated by the nature of the alien population housed in them. For example, there is a dramatic contrast between the approach to the detention of post-credible fear asylum in the Queens Contract Detention Facility, which is structured and operated much like a traditional jail or correctional facility, and the Broward Transitional Center, which appears to be a much more humane and far less intrusive form of confinement that bears only minimal resemblance to a traditional prison or jail. Coincidentally, despite their dramatic differences in conditions and approach, both facilities are operated by the same parent company, GEO (Global Expertise in Outsourcing, formerly part the Wackenhut Corporation).

In fact, the dramatic differences between these two facilities appear to be largely a function of the terms of the ICE contracts under which they each operate, rather than differences in the nature of the populations served. Thus, the nature of the conditions under which the group of asylum seekers subject to Expedited Removal are kept appears to be a policy choice, rather than a detention-related mandate.

## II. ASSESSING CONDITIONS OF CONFINEMENT AT THE DETENTION FACILITIES IN WHICH ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL ARE HOUSED

The present descriptions and assessment of the conditions under which asylum seekers are housed are based on several sources. The *primary* data source consisted of a series of structured interviews conducted by telephone with administrators who worked at 19 pre-selected detention facilities throughout the United States (described in detail below).<sup>8</sup> The results of the facility survey also were supplemented with direct observations that were conducted at 4 detention facilities (Broward Transitional Center, Elizabeth Detention Center, Krome SPC, and the Laredo Contract Detention Center), and with two group interviews that were conducted with former DHS detainees (one organized in New York City by Human Rights First, and another in Miami by Florida Immigrant Advocacy Center). In addition, the results were verified and compared with: 16 unreleased monitoring reports by the United Nations High Commissioner for Refugees (UNHCR) that ICE authorized to be shared with the Commission; 30 unreleased monitoring reports of site visits to detention facilities by the American Bar Association (ABA)

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<sup>7</sup> *ibid.*

<sup>8</sup> It is important to note at the outset that these data are limited in several ways. For one, although facilities in which the great majority of post-credible fear asylum seekers are housed were surveyed, not every facility was included. Although unlikely, it is possible that the facilities that were not included in the survey differed in some important respects from those that were, altering the accuracy of the overall descriptions. Second, and more importantly, as our primary data source, the survey depended *entirely* on information provided by the facility administrators themselves. Aside from the possible tendency for administrators to portray their own facilities in a positive light, the descriptions and accounts on which we relied in the survey were entirely those who operated the facilities rather than, for example, those of the detainees who were housed in them. In institutional settings, these two perspectives often differ from one another; conditions and procedures are not always experienced by inmates in exactly the way they are intended by administrators.

that ICE authorized be shared with Commission experts; information obtained from visits of other Commission experts in the course of the Study.<sup>9</sup> Finally, Commission researchers interviewed 39 asylum seekers who had decided to “dissolve” their asylum claims while in detention. Those interviews were evaluated to determine what effect, if any, detention conditions might have had on the aliens’ decision to dissolve their asylum claim. They, too, were used to supplement the facility survey.<sup>10</sup>

## A. The Facility Survey

As noted above, the primary data source was a survey of a sample of facilities where asylum seekers subject to Expedited Removal were detained. The sample of surveyed facilities was designed to represent the different types of institutions currently used by the Department of Homeland Security for this purpose and also to include ones that encompassed a large percentage of the population of post-credible fear asylum seekers currently in DHS custody.<sup>11</sup> Thus, the total of 19 facilities were located in 12 different states and included 6 county jails, 5 DHS run facilities, 7 private contract facilities, and one special county-run detention facility for alien families (Berks County). The institutions surveyed housed more than 70 percent of all aliens subject to Expedited Removal in FY 2003. Overall, the facilities that were surveyed were responsible for housing approximately 5585 alien men and 1015 women. (A list of the sampled facilities appears in Appendix A.) The cost of detaining an alien at these facilities varied from

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<sup>9</sup> These included visits by Commission expert to: the Queens New York Contract Facility; the Comfort Inn, Miami, Florida; San Pedro Detention Facility; Otay Mesa Detention Facility (CCA), San Diego, California; Mira Loma Detention Facility, Lancaster, California; Kenosha County Jail, Kenosha, Wisconsin; Florence SPC, Florence, Arizona; Piedmont Regional Jail, Farmville, Virginia; Aguadilla, Puerto Rico; Guaynabo-MDC, Puerto Rico; and Office of Refugee Resettlement (ORR) juvenile contract facilities in Chicago, Illinois, and San Diego, California.

<sup>10</sup> In a letter dated June 22, 2004 from Acting DRO Director Victor Cerda to USCIRF Immigration Counsel Mark Hetfield, Mr. Cerda indicated that ICE was providing the ABA and UNHCR reports to the Commission for “informational purposes only,” as they are not as comprehensive as DHS’s own monitoring reviews. As Mr. Cerda pointed out, the UNHCR and ABA reports are based on short facility tours, while the DRO monitoring reports are the result a much more comprehensive two to three day inspection of individual detention facilities. Immediately upon receipt of the letter, USCIRF made the first of many repeated requests to ICE for an opportunity to review the DRO inspection reports. ICE, however, never made those reports available to Commission experts.

<sup>11</sup> As Appendix A indicates, we had intended to survey 22 facilities. Three facilities (Ozaukee, Guaynabo, and Orleans) declined to participate. Consequently, we did not include any data or reach any conclusions pertaining to those facilities. However, note that in one case—the Ozaukee County Jail—an inspection done in September, 2003 by another outside agency that looked at many of the same issues reached many of the same overall conclusions that we did about the facilities we surveyed. Among other things, the other agency inspection reported “[d]etainee complaints about jail conditions and treatment by guards as disrespectful, rude, and unprofessional.”

Reasons for the failure to participate varied. For example, after making and breaking several appointments with Commission staff to complete the survey, Ozaukee county ultimately refused to cooperate. On the other hand, MDC Guaynabo, a facility run by the Bureau of Prisons (BOP), was unable to participate in the survey because, in spite of a number of requests made by Commission staff to BOP at the US Department of Justice, the facility was not able to get the necessary clearance from Washington in time to participate. While in Puerto Rico interviewing aliens in Expedited Removal proceedings, USCIRF Immigration Counsel Mark Hetfield was given a tour of the facility by BOP officials. Hetfield reported that, while the facility was cleaner and had more extensive programming, access to outdoor recreation and natural light, and privacy than virtually any other adult facility visited in connection with the Study (except for Broward), the facility was clearly run as a high security correctional institution. Thus, Guaynabo detainees were permitted contact attorney visits and supervised personal visits, but were strip searched after each one. Moreover, criminal detainees were co-mingled with asylum seekers with no distinction whatsoever.

A list of the facilities actually included in the sample, and from which they data on which this report relies were obtained, appears in Appendix B.

between \$30 to \$200 per detainee per day, with an average cost of approximately \$83.<sup>12</sup> This estimate is similar to the one reported in the EOIR Legal Orientation Executive Summary—that is, that overall “[t]he average cost to DHS for each detainee is \$85 per day.”

To begin the survey, administrators at each facility were asked a series of preliminary questions designed to elicit information about the cost of housing detainees there, and information about the gender and legal status of the detainees themselves.<sup>13</sup> Questions then focused at length on specific aspects of the conditions under which detainees lived, the particular procedures that governed the detainees’ day-to-day behavior, and other aspect of the institutional environment in which they were housed. By design, the survey addressed a standard set of characteristics or dimensions of institutional life, intended to determine the extent to which aliens housed in these detention facilities may be subjected to conditions of confinement that were similar to those of in-custody inmates housed in traditional jails and prisons.

### *1) Special Treatment of Alien Detainees*

One important initial issue concerned whether any special forms of treatment and protection were provided to post-credible fear asylum seekers who were in DHS detention—including whether the non-criminal and criminal aliens were kept separate from one another, whether aliens were kept separate from jail inmates (in those facilities that housed both), and whether the detention staff had any special knowledge or training that would enable them to address the special needs and unique status of asylum seekers.

More than half (13/18) of the facilities where male aliens were detained reported that they housed detainees both with and without criminal convictions. Similarly, more than half of the facilities that housed female aliens (10/13) had detainees who had been convicted of one or more criminal offense as well as those who had none. Of the facilities that housed male or female detainees who had criminal convictions with detainees who had none, 11 not only allowed some contact or interaction between both groups but also provided for shared sleeping quarters where both groups were co-mingled. Among the 8 facilities that housed non-DHS jail inmates (either sentenced or awaiting trial), 7 permitted some contact between them and the detained aliens and, in the case of 4 facilities, this included shared sleeping quarters.

Several questions addressed the issue of whether detention facility staff had special knowledge and received special training with respect to asylum seekers. In only one of the detention facilities were the line officers or guards explicitly told which specific inmates were asylum seekers. In addition, staff at very few of the facilities were given any specific training that was designed to sensitize them to the special needs or concerns of asylum seekers, and in even fewer facilities did they receive any training to enable them to recognize or address any of the special problems from which victims of torture and other forms of trauma might suffer or the

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<sup>12</sup> Note: In the case of several private contract facilities, the daily cost per detainee was reduced once the facility began to operate above a certain population level. The standard cost—not exceeding the lower population level—was used in calculating the overall average. In the case of one facility, Mira Loma, only a range was provided by the administrator and the midpoint of that range was used. Two facilities (Berks County Family Shelter and San Pedro) did not report average costs.

<sup>13</sup> A copy of the entire questionnaire appears in Appendix C.

special difficulties they might experience in the course of their detention. Specifically, only 3 of the facilities in the sample reported that staff members received “some cultural sensitivity training” and only one—Broward—reported that its staff received any training with respect to what asylum seekers “might have gone through.” In addition to the lack of specific training among line staff, only a small number of facilities (5/19) reported that *anyone* on-site—including higher level officials and administrators—had received such training.

## 2) *Use of Correctional Models of Security, Surveillance, and Control*

The first series of detailed confinement-related questions posed in the survey pertained to the basic security arrangements and procedures that were in use at the particular detention facilities. On the whole, responses indicated that these facilities were extremely secure and highly security-conscious.

All of the detention facilities but one had secure barriers (locked doors and/or gates) that separated the housing units from the initial entrance into the facility itself. The number of such security barriers ranged from 1 to 8, with a mean of 3.7 security barriers between the entrance and the detainee housing units. All but one employed special security procedures that restricted general access to the detainees’ housing units and to their individual cells or sleeping areas.

Similarly, all of the detention facilities but one employed multiple inmate “counts” during the day by which the detainees’ whereabouts were formally monitored. The number of such counts ranged from 2 to 10, and averaged 5 counts per day in the 18 facilities that used them.<sup>14</sup> All of the facilities but 5 reported that they used strip or other kinds of invasive searches on detainees as a standard procedure during the time they were processed into the facility. All but 3 reported using strip or invasive searches for security-related reasons during the detainees’ subsequent confinement. In addition, all of the facilities reported that guards conducted security-related searches of the detainees’ general living or housing areas. Some reported that these searches occurred as frequently as once a day, although in most facilities once a week or less was the norm.

The facilities also reported a heavy emphasis on the direct monitoring and surveillance of the detainees. Specifically, all but three of the facilities reported that there were fixed and secure guard stations in the detainee housing or living areas, and virtually all (18/19) had constant sight and/or sound surveillance in the housing units themselves (which typically meant the nearly constant presence of a facility staff member). In addition, most (14/19) had surveillance cameras operating inside the detainee housing units, and all but one had surveillance cameras in operation elsewhere in the facility.<sup>15</sup> All of the detention facilities used 24-hour surveillance lighting (i.e., there were key areas inside the institutions where the lights were never turned off).

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<sup>14</sup> One facility—the Yuba County Jail—reported “hourly safety checks” in addition to three “actual head counts” per day. We used only the head counts in this calculation.

<sup>15</sup> Many of the facilities reported the use of numerous surveillance cameras throughout. For example, the Yuba County Jail reported that it had approximately 70 surveillance cameras were in regular operation.

### 3) *Restricted Movement and Segregated Confinement*

Prisons and jails are characterized by the limitations they place on the liberty of inmates. Indeed, it is one of their defining qualities. The freedom of movement of post-credible fear detainees in the facilities that were surveyed was restricted in a number of important respects. For one, virtually all of the detention facilities (18/19) reported using physical restraints with the detainees. In some instances the use of restraints was reported as rare and minimal, in others it appeared to be frequent and more extensive. For example, the Tri-County Jail in Ullin, Illinois reported that the staff used “handcuffs, belly chains, and leg shackles... when detainees leave the facility.” On a day-to-day basis, detainees in virtually all (17/19) of the facilities were restricted in their movement outside of their direct housing units, and only a few (4) allowed detainees to have access to other housing or living areas within the facility. In addition, all of the facilities but 2 reported that they required the detainees to have staff escorts whenever they moved throughout the facility. The only areas within the institutions to which detainees were given relatively unrestricted, unescorted access were the dayrooms that were attached to their living areas.

The use of segregation, isolation, or solitary confinement for disciplinary reasons was widespread among the detention facilities that were sampled. All but 3 of them reported that they used some form of this kind of specialized, punitive confinement in response to certain kinds of disciplinary infractions by the detainees.

### 4) *Limitations on Privacy and Personal Freedom*

Significant limitations were reported in the amount of privacy, personal freedom, and individuality that detainees were afforded in virtually all of these facilities. Thus, detainees in only a few of the detention facilities (4/19) had access to private, individual toilets that they could use when no one else was present. In only slightly more of the facilities (5/19) were detainees able to shower privately (i.e., outside the presence of others). Very few detainees had the opportunity to be alone in their cells or rooms (something that was possible in only 4 facilities). In addition, detainees at very few facilities (4/19) were given any opportunity to personalize their living quarters by decorating them, and the overwhelming majority of the facilities (16/19) required detainees to wear uniforms rather than street clothes. Similarly, only 2 of the facilities permitted detainees to have personal hygiene items that were not sold at the facility commissary or provided by the government. In fact, there were 6 detention facilities—about a third of the sample—that did not extend commissary privileges of any kind to the detainees.

### 5) *Pursuit of Legal Claims*

The detention facilities that were surveyed did acknowledge the importance of allowing the detainees to pursue their legal claims in several ways. For example, all of the facilities reported providing the detainees with at least some kind of law library access, and in 5 of them such access was described as essentially unlimited. (However, in *none* of the facilities visited by the experts were all the legal materials listed in the DHS detention standards—listed in Appendix E—present and up-to-date, a problem consistently reported by the UNHCR and ABA monitoring reports as well.) Virtually all (18/19) of the facilities reported that “know your rights”

presentations were conducted, either by their own staff (5), NGO representatives (8), or both (5).<sup>16</sup> The great majority also indicated that the “know your rights” handouts were issued or made available to detainees. Most facilities reported handbooks were available in English and Spanish, with Chinese (6), French (4), and Creole (4) also covered in several of the facilities.<sup>17</sup>

#### 6) *Access to Programming and Meaningful Activity*

There were a significant number of restrictions placed on the detainees’ opportunities to engage in meaningful activities or programs of any kind while they were confined. The degree of the restrictions varied according to the nature of the activity. Thus, virtually all of the facilities reported that they provided detainees with some opportunity for what they characterized as outdoor recreation or exercise. (The one exception—Oakland County Jail—provided 3 hours per week in an indoor gym at the facility.) However, the number of hours of outdoor exercise per week varied widely from as many as 40 (in a few facilities where detainees were reported to have virtually unlimited daytime outdoor access) to as few as one hour to an hour and a half per day (the rule in 8 facilities). In virtually every case in which outdoor exercise was provided (15/18), the facilities reported that the detainees were still in a circumscribed, confined environment (described in one case as a “small concrete slab that is well fenced in with razor wire”).<sup>18</sup>

In terms of other activities routinely available to detainees, no detention facility provided detainees with access to the internet. Moreover, a majority (11/19) of the facilities reported that they had no educational or vocational training activities whatsoever available in which detainees could participate. Among the 8 facilities that offered some kind of programming activity, most offered ESL classes, and several gave the detainees an opportunity to participate in several kinds of classes (e.g., in “life skills” or art).

On the other hand, all of the facilities but 2 allowed detainees to work. In most of the detention facilities where work was allowed (12/17), detainees were paid. However, in each case the rate of pay for their labor was very minimal—\$1 per day.

#### 7) *Access to Religious, Mental Health, and Medical Services*

In addition to meaningful activity and programming, incarcerated persons often have special needs that arise from time to time and that must be addressed by specialized personnel. The special services available to detainees at the facilities that were surveyed varied. For

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<sup>16</sup> In some instances, these presentations were infrequent. For example, the Yuba County Jail reported that the UC Davis law school provided “know your rights” presentations “when they chose,” but this averaged only about three times per year. Given the fact that the average stay in detention is 64 days, “know your rights” presentations that occurred approximately three times per year would fail to reach a large segment of the detained asylum seeker population.

<sup>17</sup> We note that here, as with all of the data presented concerning access to services and the like, we were unable to directly assess the quality of the “know your rights” presentations, the materials that were distributed, or the accuracy of the translations.

<sup>18</sup> It should be noted that the nature of these outdoor facilities appeared to vary widely. In the inspection of the Elizabeth facility, for example, Commission researchers noted that the cramped, enclosed exercise area hardly was “outdoor” at all, even though it was characterized as such in the survey results.

example, most (13/19) of the detention facilities had at least one full-time chaplain (another had a part-time chaplain), virtually all had weekly religious services that detainees were permitted to attend, most conducted special religious services in conjunction with certain religious holidays, and all but one facility accommodated at least some religious or special diets.

On the other hand, even though all facilities employed some kind of mental health screening at the time detainees were being processed into the institution, and most made mental health services available to detainees who requested it later on, only 5 of the facilities had any full-time mental health staff members. Among the 14 that reported having no full-time mental health staff was the large Mira Loma facility where as many as 1200 DHS detainees can be held at a time. The survey did not address the issue of whether detainees had access to ongoing therapy or mental health counseling, if so, on what basis, or the quality of the care that actually was provided.<sup>19</sup> Nonetheless, the lack of full-time mental health staff in many of these facilities raised concerns about these issues.

Moreover, in only 2 of 19 facilities did mental health staff members conduct regular rounds or make any kind of effort to directly monitor the mental health status of the detainees. Most of the facilities did report that they had special suicide prevention procedures in the case of detainees who were suspected of being suicidal, although in most instances this consisted of placing the detainee in a segregation or isolation unit.<sup>20</sup>

Medical care tended to be handled more consistently. Thus, the overwhelming majority of the facilities reported that at least one full-time nurse was present, and nearly half (8/19) had full-time physician coverage.

#### 8) *Contact with the Outside World*

Finally, significant limitations were placed on the detainees' contact with the outside world in most of the detention facilities that were surveyed. For one, in virtually all of the facilities (except one), there were limitations placed on the frequency and length of the social visits that were permitted. In fact, the majority of the facilities (11/19) limited visiting days to only 1-2 days per week; only 4 permitted visiting every day. In addition, 10 facilities reported that visiting was restricted to 1 hour or less per visit, and only 2 placed no time limits on the lengths of social visits. The majority of the detention facilities (11/19) prohibited any kind of contact visiting with social or family visitors, which meant that visits often occurred behind plexi-glass windows. However, attorney visiting was handled more generously: attorney visitation was unlimited in all of the facilities and, in all but 2 facilities, they were allowed to be contact visits.

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<sup>19</sup> For example, note that a Bellevue/NYU study of detained asylum seekers reported that "most of the asylum seekers interviewed (69 percent) reported that they wanted counseling for their mental health problems although few received such services... Among those who wanted counseling, only 6 (13 percent) reported receiving counseling from someone provided by the detention facility." Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003), at p. 63.

<sup>20</sup> It should be noted that confinement in isolation is likely to exacerbate depression and, for this reason, generally is not regarded as an appropriate response to suicidality.

Detainees at all facilities were permitted phone calls, although these were outgoing phone calls only, and even in-coming calls from attorneys were prohibited. Only a few facilities placed limits on number and length of calls (except on the basis of phone availability), and some provided pro bono calling privileges on a limited basis. Virtually every facility placed limitations on the kind of mail detainees could receive (only one reported it did not). Incoming letters were opened in every facility, and 6 detention facilities even placed restrictions on the number of letters detainees could send out in a week.<sup>21</sup>

### *Summary*

Appendix D contrasts the characteristics of the alien detention facilities in which detained asylum seekers are housed (as measured in the survey described above) with those of traditional jails and prisons that are intended for accused and/or convicted criminals. Indeed, as one chief administrator of a detainee-only facility put it, “the people here are all our prisoners.”<sup>22</sup> Thus, Appendix D shows that, in most critical respects, the DHS detention facilities are structured and operated much like standardized correctional facilities. Indeed, in some instances, actual criminal justice institutions—in this case, county jails—are operated as dual use facilities that simultaneously house asylum seekers and criminal offenders, side-by-side. Even in those DHS or contract detention facilities that explicitly are designed to house only alien detainees, the physical structure, day-to-day operations, and treatment of residents appear to be corrections-based in virtually all important respects. Moreover, there were few systematic differences between the several types of facilities. That is, whether they were county jails, DHS run facilities, or private contract facilities, they were operated in more or less the same way. With the exception of the Broward Transitional Center (a private contract facility) and the Berks Family Shelter (a county run detention facility), the facilities employed similar rules, with similar conditions of confinement, that greatly resembled traditional correctional settings.

## **B. Interviews with Former Detainees**

The results of the facility surveys were supplemented by face-to-face interviews conducted in Miami and, especially, New York, with asylum seekers who had been in detention but subsequently were released. The interviewees (who, in the case of those in New York, had been confined either in the Elizabeth Detention Center or the Queens Contract Detention Facility and, in the case of those in Miami, had been confined either in Krome SPC or the Broward Transitional Center) recalled many painful and even traumatic aspects of their detention. Several complained of physical as well as mental abuse suffered in the course of their detention. One of them summarized the hardships of institutional life this way:

You had to put on a uniform, were taken to a dormitory to live, had no privacy—and even had to shower in the presence of a guard (who could be a male or female—it didn’t matter). You must conform to all the arbitrary regulations—eat what you are given, when you are given it, and get used to being searched each time you leave your dormitory. They can touch you anywhere.

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<sup>21</sup> In some instances, the limitations were placed on mailing by indigent detainees. For example, the Yuba County Jail allows indigents to send a maximum of two letters per week free of charge.

<sup>22</sup> Interview at Laredo Processing Center, September 22, 2004.

Another former detainee said, “you have to endure many cultural violations in the detention center. In my country, we are not supposed to see our elders naked. But we had to there. And you are afraid, you don’t know the law here.” In addition to fear, many talked about depression at the prospect of what they worried would be indefinite detention. Indeed, some encountered asylum seekers in the facilities who already had been detained for several years without release. They reported that deep concerns about their own uncertain fate in the asylum process affected them psychologically during their confinement. Yet there was no active monitoring of their mental or emotional condition.

The adverse treatment took a toll on a number of the persons interviewed. One of them said:

I felt really isolated and humiliated. I felt like a person who had no value. At any time, the security guards made us do whatever they wanted. I felt traumatized by my treatment. My blood pressure went higher and my medical problems worsened there.

Other former detainees described the conditions in the facilities as “psychologically degrading... stressful and depressing.” They also reported that they could be placed in isolation—in essence, solitary confinement—for trivial offenses such as verbal disagreements with other detainees.

A number of those interviewed told compelling stories of the torture and persecution in their home countries that had led them to seek asylum in the United States. Yet they felt that their treatment in detention, while they awaited the resolution of their asylum case, added to their pre-existing emotional distress. As one of them put it: “The whole detention system is there to break you down further. The time you spend there prolongs your trauma. And you are not even allowed to cry. If you do, they take you to isolation.” Another said, “I fled my country because of this. I broke down and cried when it happened here.”

Other former detainees spoke of being “treated like children” at the detention facilities, of having very little to do, and being “treated like a criminal.” Even at Broward—which otherwise was an exception to the very severe conditions in the other detention facilities—at least one former detainee noted that many of the women were depressed and that there were several suicide attempts during the period she was kept there.

Language barriers were described as a consistent problem. A number of the former detainees reported that even when there were translations provided for important legal documents, there were few if any key facility staff members (for example, in mental health) who spoke the language of many of the detainees. This made effective communication extremely difficult.

### C. Facility Tours

The tours of the facilities confirmed the fact that, except for the Broward Transitional Center, these detention units are structured and run much like traditional correctional institutions. There is a high premium placed on security and surveillance, and this is evident from the moment anyone enters the facilities themselves. Indeed, at Krome, for example, the security exceeded the level that exists at most correctional facilities. There were armed guards stationed at the entrance to the facility and it was impossible to even drive into the parking lot without first showing them proper identification. Once inside, in each of these facilities, the characteristic sounds of slamming gates and locked doors closing behind serve to remind visitors and residents that they are in a high security correctional environment.

The atmosphere inside the facilities that were examined by Commission researchers were unmistakably somber. The stark conditions appeared to have a direct effect on the residents. As one official at the Elizabeth Detention Center acknowledged, “mental health is a big problem. Sometimes people get very depressed, and just getting them a change of scenery, getting them out of this place for a while, improves their mental health.” He went on to note that:

Detention itself is really depressing. But when you don't know when you are getting out, that's really bad. I worked in a federal correctional facility and, although the inmates were not happy, they at least knew when they were getting out and had something definite to look forward to. Here, they don't.

Again, with the exception of Broward, the detention facilities that were inspected looked very much like county jail facilities that exist throughout the United States—physically drab, lacking personalized decorations and the like, and without much open space or common programming areas for meaningful activities in which detainees could participate. Most of the so-called “recreation” areas were cramped and restricted (with the exception of the outdoor recreation areas at Broward, Mira Loma, Florence, Laredo and Krome), and they had little if any exercise equipment. The libraries were small and sparse, and appeared to have comparatively few volumes (most of which were in written in English). The dayrooms were drab and uninviting.

Interestingly, all of the facilities that were inspected, except Broward, used standard correctional nomenclature for their isolation unit—“SHU” (the correctional acronym for “special housing unit”)—that is employed in most prisons and jails in the United States. Moreover, the SHU units in these detention facilities appear to be structured and to operate in very much the same way as in traditional correctional settings. That is, they were run as punishment units that subjected detainees to virtually around-the-clock enforced isolation, in extremely sparse cells, and under heightened levels of deprivation.

### III. THE PSYCHOLOGICAL IMPACT OF CONFINEMENT

The fact that the detention facilities that were surveyed and inspected so closely resembled traditional correctional institutions poses a number of concerns. Adaptation to prison-like environments is difficult for virtually everyone confined in them. Most people experience

incarceration as painful and even traumatic. The experience also can have long-term consequences. Beyond the psychological effects of trauma, life in a prison-like environment requires people to change and adjust in ways that may prove difficult for them to relinquish upon release. That is, in the course of coping with the deprivations of life in a prison or jail, and adapting to the extremely atypical patterns and norms of living and interacting with others that incarceration imposes, many people are permanently changed.

Psychological reactions to the experience of living in a prison-like environment vary from individual to individual, making generalizations difficult. It is certainly *not* the case that everyone who is incarcerated is disabled or psychologically harmed by it. But few people end the experience unchanged by it. Among the commonsense generalizations that have been corroborated by research is the fact that persons who have psychological vulnerabilities *before* their incarceration are likely to suffer more problems later on, and that the greater the level of deprivation and harsh treatment and the longer they persist, the more negative the psychological consequences.

Perhaps the most comprehensive summary of research on the effects of living in a prison-like environment included these findings: that “physiological and psychological stress responses... were very likely [to occur] under crowded prison conditions”; inmates are “clearly at risk” of suicide and self mutilation; that “a variety of health problems, injuries, and selected symptoms of psychological distress were higher for certain classes of inmates than probationers, parolees, and, where data existed, for the general population”; that imprisonment produced “increases in dependency upon staff for direction and social introversion,” “deteriorating community relationships over time,” and “unique difficulties” with “family separation issues and vocational skill training needs.”<sup>23</sup> The same literature review found that a number of problematic psychological reactions occurred after relatively brief exposure to a prison-like environment. For example, higher levels of anxiety have been found in inmates after eight weeks in jail than after one, and measurable increases in psychopathological symptoms have been found to occur after only 72 hours of confinement. Research in which college student participants were placed in a simulated prison-like environment also found that extreme reactions occurred after only a short period—less than a week—of incarceration.<sup>24</sup>

The term “institutionalization” is used to describe the process by which inmates are shaped and transformed by the institutional environments in which they live. Sometimes called “prisonization” when it occurs in prison-like settings, it is the shorthand expression for the broad negative psychological effects of incarceration. Thus, prisonization involves a unique set of psychological adaptations that typically occur—in varying degrees—in response to the extraordinary demands of prison life.<sup>25</sup> In general terms, this process involves the incorporation of the norms of prison life into one’s habits of thinking, feeling, and acting.

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<sup>23</sup> James Bonta and Paul Gendreau, P., Reexamining the Cruel and Unusual Punishment of Prison Life, 14 Law and Human Behavior 347-372 (1990), at pages 353-359.

<sup>24</sup> Haney, Craig, Banks, William, & Zimbardo, Philip, Interpersonal Dynamics in a Simulated Prison, 1 International Journal of Criminology and Penology 69 (1973).

<sup>25</sup> For example, see: Donald Clemmer, The Prison Community. New York: Hold, Rinehart & Winston (1958); Erving Goffman, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates. New York: Anchor (1961); Lynne Goodstein, Inmate Adjustment to Prison and the Transition to Community Life, Journal of Research on Crime and Delinquency, 16, 246-272 (1979); Barbara Peat, Barbara and Thomas Winfree, Reducing the Intra-Institutional Effects of “Prisonization”: A Study of a Therapeutic Community for Drug-Using Inmates, Criminal

Persons who enter prison-like environments for the first time must adapt to an often harsh and rigid institutional routine. They are deprived of privacy and liberty, assigned to what they experience as a diminished, stigmatized status, and live under extremely sparse material conditions. For many of them, the experience is stressful, unpleasant, and difficult to tolerate. However, in the course of becoming institutionalized, persons gradually become more accustomed to the wide range of restrictions, deprivations, and indignities that institutional life imposes.

The various psychological mechanisms that must be employed to adjust become increasingly “natural”—that is, second nature—and, to a degree, are internalized. To be sure, the process of institutionalization can be subtle and difficult to discern as it occurs. Many people who have become institutionalized are unaware that it has happened to them. Few of them consciously decide to allow the transformation to occur, but it occurs nonetheless.

There are several components to the psychological process of adaptation that can have adverse long-term consequences for incarcerated persons after their release. They are summarized below.<sup>26</sup>

#### **A. Dependence on Institutional Structure and Contingencies**

Living in prison-like environments requires people to relinquish the freedom and autonomy to make many of their own choices and decisions. Over time, they must temper or forego the exercise of self-initiative and become increasingly dependent on institutional contingencies. In the final stages of the process, some inmates come to depend on institutional decision makers to make choices for them and they rely on the structure and schedule of the institution to organize their daily routine. In extreme cases, their decision-making capacity is more significantly impaired. Thus, some prisoners lose the ability to routinely initiate behavior on their own and cannot exercise sound judgment in making their own decisions. Profoundly institutionalized persons may even become extremely uncomfortable and disoriented when and if previously cherished freedoms, autonomy, and opportunities to “choose for themselves” are finally restored.

A slightly different aspect of this process involves developing a subtle dependency on the institution to control or limit one’s behavior. Correctional institutions force inmates to adapt to

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Justice and Behavior, 19, 206-225 (1992); C. Thomas and D. Peterson, A Comparative Organizational Analysis of Prisonization, Criminal Justice Review (6): 36-43 (1981); Charles Tittle, Institutional Living and Self Esteem, Social Problems, 20, 65-77 (1972).

<sup>26</sup> Some of these issues are discussed at greater length in: Craig Haney, The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment, in J. Travis & M. Waul (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (pp. 33-66). Washington, DC: Urban Institute Press (2003); Craig Haney, Psychology and Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law, Psychology, Public Policy, and Law, 3, 499-588 (1997); and Craig Haney and Donald Specter, Vulnerable Offenders and the Law: Treatment Rights in Uncertain Legal Times, in J. Ashford, B. Sales, & W. Reid (Eds.), Treating Adult and Juvenile Offenders with Special Needs (pp. 51-79). Washington, D.C.: American Psychological Association (2001).

an elaborate network of typically very clear boundaries and rigid behavioral constraints. The consequences for violating these bright-line rules and prohibitions can be swift and severe. The use of continuous and increasingly sophisticated surveillance devices and practices means that prison-like environments are quick to detect and punish even minor infractions.

Institutional settings surround inmates so thoroughly with *external* limits, immerse them so deeply in a network of rules and regulations, and accustom them so completely to such highly visible systems of monitoring and restraints that *internal* controls may atrophy. Thus, institutionalization or prisonization renders some people so dependent on external constraints that they gradually cease relying on their own self-imposed internal organization to guide their actions or restrain their conduct. If and when this external structure is taken away, severely institutionalized persons may find that they no longer know how to do things on their own, or how to refrain from doing those things that are ultimately harmful or self-destructive.

## **B. Hypervigilance, Interpersonal Distrust and Suspicion**

In addition, because many prison-like environments keep people under conditions of severe deprivation, some inmates accommodate by exploiting others. In such an environment, where the possibility of being taken advantage of or exploited is very real, inmates learn quickly to become hypervigilant, always alert for signs of threat or personal risk. Many inmates learn to become interpersonally cautious, even distrustful and suspicious. They attempt to keep others at a distance, for fear that they will become a victim themselves. For some inmates, these survival strategies develop quickly, become reflexive and automatic, and are difficult to relinquish upon release.

Distancing oneself from others also requires carefully measured emotional responses. Many incarcerated persons struggle to control and suppress their reactions to events around them; emotional over-control and a generalized lack of spontaneity may result. Persons who over-control their emotional responses risk alienation from themselves and others. They may develop a form of emotional flatness that is chronic and debilitating in social interactions and intimate relationships.

The alienation and social distancing from others serves as a defense against the interpersonal exploitation that can occur in prison-like settings. However, it also occurs in response to the lack of interpersonal control that inmates have over their immediate environment, making emotional investments in relationships risky and unpredictable. The disincentive against engaging in open, candid, trusting communication with others that prevails in prison-like settings leads some persons to withdrawal from authentic social interactions altogether.<sup>27</sup> Obviously, such an extreme adaptation will create special problems when inmates attempt to reintegrate and adjust to settings outside the institution.

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<sup>27</sup> For example, see: C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, *Social Justice*, 17, 110-XXX (1990); R. Sapsford, Life Sentence Prisoners: Psychological Changes During Sentence, *British Journal of Criminology*, 18, 128-145 (1978).

### **C. Social Withdrawal and Self Isolation**

Some incarcerated persons learn to create psychological and physical safe havens through social invisibility, by becoming as inconspicuous and unobtrusively disconnected as possible from the people and events around them. The self-imposed social withdrawal often means that they retreat deeply into themselves, trust virtually no one, and adjust to prison stress by leading isolated lives of quiet desperation. One researcher found not surprisingly that prisoners who were incarcerated for longer periods of time and those who were punished more frequently by being placed in solitary confinement were more likely to believe that their world was controlled by “powerful others.”<sup>28</sup> Such beliefs are consistent with an institutional adaptation that undermines autonomy and self-initiative.

In more extreme cases, especially when combined with apathy and the loss of the capacity to initiate behavior on one’s own, the pattern closely resembles clinical depression. Inmates who are afforded little or no meaningful programming in institutional settings lack pro-social or positive activities in which to engage during their incarceration. If they also are denied access to gainful employment where they can obtain meaningful and marketable job skills and earn adequate compensation, or are allowed to work only in settings where they are assigned to menial tasks that they perform for only a few hours a day, then they are more likely to become lethargic and depressed. The longer the period of exposure to prison-like environments, the greater the likelihood that this particular psychological adaptation will occur. Indeed, one early analyst wrote that the long-term prisoners manifest “a flatness of response which resembles slow, automatic behavior of a very limited kind, and he is humorless and lethargic.”<sup>29</sup> In fact, another researcher analogized the plight of long-term women prisoners to that of persons who are terminally-ill, whose experience of this “existential death is unfeeling, being cut off from the outside... (and who) adopt this attitude because it helps them cope.”<sup>30</sup>

### **D. Diminished Sense of Self-Worth and Personal Value**

As noted above, inmates often are denied basic privacy rights and lose control over the most mundane aspects of their day-to-day existence. Prisoners generally have no choice over when they get up or have lights out, when, what, or where they eat, whether and for how long they shower or can make a phone call, and most of the other countless daily decisions that persons in free society naturally take for granted in their lives. Many inmates feel infantilized by this loss of control.

Prison-like environments also typically confine persons in small, sometimes extremely cramped and deteriorating spaces. The 60 square foot average cell size in the United States is roughly the size of a king-size bed. Inmates who are double-celled or assigned to dormitory-style housing typically have no privacy and have little or no control over the identity of the person with whom they must share small living spaces and negotiate intimate forms of daily contact this

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<sup>28</sup> Hannah Levenson, Multidimensional Locus of Control in Prison Inmates, *Journal of Applied Social Psychology*, 5, 342-347 (1975).

<sup>29</sup> A. Taylor, Social Isolation and Imprisonment, *Psychiatry*, 24, 373-XXX (1961), at p. 373.

<sup>30</sup> C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, *Social Justice*, 17, 110-XXX (1990), at p. 123.

requires. The degraded conditions under which they live serve as constant reminders of their compromised social status and their stigmatized social role as inmates.

A diminished sense of self-worth and personal value may result. In extreme cases of institutionalization, the symbolic meaning that can be inferred from this externally imposed substandard treatment and confinement in degraded circumstances is internalized. That is, inmates may come to think of themselves as “the kind of person who deserves” no more than the degradation and stigma to which they have been subjected during their incarceration.

## **E. Post-Traumatic Stress Reactions to the Pains of Imprisonment**

For some inmates, life in a prison-like environment is so stark and psychologically painful as to be traumatic. In extreme cases, the trauma is severe enough to produce post-traumatic stress reactions after release. Thus, former inmates may experience unexplained emotional reactions in response to stimuli that are psychologically reminiscent of painful events that occurred during incarceration. They may suffer free floating anxiety, an inability to concentrate, sleeplessness, emotional numbing, isolation, and depression that are connected to their prison traumas. Some may relive especially stressful or fear-arousing events that traumatized them during incarceration. In fact, psychiatrist Judith Herman has suggested that a new diagnostic category—what she termed “complex PTSD”—be used to describe the trauma-related syndrome that prisoners are likely to suffer in the aftermath of their incarceration, because it is a disorder that comes about as a result of “prolonged, repeated trauma or the profound deformations of personality that occur in captivity.”<sup>31</sup>

Moreover, it is now clear that certain prior experiences—ones that pre-date confinement in prison-like environments—may predispose inmates to these post-traumatic reactions. The literature on these predisposing experiences has grown vast over the last several decades. A “risk factors” model helps to explain the complex interplay of earlier traumatic events (such as abusive mistreatment and other forms of victimization) in the backgrounds and social histories of many incarcerated persons. As Masten and Garmezy noted in the seminal article outlining this model, the presence of these background risk factors and traumas in earlier in life increases the probability that someone will be plagued by a range of other problems later on.<sup>32</sup>

To those persons who already have experienced a series of earlier, severe traumas, life in a harsh, punitive, and often uncaring prison-like environment may represent a kind of “re-traumatization” experience. That is, time spent in prison-like environments may rekindle not only bad memories but also the disabling psychological reactions and consequences of those earlier damaging experiences.

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<sup>31</sup> See: Judith Herman, A New Diagnosis, in J. Herman (Ed.), *Trauma and Recovery*. New York: Basic Books (1992); and Judith Herman, Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma, in G. Everly & J. Lating (Eds.), *Psychotraumatology: Key Papers and Core Concepts in Post-Traumatic Stress* (pp. 87-100). New York: Plenum (1995).

<sup>32</sup> Ann Masten and Norman Garmezy, Risk, Vulnerability and Protective Factors in Developmental Psychopathology, in F. Lahey and A Kazdin (Eds.), *Advances in Clinical Child Psychology* (pp. 1-52). New York: Plenum (1985).

The various psychological consequences of institutionalization that have been described above are not always immediately obvious once the structural and procedural pressures that created them have been removed. Indeed, persons who leave a prison-like environment and are fortunate enough to return to moderately structured and especially supportive settings—stable family, work, helpful forms of agency supervision, supportive communities—may experience relatively unproblematic transitions. However, those who return to difficult and stressful circumstances that lack supportive structure and services are at a greater risk of post-incarceration adjustment problems. In these cases, the negative aftereffects of institutionalization often appear first in the form of *internal* chaos, disorganization, stress, and fear. Because the process of institutionalization has taught most people to cover or mask these internal states, and to suppress feelings or reactions that may indicate vulnerability or dysfunction, the outward appearance of normality and adjustment may hide a range of common but serious problems that are likely to be encountered in free society.

#### IV. SPECIAL PSYCHOLOGICAL ISSUES FOR ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

Because many asylum seekers have suffered severe and sometimes very recent trauma and abusive treatment preceding their detention in the United States, their incarceration would be expected to have more severe psychological consequences. These prior trauma histories—ones that often include torture, imprisonment under inhumane conditions in their native countries, and exposure to other extreme kinds of abuse—mean that a number of asylum seekers who are subject to Expedited Removal will enter the United States in fragile psychological states. As a result, they will be more vulnerable to emotional crises than the average person who is exposed to the rigors of institutional life. Indeed, there is reason to expect that, for many of these post-credible fear asylum seekers, the painful and traumatic aspects of detention (as outlined above) will represent a form of “re-traumatization” whose long-term consequences may be deeper and more long-lasting. In fact, one study of a sample of detained asylum seekers indicated that more than four of five manifested symptoms of clinical depression, three quarters had anxiety-related symptoms, and that fully half showed signs of post-traumatic stress disorder.<sup>33</sup>

In addition to the increased painfulness of incarceration for an already vulnerable population of detainees, several longer-term consequences for this group of asylum seekers may be of special concern. For one, some of those subjected to the Expedited Removal process may decide to terminate their asylum application, despite credibly fearing return to their home country, because they are traumatized and disheartened by their experiences in detention. Indeed, to study this potential problem, as part of the evaluation of consequences of current detention

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<sup>33</sup> Keller, A., Rosenfeld, B., Trinh-Sherwin, C., Meserve, C., Sachs, E., Leviss, J., Singer, E., Smith, H., Wilkinson, J., Kim, G., Alden, K., & Ford, D., Mental Health of Detained Asylum Seekers, *The Lancet*, 362, 1721-1723 (2003). A number of detailed and comprehensive reports have raised a broad set of concerns about the detention of asylum seekers in the United States. For example, see: Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003); Amnesty International, *Lost in the Labyrinth: Detention of Asylum Seekers*. New York: Amnesty International (1999). Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States*. New York: Human Rights Watch (1998).

practices, the results of interviews conducted by Commission researcher with 39 asylum seekers who decided to “dissolve” their asylum claims while in detention were reviewed.

Many of the interviewees indicated that the nature of their post-credible fear detention and treatment was one of the factors that led to their decision to terminate their application. They expressed these concerns in a variety of ways, ranging from one detainee who said that he terminated his asylum application because “it is not worth it to sit in jail while applying for asylum,” to another who said that “I need to help my children and I cannot do so from jail,” to one who preferred to go home “because detention is affecting my head and my spirit,” and a fourth who acknowledged that detention “instills fear in people” and that locking down “human beings who are not harming anybody” is “not right.”

Others complained that “when I found out the conditions of my compatriots, and how they are waiting months after months in detention, I decided I would prefer to go back.” Another asylum seeker who attributed his decision to terminate his asylum claim directly to his detention experience put it succinctly: “I’m not used to living in prison. This situation is not good for me... I can’t live in jail any longer.”

Of course, it was impossible to tell whether these detention-related explanations were genuine as opposed to, say, detainees finally concluding or conceding that their asylum claims had no merit. Yet there was no obvious advantage or benefit for a detainee to cite detention conditions as the reason for dissolving his or her asylum claim. Nonetheless, explanations based on the harshness of detention were commonplace among the 39 persons interviewed in this portion of the study. Asylum seekers who terminated said that they were “sick and tired of prison,” that they’d never been incarcerated before and didn’t think they deserved such treatment, and that they “didn’t know I’d be imprisoned,” sometimes for months or years. These comments suggest that some number of asylum seekers who might otherwise qualify for asylum could be deterred from continuing to pursue their claims because they are forced to remain in detention in the course of the asylum process.

Finally, detained post-credible fear asylum seekers—whether they ultimately are granted asylum or are returned to their home countries—may suffer from long-term psychological consequences of detention. In recent years, a large literature has developed that examines the aftereffects of incarceration.<sup>34</sup> The literature on the aftereffects of incarceration in general suggests that—especially for persons who lack access to significant social and economic resources when they are released, who may have begun their period in detention with special psychological vulnerabilities, and who are likely to re-enter free society without any adequate transitional services to assist them in the difficult post-institutional adjustment process—successful reintegration often proves a difficult if not impossible task. Many people released from traditional prisons and jails cannot find productive work or sustain meaningful social and personal relationships; an unusually high number eventually engage in criminal activity and return to custody. Most experts believe that their continued social and economic marginality is at least in part the result of the lasting psychological effects of incarceration. Asylum seekers held

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<sup>34</sup> For example, see the various studies and references described and cited in J. Travis & M. Waul (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities. Washington, DC: Urban Institute Press (2003).

in jail-like conditions may suffer from exactly the same kinds of post-incarceration adjustment problems, exacerbated by the additional problems they will encounter attempting to integrate into a strange and unfamiliar culture (in those cases where asylum is granted and they assume residency in the United States).

## V. DISCUSSION, ALTERNATIVES, AND NEED FOR FURTHER STUDY

The data from this Study, however, raises a number of questions about the conditions of confinement under which asylum seekers who are subject to Expedited Removal are detained. Even under the best of conditions and most humane practices, incarceration is psychologically stressful and potentially harmful. As long as procedures are used to insure that post-credible fear asylum seekers appear at asylum hearings and removal proceedings, policies that minimize the number of asylum seekers in Expedited Removal who are kept in detention, shorten the length of time during which they are detained, and keep those who are detained under the most humane possible conditions will reduce the psychological risks of incarceration and lessen the potential damage that may be done to this already vulnerable group of people.

These questions warrant further study. As DHS endeavors to improve the detention environment for those asylum seekers whom it must detain, there should be a careful, systematic assessment of the impact of detention on asylum seekers that not only documents the administrators' descriptions of conditions at each facility (as our Report did), but supplements that assessment with detailed inspections of a representative sample of facilities by knowledgeable researchers (with experience in evaluating correctional environments), and extended interviews (including mental health assessments) of a representative sample of asylum seeking detainees

Forcing asylum seekers to become dependent on institutional structures and contingencies (which, in extreme cases, means they may relinquish self-initiative and self-generated internal behavioral controls), and increasing the likelihood that some will become distrustful, fearful, and hypervigilant in jail-like settings where they are kept seems ill-advised. Subjecting them to conditions where some of them will feel the need to withdraw and isolate themselves from others, in addition to experiencing the enforced social isolation from their families that often occurs, is likely to impair their social relationships and future adjustment. So, too, will exposing them to conditions of confinement that diminish their sense of self worth and personal value by placing them in deprived circumstances where they have little or no control over mundane aspects of their day-to-day lives. The possibility that detained asylum seekers will experience post-traumatic stress disorder, or have pre-existing medical or psychological conditions exacerbated is a serious concern. Especially because of the vulnerabilities with which many of them initially enter detention facilities, high incidences of clinical syndromes—pre-existing or acquired during confinement—are likely.

Some asylum seekers subjected to Expedited Removal will have their petitions denied and will be returned to countries where they must re-establish themselves. Others will be granted asylum and face the challenge of integrating into a free but complex society. In neither case will the process of transition be facilitated by long periods of potentially damaging incarceration.

Of course, the exact nature of the conditions of confinement under which persons are housed matter. This study identified a number of severe jail-like conditions that went beyond anything necessary to insure the safe and secure housing of persons pending hearings and removal proceedings. Given the severity of the conditions of confinement identified in the present study, the Physicians for Human Rights study conclusion that “the psychological health of detained asylum seekers is extremely poor and worsens the longer asylum seekers remain in detention” is not surprising.<sup>35</sup>

In addition, staff members in the overwhelming majority of detention facilities surveyed received little or no client-appropriate training. As noted above, only one of 19 facilities surveyed provided its staff with any specialized training designed to sensitize them to the unique background and potential trauma histories of asylum seekers. Instead, the overwhelming majority of staff members have received jail-appropriate training in security and custody-related matters. Many have become accustomed to working with a domestic criminal population who have little in common with asylum seekers. This is especially true in the case of women and children asylum seekers, whose trauma histories and emotional needs may be more severe and require more specialized training.<sup>36</sup>

Many of the facilities surveyed appeared to fall short of existing ICE detention guidelines. Moreover, while DHS and contract facilities make an effort to carry out the guidelines, other facilities run by other government agencies are not required to follow them. For example, the guidelines make an effort to separate asylum seekers from criminals and criminal aliens. According to the guidelines: “The classification system shall assign detainees to the least restrictive housing unit consistent with facility safety and security. By grouping detainees with comparable records together, and isolating those at one classification level from all others, the system reduces noncriminal and nonviolent detainees’ exposure to physical and psychological danger.”<sup>37</sup> However, the guidelines are not binding on detention facilities operated by local, state, or federal government agencies through intergovernmental service agreements (IGSAs). Consequently, our survey found that, in IGSA facilities, asylum seekers are frequently co-mingled or even sleep next to criminal aliens, detainees awaiting criminal trial, and convicts.

On the other hand, we were very impressed with the Broward Transitional Center “non-jail-like” model of detention, which appeared to have achieved a much more appropriate balance between security concerns and the mental health and emotional needs of asylum seekers subject to Expedited Removal. Broward detainees were regarded less as criminals and more as human beings whose past trauma and future transition into free society warranted caring, respectful treatment. The detainees were given a significant amount of freedom (despite being confined in a secure detention facility), their ability to maintain and strengthen family ties was supported (through a liberal contact visiting policy), and the likelihood that they would suffer various forms of social, psychological, and cognitive deterioration associated with incarceration was minimized

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<sup>35</sup> Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (2003), at p. 5.

<sup>36</sup> As stated in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999), “The detention of asylum-seekers is, in the view of UNHCR, inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs.” See Appendix F.

<sup>37</sup> INS Detention Standard: Detainee Classification System (p. 5) (2003).

(through a full range of activities and programs in which detainees can participate on a daily basis).

The Broward model is still a form of detention, to be sure, and it is experienced as such by the detainees who are kept there. However, it appears to be designed to reduce the harmful effects of incarceration as much as possible.

Staff members who were interviewed at Broward believed that their model was transferable to other facilities in which post-credible fear asylum seekers are held and we concur. We would anticipate that the transfer of the Broward model would meet pockets of resistance among more traditionally trained correctional staff and administrators. Yet, just as at Broward itself (whose administration and staff includes former correctional personnel), committed leadership and active guidance has resulted in the creation of a model facility, run and staffed by persons who appeared to take great pride in the alternative model of detention they had created and were devoted to its continuing success. Moreover, along with the Broward administrators with whom we discussed this issue, we saw no reason why the model could not be extended to detention facilities in which male as well as female detainees were housed.

In terms of cost, it is worth noting that, according to our survey, use of Broward costs DRO \$83 per night per alien. This is slightly less expensive than the national average per ICE detention bed. (And the much more prison-like facility operated in Queens by GEO, the same contractor which manages Broward, costs ICE an average of \$200 per night. The cost of bed space in the New York metropolitan area, however, is considerably more expensive than in South Florida.).

Finally, the present report was written without an opportunity to systematically study the implementation and effects of the newly implemented Intensive Supervision Appearance Program (ISAP).<sup>38</sup> The increased use of electronic monitoring and related alternatives offers the obvious advantage of providing security and surveillance data without the corresponding economic as well as psychological costs of incarceration. At the same time, however, it is important to note that several of the asylum seekers in the Expedited Removal process that we interviewed who currently were participating in ISAP complained about the conditions that were imposed on them. That is, in discussions with a small number of persons enrolled in the program in the Miami area, complaints were expressed to the effect that unrealistic limits were set on times and distances that they could travel that, in turn, restricted or prevented participants from working and otherwise engaging in normal daily routines.

The use of monitoring devices such as ankle bracelets also constitutes a form of criminalizing post-credible fear asylum seekers—albeit on a more mild basis than detention in jail-like settings. The issue of whether ISAP (with or without electronic monitoring) is being

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<sup>38</sup> In September, 2002, an Electronic Monitoring Device Program (EMD) contract was awarded to ADT, and initially piloted in Anchorage, Detroit, Miami, Seattle, Portland, Orlando, and Chicago. On March 22, 2004, an ISAP contract was awarded to Behavioral Interventions, Inc., of Boulder, Colorado, providing for the community supervision of up to 1600 aliens. A total of 8 ICE field offices—in Baltimore, Philadelphia, Miami, St. Paul, Denver, Kansas City, San Francisco, and Portland—have implemented this program.

used with asylum seekers who would otherwise qualify for and likely have been granted parole without any such conditions merits further study.<sup>39</sup> That is, it is important to determine whether alternatives to detention (such as electronic monitoring) are being used as genuine alternatives to detention—in which case they would lessen the criminalization of this population of asylum seekers, and reduce the psychological risks of incarceration for them. If, on the other hand, these programs actually are being implemented as alternatives to parole, then they are extending potential criminalizing and other adverse effects to persons who would not otherwise be subjected to them.

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<sup>39</sup> “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...” Office of Field Operations Memorandum, December 30, 1997.

APPENDICES

**Appendix A: Facilities in Sample**

<u>FACILITY</u> NAME	LOCATION	Managed By
<b>Etowah County Jail</b>	Gadsen, Alabama	Local Gov't
<b>Florence SPC</b>	Florence, Arizona	DHS
<b>Otay Mesa</b>	Otay Mesa, California	Corrections Corporation of America
<b>Mira Loma</b>	Lancaster, California	Los Angeles County Sheriffs
<b>Oakland City Jail</b>	Oakland, California	Local Gov't
<b>San Pedro SPC</b>	San Pedro, California	DHS
<b>Yuba County Jail</b>	St. Marysville, California	Local Gov't
<b>Krome SPC</b>	Miami, Florida	DHS
<b>Broward Transitional Center</b>	Pompano Beach, Florida	Global Expertise in Outsourcing (formerly Wackenhut)
<b>Tri-County Jail</b>	Ullin, Illinois	Local Gov't
<b>Orleans Parish Jail</b>	New Orleans, Louisiana	Local Gov't
<b>Tensas Parish Detention Center</b>	Waterproof, Louisiana	Emerald Correctional Management
<b>Elizabeth Contract</b>	Elizabeth, New Jersey	Corrections Corporation of America
<b>Queens Contract</b>	Queens, New York	Global Expertise in Outsourcing (formerly Wackenhut)
<b>Berks Family Shelter</b>	Leesport, Pennsylvania	Local Gov't (County)
<b>Aguadilla SPC</b>	Aguadilla, Puerto Rico	DHS
<b>Guaynabo</b>	Guaynabo, Puerto Rico	Fed. Gov't (Bureau of Prisons)
<b>Laredo Contract Detention Facility</b>	Laredo, Texas	Corrections Corporation of America
<b>Port Isabel SPC</b>	Los Fresnos, Texas	DHS
<b>Arlington County Jail</b>	Arlington, Virginia	Local Gov't
<b>Piedmont Regional Jail</b>	Farmville, Virginia	Local Gov't
<b>Ozaukee County Jail</b>	Ozaukee, Wisconsin	Local Gov't

\*\*Ozaukee, Guaynabo, and Orleans did not complete interviews (Ozaukee refused.)

## **Appendix B: Facilities Actually Surveyed and Those Visited by Commission Experts**

In alphabetical order, the 19 facilities that were surveyed were:

Aguadilla SPC (Puerto Rico)  
Arlington County Jail (Virginia)  
Berks County Family Shelter (Pennsylvania)  
Broward Transitional Center (Florida)  
Elizabeth Detention Center (New Jersey)  
Etowah County Jail (Alabama)  
Florence Staging Facility (Arizona)  
Krome SPC (Florida)  
Laredo Contract Detention Facility (Texas)  
Mira Loma (California)  
Oakland City Jail (California)  
Otay Mesa Detention Facility (California)  
Piedmont Regional Jail (Virginia)  
Port Isabel (Texas)  
Queens Contract Detention Facility (New York)  
San Pedro SPC (California)  
Tensas Parish Detention Center (Louisiana)  
Tri-County Jail (Illinois)  
Yuba County Detention Facility (California)

In alphabetical order, the 18 facilities visited by Commission experts:

Aguadilla, Puerto Rico

Broward Detention Center, Miami, Florida

Comfort Inn, Miami, Florida

Elizabeth Contract Detention Center, Elizabeth, New Jersey

Florence SPC, Florence, Arizona

Guaynabo-MDC, Puerto Rico

Kenosha County Jail, Kenosha, Wisconsin

Krome, SPC, Miami, Florida

Laredo Contract Detention Center, Laredo, Texas

Mira Loma Detention Facility, Lancaster, California

Oakland County Jail, Oakland, California

Otay Mesa Detention Facility (CCA), San Diego, California

Piedmont Regional Jail, Farmville, Virginia

Queens New York Contract Facility

San Pedro Detention Facility, San Pedro, California

Yuba City Jail, Yuba City, California

In addition, Office of Refugee Resettlement (ORR) juvenile contract facilities in Chicago, Illinois, and San Diego, California.

**Appendix C:**

DETENTION CENTER QUESTIONNAIRE

**Researcher Name:** \_\_\_\_\_

**NAME OF FACILITY:**

**ADDRESS OF FACILITY:**

**POINT OF CONTACT:**  
(E-mail, telephone number)

**TYPE OF FACILITY:**                      Local Jail  
(Circle One)                              State Prison  
   Federal Prison  
   Private Contract Facility (Contractor name:  
   \_\_\_\_\_)  
   Run by DHS (“Service Processing Center”)

**Number of Beds at Facility:**  
(A) Number of beds for alien men in DHS custody:  
(B) Number of beds for alien women in DHS custody:  
(C) Number of beds for men who are NOT in DHS custody (specify whose custody they are in if not DHS (US Marshall’s Service, Local, State of Federal Prison system, etc.):  
(D) Number of beds for women not in DHS custody (specify):

**Cost charged to DHS per detainee per night:** \_\_\_\_\_

**Nature of Population at Facility (check all that apply):**  
 Alien men **without** known criminal convictions  
 Alien women **without** known criminal convictions  
 Criminal alien men (detained post conviction for administrative purposes, not serving time)  
 Criminal alien women  
 Criminal men serving sentences or awaiting trial  
 Criminal women serving sentences or awaiting trial

**(IF THERE ARE ANY MEN HOUSED AT FACILITY) If facility has criminals serving time or individuals awaiting trial, to what extent do male convicts and male non-criminal aliens intermingle?**  
 Share sleeping quarters

- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**(IF THERE ARE ANY MEN HOUSED AT FACILITY) If facility has criminal aliens detained post conviction, to what extent do male criminal aliens and non-criminal male aliens intermingle?**

- Share sleeping quarters
- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**(IF THERE ARE ANY WOMEN HOUSED AT FACILITY) If facility has criminals serving time or individuals awaiting trial, to what extent do female convicts and female non-criminal aliens intermingle?**

- Share sleeping quarters
- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**(IF THERE ARE ANY WOMEN HOUSED AT FACILITY) If facility has criminal aliens detained post conviction, to what extent do female criminal aliens and non-criminal female aliens intermingle?**

- Share sleeping quarters
- Housed separately, no interaction.
- Housed separately, but some interaction (specify: at rec time, meal time, or other)

**ASYLUM-SPECIFIC QUESTIONS:**

**Are the guards at the facility aware of who is an asylum seeker or who is not?**

- Guards are told who is an asylum seeker (credible fear) and who is not.

**Explain:**

- Guards are not specifically told who is seeking asylum and who is not, but they generally know.

**Explain:**

- Guards do not generally know who is seeking asylum and who is not.

**Do guards receive any special training on dealing with:**

- (A) Asylum seekers
- (B) Victims of torture and trauma?

**Explain:**

**Do other personnel at the facility receive such training? Explain:**

**Are aliens with convictions for immigration related offenses such as Entry Without Inspection or Use of False Documents treated as “criminal aliens” at the facility?**

- Yes, they are housed with criminal aliens
- Yes, they are not permitted to reside at the facility because this facility does not house criminal aliens
- No, aliens with immigration-related offenses such as those are not regarded as “criminal aliens” by this facility

**I. SECURITY, SURVEILLANCE, AND “PUNISHMENT”**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>How many security barriers (locked gates and/or doors) have to be opened from the outside by staff in order to reach the detainee’s housing units?</b>		
<b>Are restrictions placed on who can enter a detainee’s cell or individual housing area? Is access to the housing units themselves restricted?</b>		YES
<b>Are in-cell or housing unit counts preformed? How often?</b>		YES
<b>Does the staff conduct strip searches or other kinds of invasive</b>		YES

searches during in processing of the detainees?		
Are detainees ever strip-searched for security purposes? Under what circumstances?		YES
Are searches of the detainees' general living areas performed? Under what circumstances and how often?		YES
Are there fixed and secure guard stations in the detainees' housing units?		YES
Is there constant sight and sound surveillance in the detainees' housing units?		YES
Are there surveillance cameras in use within the detainees' housing units? Where?		YES
Are there surveillance cameras anywhere else within the facility? Where?		YES
Is there 24-hour surveillance lighting anywhere in the facility?		YES
Are physical restraints used with detainees? Under what circumstances?		YES

<b>Are detainees ever placed in isolation/ segregation for disciplinary reasons? What kind of problems?</b>		YES

II. ALIEN'S ABILITY TO MOVE ABOUT WITHIN DETENTION

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>Are restrictions placed on detainees' movements outside of their housing units? Please explain any such limitations.</b>		YES
<b>Is detainee access to non-assigned housing units or living areas limited? If so, how?</b>		YES
<b>Are escorts required when detainees move through the facility? When?</b>		YES
<b>Is detainee access to the dayroom restricted? How? Are escorts required for access to day rooms?</b>		YES

III. HOUSING AND LIVING SPACE CONDITIONS

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>Do detainees have access to private, individual toilets with no one else present?</b>		NO

<b>Do detainees have the use of private individual showers where no one else is present?</b>		NO
<b>Do detainees have opportunities to be alone in their cells or rooms?</b>		NO
<b>Are restrictions placed on the detainees' ability to personalize/decorate their living quarters? If so, what?</b>		YES
<b>May detainees wear their own street clothes? (Please describe uniforms or other standard-issue clothing.)</b>		NO
<b>Are different uniforms or colors issued to different classes of detainees? (Please explain color coding)</b>		YES
<b>Can detainees have personal hygiene items that are not provided by the government or sold at the commissary (canteen)? (If yes, are there any limitations on such items?)</b>		NO
<b>Are there any limitations placed on detainees' ability to purchase items at the commissary? (Please explain any limitations.)</b>		YES

IV. OCCUPATIONAL, RECREATIONAL, EDUCATIONAL, RELIGIOUS, AND LEGAL OPPORTUNITIES

ATTRIBUTE OF CONFINEMENT	TREATMENT OF ASYLUM SEEKERS	<u>JAIL</u>
Is detainee access to the law library restricted? (Eg: time restrictions, printing restrictions, etc.)		YES
Do detainees have access to the internet? If so, are there any restrictions?		NO
Are “Know Your Rights” presentations conducted at the Detention Center? If so, by whom (detention center or NGO) and how often?		
Are copies of Know Your Rights handouts issued to or made available to detainees? In what languages?  *REQUEST A COPY of handbook and list of pro bono representatives and attorneys that aliens receive		
What type of outdoor recreation do detainees receive? (Where, how often, and confined or escort??)		

<b>What programming opportunities (eg: education classes, vocational training) are provided to the detainees?</b>		
<b>Are detainees allowed to work? If so, are they paid for their work? How much?</b>		YES
<b>Religious Services:</b>  <b>Please describe religious opportunities for detainees:</b>	<b>Check all that apply:</b> <input type="checkbox"/> Full-time chaplain or other clergy at facility <input type="checkbox"/> Part-time chaplain or other clergy at facility <input type="checkbox"/> Weekly services at facility (specify denomination(s): <input type="checkbox"/> Holiday services at facility (specify denominations): <input type="checkbox"/> Detainees permitted to travel escorted to off-site religious services on holidays (explain): <input type="checkbox"/> Detainees permitted to travel unescorted to off-site religious services on holidays (explain): <input type="checkbox"/> Detainees permitted to travel unescorted to off-site religious services weekly (explain): <input type="checkbox"/> Detainees permitted to travel escorted to off-site religious services weekly (explain): <input type="checkbox"/> Other on site-regularly scheduled religious services – explain: <input type="checkbox"/> Other on-site ad hoc scheduled religious services – explain <input type="checkbox"/> Special Religious Diets Accommodated (kosher/halal/vegetarian) Y/N EXPLAIN:	

**V. HEALTH ISSUES (Mental Health, Doctor, Dentist)**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Is segregation or isolation used when a detainee may be suicidal? If not, what is done in this situation?</b>		YES
<b>How many fulltime</b>		

<b>mental health staff do detainees have access to at the facility where they are confined?</b>		
<b>Is there a mandatory mental health assessment at intake?</b>		
<b>Are services available upon request of the detainee?</b>		
<b>Do mental health personnel make regular rounds or must a detainee ask for assessment?</b>		
<b>What kind of fulltime medical staff is available to detainees?</b>		
<b>Is there a mandatory medical health assessment at intake?</b>		
<b>Do detainees have access to dental staff at the facility?</b>		

**VI. VISITS, PHONECALLS, AND CORRESPONDENCE**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Are limitations placed on the frequency and length of visits detainees are allowed to have? What are they?</b>		<b>YES</b>
<b>Are limitations placed on the length and frequency of ATTORNEY visits?</b>		

<b>What are they?</b>		
<b>Are detainees allowed to have contact visits? Under what circumstances? Limitations?</b>		NO
<b>Are detainees permitted to place telephone calls? Are calls limited in frequency and duration?</b>		YES YES
<b>Are calls to lawyers treated differently than other calls?</b>		
<b>How are telephone calls paid for and at what rate?</b>		
<b>What limitations are placed on detainees' rights to send and receive correspondence? Is correspondence to lawyers treated any differently?</b>		
<b>At what rate are indigents allowed to send correspondence?</b>		

**Appendix D**

**I. SECURITY, SURVEILLANCE, AND “PUNISHMENT”**

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Multiple security barriers (locked gates and/or doors) must be traversed to reach the detainee’s housing unit</b>	95%	YES
<b>Restrictions are placed on access to cells or individual housing areas</b>	95%	YES
<b>Multiple in-cell or housing unit counts are performed</b>	95%	YES
<b>Staff conducts strip searches or other kinds of invasive searches during in-processing</b>	74%	YES
<b>Detainees are subjected to strip-searches for security purposes</b>	84%	YES
<b>Regular searches of the detainees’ general living areas are performed</b>	100%	YES
<b>There are fixed and secure guard stations in the detainees’ housing units</b>	84%	TYPICALLY
<b>There is constant sight and/or sound surveillance in the detainees’ housing units</b>	95%	YES

<b>There are surveillance cameras in use within the detainees' housing units</b>	74%	TYPICALLY
<b>There are surveillance cameras in use in other areas of the facility</b>	95%	TYPICALLY
<b>There is 24-hour surveillance lighting elsewhere in the facility</b>	100%	TYPICALLY
<b>Physical restraints used with detainees</b>	95%	YES
<b>Detainees may be placed in isolation/ segregation for disciplinary reasons</b>	84%	TYPICALLY

II. ALIEN'S ABILITY TO MOVE ABOUT WITHIN DETENTION

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u>JAIL</u>
<b>Restrictions are placed on detainees' movement outside of their housing units.</b>	90%	YES
<b>Detainee have restricted access to non-assigned housing units or living areas</b>	79%	YES
<b>Escorts are required when detainees move through the facility</b>	90%	YES

III. HOUSING AND LIVING SPACE CONDITIONS

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Detainees lack access to private, individual toilets where no one else is present</b>	79%	VARIES
<b>Detainees lack private individual showers where no one else is present</b>	74%	YES
<b>Detainees lack opportunities to be alone in their cells or rooms</b>	79%	VARIES
<b>Restrictions are placed on the detainees' ability to personalize/decorate their living quarters</b>	79%	VARIES
<b>Detainees wear uniforms rather than their own street clothes</b>	84%	YES
<b>Detainees are prohibited from having personal hygiene items that are not provided by the government or sold at the commissary or canteen</b>	90%	YES

IV. OCCUPATIONAL, RECREATIONAL, EDUCATIONAL, RELIGIOUS, AND LEGAL OPPORTUNITIES

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Detainee access to the law library is restricted</b>		YES

	74%	
<b>Detainees are denied any access to the internet</b>	100%	YES
<b>Detainees have only restricted access to outdoor recreation</b>	84%	YES
<b>Detainees are restricted to outside exercise in areas that are circumscribed and confined, with security restrictions</b>	83%	YES
<b>Detainees are prohibited from meaningful programming opportunities (e.g., education classes, vocational training)</b>	58%	VARIES
<b>Detainees are permitted to work but are paid nothing or a trivial amount (e.g., \$1/day) for their labor</b>	90%	VARIES

V. MENTAL AND MEDICAL HEALTH ISSUES

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<u><b>JAIL</b></u>
<b>Facility fails to provide for routine mental health monitoring so that even those detainees who do not request services are</b>	90%	TYPICALLY

<b>seen periodically by mental health staff</b>		
<b>Mental health contact is limited by the absence of a full-time psychologist or psychiatrist</b>	74%	VARIES
<b>Custody staff lacks specialized training to recognize and address unique mental health needs of detainee population</b>	95%	YES
<b>Medical care is limited by the absence of a full-time physician</b>	58%	VARIES

VI. VISITS, PHONECALLS, AND CORRESPONDENCE

<b>ATTRIBUTE OF CONFINEMENT</b>	<b>TREATMENT OF ASYLUM SEEKERS</b>	<b><u>JAIL</u></b>
<b>Limitations are placed on the frequency and length of visits that detainees may have</b>	95%	YES
<b>Detainees are prohibited from having contact visits with family and friends</b>	58%	TYPICALLY
<b>Limitations are placed on detainees' rights to send and receive correspondence</b>	100%	YES

## Appendix E

### Detention of Refugees and Asylum-Seekers

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The Executive Committee,

Recalling Article 31 of the 1951 Convention relating to the Status of Refugees.

Recalling further its Conclusion No. 22 (XXXII) on the treatment of asylum-seekers in situations of large-scale influx, as well as Conclusion No. 7 (XXVIII), paragraph (e), on the question of custody or detention in relation to the expulsion of refugees lawfully in a country, and Conclusion No. 8 (XXVIII), paragraph (e), on the determination of refugee status.

Noting that the term "refugee" in the present Conclusions has the same meaning as that in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, and is without prejudice to wider definitions applicable in different regions.

- (a) Noted with deep concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation;
  - (b) Expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;
  - (c) Recognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention;
  - (d) Stressed the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum-seekers, and that of other aliens;
  - (e) Recommended that detention measures taken in respect of refugees and asylum-seekers should be subject to judicial or administrative review;
  - (f) Stressed that conditions of detention of refugees and asylum seekers must be humane. In particular, refugees and asylum-seekers shall, whenever possible, not be accommodated with persons detained as common criminals, and shall not be located in areas where their physical safety is endangered;
  - (g) Recommended that refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the absence of such office, available national refugee assistance agencies;
  - (h) Reaffirmed that refugees and asylum-seekers have duties to the country in which they find themselves, which require in particular that they conform to its laws and regulations as well as to measures taken for the maintenance of public order;
  - (i) Reaffirmed the fundamental importance of the observance of the principle of non-refoulement and in this context recalled the relevance of Conclusion No. 6 (XXVIII).
-

## Appendix F



OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES GENEVA

# **UNHCR REVISED GUIDELINES ON APPLICABLE CRITERIA AND STANDARDS RELATING TO THE DETENTION OF ASYLUM SEEKERS<sup>1</sup>**

**(February 1999)**

### **Introduction**

1. The detention of asylum-seekers is, in the view of UNHCR inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.
2. Of key significance to the issue of detention is Article 31 of the 1951 Convention<sup>2</sup>. Article 31 exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Article also provides that Contracting States shall not apply to the movements of such refugees restrictions other than those which are **necessary**, and that any restrictions shall only be applied until such time as their status is regularised, or they obtain admission into another country.
3. Consistent with this Article, detention should only be resorted to in cases of **necessity**. The detention of asylum-seekers who come "directly" in an irregular manner should, therefore, not be automatic, or unduly prolonged. This provision applies not only to recognised refugees but also to asylum-seekers pending determination of their status, as recognition of refugee status does not make an individual a refugee but declares him to be one. Conclusion No. 44(XXXVII) of the Executive Committee on the Detention of Refugees and Asylum-Seekers examines more concretely what is meant by the term "**necessary**". This Conclusion also provides guidelines to States on the use of detention and recommendations as to certain procedural guarantees to which detainees should be entitled.

4. The expression "**coming directly**" in Article 31(1), covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept "**coming directly**" and each case must be judged on its merits. Similarly, given the special situation of asylum-seekers, in particular the effects of trauma, language problems, lack of information, previous experiences which often result in a suspicion of those in authority, feelings of insecurity, and the fact that these and other circumstances may vary enormously from one asylum seeker to another, there is no time limit which can be mechanically applied or associated with the expression "**without delay**". The expression "**good cause**", requires a consideration of the circumstances under which the asylum-seeker fled. The term "asylum-seeker" in these guidelines applies to those whose claims are being considered under an admissibility or pre-screening procedure as well as those who are being considered under refugee status determination procedures. It also includes those exercising their right to seek judicial and/or administrative review of their asylum request.

5. Asylum-seekers are entitled to benefit from the protection afforded by various International and Regional Human Rights instruments which set out the basic standards and norms of treatment. Whereas each State has a right to control those entering into their territory, these rights must be exercised in accordance with a prescribed law which is accessible and formulated with sufficient precision for the regulation of individual conduct. For detention of asylum-seekers to be lawful and not arbitrary, it must comply not only with the applicable national law, but with Article 31 of the Convention and international law. It must be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances, with the possibility of release where no grounds for its continuation exist.<sup>3</sup>

6. Although these guidelines deal specifically with the detention of asylum-seekers the issue of the detention of stateless persons needs to be highlighted.<sup>4</sup> While the majority of stateless persons are not asylum-seekers, a paragraph on the detention of stateless persons is included in these guidelines in recognition of UNHCR's formal responsibilities for this group and also because the basic standards and norms of treatment contained in international human rights instruments applicable to detainees generally should be applied to both asylum-seekers and stateless persons. The inability of stateless persons who have left their countries of habitual residence to return to them, has been a reason for unduly prolonged or arbitrary detention of these persons in third countries. Similarly, individuals whom the State of nationality refuses to accept back on the basis that nationality was withdrawn or lost while they were out of the country, or who are not acknowledged as nationals without proof of nationality, which in the circumstances is difficult to acquire, have also been held in prolonged or indefinite detention only because the question of where to send them remains unresolved.

### **Guideline 1: Scope of the Guidelines.**

These guidelines apply to all asylum-seekers who are being considered for, or who are in, detention or detention-like situations. For the purpose of these guidelines, UNHCR considers detention as: **confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory.** There is a qualitative difference between detention and other restrictions on freedom of movement.

Persons who are subject to limitations on domicile and residency are not generally considered to be in detention.

When considering whether an asylum-seeker is in detention, the cumulative impact of the restrictions as well as the degree and intensity of each of them should also be assessed.

## **Guideline 2: General Principle**

**As a general principle asylum-seekers should not be detained.**

According to Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum-seekers are often forced to arrive at, or enter, a territory illegally. However the position of asylum-seekers differs fundamentally from that of ordinary immigrants in that they may not be in a position to comply with the legal formalities for entry. This element, as well as the fact that asylum-seekers have often had traumatic experiences, should be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.

## **Guideline 3: Exceptional Grounds for Detention.**

Detention of asylum-seekers may exceptionally be resorted to for the reasons set out below as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. These are contained in the main human rights instruments.<sup>5</sup>

There should be a presumption against detention. Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or guarantor requirements [see Guideline 4]), these should be applied **first** unless there is evidence to suggest that such an alternative will not be effective in the individual case. Detention should therefore only take place after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.

In assessing whether detention of asylum-seekers is necessary, account should be taken of whether it is reasonable to do so and whether it is proportional to the objectives to be achieved. If judged necessary it should only be imposed in a non discriminatory manner for a minimal period.<sup>6</sup>

The permissible exceptions to the general rule that detention should normally be avoided must be prescribed by law. In conformity with EXCOM Conclusion No. 44 (XXXVII) the detention of asylum-seekers may only be resorted to, if **necessary**:

**(I) to verify identity.**

This relates to those cases where identity may be undetermined or in dispute.

**(ii) to determine the elements on which the claim for refugee status or asylum is based.**

This statement means that the asylum-seeker may be detained exclusively for the purposes of a preliminary interview to identify the basis of the asylum claim.<sup>7</sup> This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim. This exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

**(iii) in cases where asylum-seekers have destroyed their travel and /or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum.**

What must be established is the absence of good faith on the part of the applicant to comply with the verification of identity process. As regards asylum-seekers using fraudulent documents or travelling with no documents at all, detention is only permissible when there **is an intention** to mislead, or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason.

**(iv) to protect national security and public order.**

This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he/she be allowed entry.

Detention of asylum-seekers which is applied for purposes other than those listed above, for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country. Detention should also be avoided for failure to comply with the administrative requirements or other institutional restrictions related residency at reception centres, or refugee camps. Escape from detention should not lead to the automatic discontinuation of the asylum procedure, or to return to the country of origin, having regard to the principle of non- refoulement.<sup>8</sup>

**Guideline 4: Alternatives to Detention.**

Alternatives to the detention of an asylum-seeker until status is determined should be considered. The choice of an alternative would be influenced by an individual assessment of the personal circumstances of the asylum-seeker concerned and prevailing local conditions.

Alternatives to detention which may be considered are as follows:

**(i) Monitoring Requirements.**

Reporting Requirements: Whether an asylum-seeker stays out of detention may be conditional on compliance with periodic reporting requirements during the status determination procedures. Release could be on the asylum-seeker's own recognisance, and/or that of a family member, NGO or community group who would be expected to ensure the asylum-seeker reports to the authorities periodically, complies with status determination procedures, and appears at hearings and official appointments.

Residency Requirements: Asylum-seekers would not be detained on condition they reside at a specific address or within a particular administrative region until their status has been determined. Asylum-seekers would have to obtain prior approval to change their address or move out of the administrative region. However this would not be unreasonably withheld where the main purpose of the relocation was to facilitate family reunification or closeness to relatives.

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**(ii) Provision of a Guarantor/ Surety.** Asylum seekers would be required to provide a guarantor who would be responsible for ensuring their attendance at official appointments and hearings, failure of which a penalty most likely the forfeiture of a sum of money, levied against the guarantor.

**(iii) Release on Bail.** This alternative allows for asylum-seekers already in detention to apply for release on bail, subject to the provision of recognisance and surety. For this to be genuinely available to asylum-seekers they must be informed of its availability and the amount set must not be so high as to be prohibitive.

**(iv) Open Centres.** Asylum-seekers may be released on condition that they reside at specific collective accommodation centres where they would be allowed permission to leave and return during stipulated times.

These alternatives are not exhaustive. They identify options which provide State authorities with a degree of control over the whereabouts of asylum-seekers while allowing asylum-seekers basic freedom of movement.

**Guideline 5: Procedural Safeguards.<sup>10</sup>**

If detained, asylum-seekers should be entitled to the following minimum procedural guarantees:

(i) to receive prompt and full communication of any order of detention, together with the reasons for the order, and their rights in connection with the order, in a language and in terms which they understand;

(ii) to be informed of the right to legal counsel. Where possible, they should receive free legal assistance;

(iii) to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuation of detention, which the asylum-seeker or his representative would have the right to attend;

(iv) either personally or through a representative, to challenge the necessity of the deprivation of liberty at the review hearing, and to rebut any findings made. Such a right should extend to all aspects of the case and not simply the executive discretion to detain;

(v) to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available.

Detention should not constitute an obstacle to an asylum-seekers' possibilities to pursue their asylum application.

#### **Guideline 6: Detention of Persons under the Age of 18 years.<sup>11</sup>**

In accordance with the general principle stated at Guideline 2 and the UNHCR Guidelines on Refugee Children, **minors who are asylum-seekers should not be detained.**

In this respect particular reference is made to the Convention on the Rights of the Child in particular:

- Article 2 which requires that States take all measures appropriate to ensure that children are protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members;
- Article 3 which provides that in any action taken by States Parties concerning children, the best interests of the child shall be a primary consideration;
- Article 9 which grants children the right not to be separated from their parents against their will;
- Article 22 which requires that States Parties take appropriate measures to ensure that minors who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance;
- Article 37 by which States Parties are required to ensure that the detention of minors be

used only as a measure of last resort and for the shortest appropriate period of time.

Unaccompanied minors should not, as a general rule, be detained. Where possible they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements should be made by the competent child care authorities for unaccompanied minors to receive adequate accommodation and appropriate supervision. Residential homes or foster care placements may provide the necessary facilities to ensure their proper development, (both physical and mental), is catered for while longer term solutions are being considered.

All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.

If none of the alternatives can be applied and States do detain children, this should, in accordance with Article 37 of the Convention on the Rights of the Child, be as a measure of last resort, and for the shortest period of time.

If children who are asylum-seekers are detained at airports, immigration-holding centres or prisons, they must not be held under prison- like conditions. All efforts must be made to have them released from detention and placed in other accommodation. If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families.

During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play which is essential to a child's mental development and will alleviate stress and trauma.

Children who are detained, benefit from the same minimum procedural guarantees (listed at Guideline 5) as adults. A legal guardian or adviser should be appointed for unaccompanied minors.<sup>12</sup>

### **Guideline 7: Detention of Vulnerable Persons.**

Given the very negative effects of detention on the psychological well being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers falling within the following vulnerable categories:<sup>13</sup>

Unaccompanied elderly persons.

Torture or trauma victims.

Persons with a mental or physical disability.

In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation, medication counselling etc. should it become necessary.

### **Guideline 8: Detention of Women.**

Women asylum-seekers and adolescent girls, especially those who arrive unaccompanied, are particularly at risk when compelled to remain in detention centres. As a general rule the detention of pregnant women in their final months and nursing mothers, both of whom may have special needs, should be avoided.

Where women asylum-seekers are detained they should be accommodated separately from male asylum-seekers, unless these are close family relatives. In order to respect cultural values and improve the physical protection of women in detention centres, the use of female staff is recommended.

Women asylum-seekers should be granted access to legal and other services without discrimination as to their gender,<sup>14</sup> and specific services in response to their special needs<sup>15</sup>. In particular they should have access to gynaecological and obstetrical services.

### **Guideline 9: Detention of Stateless Persons.**

Everyone has the right to a nationality and the right not to be arbitrarily deprived of their nationality.<sup>16</sup>

Stateless persons, those who are not considered to be nationals by any State under the operation of its law, are entitled to benefit from the same standards of treatment as those in detention generally.<sup>17</sup> Being stateless and therefore not having a country to which automatic claim might be made for the issue of a travel document should not lead to indefinite detention. Statelessness cannot be a bar to release. The detaining authorities should make every effort to resolve such cases in a timely manner, including through practical steps to identify and confirm the individual's nationality status in order to determine which State they may be returned to, or through negotiations with the country of habitual residence to arrange for their re-admission.

In the event of serious difficulties in this regard, UNHCR's technical and advisory service pursuant to its mandated responsibilities for stateless persons may, as appropriate, be sought.

### **Guideline 10: Conditions of Detention<sup>18</sup>**

Conditions of detention for asylum-seekers should be humane with respect shown for the inherent dignity of the person. They should be prescribed by law.

Reference is made to the applicable norms and principles of international law and standards on the treatment of such persons. Of particular relevance are the 1988 UN Body of Principles for the

Protection of all Persons under any form of Detention or Imprisonment, 1955 UN Standard Minimum Rules for the Treatment of Prisoners, and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

The following points in particular should be emphasised:

- (i) the initial screening of all asylum seekers at the outset of detention to identify trauma or torture victims, for treatment in accordance with Guideline 7.
- (ii) the segregation within facilities of men and women; children from adults(unless these are relatives);
- (iii). the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups;
- (iv) the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary;
- (v) the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate;
- (vi) the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities;
- (vii) the opportunity to continue further education or vocational training;
- (viii) the opportunity to exercise their religion and to receive a diet in keeping with their religion;
- (ix) the opportunity to have access to basic necessities i.e. beds, shower facilities, basic toiletries etc.;
- (x) access to a complaints mechanism, (grievance procedures) where complaints may be submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.

### **Conclusion.**

The increasing use of detention as a restriction on the freedom of movement of asylum seekers on the grounds of their illegal entry is a matter of major concern to UNHCR, NGOs, other agencies as well as Governments. The issue is not a straight-forward one and these guidelines

have addressed the legal standards and norms applicable to the use of detention. Detention as a mechanism which seeks to address the particular concerns of States related to illegal entry requires the exercise of great caution in its use to ensure that it does not serve to undermine the fundamental principles upon which the regime of international protection is based.

1. These Guidelines address exclusively the detention of asylum seekers. The detention of refugees is generally covered by national law and subject to the principles, norms and standards contained in the 1951 Convention, and the applicable human rights instruments. 2. The Geneva Convention of 28 July 1951 Relating to the Status of Refugees. 3. Views of the Human Rights Committee on Communication No. 560/1993, 59th Session, CCPR/C/D/560/1993. 4. UNHCR has been requested to provide technical and advisory services to states on nationality legislation or practice resulting in statelessness. EXCOM Conclusion No. 78(XLVI) (1995), General Assembly Resolution 50/152,1996. See also Guidelines: Field Office Activities Concerning Statelessness.(IOM/66/98-FOM70/98). 5. Article 9(1) International Covenant on Civil and Political Rights.(ICCPR) Article 37(b) UN Convention on the Rights of the Child.(CRC) Article 5(1) European Convention for the Protection of Human Rights and Fundamental Freedoms.(ECHR) Article 7(2) American Convention on Human Rights 1969.(American Convention) Article 5 African Charter on Human and People's Rights. (African Charter) 6. Article 9(1), Article 12 ICCPR, Article 37(b) CRC Article 5(1)(f) ECHR Article 7(3) American Convention Article 6 African Charter. EXCOM Conclusion No. 44(XXXVII) 7. EXCOM Conclusion No. 44 (XXXVII) 8. Sub Committee of the Whole of International Protection Note EC/SCP/44 Paragraph 51(c). 9. Art 16, Art 12 UDHR 10. Article 9(2) and (4) ICCPR Article 37(d) CRC Article 5(2) and (4) ECHR Article 7(1) African Charter. Article 7(4) and (5) American Convention EXCOM Conclusion no. 44 (XXXVII) UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. 1988 UN Standard Minimum Rules for the Treatment of Prisoners 1955 11. See also UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 12. An adult who is familiar with the child's language and culture may also alleviate the stress and trauma of being alone in unfamiliar surroundings. 13. Although it must be recognised that most individuals will be able to articulate their claims, this may not be the case in those who are victims of trauma. Care must be taken when dealing with these individuals as their particular problems may not be apparent, and it will require care and skill to assess the situation of a person with mental disability or a disoriented older refugee who is alone. 14. See UNHCR Guidelines on The Protection of Refugee Women. 15. Women particularly those who have travelled alone may have been exposed to violence and exploitation prior to and during their flight and will require counselling. 16. Art 15 UDHR. See EXCOM No. 78(XLVI) 17. Article 10(1) ICCPR 1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. UN Standard Minimum Rules for the Treatment of Prisoners 1955 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty 18. Article 10(1) ICCPR 1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. 1955 UN Standard Minimum Rules for the Treatment of Prisoners. 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

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

**LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EXPEDITED  
REMOVAL: A SURVEY OF ALTERNATIVE PRACTICES**

DECEMBER 2004

Charles H. Kuck

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## LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EXPEDITED REMOVAL: A SURVEY OF ALTERNATIVE PRACTICES

By Charles H. Kuck

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), which took effect April 1, 1997, created the Expedited Removal process. Congress established Expedited Removal to address the perception that the asylum system was vulnerable to abuse by individuals arriving at ports of entry with false or no documents.<sup>1</sup> The Expedited Removal process, one of the major immigration reform measures included in IIRAIRA, constitutes a significant departure from prior law. It is a process that limits the rights of non-citizens at ports of entry and increases the authority of Department of Homeland Security (DHS) inspectors and Asylum Officers, who are now authorized to issue orders of removal which are not subject to appeal or other external review. Prior to the creation of Expedited Removal, orders of removal were issued only by immigration judges and were subject to administrative and judicial review. On November 13, 2002, Attorney General Ashcroft extended Expedited Removal beyond ports of entry to undocumented non-Cuban aliens who, within two years prior to apprehension, entered the United States by sea.<sup>2</sup> On August 11, 2004, the Secretary of Homeland Security expanded Expedited Removal authority to Border Patrol agents who apprehend aliens within 100 miles of the border within 14 days after an entry without inspection.<sup>3</sup>

The International Religious Freedom Act of 1998 (IRFA) authorized the United States Commission on International Religious Freedom (USCIRF) to appoint experts to conduct a study to answer four questions relating to the impact of Expedited Removal on asylum claims.<sup>4</sup> 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.

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<sup>1</sup> See, e.g., Cooper, "Procedures for Expedited Removal and Asylum Screening Under [IIRAIRA]," 29 Conn. L. Rev. 1501, 1501-02 (1997).

<sup>2</sup> Notice Designating Aliens subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act Notice, 67 FR 68924 (November 13, 2002).

<sup>3</sup> Notice Designating Aliens for Expedited Removal, 69 FR 48877 (August 11, 2004).

<sup>4</sup> H.R. 2431, P.L.105-292 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 Charles Kuck, Esq as the lead expert for exploring legal representation issues.

This report addresses legal representation for asylum seekers in the Expedited Removal process, as it relates to the third and fourth study questions; namely, whether barriers to representation, particularly those faced by detained aliens in Expedited Removal, may result in the incorrect removal of asylum seekers to countries where they may be persecuted, and whether conditions of detention may create unnecessary or inappropriate barriers to representation. This report also explores various approaches currently employed to meet the need for legal assistance by such aliens, supported by both the government and the private sector.

## I. OVERVIEW OF ENTRY PROCESS

Upon entry to the United States, an “arriving alien”<sup>5</sup> is subject to “inspection” by an officer of the DHS Bureau of Customs and Border Protection (“CBP”). The inspecting officer is required to make a review of the person’s entry documents in primary inspection and determine whether or not the person is admissible to the United States, using as the standard, the legal inadmissibility requirements found in 8 U.S.C. § 1182, et. seq. If the primary inspecting officer is not convinced of the arriving alien’s admissibility, or if the arriving alien appears inadmissible, the alien is referred to secondary inspection. In the secondary inspection, a CBP officer will examine the arriving alien and his documents. If the CBP officer determines the alien lacks authentic or appropriate travel documents, he will initiate the Expedited Removal process described in 8 U.S.C. §1225. As part of the Expedited Removal process, the CBP officer is required to ask the arriving alien a series of questions, which are designed to ascertain whether the arriving alien has a fear of immediate return to the home country.<sup>6</sup>

An arriving alien without proper documents is subject to being “expeditiously removed” unless he or she demonstrates a “credible fear” of return to his or her home country. Thus, an alien expressing a fear of return to the immigration inspector must be referred to an asylum officer, who then determines whether that fear is “credible.” Credible fear is defined by statute as 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 . . . .”<sup>7</sup>

Understanding the prior “exclusion” process is essential to understanding the changes made by Expedited Removal. The charts accompanying this text show the basic procedures involved in the exclusion process.<sup>8</sup> Prior to 1997, all aliens who were deemed inadmissible to the United States at the time of their application for entry had the opportunity to appear before an immigration judge to challenge the finding of inadmissibility or, in the alternative, to accept an offer made at the discretion of the immigration inspector to withdraw his application for

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<sup>5</sup> 8 CFR 1.1(q) (2004), defined an arriving alien as someone who is requesting admission to the United States at either a land, sea or air port of entry.

<sup>6</sup> See Form I-867B (attached as Appendix A); See also *A-file and Record of Proceeding Analysis of Expedited Removal*, Jastram & Hartsough, Feb. 2005; *Evaluation of Credible Fear Referral in Expedited Removal at Port of Entry in United States*, Keller et al. Feb. 2005.

<sup>7</sup> 8 U.S.C. §1225(b)(1)(B)(v), Immigration & Nationality Act (“INA”); §235(b)(1)(B)(v).

<sup>8</sup> See *The Asylum Application Process for Exclusion Proceedings Used before April 1, 1997*, prepared by Charles Kuck & Susan Kyle (Feb. 2005). (Attached as Appendix F).

admission.<sup>9</sup> For those aliens who sought to challenge their exclusion by the Immigration Inspector, the Legacy INS had the authority to detain them until their hearing, but often released these aliens after issuing them a Form I-122, (“Notice to Applicant for Admission Detained for Hearing Before Immigration Judge”). The immigration judge was authorized to admit aliens whom he or she determined were actually admissible to the United States, and to hear arriving aliens’ claims for asylum.

Prior to the advent of Expedited Removal, inspectors were not required to ask the alien about a fear of return. They also did not, however, have the authority to remove the alien, but only to offer withdrawal or refer him or her directly to the immigration judge, where (s)he could apply for asylum.

At the exclusion hearing before an immigration judge, the alien was entitled to representation (at his or her own expense) in the presentation of his request for admission and in his request for asylum. These exclusion proceedings were recorded for transcription purposes and the parties had the opportunity to appeal the determination to the Board of Immigration Appeals (“BIA”).<sup>10</sup>

After the 1993 bombing of the World Trade Center, however, questions were raised about whether immigration inspectors could protect our borders if they were not authorized to turn away improperly documented aliens. There were also concerns that, due to a shortage of detention capacity as well as Immigration Judge backlogs, detaining the alien until his or her hearing was often not a viable option. Under these circumstances, there was growing concern that terrorists and other aliens without valid identity documents could exploit the system to enter and disappear into the United States. Human rights advocates, however, argued that bona fide asylum seekers are often forced to flee without proper documents. They asserted that authorizing Immigration Inspectors to summarily remove arriving aliens would result in the refoulement (i.e. return) of *bona fide* asylum seekers to countries where they may face persecution.<sup>11</sup>

As shown in the attached chart of the Expedited Removal entry process, there were substantial changes made by Congress in an effort to address all of these concerns. See Chart 2. Under the current Expedited Removal process, arriving aliens whom CBP determines lack the appropriate travel documents are processed for immediate removal, e.g. departing on the next available flight to their country of origin. The CBP Inspectors are authorized to offer a withdrawal of entry to the arriving alien, but the alien himself can not make such a request.<sup>12</sup> Prior to finalizing the Expedited Removal order, the CBP Inspector must ask a series of questions<sup>13</sup> that are designed to ascertain whether the alien has a fear of return to his/her home

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<sup>9</sup> Accepting a withdrawal of an application for admission was a longstanding discretionary practice of INS, though this practice was not codified until 1996. *See* 8 U.S.C. §1225(a)(4), INA §235(a)(4).

<sup>10</sup> *Id.*

<sup>11</sup> For a detailed account of the public policy debate surrounding asylum reform and IIRIRA, *see* Phillip Schrag, *A Well-Founded Fear: The Congressional Battle to Save Political Asylum in America*, Routledge (2000).

<sup>12</sup> *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208.

<sup>13</sup> *See* Form I-867B (attached as Appendix A); *see also* *Evaluation of Credible Fear Referral in Expedited Removal at Port of Entry in United States*, Keller et. al., Feb. 2005. and *A-file and Record of Proceeding Analysis of Expedited Removal*, Jastram et. al. Feb. 2005. for an explanation and analysis of the Four Questions.

country. Arriving Aliens who are found to have a fear of return are then placed in a detention facility, where they will wait, for 48 hours or more, for a credible fear interview with a DHS U.S. Citizenship and Immigrations Services (“USCIS”) Asylum Officer.

The alien may neither contact nor be represented by an attorney or other representative before or during the Expedited Removal process at the port of entry. If the inspector refers the alien for a credible fear determination, the alien may contact an attorney or representative during the minimum 48 hour period between the inspection process at the port of entry (“POE”) and the credible fear interview. The alien must do so, however from the facility where he has been placed in mandatory detention. During the credible fear interview, the alien may not be “represented” by counsel, though an attorney or representative may observe the interview.

While a “record” of the questioning by the CBP Inspector is maintained in the alien’s file, the questioning is not typically taped or independently transcribed.<sup>14</sup> Nor, at ports of entry, may the applicant’s attorney “witness” the interview (though counsel may be present at the Credible Fear Interview). Rather, the interview is memorialized by the interviewing officer him or herself, who types a record of the conversation using the Form I-867A and B or I-870.<sup>15</sup> While the regulations require that the accuracy of the sworn statement taken at the port of entry be ensured by “having the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction,”<sup>16</sup> our Study found that nearly 72 percent of the time the alien neither read the statement, nor was the statement read back to him or her.<sup>17</sup> Our Study found, further, that INS trial attorneys use these statements to impeach the applicant’s testimony in 48 percent of the cases reviewed, and that the port of entry statement was cited by the Immigration Judge in his decision to deny the application nearly 32 percent of the time.<sup>18</sup>

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<sup>14</sup> See e-mail message from Linda M. Loveless (CBP) to Mark Hetfield (USCIRF), Dec 4, 2003 (stating that the CBP Offices at the Atlanta, Las Vegas and Houston Airport Ports of Entry have a videotape system in place, ostensibly to monitor the performance of CBP Inspectors during the interview process. However the videotapes used during these interviews are typically taped over after approximately 60-90 days, and are usually not available to either the alien or the government at a subsequent hearing. Secondary inspections are also videotaped at three land ports of entry: Oroville in Washington State and Peace Bridge and Champlain in New York State. In Oroville tapes are retained for only 30 days, in the other two sites they are kept for approximately six months).

<sup>15</sup> See sample, attached as Exhibit A; See also *Evaluation of Credible Fear Referral in Expedited Removal at Port of Entry in United States*, Keller et. al., Feb. 2005 (contending that while Form I-867A and B purports to be certified by the alien as being a “full true and correct” record of the interrogation during the secondary inspection process, the component of this Study which involved the monitoring of ports found issues relating to the reliability of the document); see also CBP Response to Recommendations of UNHCR Study on U.S. Expedited Removal, issued 10/23/2003, Section A-7(2) (stating that in the past, CBP has rejected proposals that the form include warnings that it is not a verbatim transcript, noting that “trial attorneys or judges may determine the appropriate weight to be given to such statements in subsequent proceedings”); but see Form I-870 (Attached as Appendix B), (showing that the I-870 was revised on November 21, 2003 to state the following caveat: “The following notes are not a verbatim transcript of this interview. These notes are recorded to assist the individual 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”).

<sup>16</sup> 8 CFR 235.3(b)(2)(i) (2004).

<sup>17</sup> See Keller, et al.

<sup>18</sup> See Jastram, et al.

## II. REPRESENTATION OF ARRIVING ALIENS AND ASYLUM SEEKERS

### A. Introduction

Prior to the enactment of IIRAIRA, aliens who were denied admission into the United States were afforded a full hearing with the right to counsel, the right to present evidence, and to question witnesses on the record before an Immigration Judge pursuant to former section INA § 240.<sup>19</sup> Before the implementation of IIRIRA, aliens had access to legal counsel prior to the removal (exclusion) hearing. IIRIRA did not include any provisions which specifically limited an asylum seeker's right to an attorney; nonetheless, Expedited Removal has had the effect of significantly restricting an alien's right to counsel. This is because of DHS's increased detention of asylum seekers in the Expedited Removal context. The changes to INA §240 (renumbered now to INA §235) have authorized secondary inspectors and their supervisors to make removal decisions previously made only by Immigration Judges, and before an alien is permitted to contact legal counsel.

While an alien/asylum-seeker may consult with persons of his choice prior to the credible fear interview, there is no right to "representation," nor does the alien have the right to have counsel present at the immigration judge's review of the negative credible fear determination.<sup>20</sup> Not until after the alien/asylum-seeker is found to have a credible fear of persecution or torture (after a credible fear interview), may an attorney fully represent him or her at an asylum hearing before an immigration judge.<sup>21</sup> While an alien/asylum seeker will not have access to counsel at the primary or secondary inspection process, or likely not even at the credible fear determination, the alien is asked to sign legal documents which will have a bearing on a subsequent claim for asylum. As discussed earlier, these documents are frequently used as a sort of "record of proceedings" by DHS Immigration and Customs Enforcement (ICE) attorneys and Immigration Judges.<sup>22</sup>

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<sup>19</sup> 8 U.S.C. §1225, Immigration & Nationality Act.

<sup>20</sup> INA § 235(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4). *See* Executive Office for Immigration Review, Interim Operating Policy and Procedure Memorandum 97-3: Procedures for Credible Fear and Claimed Status Reviews, at 4 (Mar. 25, 1997) (proclaiming that immigration judges have the discretion as to whether consultants may be present at this review. If counsel is allowed to be present, nothing entitles him or her to make an opening statement, call and question witnesses, cross examine, object to written evidence, or make a closing argument); *but see* Expedited Removal Training Materials, page 4 (explaining that aliens in secondary (inspection) are not entitled to representation and do not have the right to an attorney, unless criminal proceedings are contemplated, nor are aliens entitled to contact family, friends, or others in the United States, concerning their situation. However, in some cases, it may be beneficial to permit such communication if it may assist in the case or allay concerns").

<sup>21</sup> *See* Section II, Inspector Field Manual (2003)2.9 Dealing with Attorneys and Other Representatives (asserting that no applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way on your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action). A more comprehensive treatment of this topic is contained in the Adjudicator's Field Manual, Chapter 12, and 8 CFR 292.5(b). The alien's right to counsel is a statutory right, 8 USC §1362, Immigration and Nationality Act §292.

<sup>22</sup> *See* Jastram, et al.; Keller et al.

## B. The Impact of Representation on Asylum Claims in Expedited Removal

Asylum seekers in Expedited Removal who have legal counsel tend to be much more successful in applying for asylum than those who proceed without an attorney. Of those individuals found to have a credible fear, who were subsequently represented by counsel, 25 percent were granted asylum by an Immigration Judge;<sup>23</sup> whereas, only 2 percent of those not represented by counsel were granted asylum.<sup>24</sup> One could argue that these statistical differences are attributable to attorneys representing only those applicants with the most meritorious cases. The statistics, however, also indicate that success rates of unrepresented asylum seekers are only marginally higher in areas with the lowest rates of legal representation than for those in areas with the highest rates of representation.<sup>25</sup> Immigration courts with the highest rates of representation tend to be in major metropolitan areas. Those with the lowest rates of representation tend to be courts, predominantly located within the detention centers themselves, in more rural areas. It therefore seems that the ability of an alien to obtain counsel is more closely associated with geographic location than with the merits of the asylum claim. Obviously, being represented by counsel appears to play a role in the ultimate decision on asylum.

The key difference between the affirmative asylum process and Expedited Removal is found in the latter's adversarial nature.<sup>26</sup> An alien who is already in the United States may apply for asylum affirmatively and undergo a non-adversarial "interview" with an asylum officer, bring an attorney with him, and provide his own interpreter. In contrast, an asylum seeker in Expedited Removal proceedings must first pass through his initial interview at the port of entry, typically after a long journey. (S)he must then engage in a credible fear interview after being given 48 hours or so to adjust to his new surroundings in a jail-like detention facility, and identify a person of his choosing with whom to "consult."<sup>27</sup> Then, if successful in obtaining a credible fear finding, the alien must claim asylum in court, where he is opposed by a DHS Trial Attorney who is generally there to argue the DHS position that the applicant should be removed from the United States.<sup>28</sup> It is only at this late stage where the applicant may be represented by counsel. Unlike a non-adversarial affirmative asylum proceeding, each asylum seeker subject to Expedited Removal needs to argue the merits of his case before an immigration judge and against a DHS "trial attorney." Consequently, it should be noted that unrepresented asylum seekers in affirmative proceedings are granted asylum 24 percent of the time, in contrast to the 2 percent grant rate of unrepresented asylum seekers who are referred to adversarial proceedings after being placed in Expedited Removal.<sup>29</sup>

Detained asylum seekers who are not conversant in English may have difficulty finding legal counsel, even more difficulty conducting legal research and representing themselves in immigration court. Moreover, for "security reasons" commonly cited by prisons, no detention

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<sup>23</sup> *Statistical Report on Immigration Court Proceedings, FY 2000-2004*, Kyle, Fleming, and Scheuren, (Feb. 2005), tables 3-2 to 3-12.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See *id.* at table V;(reporting an acceptance rate for Expedited Removal of 25 percent for represented aliens and 2 percent for unrepresented aliens, table P&Q).

<sup>27</sup> See 8 CFR 235.3(b)(4)(ii) (2004).

<sup>28</sup> *Supra note 12.*

<sup>29</sup> Appendix C.

facility provides aliens with internet access to conduct research to document their asylum claims.<sup>30</sup> While the DHS detention standards have an extensive list of legal reference materials which should be maintained in the law libraries of detention centers, visits by the U.S. Commission on International Religious Freedom Expedited Removal Study (“USCIRF Study”) experts consistently found that many of the materials on the list were not in the law libraries, and that, when present, they were years out of date.<sup>31</sup>

All of these factors clearly affect the ability of the alien to effectively present an asylum claim and make the Immigration Judge’s task particularly difficult, putting additional strains on court time and resources. As EOIR stated after reviewing earlier drafts of this report:

All judges prefer represented to non-represented cases. Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge. Judges struggle with the alien’s difficulties in completing the I-589 (Application for Asylum) in a language they may not be familiar with. The skeletal information provided by the alien must be expanded on by the judge, while maintaining impartiality...<sup>32</sup>

As noted in regulations controlling the Immigration Court process, every alien is entitled to legal representation of his or her own choosing, however, they have no right to legal counsel paid for by the government.<sup>33</sup> While waiting for (and often following) a credible fear interview, asylum seekers are detained in one of the 185 or so different jails or detention facilities currently operated or under contract with the DHS.<sup>34</sup> Moreover, as noted in the Report on Condition of Confinement at Detention Facilities,<sup>35</sup> many of the custodial immigration facilities for these asylum seekers are located in rural parts of the United States, where few lawyers visit and even fewer maintain a practice.<sup>36</sup> In this report, we did not examine, nor do we allege, that DHS is in violation with its detention standards with regard to access to legal counsel. The practical effect of detention in remote locations, however, is to restrict asylum seekers’ legally authorized right to counsel.

### **C. Approaches to Representation of Detained Asylum Seekers**

There have been various piecemeal approaches to solving the problem of unrepresented asylum seekers detained by ICE during the removal process. The general approach, however, is market-based. Asylum-seekers’ ability to retain counsel – paid or pro bono – is generally dependent on the availability of legal services in the geographic areas where they are detained.

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<sup>30</sup> See Haney, *Conditions of Confinement for Detained Asylum Seekers Subject to Expedited Removal*, (Feb. 2005).

<sup>31</sup> Human rights reference materials, while included in the DHS Detention Standards and critical to any asylum claim, were either missing or years out-of-date in every facility visited. In some facilities, a Lexis CD-ROM took the place of the law library, but the CD did not contain the human rights materials listed in the Detention Standards, nor did any of the facilities offer instruction to detainees on the use of the Lexis CD-ROM. See Appendix G, *Law Library and Related Resources* (listing of materials from the DHS Detention Standards).

<sup>32</sup> Letter to Mark Hetfield, USCIRF, from Marta Rothwarf, Associate General Counsel, Executive Office for Immigration Review (EOIR), January 19, 2005.

<sup>33</sup> 8 C.F.R. § 1003.16(b).

<sup>34</sup> *Supra note 12*.

<sup>35</sup> See, Haney.

<sup>36</sup> Fleming and Scheuren, *Statistical Report on Detention, FY 2000-2003*, (Feb. 2005).

Many of the 185 detention facilities are located in rural areas without access to counsel of any kind<sup>37</sup>, let alone attorneys trained in and experienced with asylum cases, and most detention facilities do not provide ready access to communication with outside counsel.<sup>38</sup> Consequently, many detained asylum seekers are left unrepresented at their merits hearing.<sup>39</sup>

As noted previously, an unrepresented asylum seeker in the Expedited Removal process has only a 2 percent likelihood of being granted asylum, versus 25 percent chance for asylum seekers with attorneys. In contrast, 26 percent of unrepresented asylum seekers outside of Expedited Removal - who apply through the non-adversarial affirmative process - are granted asylum.<sup>40</sup> Consequently, it appears that an asylum seeker in Expedited Removal without representation is vulnerable to being incorrectly removed to a country where he or she may be persecuted. This vulnerability appears to be greater for those asylum seekers who are detained.

#### **D. Legal Representation Models**

Recognizing the problems with asylum seekers trying to navigate this adversarial process unassisted, several organizations, together with the Executive Office for Immigration Review (EOIR) and ICE, have made efforts to increase and facilitate representation, or at least legal orientation and counseling, of detained asylum seekers.<sup>41</sup> A number of these programs, representing different models for securing legal assistance, are described below. All have the potential, if more broadly applied, to help ensure that the Expedited Removal process will not cause *bona fide* asylum seekers to be returned incorrectly to their persecutors.

Some of these models apply exclusively to asylum seekers in Expedited Removal proceedings, others also apply to other detained aliens as well.

##### *1. EOIR's Legal Orientation Program*

In 2002, the EOIR began a Legal Orientation Program (“LOP”) to provide a “rights” presentation to detainees and to increase pro bono representation. In its first year of operation in select DHS Detention facilities with Immigration Courts, the LOP has increased the productivity of the Immigration Judges. Effectively informing detained immigrants of their legal rights (or lack of available options), helps to clear Court dockets for cases to be heard on the merits.<sup>42</sup>

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<sup>37</sup> Id.

<sup>38</sup> See Haney (reporting that while every facility is required to provide telephones through which detainees can call collect to counsel, the rates for these calls is typically significantly higher than market rates. Furthermore, none of the detention facilities surveyed in the course of this Study permitted detainees to accept incoming calls, making it particularly difficult for attorneys to contact clients, and impossible to return their calls) See also INS Detention Standards, Detainee Handbook p 12, and Visitation p11 (Attached as Appendix ) (stating that detention facilities, are required to post a list of pro bono legal organizations in all detention housing areas and other appropriate areas).

<sup>39</sup> See Kyle, Fleming, and Scheuren, Tables P and Q (showing that according to Statistics for FY2003, approximately 22 percent of asylum seekers are unrepresented nationwide, but at some major detention facilities in more rural areas, as many as 85 percent of asylum seekers are not represented).

<sup>40</sup> See Appendix C.

<sup>41</sup> See discussion *infra* Section B 1-7.

<sup>42</sup> See EOIR *Pro Bono Program Update* Memorandum from Pro Bono Coordinator (December 2003) (Attached as Appendix D); see also <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm#DetRightsPres> (last visited Dec. 2004).

Through LOP orientations, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained individuals. The orientations are normally comprised of three components: 1) the interactive group presentation, which is open to general questions; 2) the individual orientation, where non-represented individuals can briefly discuss their cases with experienced counselors; and 3) the referral/self-help component, where those with potential relief, or those who wish to voluntarily depart the country or request removal are referred to pro bono counsel, or given self-help legal materials and basic training through group workshops, where appropriate.<sup>43</sup>

It must be noted, however, the status of funding for this program, which is not limited to asylum seekers, is often unclear. In FY2002 and FY2003, Congress allocated \$1 million each year to INS, and in FY2004 to ICE, for non-governmental agencies to provide ‘live presentations’ to persons in INS detention prior to their first hearing before an immigration judge. These presentations provide immigration detainees with essential information about immigration court procedures and the availability of legal remedies to assist detainees in distinguishing between meritorious cases and frivolous cases.”<sup>44</sup> According to EOIR, the leadership of the Senate Immigration Subcommittee recommended, and INS agreed, that EOIR was better positioned to implement the requirement, and that obvious benefits would accrue to their legal and detention personnel once the program was operational.<sup>45</sup> EOIR reports that the Legal Orientation Program has, since its inception, enjoyed strong support from INS and then ICE Headquarters, as well as from the ICE Officers in Charge at each of the seven detention facilities served by the program.<sup>46</sup>

With these funds, EOIR was able to provide comprehensive legal orientation to over 17,000 detained respondents, representing approximately 20 percent of the total population of detained aliens, at six detention facilities in its first full year of operation.<sup>47</sup> Since that time, EOIR has expanded to a seventh site (El Paso, Texas), and expects to provide legal orientation to over 20,000 aliens.

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<sup>43</sup> See Executive Office of Immigration Review website: <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm> (last update 11/29/2004).

<sup>44</sup> This language is taken from House Conference Report No. 108-10, *Making further continuing appropriations for the Fiscal Year 2003, and for Other Purposes* (Pub L. No. 108-7). The language in the conference report is very similar to the Conference reports for FY2002 and FY2004, although the latter does not make specific reference to non-governmental organizations. See Conference Report for Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 2002 (Pub. L. No. 107-77) as well as the FY2004 Homeland Security Appropriations Conference Report Accompanying H.R. 2555 (Pub.L. No. 108-90).

<sup>45</sup> See Letter from Senators Hatch, Leahy, Brownback and Kennedy to Attorney General John Ashcroft (November 30, 2001).

<sup>46</sup> Letter from Marta Rothwarf, Associate General Counsel, Executive Office for Immigration Review (EOIR) to Mark Hetfield (January 19, 2005).

<sup>47</sup> *Id.*; For more information about the program and its effectiveness, see Executive Office of Immigration Review website: <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm> (last update 11/29/2004); see also Appendix D (exemplifying EOIR’s exceptional efforts to promote pro bono representation. EOIR recognizes the importance of legal representation and undertakes an effort, locally and nationally, to encourage aliens to seek representation. As noted, the lack of attorneys in many areas where detention facilities are located severely hamper detained aliens right to counsel).

Although ICE transferred \$1 million to EOIR, as directed by Congress, in FY2004, it has yet to transfer the FY2003 funding to EOIR, citing budgetary shortfalls. On February 1, 2005, ICE confirmed that it will transfer \$1 million to EOIR for Legal Orientation Programs for FY2005. The funding owed to ICE for FY2003, however, remains in question.<sup>48</sup>

According to EOIR, the LOP (also known as "Group Rights Presentation Programs") made by non-governmental organizations to detained populations "demonstrated that they are beneficial to all parties involved. These programs result in greater judicial efficiency for EOIR, less time for aliens in DHS detention, and greater access for detained aliens to legal information, counseling, and pro bono representation."<sup>49</sup>

EOIR statistics further demonstrate that, after receiving the presentations, detained individuals make better-informed decisions on proceeding with their cases, and are more likely to obtain representation, that non-profit organizations reach a wider audience of people with minimal resources, and that cases are more likely to be completed faster, resulting in fewer court hearings and less time spent in detention (either because of case completion or removal).<sup>50</sup> In EOIR's July 27, 2004 briefing to USCIRF staff and experts, EOIR's LOP was shown to have reduced the processing times for detained cases by 1.5 to 3 days at an average cost of \$85 per day for detention.<sup>51</sup> This reduction, as modest as it seems, when applied to the seven facilities in which EOIR's LOP program is in effect, pays for the program over the course of the year.<sup>52</sup>

EOIR has been working to further develop and expand upon the use of legal orientations to immigrants detained by the DHS. The LOP is currently funding comprehensive Legal Orientation Programs at six major DHS detention facilities in: Eloy, Arizona; Port Isabel, Texas; Batavia, New York; Seattle, Washington; Lancaster, California; and Aurora, Colorado. EOIR notes that with \$1 million in additional funding, that it could expand the LOP to seven more detention centers<sup>53</sup>

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<sup>48</sup> See, *The American Lawyer*, *On a Shoestring*, July 2004 (referencing a letter sent by Asa Hutchinson, Undersecretary of Border and Transportation Security at the Department of Homeland Security, to Senators Edward Kennedy and Sam Brownback. Subsequently on February 1, 2005, ICE confirmed that it will pay the funds in FY2005); see also *EOIR/USCIRF Meeting Notes*, July 27, 2004 ;In a written question submitted to Attorney General nominee Alberto R. Gonzales during his nomination hearing on January 18, 2005, Senator Edward M. Kennedy asked Mr. Gonzales what he would do, as Attorney General, to ensure that DHS transfers the \$2 million owed to EOIR for these programs for FY2003 and FY2005, and what he would do to increase funding for "these highly successful programs so they reach even greater numbers of detainees." Mr. Gonzales' response was that he "would work with (his) colleagues at the Department of Homeland Security to ensure that any money that is owed to EOIR is transferred and to determine the extent to which funding may be increased in future years." See Appendix H.

<sup>49</sup> See *EOIR Pro Bono Program Update Memorandum* from Pro Bono Coordinator (December 2003); see also <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm#DetRightsPres> (last update 11/29/2004).

<sup>50</sup> See *EOIR Pro Bono Program Update Memorandum* from Pro Bono Coordinator (December 2003); see also <http://www.usdoj.gov/eoir/probono/MajorInitiatives.htm#DetRightsPres> (last update 11/29/2004).

<sup>51</sup> See *EOIR/USCIRF Meeting Notes*, July 27 2004.

<sup>52</sup> See *EOIR LOP Executive Summary and Statistical Analysis* (Attached as Appendix D). In a subsequent letter to USCIRF, EOIR explained that, while the information provided in the Executive Summary and Statistical Analysis are accurate, at this time it is not possible for EOIR to isolate all factors affecting the measured result. EOIR is actively working to improve the program's performance measurement system.

<sup>53</sup> See *EOIR Legal Orientation Program DHS Briefing* (EOIR, July 20, 2004) (Attached as Appendix D) (stating that with extra funding the program could expand such sites as: Aguadilla, Puerto Rico; Bradenton and Miami

## 2. *Florence Immigrant and Refugee Rights Project*

The Florence Project is a nonprofit legal service organization that provides free legal services to men, women and children detained by the Florence, Arizona ICE Service Processing Center. The Florence Project was created in 1989, prior to the advent of Expedited Removal. Concerned that indigent people in deportation proceedings were in danger of having their rights disregarded, local Immigration Judge John McCarrick urged Phoenix area attorneys to fill the gap in representation left by the absence of a public defender system in immigration proceedings for those who could not afford an attorney. In response to this call, Attorney Chris Brelje, supported and encouraged by his law firm Lewis and Roca, spent a year establishing the project.<sup>54</sup>

Although originally called the Florence Asylum Project, the organization changed its name to the Florence Immigrant and Refugee Rights Project (FIRRP) to reflect the range of legal issues facing detained immigrants. With services first in Florence, FIRRP expanded its reach to include legal services first at the Eloy Detention Center in 1998, then at the Southwest Key Facility in Phoenix for detained children in late 2000. In January 2001 the Integrated Social Services Program was added to address the diverse mental health and social needs of people FIRRP serves.<sup>55</sup>

The Florence Project provides early and accurate legal information in the form of legal orientation presentations to aliens in Eloy, Florence, and the Southwest Key facilities in Phoenix, Arizona. The Eloy facility's presentations are largely funded by the EOIR Legal Orientation Program (LOP); the other sites are primarily dependent on private funding. This presentation enables aliens to make informed decisions about whether and how to proceed with their immigration case. FIRRP contributes to the efficiency of the removal process by equipping aliens to determine up front whether or not there is a basis for them to proceed with their claim. With FIRRP's assistance, aliens who realize there is no legal relief available are less likely to proceed with their claim, reducing their time in, and the government's expenses for, detention. Moreover, by understanding the process better, aliens counseled by FIRRP who decide to proceed are more likely to avoid unnecessary continuances and other demands on the court's time.

For individuals who continue to the final stages of a case, FIRRP provides, at a minimum, assistance with documents and in-depth training on how to represent oneself in immigration court. In many instances, staff attorneys provide representation before immigration judges and on appeal if necessary, all at no charge to the individual. FIRRP also advocates for its clients outside of court, with deportation officers and other staff at the detention facilities.<sup>56</sup>

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(Krome) Florida; El Centro, San Diego and San Pedro, California; Houston and Laredo, Texas; Las Vegas, Nevada; and York County, Pennsylvania).

<sup>54</sup> See the Florence Immigrant and Refugee Rights Project website <http://www.firrp.org/> (last visited 12/10/2004).

<sup>55</sup> Id.

<sup>56</sup> Id.

The Florence Project became a “Justice Efficiency Model” that was studied by EOIR in 1998. The model, founded to assist detained aliens while making immigration proceedings more efficient, has been used and modified by other organizations working with the similar populations, including those participating in the EOIR Legal Orientation Program.<sup>57</sup>

### 3. *Human Rights First’s Asylum Legal Representation Program*

In the New York and New Jersey area, Human Rights First (formerly the Lawyers Committee for Human Rights) has created a pro bono program to match detained asylum seekers with pro bono counsel. The clients of the Asylum Legal Representation Program cannot afford counsel. Volunteer lawyers learn about international human rights law and have the chance to represent individual clients at an asylum interview or a hearing before an immigration judge. The cases are assigned to pro bono volunteers through the Representation Program.<sup>58</sup>

Asylum seekers benefiting from this program are held primarily at two contract detention facilities in the New York – New Jersey area: the two hundred bed facility in Queens, New York, run by the GEO Group Inc. (formerly, the Wackenhut Corporation), and the three hundred bed facility in Elizabeth, New Jersey, run by Corrections Corporation of America. Asylum seekers are sometimes detained in county or local jails in New Jersey as well. The New York – New Jersey area has significant refugee and immigrant populations, and the organizations that provide legal services to indigent asylum seekers are faced with a legal representation need that is much larger than they can meet.<sup>59</sup>

The non-profit organizations in the area work collaboratively with each other, and in cooperation with ICE Detention officials. At the two facilities, several local legal organizations take turns, for periods of several months, in providing new arrivals with legal orientation presentations, initial consultations, and assistance in finding legal counsel. At the Queens facility, this work is performed by Catholic Charities, the Hebrew Immigrant Aid Society (HIAS), and Human Rights First. At the Elizabeth facility, this role is played by American Friends Service Committee, HIAS, the Catholic Legal Immigration Network (CLINIC), and Human Rights First.<sup>60</sup>

When Human Rights First plays this role, an attorney from its office will travel to the detention facility once or twice a week to meet with new arrivals. The attorney describes the Expedited Removal, asylum application and immigration court processes to the asylum seekers and explains how those who are indigent can try to find pro bono legal representation. The attorney will meet with any detainees who would like to meet individually. In these meetings, the detainees can ask specific questions about their situations. The attorney, in turn, will learn more about the asylum seeker’s case. With the asylum seeker’s permission, his or her request for

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<sup>57</sup> See *EOIR’s Evaluation of Rights Presentation*, available at <http://www.usdoj.gov/eoir/statpub/rightspresmain.htm> (last visited 1/28/05).

<sup>58</sup> See Human Rights First website <http://www.humanrightsfirst.org/asylum/probono/probono.htm>. (last visited 12/10/2004).

<sup>59</sup> *Informational Interview with the Asylum Program Director*, Human Rights First.

<sup>60</sup> *Id.*

representation will be forwarded to the legal organizations in the collaborative representation project.<sup>61</sup>

During the consultations, the attorney may assist asylum seekers in other ways. The attorney may advise the asylum seeker on steps she needs to take with respect to her asylum case or may answer questions about the individual's eligibility for asylum. Many asylum seekers also have questions about detention. The attorney will explain the process for seeking release on parole, but also explain that these facilities seldom release asylum seekers from detention until after the Immigration Judge has ruled on their application.<sup>62</sup>

After the request for representation is circulated (with the asylum seeker's permission), to the collaborative representation project, one of the organizations may decide to conduct a full interview to determine if they can take the case on for representation. Before taking on a case, an organization will send a representative to the detention facility to meet with the asylum seeker. This representative will conduct an extensive interview; the interview will assist the organization in deciding whether it can represent the asylum seeker.<sup>63</sup>

When Human Rights First decides to take on a case for representation, it recruits and trains pro bono lawyers to handle the case. Human Rights First's legal staff also provides significant support to the pro bono attorneys, reviewing their submissions, discussing case strategy and answering frequent questions. Because of the significant work involved in detained cases, including the added travel time, Human Rights First generally encourages two or more attorneys to work on a detained asylum case.<sup>64</sup>

Local legal organizations have formed two unique collaborative projects (the first was started in New York and a second developed subsequently in New Jersey) that are supported by several local foundations. Current funding, however, does not completely fill the need for representation in these areas. Several organizations have had to decrease the number of asylum seekers they assist as they are faced with financial challenges or competing needs; and one organization has had to suspend its ability to take on new cases entirely.<sup>65</sup>

#### 4. *Capital Area Immigrants Rights (CAIR) Coalition*

In an attempt to enhance access to legal advice and assistance, the Department of Homeland Security has partnered with a non-governmental organization in Arlington, Virginia. A little over three years ago, the Capital Area Immigrants' Rights (CAIR) Coalition, in conjunction with the United Nations High Commissioner for Refugees (UNHCR), developed a model with the Arlington, Virginia Asylum Office to provide legal assistance to individuals in the Expedited Removal process

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<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> See, Acer, Eleanor, *Making a Difference: A Legacy of Pro Bono Representation*, Journal of Refugee Studies, September 2004, Vol. 17: 347-366.

<sup>65</sup> *Supra note 60.*

who had asserted a fear of returning to their country of nationality.<sup>66</sup> After the individual is detained and before the scheduling of a credible fear interview, an Asylum Officer asks the individual if he or she has an attorney. If the alien is unrepresented, the Asylum Officer asks if the individual wants CAIR Coalition to seek an attorney to accompany the alien to the credible fear interview. If the individual answers affirmatively, CAIR Coalition is designated as the organization that will make a legal appearance at the interview. A fax is sent to CAIR Coalition, providing the date and location of the credible fear interview.<sup>67</sup>

CAIR Coalition developed a list of volunteer lawyers, law students, and others who were trained to assist individuals at the credible fear interview. A request for legal assistance at the credible fear interview is sent to the volunteer list. The volunteer explains the Expedited Removal process, credible fear, and immigration detention to the alien seeking representation. After the interview, a summary of the individual's claim is presented to a CAIR Coalition staff member. The CAIR Coalition staff attorney screens and reviews the claim to see if the alien appears to be eligible for relief. If the claim appears meritorious, the summary is circulated to a list of pro bono attorneys for the purpose of securing representation for the actual asylum hearing before the immigration judge.<sup>68</sup>

The Arlington Asylum Office has a significantly higher-than-average rate of aliens "dissolving" their asylum claims at the time of the credible fear interview.<sup>69</sup> According to that office, this might be one way in which the CAIR Coalition contributes to the efficiency of the Expedited Removal process; namely, by aliens dissolving their credible fear claims when an attorney advises them that they may not meet the criteria for asylum.<sup>70</sup>

The success of this model has resulted in higher rates of representation for detained asylum seekers before the Arlington and Baltimore Immigration Courts. In addition, the Arlington Asylum Office has requested that this model be extended to the Atlanta area.<sup>71</sup> It is in the process of being implemented there with the assistance of various large law firms, including Alston & Bird LLP, as well as Atlanta non-profits, including Catholic Social Services.<sup>72</sup>

## 5. *Law School Clinical Programs*

Another type of program created by the private sector to provide legal assistance to asylum seekers is one in which second and third year law students enrolled in law school provide

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<sup>66</sup> See 8 CFR 100.4(f)(3) (2004) (establishing that the Arlington Asylum Office is part of U.S. Citizenship and Immigration Services (USCIS) within DHS. The Arlington Asylum office has jurisdiction over the District of Columbia, the western portion of the State of Pennsylvania within the jurisdiction of the Pittsburgh suboffice, and the States of Maryland, West Virginia, North Carolina, Georgia, Alabama and South Carolina).

<sup>67</sup> Information received from Detention Project Director, CAIR Coalition. For more information see the CAIR Coalition Website, <http://www.caircoalition.org/about.htm> (last visited 12/10/2004).

<sup>68</sup> Id.

<sup>69</sup> See DHS Table 11, Fleming and Scheuren (reporting that in FY2003, over 30 percent of asylum seekers referred for credible fear dissolved their asylum claim before the Arlington Asylum office. Compare this to a national rate of under 8 percent for the same period of time).

<sup>70</sup> Meeting between USCIRF Immigration Counsel Hetfield, Dr. Fritz Scheuren and the Arlington Asylum Office (March 23, 2004).

<sup>71</sup> Atlanta is under the jurisdiction of the USCIS Asylum Office in Arlington, Virginia.

<sup>72</sup> Id.

attorney services. This program is exemplified by the Clinic for Asylum, Refugee and Emigrants Services (CARES) at Villanova University School of Law in Villanova, Pennsylvania, where law students represent asylum seekers in detention. Most of CARES' clients entered the country without proper travel documents and have asserted a fear of returning to their country of nationality. They are then processed in accordance with the Expedited Removal rules. Students enrolled in CARES travel up to two hours each way to county jails in York and Berks Counties in rural Pennsylvania to represent their asylum clients. Many of the clients are unaccompanied minors and families with minor children.<sup>73</sup>

When the clinic learns about detained asylum seekers who need legal representation (most of the referrals are from the Pennsylvania Immigration Resource Center (PIRC)), a team of two students typically travel to the detention center to conduct an intake interview with the clients. If the clinic accepts the case, the students represent the clients throughout the process, beginning with the credible fear interview and through the hearing on the merits of the asylum claim. CARES receives additional help from Students enrolled in Villanova's undergraduate Department of Modern Languages with interpretation and translation.<sup>74</sup>

## 6. *Private Detention Facility Representation*

At least one of the private detention facility contractors to ICE, Corrections Corporation of America ("CCA") is under contract with DHS to provide private counsel to speak to ICE detainees. At its Laredo, Texas facility, ICE has contracted with CCA to hire a local attorney to assist the detainees, at the detainee's request, with legal matters pertaining to their detention. While originally envisioned as legal access to detainees to resolve problems with the facility (e.g., food, medical care issues, etc.), the attorney retained by CCA in Laredo, when requested by the detainee, helps the detainee understand the immigration process, obtains forms or documents the detainee specifically requests and provides a translation of the forms. This attorney may also do legal research for the detainee and give his advice to the detainee on the likelihood of success on the merits of his case. His primary purpose, however, is to facilitate a resolution to detention-related problems in the facility. Accordingly, this attorney does not represent aliens in immigration court proceedings, nor is he a specialist in immigration law.<sup>75</sup>

In a discussion with the attorney hired by CCA to carry out its part of the DHS contract, we were informed that his practice is not an immigration law centered practice. Further, he does not provide a general rights presentation, and can only go to the facility to talk to the detainee when a detainee so requests. The attorney indicated that he spent less time in 2004, than in previous years, on matters related to detention issues for CCA. He also specifically noted that he does not become retained counsel on any these cases, and that he is limited in the scope of the

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<sup>73</sup> Information received from CARES representative (2004); for more information see Villanova University's School of Law website, <http://www.law.vill.edu/currentstudents/clinicsandexternships/caresclinic.asp> (last visited 12/10/2004).

<sup>74</sup> Id.

<sup>75</sup> See CCA Inmate Orientation Handbook at 11-12; see also "Request for Attorney/Paralegal Conference" form (Attached as Exhibit E) (showing that in fact, in the "Inmate Orientation Handbook" that CCA provides each detainee, under "Legal Assistance" they note that CCA has retained counsel to assist inmates is clearly designed for internal prison issues, not necessarily for the complicated issues related to immigration law, or asylum cases in particular).

representation he provides. Finally, he pointed out that there are few immigration lawyers in the Laredo area and that he is not aware of anyone who practices asylum law.<sup>76</sup>

## 7. *The Overseas Processing Entity Model of the Department of State*

At DHS, Refugee and Asylum adjudications are administered by the USCIS Office of Refugees, Asylum, and International Operations (ORAIO). Both programs aim to protect aliens who meet the definition of a “refugee” under U.S. law.<sup>77</sup> There are some notable differences, however. The obvious one is that refugee applicants apply outside of the United States, while aliens must be physically located within the United States to apply for asylum. Another important distinction, however, is that asylum seekers must prepare their own asylum applications or, from within the detention center, find and retain an attorney to assist them. In contrast, refugee applicants are generally required by the US Refugee Program to complete their forms with the assistance of a caseworker working for an agency under contract with the Department of State.<sup>78</sup>

These agencies are known as Overseas Processing Entities (OPEs), and were formerly known as Joint Voluntary Agencies (JVAs). The OPE prepares cases for DHS adjudication, including screening applicants to determine whether an individual appears to meet the requirements to receive a refugee interview; reviewing an individual’s refugee characteristics; conducting family history interviews; and compiling documentation needed for DHS adjudication. Most importantly, while the OPE does not “represent” refugee applicants in the attorney-client sense, the OPE does assist the applicant with completing the Form I-590 (Registration for Classification as Refugee), and with articulating the applicant’s refugee claim. The Refugee Application is intended to elicit the same information as the Form I-589 Application for Asylum. It is somewhat ironic that, while asylum applicants must fill out their own applications or find legal counsel to do so, refugee applicants overseas are generally not permitted to fill out the refugee application on their own. Form filling and case preparation is done with the assistance of the OPE, working under contract with the Department of State.<sup>79</sup>

In a recent report on the Refugee Program commissioned by the Department of State, David Martin commented that, in preparing the refugee application for submission to DHS, an OPE caseworker “typically questions the applicant to capture the full particulars of the refugee claim and to record it in the file that will be presented to the DHS officer. This too may require considerable skill and up to several hours of time, because refugees often have only a dim idea of which parts of their background are salient for the specific purposes of the DHS refugee determination.”<sup>80</sup>

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<sup>76</sup> Conversation between author and DHS contract attorney (Dec. 7, 2004).

<sup>77</sup> See 8 USC 1101(a)(42)(2004) Immigration and Nationality Act (defining what it means to be classified as a refugee).

<sup>78</sup> These agencies are generally overseas offices of “voluntary agencies” based in the United States, or the Geneva-based International Organization for Migration.

<sup>79</sup> Section 3.3 of the USCIS Refugee Officer’s Field Manual (2003).

<sup>80</sup> *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement*, David A. Martin (July 8, 2004), available at, <http://www.state.gov/g/prm/refadm/rls/rpts/36958.htm> (last visited 1/28/2005).

In the U.S. Refugee program, the operating assumption of the government seems to be that a refugee applicant cannot successfully complete the application without assistance. Seeing that only 2 percent of unrepresented asylum applicants in Expedited Removal are ultimately successful in their asylum application, the same assumption may be applicable to asylum seekers in Expedited Removal.

If asylum seekers were concentrated in greater numbers in fewer detention facilities, the OPE may provide a useful model for asylum seekers in Expedited Removal. Such a system could have potential in the context of explaining the credible fear determination process to aliens, assisting them with finding counsel, as well as with more expeditious preparation of their asylum applications.

#### **E. The Future of Representation of Detained Asylum Seekers in Expedited Removal Proceedings**

A continued problem reported by all NGOs and pro bono organizations is the shrinking pool of available funding to run these programs. For example, there is at least one major provider of services to asylum seekers that is disengaging from providing representation. As a result of funding difficulties, the Hebrew Immigrant Aid Society (HIAS), a major service provider in the New York/New Jersey area, is no longer accepting new clients.<sup>81</sup>

Some organizations are restructuring how these types of services are provided. CLINIC, a national organization dedicated to the training of Catholic Charities and Catholic Social Services agencies in providing immigration services to the poor and detained asylum seekers, is currently restructuring how these services are provided. CLINIC is now seeking not only alternate private sources of funding, but also is creating new programs to better support and provide representation, including turning over CLINIC affiliates to Diocesan partners, to ensure continued funding while still providing support to allow these organization to focus on maintaining the standards of representation. However, many social service organizations report that they require continued funding from the private sector- funding which is becoming increasingly scarce.<sup>82</sup>

The biggest potential source of representation remains the private bar. Indisputably, there are available a number of private attorneys willing to take the case of asylum seekers who can pay for such services. However, for those unable to pay, or for those detained asylum seekers in rural detention facilities unable to contact competent counsel, representation is difficult to obtain. One obvious solution is an expansion of programs similar to those done where larger private law firms provide pro bono assistance, usually through newer attorneys. In fact, a recent Supreme Court case on immigration law was handled by pro bono counsel and established case law likely

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<sup>81</sup> Conversation with HIAS representative (Dec. 2004).

<sup>82</sup> Conversation with CLINC representative (Dec. 2004).

to impact thousands of similar cases.<sup>83</sup> Access to Representation in any form, but particularly through competent immigration counsel is an essential element to a fair, just, and rapid asylum process.

Congress requested that this study address whether asylum seekers in Expedited Removal are being incorrectly removed to countries where they may be persecuted, and whether such asylum seekers are being detained under inappropriate conditions. The conditions of detention clearly create certain impediments that make it difficult for asylum seekers to effectively represent themselves or obtain representation. Moreover, *bona fide* asylum seekers who navigate the adversarial Expedited Removal process unassisted by legal counsel seem particularly vulnerable to being incorrectly removed. The models discussed above, if more widely and consistently applied, would help protect bona fide asylum seekers from this danger, without undermining the efficiency of the process.

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<sup>83</sup> Leocal v. Ashcroft, 125 S. Ct. 377 (2004). Leocal's case fit the criteria for review by the BIA Pro Bono Project, a collaborative effort of four non-governmental agencies (Catholic Legal Immigration Network, Inc., the American Immigration Law Foundation, the Capital Area Immigrants' Rights Coalition, and the National Immigration Project of the National Lawyer's Guild) and the Executive Office for Immigration Review. The Project matches pro bono counsel with unrepresented detainees who have cases pending before the BIA.

Through the BIA Project, Leocal's case was matched with a team of pro bono attorneys at King & Spaulding, which represented him before the BIA, Eleventh Circuit Court of Appeals and ultimately the U.S. Supreme Court. Without the pro bono representation of King & Spaulding, it is unlikely that Leocal's case would have progressed beyond the BIA and onto the Supreme Court, meaning that the unanimous decision that allowed for Leocal to return to the country and his family would not have happened.

"Considering the complexity of immigration law, the law's severe penalties, and the fact that most immigrants lack the money to hire attorneys, anyone who is at risk of being removed from the U.S. should be able to secure legal representation," says Donald Kerwin, Executive Director of the Catholic Legal Immigration Network, Inc. "The Supreme Court's 9 - 0 ruling in favor of a man who would have been otherwise separated from his family clearly demonstrates that the system needs to take into account the potentially tragic consequences of denying immigrants legal representation."

**Appendix A**

U.S. Department of Justice  
Immigration and Naturalization Service

**Record of Sworn Statement in Proceedings  
under Section 235(b)(1) of the Act**

Statement by: \_\_\_\_\_

In the case of: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Gender (circle one): Male Female

At: \_\_\_\_\_ Date: \_\_\_\_\_

Before: \_\_\_\_\_  
(Name and Title)

In the \_\_\_\_\_ language. Interpreter \_\_\_\_\_ Employed by \_\_\_\_\_

I am an officer of the United States Immigration and Naturalization Service. I am authorized to administer the immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Immigration and Naturalization Service to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

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.

Until a decision is reached in your case, you will remain in the custody of the Immigration and Naturalization Service.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

Q: Do you understand what I've said to you?

A.

Q: Do you have any questions?

A.

Q: Are you willing to answer my questions at this time?

A.

Q: Do you swear or affirm that all the statements you are about to make are true and complete?

A.

**Jurat for Record of Sworn Statement in  
Proceedings under Section 235(b)(1) of the Act**

Q: Why did you leave your home country or country of last residence?

A.

Q. Do you have any fear or concern about being returned to your home country or being removed from the United States?

A.

Q. Would you be harmed if you are returned to your home country or country of last residence?

A.

Q. Do you have any questions or is there anything else you would like to add?

A.

I have read (or have had read to me) this statement, consisting of \_\_\_\_\_ pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above-named officer of the Immigration and Naturalization Service. I have initialed each page of this statement (and the corrections noted on page(s) \_\_\_\_\_).

Signature: \_\_\_\_\_

Sworn and subscribed to before me at \_\_\_\_\_  
on \_\_\_\_\_.

\_\_\_\_\_  
Officer, United States Immigration and Naturalization Service

Witnessed by: \_\_\_\_\_

_____	_____	_____	_____
District Office Code	Asylum Office Code	Alien's File Number	Alien's Last/ Family Name
_____	_____	_____	_____
Asylum Officer's Last Name	Asylum Officer's First Name	Alien's Nationality	

*All statements in italics must be read to the applicant*

**SECTION I:**

**INTERVIEW PREPARATION**

- 1.1 \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Date of arrival [MM/DD/YY]
- 1.2 \_\_\_\_\_  
 Port of arrival
- 1.3 \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Date of detention [MM/DD/YY]
- 1.4 \_\_\_\_\_  
 Place of detention
- 1.5 \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Date of AO orientation [MM/DD/YY]
- 1.6 \_\_\_\_\_  
 If orientation more than one week from date of detention, explain delay
- 1.7 \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Date of interview [MM/DD/YY]
- 1.8 \_\_\_\_\_  
 Interview site
- 1.9  Applicant received and signed **Form M-444** and relevant *pro bono* list on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Date signed [MM/DD/YY]
- 1.10 Does applicant have consultant(s)?  Yes  No
- 1.11 If yes, consultant(s) name, address, telephone number and relationship to applicant  
 \_\_\_\_\_  
 \_\_\_\_\_
- 1.12 Persons present at the interview (check which apply)
- 1.13  Consultant(s)
- 1.14  Other(s), list: \_\_\_\_\_
- 1.15  No one other than applicant and asylum officer
- 1.16 Language used by applicant in interview: \_\_\_\_\_
- 1.17 \_\_\_\_\_  Yes  No  
 Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.18 \_\_\_\_\_  Yes  No  
 Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.19 \_\_\_\_\_  Yes  No  
 Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.20  Interpreter **was not changed** during the interview
- 1.21  Interpreter **was changed** during the interview for the following reason(s):
- 1.22  Applicant requested a female interpreter replace a male interpreter, or *vice versa*
- 1.23  Applicant found interpreter was not competent
- 1.24  Applicant found interpreter was not neutral
- 1.25  Officer found interpreter was not competent
- 1.26  Officer found interpreter was not neutral
- 1.27  Bad telephone connection
- 1.28  Asylum officer read the following paragraph to the applicant at the beginning of the interview:

**Alien's File Number:**

*The purpose of this interview is to determine whether you may be eligible for asylum or protection from removal to a country where you fear persecution or torture. I am going to ask you questions about why you fear returning to your country or any other country you may be removed to. It is very important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons why you fear harm. The information you tell me about the reasons for your fear will not be disclosed to your government, except in exceptional circumstances. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain.*

**SECTION II: BIOGRAPHIC INFORMATION**

2.1 \_\_\_\_\_  
Last Name/ Family Name [ALL CAPS]

2.2 \_\_\_\_\_ 2.3 \_\_\_\_\_  
First Name Middle Name

2.4 \_\_\_\_/\_\_\_\_/\_\_\_\_ 2.5 Gender  Male  Female  
Date of birth [MM/DD/YY]

2.6 \_\_\_\_\_  
Other names and dates of birth used

2.7 \_\_\_\_\_ 2.8 \_\_\_\_\_  
Country of birth Country (countries) of citizenship (list all)

2.9 \_\_\_\_\_  
Address prior to coming to the U.S. (List Address, City/Town, Province, State, Department and Country).

2.10 \_\_\_\_\_ 2.11 \_\_\_\_\_ 2.12 \_\_\_\_\_  
Applicant's race or ethnicity Applicant's religion All languages spoken by applicant

2.13 Marital status:  Single  Married  Legally separated  Divorced  Widowed

2.14 Did spouse arrive with applicant?  Yes  No

2.15 Is spouse included in applicant's claim?  Yes  No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location (if with applicant, provide A-Number):

\_\_\_\_\_  
\_\_\_\_\_

2.17 Children:  Yes  No

2.18 List any children (Use the continuation section to list any additional children):

Date of birth (MM/DD/YY)	Name	Citizenship	Present location (if w/PA, list A-Numbers)	Did child arrive with PA?	Is child included in PA's claim?
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Alien's File Number:**

_____	_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
_____	_____	_____	_____	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Alien's File Number:**

2.19 Does applicant claim to have a medical condition (physical or mental), or has the officer observed any indication(s) that a medical condition exists? If YES, answer questions 2.20 and 2.21 and explain below.  Yes  No

2.20 Has applicant notified the facility of medical condition?  Yes  No

2.21 Does applicant claim that the medical condition relates to torture?  Yes  No

2.22 Does the applicant have a relative, sponsor or other community ties, including spouse or child already listed above?  Yes  No

2.23 If YES, provide information on relative or sponsor (use continuation section, if necessary):

\_\_\_\_\_  
Name

\_\_\_\_\_  
Relationship

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

Citizen  Legal Permanent Resident  Other

**SECTION III:**

**CREDIBLE FEAR INTERVIEW**

**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.**

The asylum officer must elicit sufficient information related to both credible fear of persecution and credible fear of torture to determine whether the applicant meets the threshold screening. Even if the asylum officer determines in the course of the interview that the applicant has a credible fear of persecution, the asylum officer must still elicit any additional information relevant to a fear of torture. Asylum officers are to ask the following questions and may use the continuation sheet if additional space is required. If the applicant replies YES to any question, the asylum officer must ask follow-up questions to elicit sufficient details about the claim in order to make a credible fear determination.

3.1 a. *Have you or any member of your family ever been mistreated or threatened by anyone in any country to which you may be returned?*  
 Yes  No \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. *Do you have any reason to fear harm from anyone in any country to which you may be returned?*  
 Yes  No

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. If YES to questions *a* and/or *b*, was it or is it because of any of the following reasons? (Check each of the following boxes that apply).  
 Race  Religion  Nationality  Membership in a particular social group  Political Opinion

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Alien's File Number:**

3.2  At the conclusion of the interview, the asylum officer must read the following to applicant:

If the Department of Homeland Security determines you have a credible fear of persecution or torture, your case will be referred to an immigration court, where you will be allowed to seek asylum or withholding of removal based on fear of persecution or withholding of removal under the Convention Against Torture. The Field Office Director in charge of this detention facility will also consider whether you may be released from detention while you are preparing for your hearing. *If the asylum officer determines that you do not have a credible fear of persecution or torture, you may ask an Immigration Judge to review the decision. If you are found not to have a credible fear of persecution or torture and you do not request review, you **may be removed** from the United States as soon as travel arrangements can be made. Do you have any questions?*

3.3  At the conclusion of the interview, the asylum officer must read a summary of the claim, consisting of the responses to Questions 3.1 a-c and information recorded in the Additional Information/Continuation section, to applicant.

\*\*\*\*Typed Question and Answer (Q&A) interview notes and a summary and analysis of the claim must be attached to this form for all negative credible fear decisions. These Q&A notes must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues and that the applicant was given every opportunity to establish a credible fear.

**SECTION IV:**

**CREDIBLE FEAR FINDINGS**

**A. Credible Fear Determination:**

Credibility

- 4.1  There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.
- 4.2  Applicant found **not** credible because (check boxes 4.3-4.5, which apply):
- 4.3  Testimony was internally inconsistent on material issues.
- 4.4  Testimony lacked sufficient detail on material issues.
- 4.5  Testimony was not consistent with country conditions on material issues.

Nexus

- 4.6  Race    4.7  Religion    4.8  Nationality    4.9  Membership in a Particular Social Group

(Define the social group): \_\_\_\_\_

- 4.10  Political Opinion    4.11  Coercive Family Planning [CFP]    4.12  No Nexus

Credible Fear Finding

- 4.13  Credible fear of **persecution** established.
- OR**
- 4.14  Credible fear of **torture** established.
- OR**
- 4.15  Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

**B. Possible Bars:**

- 4.16  Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):
- 4.17  Particularly Serious Crime    4.18  Security Risk    4.19  Aggravated Felon
- 4.20  Persecutor    4.21  Terrorist    4.22  Firmly Resettled
- 4.23  Serious Non-Political Crime Outside the United States
- 4.24  Applicant does **not** appear to be subject to a bar(s) to asylum or withholding of removal.



## Appendix C

### Affirmative Asylum Application Outcome and Representation Status by Asylum Office, FY 2000-2003

Source: USCIS Asylum Division

Asylum Office	Total Adjudicated*		Granted Asylum			Total Adjudicated*
	Rep.	Unrep.	Rep.	Unrep.	Total	
ZSF	43%	57%	51%	43%	46%	26,393
ZAR	38%	62%	55%	35%	42%	22,838
ZMI	15%	85%	38%	33%	34%	33,548
<b>Mean</b>	<b>34%</b>	<b>66%</b>	<b>38%</b>	<b>24%</b>	<b>28%</b>	<b>27,994</b>
ZNK	38%	62%	26%	18%	21%	20,381
<b>Median</b>	<b>37%</b>	<b>63%</b>	<b>36%</b>	<b>17%</b>	<b>24%</b>	<b>24,451</b>
ZLA	26%	74%	54%	16%	26%	70,061
ZNY	40%	60%	20%	16%	18%	26,063
ZHN	33%	67%	24%	15%	18%	12,483
ZCH	37%	63%	34%	14%	21%	12,188
<b>Total</b>	<b>31%</b>	<b>69%</b>	<b>41%</b>	<b>24%</b>	<b>29%</b>	<b>223,955</b>

\* Includes cases granted, denied, referred, rejected, closed, and marked no show.

**EOIR Legal Orientation Program  
DHS Briefing - July 20, 2004**

- A. Congressional Appropriation of \$1m to INS - FY'02; DHS - FY'03 and FY'04
- Transferred to EOIR FY'02 and FY'04 - Administered by Pro Bono Program
  - Norwich University '04 BPA - \$977,500 includes:
    - \*7 Programs for '04                      \*Administration                      \*Travel
    - \*Training Conference \*Database                      \*Evaluation
- B. Sites where EOIR-funded Legal Orientation Programs are being carried out for all detainees prior to appearing in immigration court:
- 1 Aurora (Denver), Colorado (since 6/30/03) - Lutheran Immigrant and Refugee Services (LIRS) in conjunction with the Rocky Mountain Immigrant Advocacy Network (RMIAN)(\$146,700);
    - # Group Orientations through 6/29/04 - 156
    - # Attendees - 2,382
    - # Individual Orientations - 739
  - 2 Batavia, New York (since 2/21/03) - Volunteer Lawyers Project (VLP) of the Erie County Bar Association (\$60,120);
    - # Group Orientations through 02/20/04 - 156
    - # Attendees - 701
    - # Individual Orientations - 393
  - 3 Eloy, Arizona (since 3/7/03) - Florence Immigrant and Refugee Rights Project (FIRRP)(\$149,639);
    - # Group Orientations through 3/06/04 - 270
    - # Attendees - 4,238
    - # Individual Orientations - 2,562
  - 4 Lancaster, California - (since 5/27/03) - Catholic Legal Immigration Network, Inc. (CLINIC)(\$124,819);
    - # Group Orientations through 5/26/04 - 108
    - # Attendees - 3,399
    - # Individual Orientations - 424
  - 5 Port Isabel (Los Fresnos), Texas (since 2/18/03) - American Bar Association (ABA) through ProBAR (South Texas Asylum Representation Project)(\$136,600);
    - # Group Orientations through 2/17/04 - 234
    - # Attendees - 5,218
    - Individual Orientations - 781
    - # Projected detainees served in 12 months - 5,950

- 6 Seattle, Washington (since 3/17/03) - Northwest Immigrant Rights Project (NWIRP)(\$129,800);
- # Group Orientations through 3/16/04 - 127
  - # Attendees - 1,103
  - # Individual Orientations - 671

**Total # detained aliens served in 1<sup>st</sup> Year of LOP - 17,041**

- C. 7<sup>th</sup> site added under FY '04 funding - El Paso, Texas, by the Catholic Legal Immigration Network, Inc. (CLINIC)(\$108,222 for 9 months)
- # Estimated detainees served in 12 months - 3,850
- D. Non EOIR-funded - Florence, Arizona - Florence Immigrant and Refugee Rights Project (FIRRP) [the creators of the "Justice Efficiency Model", since 1990)
- # Estimated detainees served in past 12 months - 2,150
- E. Possible future EOIR LOP sites:
- 1 Aguadilla, Puerto Rico - # estimated detainees served in 12 months - 735
  - 2 Bradenton, Florida - # estimated detainees served in 12 months - 1,860
  - 3 El Centro, California - # estimated detainees served in 12 months - 2,200
  - 4 Houston, Texas - # estimated detainees served in 12 months - 1,740
  - 5 Laredo, Texas - # estimated detainees served in 12 months - 2,360
  - 6 Las Vegas, Nevada - # estimated detainees served in 12 months - 1,100
  - 7 Miami (Krome), Florida - # estimated detainees served in 12 months - 2,975
  - 8 Newark, New Jersey - # estimated detainees served in 12 months - 1,930
  - 9 San Diego, California - # estimated detainees served in 12 months - 3,870
  - 10 San Pedro, California - # estimated detainees served in 12 months - 1,590
  - 11 York County, Pennsylvania - # estimated detainees served in 12 months - 1,675

\*The "estimated detainees served in 12 months" is based upon 70% of EOIR's detained proceeding completion data for the past fiscal year. Based upon first year's statistics under the LOP, an average of 30% of detained aliens in proceedings are either released under bond prior to their initial removal hearing, or decline to attend the Legal Orientation Program.

### Detained Completions with and without Applications and Grant Rate

	Total Completions	Detained w/o Apps	Detained w/ Apps	% w/ Apps	Grants	Denials	Detained w/ Apps. Grant Rate
<b>PIS</b>							
2/18/01-2/17/02	7,293	7,243	50	1%	10	9	53%
2/18/02-2/17/03	6,432	6,343	89	1%	18	20	47%
<b>2/18/03-2/17/04</b>	<b>6,854</b>	<b>6,735</b>	<b>119</b>	<b>2%</b>	<b>60</b>	<b>30</b>	<b>67%</b>
<b>BTV</b>							
2/21/01-2/20/02	855	781	74	9%	18	46	28%
2/21/02-2/20/03	894	792	102	11%	22	53	29%
<b>2/21/03-2/20/04</b>	<b>899</b>	<b>794</b>	<b>105</b>	<b>12%</b>	<b>26</b>	<b>52</b>	<b>33%</b>
<b>EAZ</b>							
3/7/01-3/6/02	6,371	5,869	502	8%	197	237	45%
3/7/02-3/6/03	7,886	7,370	516	7%	160	280	36%
<b>3/7/03-3/6/04</b>	<b>7,430</b>	<b>6,805</b>	<b>625</b>	<b>8%</b>	<b>227</b>	<b>330</b>	<b>41%</b>
<b>AIR</b>							
3/17/01-3/16/02	2,514	2,315	199	8%	54	111	33%
3/17/02-3/16/03	2,165	1,995	170	8%	40	84	32%
<b>3/17/03-3/16/04</b>	<b>1,881</b>	<b>1,725</b>	<b>156</b>	<b>8%</b>	<b>43</b>	<b>67</b>	<b>39%</b>
<b>LAN</b>							
5/27/01-5/26/02	5,905	5,615	290	5%	83	126	40%
5/27/02-5/26/03	5,070	4,637	433	9%	86	257	25%
<b>5/27/03-5/26/04</b>	<b>4,784</b>	<b>4,326</b>	<b>458</b>	<b>10%</b>	<b>112</b>	<b>238</b>	<b>32%</b>
<b>WSI</b>							
6/22/01-6/21/02	2,785	2,696	89	3%	30	38	44%
6/22/02-6/21/03	2,913	2,855	58	2%	18	29	38%
<b>6/22/03-6/21/04</b>	<b>2,648</b>	<b>2,530</b>	<b>118</b>	<b>4%</b>	<b>34</b>	<b>62</b>	<b>35%</b>

**Bold = Updated Information**

6/21/04

## AVERAGE PROCESSING TIME

	Received Date to Proceedings Completion Date	Received Date to First Hearing Date	First Hearing Date to Proceeding Completion Date
<b>PIS</b>			
2/18/01-2/17/02	24	15	9
2/18/02-2/17/03	23	11	13
<b>2/18/03-2/21/04</b>	<b>22</b>	<b>10</b>	<b>12</b>
<b>BTV</b>			
2/21/01-2/20/02	24	8	17
2/21/02-2/20/03	28	7	21
<b>2/21/03-2/20/04</b>	<b>25</b>	<b>6</b>	<b>19</b>
<b>EAZ</b>			
3/7/01-3/6/02	30	12	19
3/7/02-3/6/03	23	14	9
<b>3/7/03-3/6/04</b>	<b>21</b>	<b>12</b>	<b>9</b>
<b>AIR</b>			
3/17/01-3/16/02	16	7	10
3/17/02-3/16/03	14	4	9
<b>3/17/03-3/16/04</b>	<b>11</b>	<b>3</b>	<b>8</b>
<b>LAN</b>			
5/27/01-5/26/02	22	13	9
5/27/02-5/26/03	25	12	13
<b>5/27/03-5/26/04</b>	<b>19</b>	<b>8</b>	<b>11</b>
<b>WSI</b>			
6/22/01-6/21/02	13	6	7
6/22/02-6/21/03	12	5	7
<b>6/22/03-6/21/04</b>	<b>16</b>	<b>5</b>	<b>11</b>

**Bold = Updated Information**

6/21/04



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## Pro Bono Program Update - December 2003

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**To:** All Board Members and Staff  
**From:** Steven Lang, Pro Bono Coordinator

I am pleased to send all of you this update on the Pro Bono Program. Since April of 2000, the Pro Bono Program has worked to improve the level and quality of *pro bono* representation. This has been carried out primarily through initiatives which facilitate access to information and create new incentives for attorneys and law students to take on *pro bono* cases before the immigration courts and Board of Immigration Appeals (BIA). The Program has also continued to perform an important community relations role, with the Coordinator often serving as liaison between our agency and the non-profit legal community on issues related to legal assistance for indigent aliens.

In these difficult budget times, the Pro Bono Program has limited its focus over the past year to three major initiatives - the Legal Orientation Program, the BIA Pro Bono Project, and interagency initiatives aimed at improving access to *pro bono* legal services for Unaccompanied Alien Children. The Program also continues to promote and develop two earlier initiatives - the Pro Bono Program webpage, and the Model Hearing Program (MHP).

Many of the Program's accomplishments owe their success to the numerous Board and Clerk's Office staff, Immigration Judges and Court Administrators whose interest and active involvement in the Program have helped to shape its approach and direction. Our agency has long recognized the mutual benefits derived from strong *pro bono* participation in immigration proceedings. I look forward to your comments, suggestions, and enthusiasm throughout this next year as we strive to meet future challenges and goals.

### **I. Legal Orientation Programs**

In FY'02, Congress appropriated \$1 million to the INS for "Legal Orientation Programs." The Pro Bono Program lead efforts to transfer these funds to EOIR, as well as to determine the best available means of funding such programs across the country. These funds have recently been renewed. We are currently in the process of evaluating program performance and reviewing proposals for continued, as well as new funding.

EOIR's past experience with Legal Orientation Programs (also known as "Rights Presentations") demonstrated that they are beneficial to all parties involved. These programs result in greater judicial efficiency for EOIR, less time for aliens in DHS detention, and greater access for detained aliens to legal information, counseling, and *pro bono* representation.

Through such orientations, representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to large groups of detained

individuals. The orientations are normally comprised of three components: 1) the interactive group orientation, which is open to general questions; 2) the individual orientation, wherein non-represented individuals can briefly discuss their cases with experienced counselors; and 3) the self-help component, wherein those detainees who wish to pursue claims for relief are provided with self-help legal materials and assistance through group workshops, where appropriate.

EOIR currently maintains a contract (Blanket Purchase Agreement - BPA) with Norwich University to carry out a comprehensive Legal Orientation Presentation Training Program at six detention sites across the country. Serving as the Contracting Officer's Technical Representative (COTR), the Pro Bono Coordinator has worked with Norwich University, six non-profit agency subcontractors, EOIR components, DHS and local detention facility representatives to implement the programs at the following sites:

<u>Detention/Immigration Court</u>	<u>Subcontractor</u>
1. Port Isabel, Texas	American Bar Association (through ProBAR)
2. Eloy, Arizona	Florence Immigrant & Refugee Rights Project (FIRRP)
3. Batavia, New York	Erie County Bar Association VLP
4. Seattle, Washington	Northwest Immigrant Rights Project (NWIRP)
5. Lancaster, California	Catholic Legal Immigration Network, Inc. (CLINIC)
6. Aurora, Colorado	Lutheran Immigrant & Refugee Services (LIRS), together with the Rocky Mountain Immigrant Advocacy Network (RMIAN)

More than 23,000 detainees are expected to benefit from the program in the first 12 months of full operation, or roughly 20 percent of all DHS detainees who appear before the Immigration Courts each year. As of the end of August 2003, preliminary results have shown an **average decrease in detained proceeding completion times of 1.5 days per detainee** (from receipt to proceeding completion date), with three of the **newest sites averaging 2.2 days** (from first Master Calendar hearing to proceeding completion date) as compared to the 12-month period preceding each sites' start date.

## **II. The BIA Pro Bono Project.**

Since its implementation in January of 2001, the Project has succeeded in recruiting over 350 attorneys, law students and Accredited Representatives to write appeal briefs for over 250 USICE detainees who would have otherwise appeared without representation before the BIA. The Project was recently expanded to include certain non-detained case appeals, as well.

Under the Project, the Catholic Legal Immigration Network (CLINIC), Capital Area Immigrant Rights (CAIR) Coalition, American Immigration Law Foundation (AILF) and National Lawyers Guild send experienced volunteer attorney "screeners" to the BIA Clerk's Office every week to review selected case appeal transcripts. After review, the screeners write redacted summaries for cases they believe to be most suitable for *pro bono* representation. These summaries are e-mailed to participating *pro bono* representatives throughout the country who may select cases in which to enter as counsel. Those representatives who accept a case under the Project receive a copy of the file, as well as additional time to file the appeal brief.

Legal representation in many of these cases has already had a meaningful impact. Since attorneys or accredited representatives usually identify and argue the issues better on appeal, immigrants with meritorious cases have a greater chance of success. Representation also reduces procedural errors and enables the BIA to provide a more effective and timely case review. Special thanks to the Clerk's Office this past year for their great assistance in facilitating key elements of the Project.

### **III. Unaccompanied Alien Children in DHS/ORR Custody**

Since early 2003, the Pro Bono Program, together with OCIJ, has been working with the newly-created Division for Unaccompanied Children's Services at the Office of Refugee Resettlement (ORR) to discuss, among other matters, new initiatives aimed at improving legal assistance for this special population.

EOIR's involvement with ORR was anticipated by Section 462 of the Homeland Security Act in "developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child," and in "compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children."

Efforts are currently underway to develop and implement a pilot program in Chicago which would combine greater pro bono attorney involvement with a new volunteer 'Guardian Ad Litem' (GAL) component. The GAL would function *in loco parentis* in the context of any immigration court proceedings to encourage the child to participate to the fullest extent possible. The GAL would also make a determination as to the best interests of the child which may be offered to the attorney and/or immigration court as a recommendation.

Together with ORR, the Pro Bono Program has also formed an interagency pro bono committee to better coordinate national and local pro bono efforts to assist these children.

### **IV. Pro Bono Program Webpage**

The Pro Bono Program has steadily expanded its heavily-visited internet webpage (#1 after the Homepage). The webpage currently includes an online version of the "List of Free Legal Service Providers," and a variety of links to governmental and non-governmental sites, including bar associations, law school immigration clinics, human rights groups and *pro bono* organizations providing access to asylum documentation and self-help legal materials (<http://www.usdoj.gov/coir/probono/probono.htm>).

Also found on the Pro Bono Program webpage are the recently-posted "Immigration Court Representation Summaries." These concise reports provide detailed information regarding the number of case completions, as well as custody status, nationality, language, and forms of relief requested by individuals in removal proceedings. The reports are designed to assist *pro bono* groups in their efforts to assess the needs of their local communities in order to better direct their services.

### **V. Model Hearing Program**

The Model Hearing Program is an educational program developed by the Pro Bono Program to improve the quality of advocacy before the court, as well as increase levels of *pro bono* representation. Model Hearings consist of small-scale 'mock' trial training sessions held in the immigration court and presented by volunteer immigration judges. The training sessions, carried out in cooperation with partnering bar associations and/or *pro bono* agencies, provide practical and relevant 'hands-on' immigration court training to small groups of attorneys/law students with an emphasis on practice, procedure and advocacy skills. Participants receive training materials and CLE credit, and agree to perform a minimal level of *pro bono* representation throughout the year. Since June of 2001, over 13 Model Hearing training sessions were held in the following court locations: San Diego, Dallas, York, Cleveland, Newark and New York City. Special thanks to the immigration court judges and staff in York, Pennsylvania, New York City, and Dallas for their help in facilitating Model Hearings this past year.

## EOIR Legal Orientation Program - FY 2004

### 1. SCOPE

The Executive Office for Immigration Review (EOIR) requires a Contractor to provide Legal Orientation Training Programs to aliens detained by the Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement (BICE, a legacy agency of the Immigration and Naturalization Service, INS) who are in immigration proceedings before the EOIR. The legal orientation programs will be locally performed by non-governmental non-profit organizations (NGOs) that regularly provide legal services to aliens.

### 2. BACKGROUND

- A. EOIR was established in January 1983. Under delegated authority of the Attorney General of the United States, EOIR administers and interprets Federal immigration laws and regulations through the conduct of Immigration Court proceedings, appellate reviews, and administrative hearings in individual cases. EOIR carries out these responsibilities through its three main components:
- (1) The Office of the Chief Immigration Judge (OCIJ), which oversees all the Immigration Courts and their proceedings throughout the United States;
  - (2) The Board of Immigration Appeals (BIA), which hears appeals of decisions made in individual cases by Immigration Judges, DHS District Directors, or other immigration officials; and
  - (3) The Office of the Chief Administrative Hearing Officer (OCAHO), which resolves cases concerning employer sanctions, document fraud, and immigration-related employment discrimination.
- B. The Office of the Chief Immigration Judge supervises and directs the activities of over 50 Immigration Courts throughout the United States. Immigration Courts are located in federal buildings, private buildings, correctional institutions, and DHS-operated/contracted detention centers. Immigration Judges conduct immigration hearings at these courts, and at designated 'detail' sites, to resolve various immigration matters.
- C. In FY2002, nearly 230,000 cases were completed by the immigration courts. Approximately one third of these cases involved detained aliens in DHS custody, of which close to 80% proceeded *pro se* (without legal representation).
- D. Although there are various types of immigration proceedings before the court, the vast majority are Removal proceedings, which are scheduled as either Master Calendar or Individual Hearings. In Master Calendar hearings, Immigration Judges are required to ensure that aliens proceeding *pro se* have a clear understanding of the charges against them, their procedural rights during the hearing process, and their options for relief. In addition, Immigration Judges attempt to provide adequate time for *pro se* aliens to assemble facts, documents, and witnesses which may be helpful in the aliens' pursuit of relief

from removal. As a result, the additional time required by detained *pro se* aliens often places a great burden on the court's dockets and reduces the efficiency of the Master Calendar hearing process.

- E. Also known as Legal Rights Presentations, or "Rights Presentations," the Legal Orientation Program (LOP) concept was created in 1989 and pioneered in the early 1990s as the "Justice Efficiency Model" by the Florence Immigrant and Refugee Rights Project in Florence, Arizona, in conjunction with the local Immigration Court. Conducted by non-profit agencies in DHS detention facilities, these programs effectively disseminate legal information and improve access to *pro bono* counsel to detainees while at the same time reducing government costs per detained alien and increasing the efficiency of Immigration Court proceedings. Rights Presentations can also have the effect of reducing behavioral problems at the detention facility. The model has been commended by the U.S. Senate, the U.S. Commission on Immigration Reform, national advocacy groups, the American Bar Association, the DHS and EOIR for the benefits it can provide to all parties involved in Immigration Court proceedings - the detained alien, the government, and the non-profit legal sector.
- F. In 1998, EOIR funded 90-day pilot projects at three DHS Service Processing Centers - Florence (AZ), Port Isabel (TX), and San Pedro (CA) - to implement Rights Presentation programs to detained aliens before their first (initial) Master Calendar Hearing. The EOIR evaluation of the pilot projects concluded that the Rights Presentation programs resulted in faster completions and increased availability of representation to detainees with potentially meritorious claims to relief, and recommended that the government expand them to all INS (DHS) detention facilities.
- G. In FY 2002, Congress appropriated \$1 million to the Department of Justice to carry out "legal orientation programs." These programs were to be used "for non-governmental agencies to provide live presentations to persons in INS [DHS] detention prior to their first hearing before an immigration judge." Presentations were to include essential information about immigration court procedures and the availability of legal remedies to assist detainees in distinguishing between meritorious cases and frivolous cases. EOIR is currently carrying out these programs at six DHS detention sites across the country.
- H. In FY 2004, Congress appropriated \$1 million to the Department of Homeland Security for "legal orientation programs." These funds were recently transferred to EOIR to continue conducting legal orientation programs across the country.

### 3. STATEMENT OF WORK

- A. To conduct Legal Orientation Training Programs for aliens detained by the DHS in order to measurably:
  - (1) Increase the efficiency of Immigration Court proceedings;
  - (2) Decrease the duration of detention;
  - (3) Increase an individual's ability to make a timely decision about his or her immigration case through receipt of early and accurate legal information

- and orientation; and
- (4) Facilitate access to legal counsel.
- B. Legal Orientation Programs shall include the following elements:
- (1) Group orientations;
  - (2) Individual orientations;
  - (3) Self-help workshops;
  - (4) Dissemination of written and taped legal orientation materials; and
  - (5) Programs to promote and facilitate *pro bono* representation for detained aliens who seek legal assistance through the legal orientation program.
- C. All elements stated above at 3.B shall be performed by one or more on-site trainer(s), who must either be licensed attorneys, BIA Accredited Representatives or legal assistants/paralegals, law students, law school graduates or other trained volunteers working under the direct supervision of such licensed attorneys or Accredited Representatives.
- D. At the end of the contract period, the Contractor will provide a report on all services performed and data to assist the Contract Officer Technical Representative (COTR) in evaluating and quantifying the costs, savings, benefits, and other effects of the legal orientation programs on the immigration court process.
- E. The specific tasks to be provided are as follows:
- (1) Identify the immigration courts and/or detention facility sites at which legal orientation programs will be conducted.
  - (2) Establish plans for program operation for no less than 12 months.
  - (3) The trainer(s) will review in advance available information on individuals scheduled to attend the group orientation in order to make necessary preparations for the orientation.
  - (4) Provide group orientations to all detained aliens (with reasonable exceptions to be approved by the COTR) regardless of representation status prior to their initial Master Calendar Hearing in the Immigration Court. Additional group orientations may be made to detained aliens prior to subsequent hearings. Group orientations will review the range of rights available and alert individuals to their alternatives or the lack thereof. Group orientations will also include group question and answer periods at the conclusion of each orientation in which the trainer(s) will respond to general concerns of individuals.
  - (5) Arrange for suitable space in which to conduct the group orientations, which may include the EOIR Immigration Court or other space within the detention facility. Where a contract detention facility, or state or county jail is involved, the Government will make its best effort to facilitate access to a suitable space.

- (6) Group orientations must be made in the language(s) most appropriate for the majority of detained aliens present at the orientation. The Government will not provide interpreters for the purpose of the group orientation.
- (7) The trainer(s) shall state at the beginning of each group orientation that the views expressed by the trainer(s) do not necessarily represent the views of EOIR, the Department of Justice, or the United States Government. In addition, the trainer(s) shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government.
- (8) Within a short period following the group orientation, the trainer(s) will conduct individual orientations when requested by unrepresented individuals to assist them in understanding their legal situations. The trainer(s) may respond to specific concerns/questions of an individual, educating the individual as to the law and applicable procedure.
- (9) The trainer shall explain to all individuals receiving an individual orientation that the trainer(s) is/are not their attorney or representative. In addition, the trainer shall not, in any manner, either speak, or appear to speak, on behalf of EOIR, the Department of Justice, or the United States Government. The trainer shall also obtain written consent from the individual prior to disclosing any confidential detainee information to other parties. This written consent shall state, in effect, that the detained individual understands that the trainer is not their attorney or representative, that the individual has willingly given his/her information, and that the individual authorizes its disclosure to other parties for the purpose of obtaining pro bono/volunteer legal assistance.
- (10) All reasonable efforts must be made by the trainer(s) to conduct the individual orientation in the appropriate language of the detained alien. The Government will not provide interpreters for the purpose of the individual orientation.
- (11) The trainer(s) will distribute appropriate written legal orientation and other relevant and informative materials to individuals, as well as make available any relevant taped materials. All such materials intended for distribution under this agreement must be pre-approved by the COTR. In consultation with the COTR, the Contractor may develop additional appropriate written and/or taped legal orientation materials of a general nature for use at the particular site as it deems necessary.
- (12) The Contractor will also provide 'self-help' training 'workshops' when needed for unrepresented individuals interested in pursuing relief from removal, or subject to special procedures (i.e. Temporary Protected Status, reinstatement of a previous order of removal/deportation, "reasonable fear" or "credible fear" proceedings, and aliens eligible for post-removal order review). The purpose of the self-help workshop is to educate and assist the group in understanding the relevant law and

procedures to be followed in pursuing particular forms of relief, or in understanding special procedures in place, that may apply to their own legal situation.

- (13) The Contractor will also implement local programs to promote and facilitate *pro bono* representation (both at the Immigration Court and BIA level) for detained aliens who request such assistance through the legal orientation programs. This includes working closely with individuals providing *pro bono* representation to detained aliens to facilitate representation, and to improve the delivery of legal services.
- (14) The Contractor may recruit, coordinate and train local *pro bono* attorneys, accredited representatives, law students or law graduates to carry out the above task at 3.E(13). However, the Contractor may not engage in services performed in the supervision or direction of *pro bono* representatives in case-specific legal matters, nor in the indirect preparation of case specific papers.
- (15) To implement each program, the Contractor will coordinate with the COTR and on-site representatives at each program location. On-site representatives may include officials from the DHS, EOIR, or other individuals deemed necessary by the Contractor or the COTR.
- (16) The Contractor will maintain records on the number of group and individual orientations made and self-help training workshops conducted, the number of individuals served (by attending a group orientation as well as by individual orientation), and other data as deemed necessary by the Contractor or the COTR, and will assist the COTR in evaluating the effect of the legal orientation programs upon the following:
  - (1) Access to *pro bono* representation for individuals pursuing claims for relief; and
  - (2) Provision of comprehensive legal services at an appropriate level to all detained individuals at the selected sites;

F. Contract funds are specifically restricted to the services outlined within this Blanket Purchase Agreement (BPA), and may not be used to provide "representation" within the meaning of 8 C.F.R. §1.1(m), and as proscribed by §292 of the Immigration and Nationality Act, 8 USC 1362.

## Appendix E

### INMATE MAIL

Outgoing mail inspection will be conducted in accordance with the procedure set forth by the contracting agency and applicable Federal law. Outgoing general mail is to be placed in the locked mailbox located in your housing area (legal mail may be sealed before being placed into the mailbox). Be sure you have your full name, ID number, housing assignment and proper return address on your outgoing mail. Inmate mail will be collected daily Monday through Friday by a staff member. (Excluding Holiday's)

Incoming mail will be processed by the mail officer (opened and inspected for money orders or contraband in your presence) and delivered to you in your housing area Monday through Friday. Incoming mail must have a complete return address, your full name, ID number and housing assignment number on it. (Excluding Holiday's)

Books and publications will be received from PUBLISHERS ONLY. Packages WILL NOT BE ACCEPTED unless prior approval is obtained. Unauthorized items received in the mail will be destroyed or returned at the inmate's expense. No explicit publication and pornography material allowed.

### INDIGENT SUPPLIES

If you are indigent (having less than \$3.00 in you account for thirty (30) days or more) you may receive indigent supplies (stamps and writing materials) by sending a Request for Services form to the Shift Supervisor. YOUR FORM MUST BE SENT TO THE SHIFT SUPERVISOR NO LATER THAN TUESDAY EVENING IN ORDER FOR YOU TO RECEIVE YOUR SUPPLIES ON THURSDAY. Indigent inmates may mail up to five (5) pieces of mail each week.

Hygiene products (toothpaste, bar of soap) will be distributed as scheduled. Toothbrushes and razors distributed on exchange only.

### LEGAL ASSISTANCE

The U. S. Supreme Court in *Bounds v. Smith* determined that a prison meets the access to courts requirement by the use of a library, a person trained in the law, or a combination of both.

CCA retains an attorney to provide legal assistance to inmates housed at CCA. Assistance may be provided by the attorney pursuant to inmates' completion of written request for Attorney Conference form (14-8A or equivalent) which is available at each post location.

The necessary envelopes and postage will be provided to the inmate to forward by mail the request for attorney form to the attorney. Inmates may send form 14-8A to the following address:

Inmate Orientation Handbook  
Correctional Corporation of America  
Laredo Processing Center

Revised October 2003

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Laredo, TX 78040

In addition, it is CCA's policy to encourage informal resolution of inmate complaints. If the issue cannot be informally resolved inmate can request a CCA inmate Grievance form (14-A). This form is available at each post location.

### RECREATION PROGRAM

Outdoor recreation facilities and activities are available to all inmates as well as leisure time dayroom activities. Inmates are encouraged to initiate activities and, through the approval and guidance of the staff, assist in the managing of the activity.

The following rules and regulations apply to all inmates participating in any form of recreational activity. The Recreation Supervisor will coordinate all activities and may utilize inmates as program assistants, referees and coaches. All discrepancies will be brought to the attention of a Detention Officer or the Recreation Supervisor. The staff member's decision is final.

Violation of any rule or regulation may result in disciplinary action, expulsion from the activity or recreation area. The following rules include main areas of concern. Additional verbal orders may be given and will be followed.

- 1) "Horseplay" or "tough" play will not be tolerated.
- 2) Do not sit on equipment or the recreational area if it is not specifically designed for such. Abuse of equipment or the recreational area will not be tolerated. Do not attempt to repair broken or damaged equipment; contact a staff member.
- 3) All activities will be conducted in designated areas only.
- 4) Appropriate dress wear must be maintained while in outside recreation.
- 5) Do not block any entrance or exit leading in or out of the building or hallways.
- 6) All safety rules will be adhered to. Safety devices will be used at all times.
- 7) All injuries will be immediately reported to any staff member before leaving the recreational area.
- 8) Inmates with medical restrictions will not be allowed to participate in strenuous physical activities while in recreation.
- 9) During recreation, you are not allowed to grab or touch the perimeter fence.
- 10) At no time are you to contact the outside perimeter officer, any questions or concerns will be addressed to the inside detention officer.

### VISITATION

All visitors will be required to present the following legal documents to be eligible for visitation: Resignment (Current legal status, Border Crossing Card, Resident Alien Card, VISA/Passport) U.S. Citizens (Current State Drivers License/Identification Card is required. Any visitor under the age of eighteen (18) must be accompanied by his/her legal guardian (proof required). All

Inmate Orientation Handbook  
Correctional Corporation of America  
Laredo Processing Center

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Revised October 2003

**CONFIDENTIAL**  
**REQUEST FOR ATTORNEY/PARALEGAL CONFERENCE**

**INMATE/RESIDENT NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
(Print Name)

Inmate/Resident ID# and Housing Assignment: \_\_\_\_\_

**TYPE OF LEGAL CONCERN: (check one)**

- \_\_\_\_\_ Motion to Proceed In Forma Pauperis
- \_\_\_\_\_ Motion for Appointment of Counsel
- \_\_\_\_\_ Petitions for Writs of Habeas Corpus
- \_\_\_\_\_ Petitions for Post Conviction Relief
- \_\_\_\_\_ Condition of Confinement/ Civil Rights Complaint (attach grievance)

Briefly describe your legal issues and specify if you have a court imposed deadline and the date:  
(Use additional sheets if needed)

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The attorney/paralegal services in the above specified areas of law include assistance in preparation of initial legal documents (such as petitions, complaints, motions for the appointment of counsel and motions to proceed in forma pauperis). The attorney/paralegal services do not include typing, photocopying and making court appearances. If your legal matter involves CCA and if in your best interest, the attorney/paralegal should attempt to resolve any dispute with CCA informally before instituting more formal procedures. If the initial pleading involves a 42 USC sec. 1983 or condition of confinement claim, you should have first availed yourself to the Inmate Grievance System because the court will likely dismiss the suit if you failed to exhaust administrative remedies available through the grievance process.

Please note that the attorney/paralegal is retained by and his/her fee is paid by CCA which in no way changes the attorney/paralegal's duty to advise or assist you. The attorney is bound by the disciplinary rules of the Supreme Court of this state in providing legal services to you including confidentiality between you and the attorney/paralegal.

Acknowledged:

\_\_\_\_\_  
Signature of Inmate/Resident

\_\_\_\_\_  
Date

**ATTORNEY'S RESPONSE (May be attached)**

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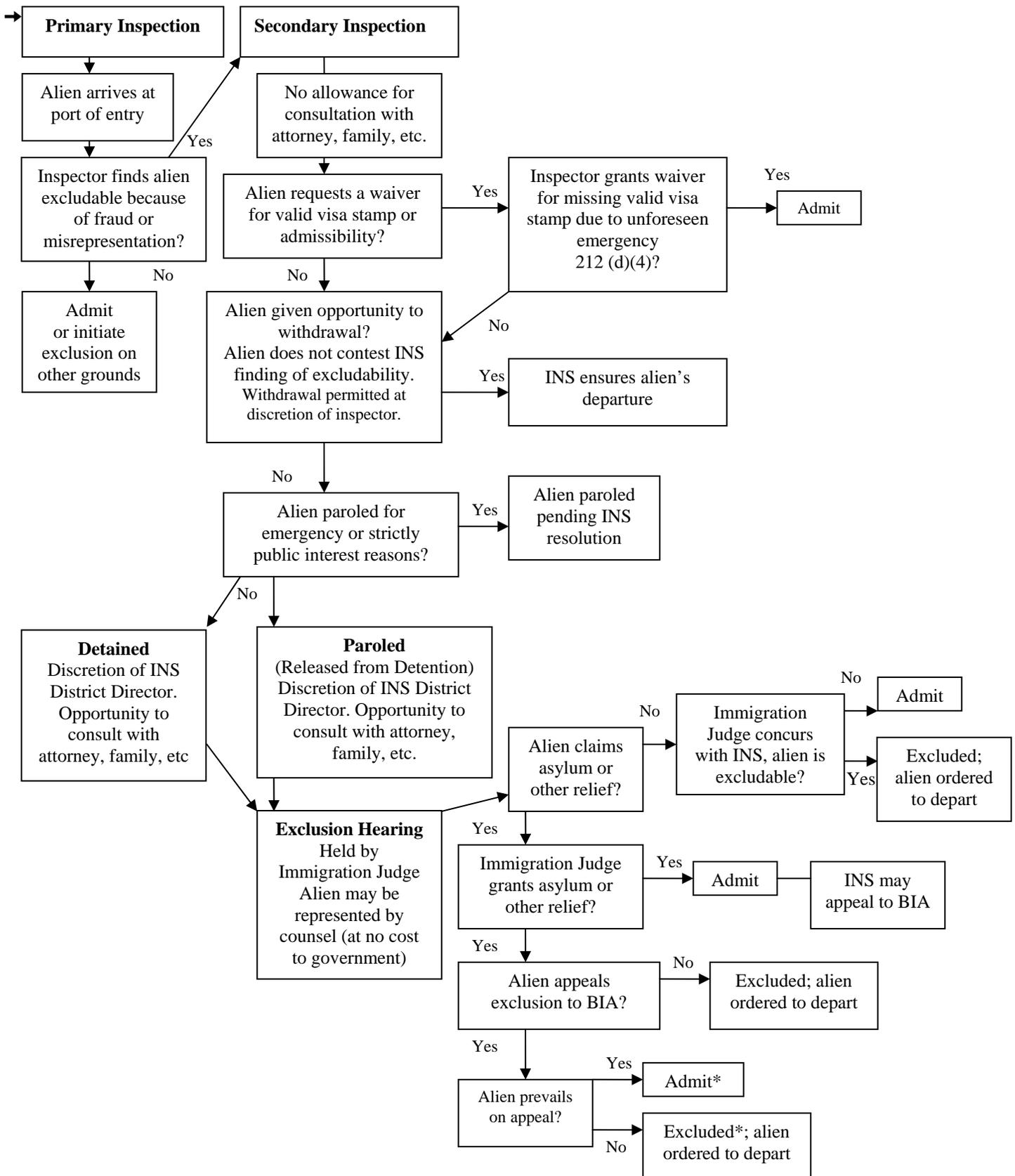
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**Appendix F**

**The Asylum Application Process for Arriving Aliens Presenting Documents that are Missing, False or Obtained by Misrepresentation  
Used before April 1, 1997**



\*Federal court appeal process available after decision from Board of Immigration Review (BIA)

## Appendix G Law Library and Related Resources

<http://www.ice.gov/graphics/dro/opsmanual/legal.pdf>

“Facilities holding INS detainees shall permit detainees access to a law library, and provided legal material, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents.”

### List of Legal Reference Materials for Detention Facilities:

1. Constitution of the United States of America: Analysis and Interpretation. Updated: Supplements and revised editions are published irregularly.
2. United States Code, Title 8, Aliens and Nationality. Updated: Annual pocket parts
3. Code of Federal Regulations, Title 8, Aliens and Nationality. Updated: Published annually
4. Bender's Immigration and Nationality Act Service. Updated: Monthly
5. Bender's INS Regulation Service. Updated: Monthly
6. Administrative Decisions Under Immigration & Nationality Laws. Board of Immigration Appeals (BIA) decisions consisting of 20 bound volumes and loose-leaf Interim decisions.
7. Immigration Law and Defense, by the National Lawyers Guild. Updated: Annual subscription
8. Immigration Law and Crimes, by the National Immigration Project of the National Lawyers Guild. Updated: Annual subscription
9. Guide for Immigration Advocates. Updated: Published irregularly
10. Country Reports on Human Practices. Submitted by the Department of State to the Committee on Foreign Affairs of the U.S. House of Representatives and the Committee on Foreign Relations of the U.S. Senate. Updated: Published annually in February
11. Human Rights Watch World Report. One bound volume. Updated: Annually
12. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. Updated: Irregularly
13. Considerations for Asylum Officers Adjudicating Asylum Claims From Women. Updated: Irregularly

14. Immigration and Naturalization Service Basic Law Manual Updated: Irregularly
15. Lawyer's Committee Handbook on Representing Asylum Applicants.  
Updated: Irregularly
16. Rights of Prisoners. 2nd edition by Michael B. Mushlin. Updated: Annual pocket parts
17. Federal Habeas Corpus, Practice & Procedure. 2nd Edition by James S. Liebman Updated: Annual pocket parts
18. Federal Civil Judicial Procedure and Rules. Paperback volume. Updated: Published annually
19. United States Code, Title 28. Rules Appellate procedure pamphlets I + II. Updated: Annually
20. Federal Criminal Code and Rules. Paperback volume. Updated: Published annually
21. Criminal Procedure (Hornbook). By LaFave. Updated: Published irregularly
22. Legal Research in a Nutshell. 5th edition by Morris L. Cohen, published 1992.  
Updated: Published irregularly
23. Legal Research & Writing: Some Starting Points. 4th edition by William P. Statsky, Updated: Published irregularly
24. Black's Law Dictionary. 1990, latest standard edition, one hardbound volume.  
Updated: Published irregularly
25. Spanish-English Law Dictionary, By Solis. 1992. Updated: Published irregularly
26. Directory of Nonprofit Agencies that Assist Persons in Immigration Matters.  
Updated: Irregularly
27. Other Translation Dictionaries Depending on the Most Common Languages Spoken by the Detainee Population.
28. Detainee Handbook and Detainee Orientation Materials.
29. Self-Help Materials. Materials provided by outside organization after clearance by District Counsel.
30. Telephone books (Yellow pages) for local areas and nearby metropolitan areas where counsel may be located.

Responses of Alberto R. Gonzales  
Nominee to be Attorney General  
to the Written Questions of Senator Edward Kennedy

**I. HUMAN RIGHTS ISSUES INVOLVED IN THE WAR ON TERRORISM**

- 1) Did you participate in meetings in which specific interrogation techniques were discussed?

Response: As I noted in my testimony before the Committee, I recall participating in some discussions regarding the manner in which we could question enemy combatant terrorists for information that might save American lives.

- If so:
- i. Please provide details, including the specific interrogation techniques that were mentioned at such meetings.
  - ii. Did you raise any objection – either during any such meeting or afterwards – to the use of these techniques? Please provide details.
- If not:
- i. Why didn't you raise objections to the use of these techniques?
  - ii. In retrospect, do you believe you should have raised objections at the time those techniques were discussed?

Response: I believe that during these discussions, representatives from agencies raised concerns that certain terrorists had information that might save American lives. There was a desire to explore certain methods of questioning these terrorists, but there was concern that nothing be done that would violate the law. I do not have a specific recollection about each individual method of questioning discussed. It is quite likely that not all the methods were discussed since our discussions were not intended to provide approval of certain methods of questioning. I have no specific recollection of raising objections to the use of particular methods of questioning. But my role was not to decide whether or not certain methods of questioning should be adopted as a policy matter; it was for others to decide whether a particular method of eliciting information from terrorists was something to employ under the directives of the President that we should do everything that we lawfully can to win the war against the terrorists. Nor was it my role to make the ultimate decision whether a particular method was legal. That responsibility rested with the Department of Justice. For me to provide details about the method of questioning terrorists mentioned in meetings that I attended would entail discussing classified information, which I am not at liberty to do.

(a) Please identify all notes, memoranda, e-mail, audio-recordings, or documents of any kind which reflect:

- i. The occurrence and substance of such meetings;

Access to representation also results in a more efficient immigration court process that saves time and money for the government while also benefiting the child.

**Question:** Federal funding is now used by the Justice Department to provide grants to faith-based and private non-profit organizations to provide legal services to victims of domestic violence and sexual assault. Will you support federal funding to award grants to non-profit organizations to provide legal representation to these most vulnerable children? If not, why shouldn't we provide the same authority to award grants to nonprofit organizations so they may represent unaccompanied immigrant minors.

If you do not support such funding, what changes will you propose to ensure that the best interests of these children are fully protected and respected?

Response: The plight of unaccompanied minors who are sent to the United States is an extraordinarily heart-rending issue. Many of these abandoned children arrive in the United States after having suffered abuse, neglect, and violence. If confirmed, I would carefully review and consider any proposal, whether regulatory or legislative in nature, to ensure that unaccompanied minors receive the services they need and are not further victimized after they arrive in the United States.

## VII. LEGAL ORIENTATION PROGRAMS

In 2002, Congress appropriated \$ 1 million for legal orientation programs in order to increase the efficiency and effectiveness of immigration removal proceedings. The programs are funded through appropriations to DHS, which are then transferred to EOIR.

Legal orientation presentations provide immigration detainees with essential information about immigration court procedures and the availability of legal remedies. The programs help identify immigration detainees with meritorious cases that can be referred to legal assistance agencies, at no cost to the government. The programs also help convince detainees without relief not to challenge their removal, thereby needlessly protracting their immigration proceedings and deportation. These programs have resulted in greater judicial efficiency, fewer detention expenses, and greater access for aliens to legal information. EOIR has calculated that these programs result in an annual saving of approximately \$8 million dollars by reducing detention by more than 4 days per alien in sites with these programs. In its first full year, these programs reached 17,000 detainees, comprising approximately 20% of the detention proceedings completed by immigration judges in fiscal year 2003. Despite the benefits and efficiencies generated by the programs, DHS failed to transfer the FY 2003 appropriations to EOIR, and I understand may not transfer the funding for fiscal year 2005.

**Question:** As Attorney General, what will you do to ensure that DHS transfers the \$2 million owed to EOIR for these programs? What will you do to increase funding

for these highly successful programs so they reach even greater numbers of detainees?

Response: If confirmed, I would work with my colleagues at the Department of Homeland Security to ensure that any money that is owed to EOIR is transferred and to determine the extent to which funding may be increased in future years.

## **VIII. USE OF SECRET EVIDENCE**

In the past, the Department of Justice has used classified evidence in immigration proceedings, and not made it available to the defendant and or to defense counsel. In some cases where classified evidence was used to deport an individual, it was later discovered that the evidence was incorrect or discredited.

**Question:** Will the Department of Justice again use classified evidence in immigration proceedings? What step will you take to avoid the types of mistakes made in the past?

Response: Current federal law specifically permits the use of classified evidence in immigration proceedings with respect to detention decisions and decisions on applications for various forms of immigration relief, such as asylum or cancellation of removal. However, my understanding is that this is done only rarely and that immigration judges have not used classified evidence for purposes of determining whether or not an alien is deportable. I know that the issues relating to the use of classified evidence in immigration proceedings have been the subject of considerable attention both in Congress and among the affected federal agencies in the past, and, if confirmed, I would conduct a review of the Department's policies in this regard.

## **CIVIL RIGHTS**

### **I. Voting Rights Act**

The Voting Rights Act is critical to ensuring ballot access for all Americans, regardless of race, ethnicity or proficiency in English. Private citizens can enforce the Act's non-discrimination provisions, but Justice Department enforcement is critical to its effectiveness. Unfortunately, in recent years the Department has cut back its enforcement actions. In 2004, the Civil Rights Division did not file a single case alleging racial or ethnic discrimination against minority voters. In 2003, the Division filed only one such case, and only two in 2002. That is not a satisfactory record, given the widespread discrimination against minority voters in state, local and federal elections across the country.

1. During your hearing, you stated that you believe strongly in protecting voting rights. Will you commit that if you are confirmed as Attorney General, the Department will vigorously enforce Section 2 of the Voting Rights Act while also maintaining its role in enforcing other voting and civil rights laws?

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

**STATISTICAL REPORT ON EXPEDITED REMOVAL,  
CREDIBLE FEAR, AND WITHDRAWAL, FY 2000-2003**

FEBRUARY 2005

U.S. Department of Homeland Security Office of Immigration Statistics  
Special Tabulations Prepared with Assistance from the  
U.S. Department of Homeland Security, including  
U.S. Immigration and Customs Enforcement –  
Office of Detention and Removal Operations (ICE-DRO),  
U.S. Customs and Border Protection (CBP), and  
U.S. Citizenship and Immigration Services (USCIS)

Assembled and Introduced by Cory Fleming and Fritz Scheuren  
NORC University of Chicago

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## PREFACE

The Study of Asylum Seekers in Expedited Removal (the Study) was undertaken by experts appointed by the US Commission on International Religious Freedom (the Commission) to respond to four questions posed by the International Religious Freedom Act (IRFA) of 1998. Specifically, the Study is to determine whether immigration officers performing duties under section 235(b) of the Immigration and Nationality Act (INA) (8 U.S.C. 1225(b)) 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.

The Study has several components, including collection of statistics; thorough sample file review; direct observations of the removal process; surveys of Department of Homeland Security (DHS) officials and detention center personnel; as well as interviews with individuals seeking asylum.

The present report consists of a compilation of administrative data tabulated by the experts for the Study with support from the U.S. Department of Homeland Security, including the Office of Detention and Removal Operations (DRO) at Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and the U.S. Customs and Inspection Service (USCIS). DRO, CBP, and USCIS reviewed an earlier draft of this report and provided comments that have been taken into account in the final report. The compilation and accompanying descriptive summaries were prepared under my general direction by Cory Fleming and Fritz Scheuren. Let me also take this opportunity to express my deep appreciation for the care, diligence, speed, and expertise of the DHS staff, including Michael Hoefler and Jim Fitzsimmons of the Office of Immigration Statistics, John Bjerke and Hal Griffin of DRO, Salvador Flores of CBP, and especially Linda Loveless of CBP and Georgia Papas of USCIS.

Mark Hetfield  
Commission on International Religious Freedom

February 2005

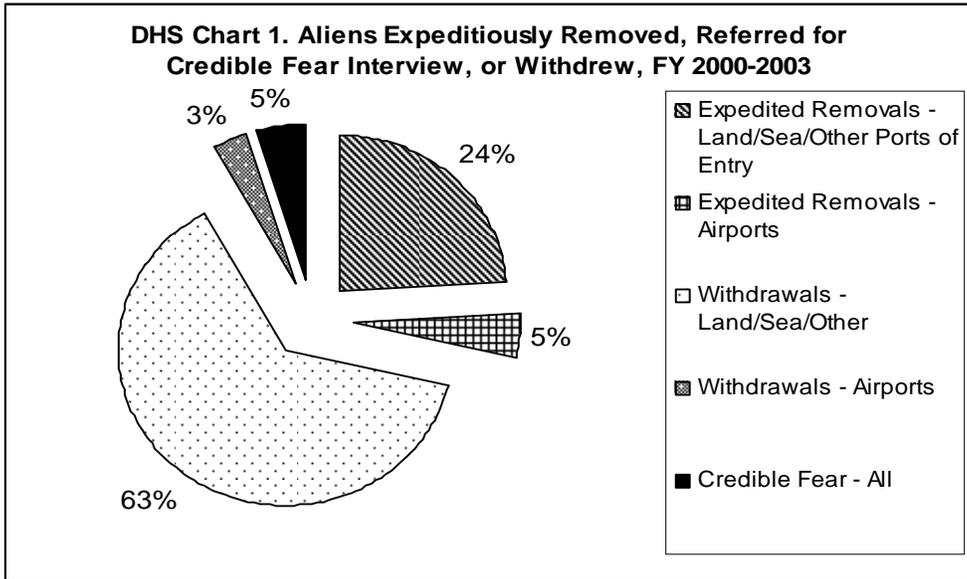
# Special Tabulations Prepared with Assistance from the U.S. Department of Homeland Security

## DESCRIPTIVE SUMMARY

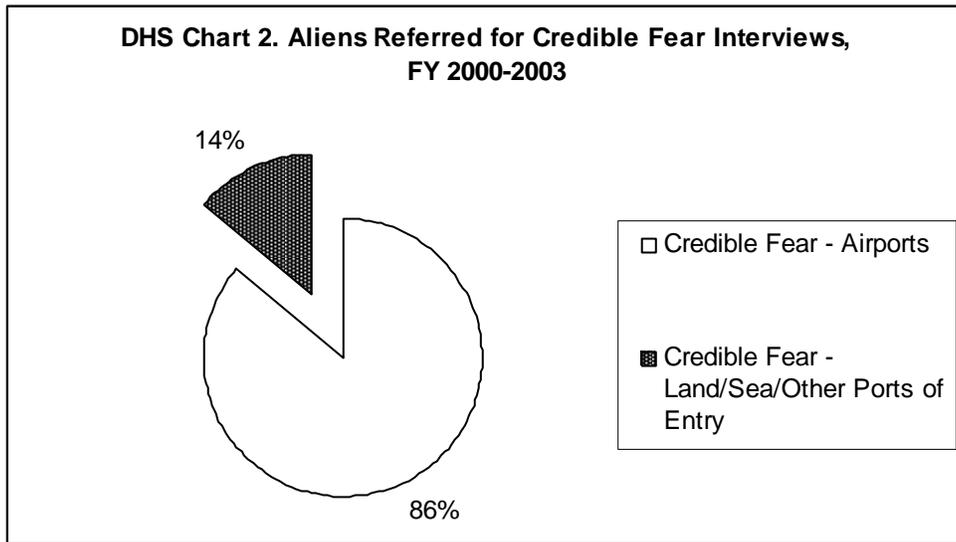
This Report consists of a compilation of special tabulations produced with assistance from many offices within the U.S. Department of Homeland Security (DHS). The table sets accompanying this summary were designed as background for the Study of Asylum Seekers in Expedited Removal (the Study) being undertaken by experts designated by the U.S. Commission on International Religious Freedom (the Commission), pursuant to section 605 of the International Religious Freedom Act of 1998 (IRFA).

The tabulations are quite extensive and hence some summarization of them is warranted. The tables begin by providing an overview of aliens who: (1) are expeditiously removed, (2) referred for a credible fear interview upon arrival at a port of entry (POE) in the U.S., or (3) are subject to Expedited Removal but are permitted to withdraw their application for admission. These data lay out the geographical and demographic make-up of those aliens seeking asylum in the U.S during a four-year period from FY 2000-2003.

DHS Charts 1-3 summarize some of the data displayed in DHS Table 1. (Note that all charts in this summary are based on data presented in the tables.) Among other data, DHS Table 1 shows aliens referred for credible fear interviews make up a very small proportion (5 percent) of those subject to Expedited Removal for entering the United States without the appropriate documentation. DHS Table 1 also shows that, while nearly 90 percent of aliens subject to Expedited Removal are inspected at land and sea ports of entry, 86 percent of all aliens who are referred for credible fear are inspected at airports.

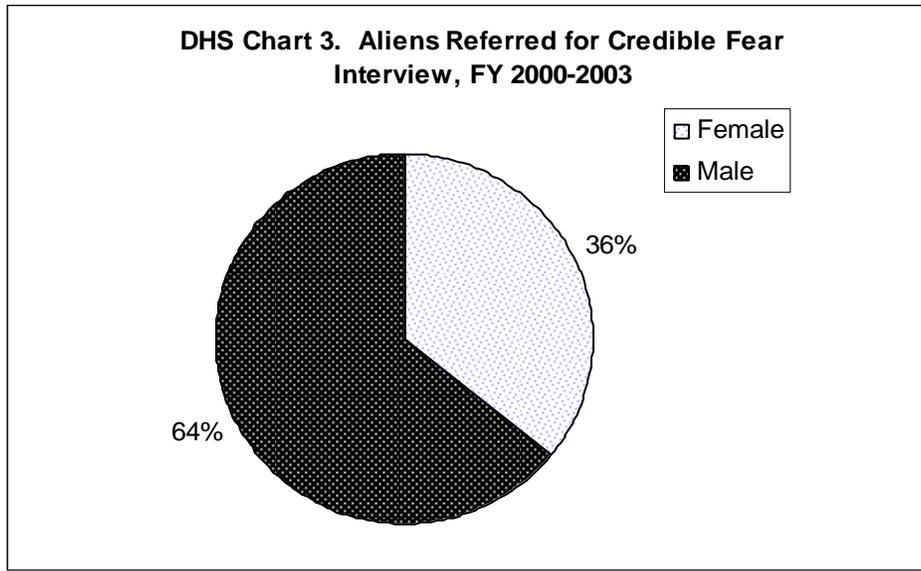


*Based on DHS Table 1.*



*Based on DHS Table 1.*

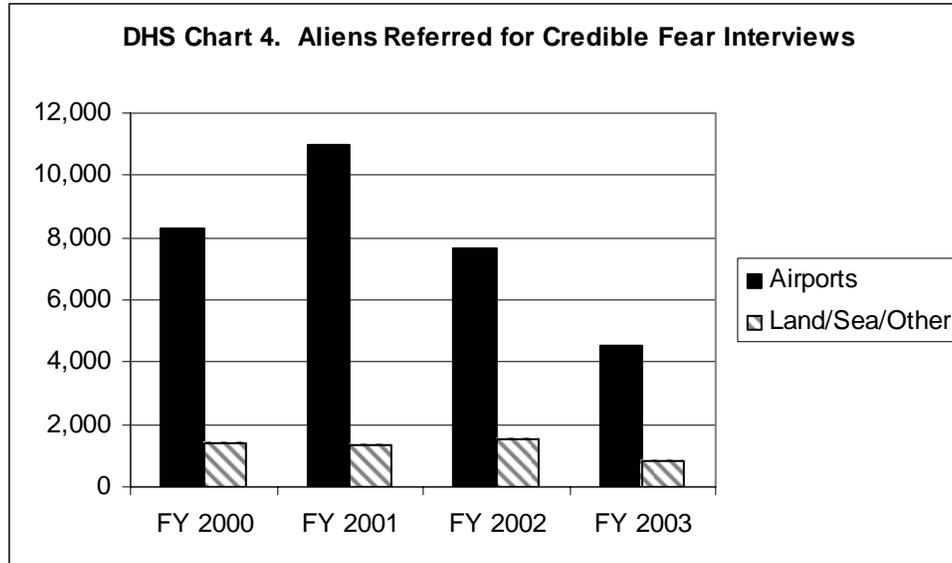
DHS Table 1 also shows that, during this period of time, significantly more men (64.2 percent) were referred for a credible fear interview than women.



*Based on DHS Table 1.*

DHS Table 1 also shows that the vast majority (85.1 percent) of aliens expeditiously removed from the U.S. were of Mexican nationality. However, the People’s Republic of China (29 percent) tops the list as the country of citizenship for the largest number of aliens referred for credible fear interviews during that same time period.

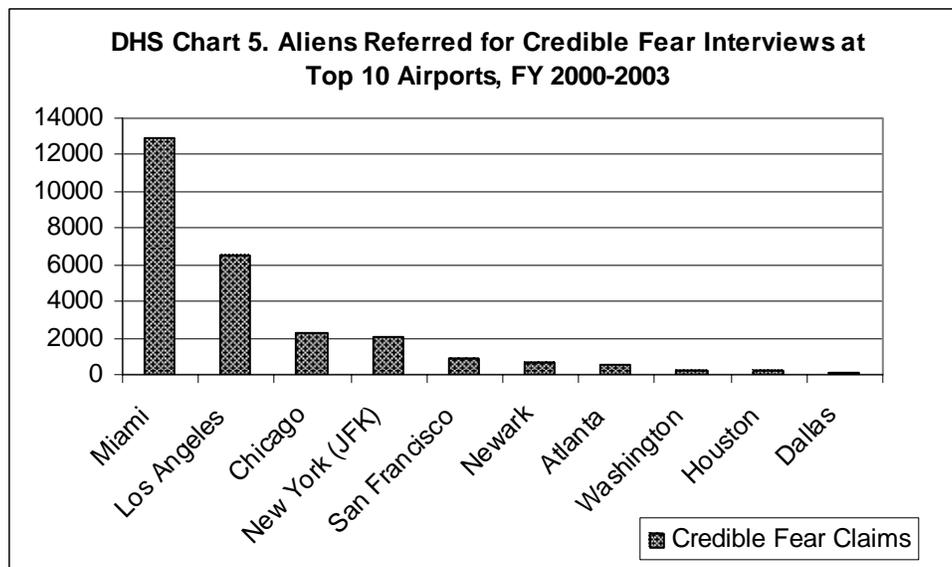
DHS Table 2 shows a substantial rise in the number of aliens referred for credible fear interviews at airports from FY 2000 to FY 2001, then a drop after FY 2001 back to about the FY 2000 level, followed by a much steeper drop for FY 2003. This contrasts with the number at land, sea and other ports of entry (POEs). Overall, these latter POEs remained relatively flat from FY 2000 to FY 2001, then increased by a small amount in FY 2002 before decreasing in FY 2003.



Based on DHS Table 2.

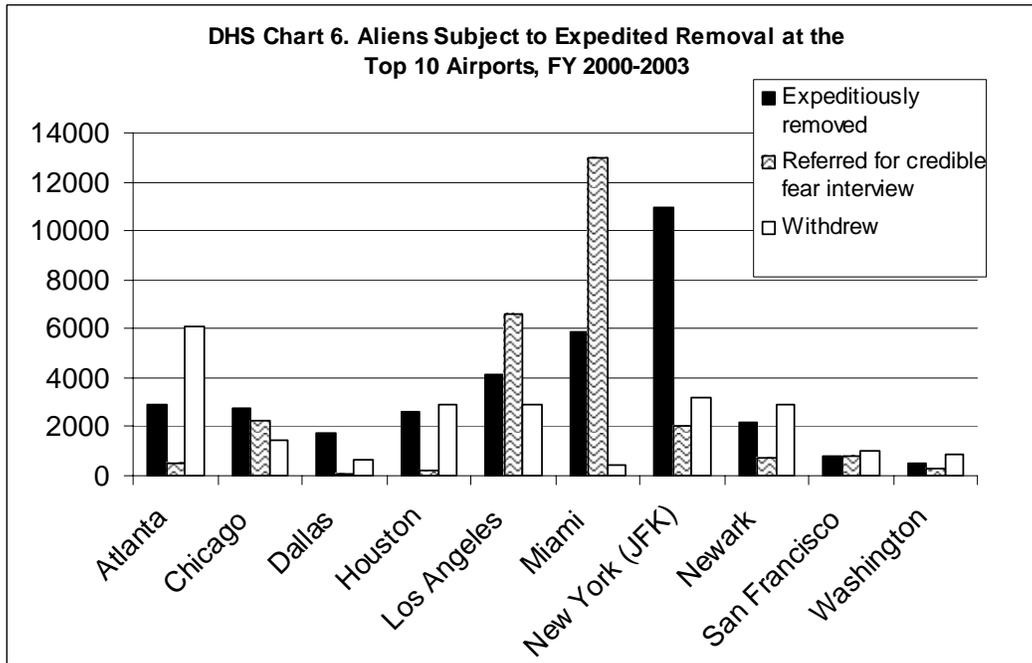
As is implicit above, a high percentage of aliens who are referred for a credible fear determination, arrive in the U.S. via airports (as opposed to land ports, seaports or other means). Beginning with DHS Table 3, subsequent tables report the number of alien arrivals at the top 10 airports in the nation and how their request for asylum was managed.

DHS Table 4 shows that in the aggregate for four years, Miami International Airport processed more credible fear claims than any other airport in the country, nearly double the number of the Los Angeles International Airport where the next largest number of claims was made.



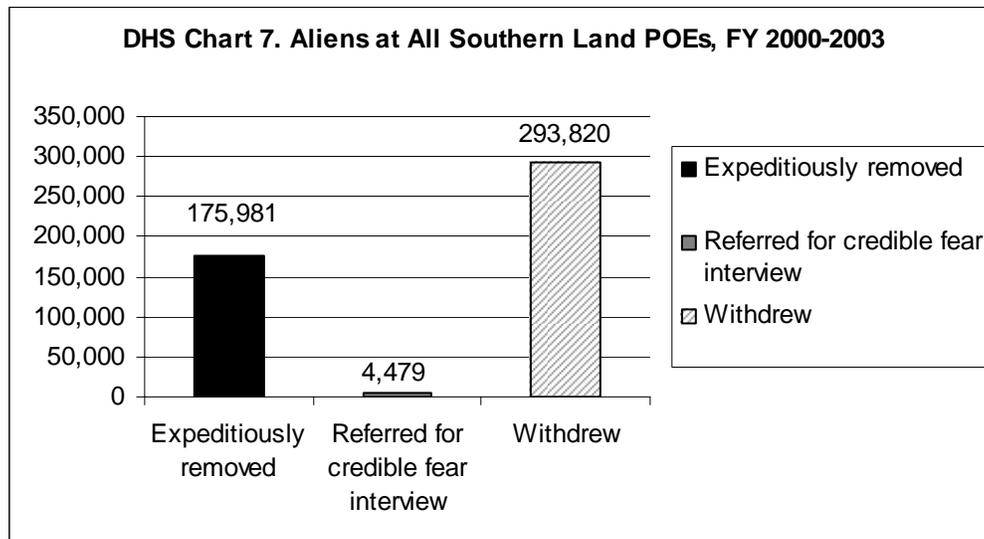
Based on DHS Table 2.

A comparison of the aggregate counts from FY 2000-2003 of each processing category are shown below, as taken from DHS Table 5.

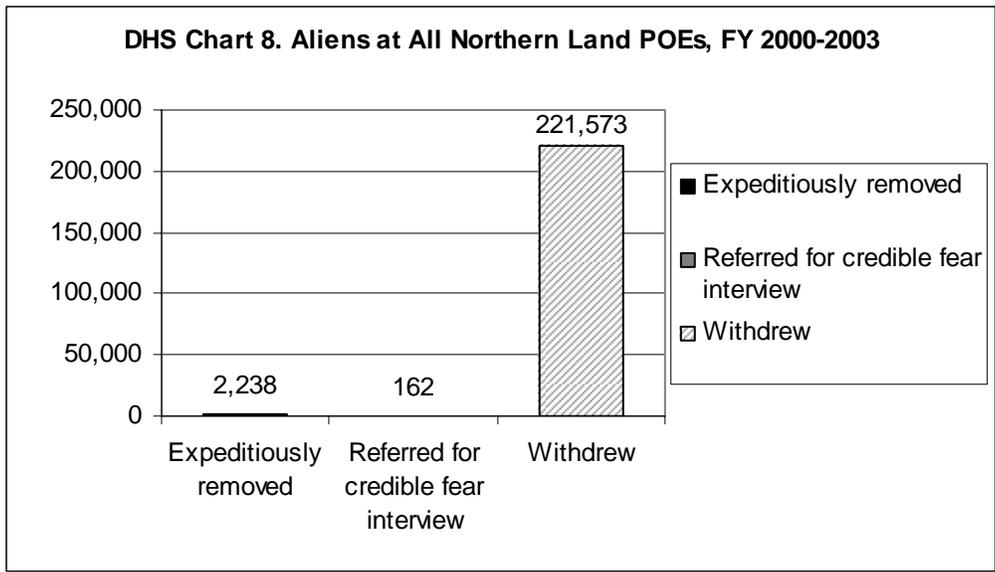


Based on DHS Tables 5.0 – 5.9.

The top land ports of entry at both the southern and northern borders of the U.S. are also reported for each year from FY 2000 to FY 2003. DHS Table 6 summarizes the southern land ports and DHS Table 7 the northern land ports. Notice the change in scales between these two charts, as there are many more alien arrivals through the southern ports.

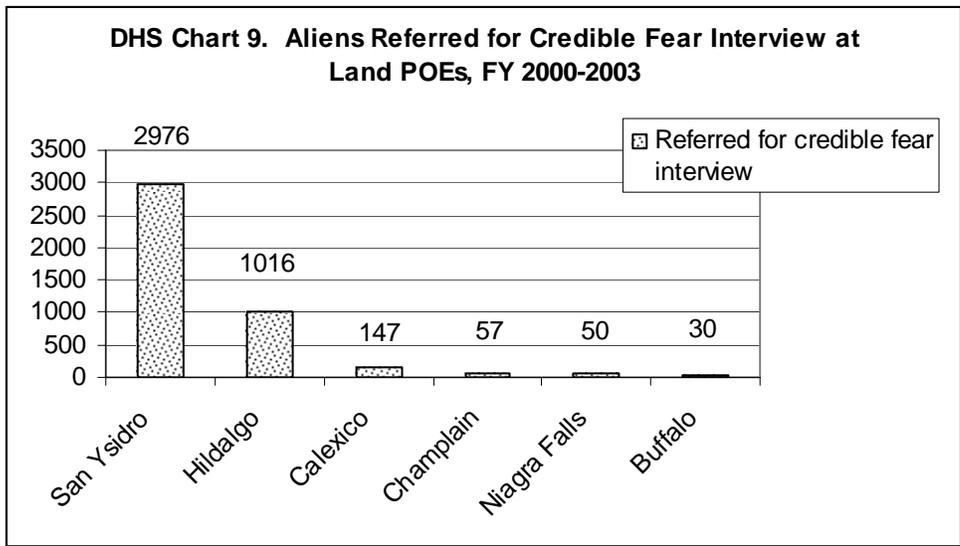


Based on DHS Table 6.



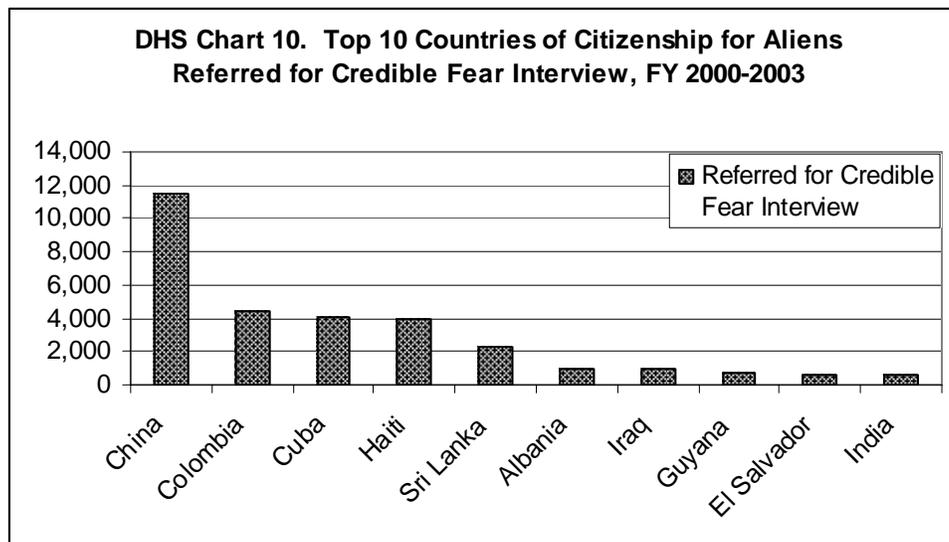
*Based on DHS Tables 7(a) & 7(b).*

In the DHS Table 8 series, the management of alien arrivals for the top 3 southern and northern POEs is expanded and further details given for each port.



*Based on DHS Tables 8.0 – 8.5.*

DHS Table 9 provides detailed information for the entire period FY 2000 to FY 2003 on the top 10 countries of citizenship for aliens referred for credible fear interview claims.



Based on DHS Table 9.

DHS Table 10 provides summary information for each fiscal year, FY 2000 to FY 2003, on the top countries of citizenship for aliens referred for credible fear interview claims. Finally, in DHS Table 11, the table shows the disposition of credible fear interviews.

There are two other tabular reports of compiled administrative data that may also be worth consulting to round out what is readily available from the existing administrative system about the Expedited Removal process. These provide DHS detention statistics and statistics from the Department of Justice.<sup>1</sup>

## SOURCES AND LIMITATIONS OF DATA

No integrated statistical reporting system with respect to Expedited Removal currently operates within the Department of Homeland Security. Different offices use different data management systems, and the interoperability among these systems is not always apparent. In some offices, paper systems for counting applications are still maintained. The efforts to convert these operational systems into a single unified information system appear to be in many places still in its infancy.

The fiscal years covered in this report span the period before and after the creation of DHS. In our work, naturally, we found many efforts still underway to adapt these earlier standalone systems in this post 9/11 world.

Notwithstanding these difficulties, with the expert assistance of the DHS staff, we were in most instances able to roughly reconcile the disparate sources so as to display comparable

<sup>1</sup> Cory Fleming and Fritz Scheuren, *Statistical Report on Detention, FY 2000-2003*, February 2005; Susan Kyle, Cory Fleming, and Fritz Scheuren, *Statistical Report on Immigration Court Proceedings, FY 2000-2004*, February 2005.

information on the Expedited Removal process in a way that we found useful for the Commission's purposes.

In a few instances (DHS Tables 1, 5.4, and 7), duplicate versions of the same tabulation had to be provided. These different versions of the tables reflect differences in data received from the offices within the Department of Homeland Security, and the two versions—(a) and (b)—are provided to indicate the degree of potential error in the counts. Such differences reflect the complexities of managing very large data sets in a systematic fashion across many different offices within a department, and are not unexpected, especially given the early stage of integration. Despite these differences, we remain convinced that, for the most part, percentage distributions can be relied upon, as well as relative changes over time.

Confidentiality requirements by DHS restrict the public versions of these tables to reporting only cell counts of six (6) or more. All nonzero cells of less than 6 are asterisked (\*). Zero cells have been identified by a dash (-). Summary totals in the tables have also been examined to be sure that indirect disclosure (e.g., disclosure by subtraction) did not occur.

As a check on our work, we reviewed the earlier GAO report on Expedited Removal<sup>2</sup> and found that for the year 2000 which overlapped between the two studies, the results shown here are comparable.

As a further check the regular reports that DHS and its predecessor organizations produced were also examined, notably the annual Immigration and Naturalization Service (INS) and later DHS, reports for the years tabulated here. For those readers interested in the setting that Expedited Removal data sit in, these reports are highly recommended, if only for their definitions and for an understanding of the much larger missions that DHS has, especially in the post 9/11 world.

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<sup>2</sup> United States General Accounting Office. 2000. *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*. GAO/GGD-00-176.

## TABLE SETS

**DHS Table 1(a): Aliens Expeditiously Removed, Referred for Credible Fear Interview, or Withdrew at All Ports of Entry (Air, Land, Sea & Other), FY 2000-03**

	Expeditiously removed (1)		Referred for credible fear interview		Withdrew (2)		Total
	Number	Percent	Number	Percent	Number	Percent	
<b>All</b>	<b>233,503</b>	<b>100.0%</b>	<b>36,566</b>	<b>100.0% (3)</b>	<b>542,255</b>	<b>100.0%</b>	<b>812,324</b>
Airports	37,296	16.0%	31,506	86.2% (4)	26,309	4.9%	95,111
Land/Sea/Other	196,207	84.0%	5,060	13.8% (5)	515,946	95.1%	717,213
<hr/>							
<b>Gender - All</b>	<b>233,497</b>	<b>100.0%</b>	<b>37,430</b>	<b>100.0% (3)</b>			
Female	100,353	43.0%	13,394	35.8%	NA	NA	NA
Male	133,144	57.0%	24,036	64.2%	NA	NA	NA
<hr/>							
<b>Age - All</b>	<b>233,485</b>	<b>100.0%</b>	<b>37,430</b>	<b>100.0% (3)</b>			
0-17	1,488	0.6%	2,450	6.5%	NA	NA	NA
18-19	21,255	9.1%	3,320	8.9%	NA	NA	NA
20-29	119,623	51.2%	17,458	46.6%	NA	NA	NA
30-39	59,004	25.3%	10,168	27.2%	NA	NA	NA
40-49	22,575	9.7%	3,068	8.2%	NA	NA	NA
50+	9,477	4.1%	940	2.5%	NA	NA	NA
unknown	63	0.0%	26	0.1%	NA	NA	NA
<hr/>							
<b>Country of citizenship</b>							
<b>All</b>	<b>234,021</b>	<b>100.0%</b>	<b>39,422</b>	<b>100.0% (3)</b>	NA	NA	NA
Mexico	199,079	85.1%	China	11,451	29.0%	NA	NA
Brazil	4,705	2.0%	Colombia	4,389	11.1%	NA	NA
Dominican Republic	3,602	1.5%	Cuba	4,093	10.4%	NA	NA
Jamaica	2,053	0.9%	Haiti	3,909	9.9%	NA	NA
Guatemala	1,979	0.8%	Sri Lanka	2,310	5.9%	NA	NA
Peru	1,729	0.7%	Albania	981	2.5%	NA	NA
Canada	1,478	0.6%	Iraq	969	2.5%	NA	NA
Colombia	1,469	0.6%	Guyana	711	1.8%	NA	NA
Ecuador	1,414	0.6%	El Salvador	587	1.5%	NA	NA
El Salvador	1,383	0.6%	India	557	1.4%	NA	NA
Other countries	15,130	6.5%	Other countries	9,465	24.0%	NA	NA

Source (s): Immigration and Customs Enforcement-Office of Detention and Removal Operations (ICE-DRO), U.S. Customs and Border Protection (CBP), and Office of International Affairs- Asylum Division, U.S. Citizenship and Immigration Services (USCIS) at the U.S. Department of Homeland Security. Also, the Executive Office for Immigration Review (EOIR), U.S. Department of Justice

- (1) Figures do not include aliens referred for credible fear interviews or legal status cases.
- (2) Breakdown of withdrawals not available. Includes only withdrawals of aliens subject to expedited removal.
- (3) Figures for number of credible fear cases vary from ICE-DRO (36,566 & 36,721), EOIR (37,430), and CIS (39,422).
- (4) Figures include number of cases at airports primarily, though some cases also come from seaports.
- (5) Figures includes number of cases at land and seaports primarily, though some cases also come from airports.

**DHS Table 1(b): Aliens Expeditiously Removed, Referred for Credible Fear Interview, or Withdrawn at All Ports of Entry (Air, Land, Sea & Other), FY 2000-03**

	Expeditiously removed (1)		Referred for credible fear interview		Withdrawn (2)		Total
	Number	Percent	Number	Percent	Number	Percent	
<b>All</b>	<b>233,503</b>	<b>100.0%</b>	<b>36,566</b>	<b>100.0% (3)</b>	<b>542,255</b>	<b>100.0%</b>	<b>812,324</b>
Airports	37,296	16.0%	31,506	86.2% (4)	26,309	4.9%	95,111
Land/Sea/Other	196,207	84.0%	5,060	13.8% (5)	515,946	95.1%	717,213
<b>Gender - All</b>	<b>233,497</b>	<b>100.0%</b>	<b>37,430</b>	<b>100.0% (3)</b>	NA	NA	NA
Female	100,353	43.0%	13,394	35.8%	NA	NA	NA
Male	133,144	57.0%	24,036	64.2%	NA	NA	NA
<b>Age - All</b>	<b>233,485</b>	<b>100.0%</b>	<b>37,430</b>	<b>100.0% (3)</b>	NA	NA	NA
0-17	1,488	0.6%	2,450	6.5%	NA	NA	NA
18-19	21,255	9.1%	3,320	8.9%	NA	NA	NA
20-29	119,623	51.2%	17,458	46.6%	NA	NA	NA
30-39	59,004	25.3%	10,168	27.2%	NA	NA	NA
40-49	22,575	9.7%	3,068	8.2%	NA	NA	NA
50+	9,477	4.1%	940	2.5%	NA	NA	NA
unknown	63	0.0%	26	0.1%	NA	NA	NA
<b>Country of citizenship</b>							
<b>All</b>	<b>234,021</b>	<b>100.0%</b>	<b>36,721</b>	<b>100.0% (3)</b>	NA	NA	NA
Mexico	199,079	85.1%	China	11,133	30.3%	NA	NA
Brazil	4,705	2.0%	Colombia	4,026	11.0%	NA	NA
Dominican Republic	3,602	1.5%	Cuba	3,978	10.8%	NA	NA
Jamaica	2,053	0.9%	Haiti	3,848	10.5%	NA	NA
Guatemala	1,979	0.8%	Sri Lanka	2,244	6.1%	NA	NA
Peru	1,729	0.7%	Iraq	963	2.6%	NA	NA
Canada	1,478	0.6%	Albania	939	2.6%	NA	NA
Colombia	1,469	0.6%	Guyana	711	1.9%	NA	NA
Ecuador	1,414	0.6%	India	513	1.4%	NA	NA
El Salvador	1,383	0.6%	El Salvador	473	1.3%	NA	NA
Other countries	15,130	6.5%	Other countries	7,893	21.5%	NA	NA

Source (s): Immigration and Customs Enforcement-Office of Detention and Removal Operations (ICE-DRO), U.S. Customs and Border Protection (CBP), and Office of International Affairs- Asylum Division, U.S. Citizenship and Immigration Services (USCIS) at the U.S. Department of Homeland Security. Also, the Executive Office for Immigration Review (EOIR), U.S. Department of Justice

- (1) Figures do not include aliens referred for credible fear interviews or legal status cases.
- (2) Breakdown of withdrawals not available. Includes only withdrawals of aliens subject to expedited removal.
- (3) Figures for number of credible fear cases vary from ICE-DRO (36,566 & 36,721), EOIR (37,430), and CIS (39,422).
- (4) Figures include number of cases at airports primarily, though some cases also come from seaports.
- (5) Figures includes number of cases at land and seaports primarily, though some cases also come from airports.

**DHS Table 2: Aliens Expeditiously Removed, Referred for Credible Fear Interview, or Withdrew at Ports of Entry (Air, Land, Sea & Other) by Year**

	<b>Expeditiously removed (1)</b>	<b>Referred for credible fear interview</b>	<b>Withdrew (2)</b>	<b>Total</b>
<b>Airports - All</b>	<b>37,296</b>	<b>31,506</b>	<b>26,309</b>	<b>95,111</b>
FY 2000	9,990	8,303	6,783	25,076
FY 2001	10,329	10,995	5,938	27,262
FY 2002	8,966	7,670	6,493	23,129
FY 2003	8,011	4,538	7,095	19,644
<b>Land/Sea/Other - All</b>	<b>196,207</b>	<b>5,030</b>	<b>515,946</b>	<b>717,183</b>
FY 2000	76,263	1,363	117,946	195,572
FY 2001	58,726	1,325	128,085	188,136
FY 2002	25,893	1,504	148,682	176,079
FY 2003	35,325	838	121,233	157,396

Source(s): Immigration and Customs Enforcement-Office of Detention and Removal Operations (ICE-DRO), U.S. Customs and Border Protection (CBP), and Office of International Affairs- Asylum Division, U.S. Citizenship and Immigration Services (USCIS) at the U.S. Department of Homeland Security

(1) Figures do not include aliens referred for credible fear interviews or legal status cases.

(2) Includes only withdrawals of aliens subject to expedited removal.

**DHS Table 3: Aliens Exeditiously Removed, Referred for Credible Fear Interview or Withdrew at the Nation's Airports, FY 2000-03**

	Exeditiously removed (1)		Referred for credible fear interview		Withdrew		Total			
	Number	Percent	Number	Percent	Number	Percent	Number			
<b>All Airports</b>	<b>37,296</b>	<b>100.0%</b>	<b>31,506</b>	<b>100.0%</b>	<b>26,309</b>	<b>100.0%</b>	<b>95,111</b>			
<b>Airports</b>										
New York (JFK)	10,983	33.2%	Miami	12,953	41.1%	Atlanta	6,060	23.0%	Miami	18,801
Miami	5,848	17.7%	Los Angeles	6,565	20.8%	New York (JFK)	3,187	12.1%	New York (JFK)	16,186
Los Angeles	4,140	12.5%	Chicago	2,269	7.2%	Newark	2,929	11.1%	Los Angeles	13,628
Atlanta	2,871	8.7%	New York (JFK)	2,016	6.4%	Los Angeles	2,923	11.1%	Atlanta	9,441
Chicago	2,731	8.3%	San Francisco	814	2.6%	Houston	2,884	11.0%	Chicago	6,438
Houston	2,617	7.9%	Newark	701	2.2%	Chicago	1,438	5.5%	Newark	5,828
Newark	2,198	6.6%	Atlanta	510	1.6%	San Francisco	1,018	3.9%	Houston	5,753
Dallas	1,714	5.2%	Washington	269	0.9%	Washington	888	3.4%	San Francisco	2,663
San Francisco	831	2.5%	Houston	252	0.8%	Seattle	771	2.9%	Dallas	2,428
Washington	543	1.6%	Dallas	74	0.2%	Dallas	640	2.4%	Washington	1,700
Other airports	2,820	8.5%	Other airports	5,083	16.1%	Other airports	3,571	13.6%	Seattle	771
								Other airports	11,474	

Source: Office of Detention and Removal Operations - Immigration and Customs Enforcement at U.S. Department of Homeland Security

(1) Figures do not include aliens referred for credible fear interviews or legal status cases.

**DHS Table 4: Aliens Referred for Credible Fear Interviews  
at Nation's Airports by Year**

	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>Total</b>
<b>All</b>	<b>8,303</b>	<b>10,995</b>	<b>7,670</b>	<b>4,538</b>	<b>31,506</b>
<b>Airports</b>					
Miami	2,251	5,059	3,335	2,308	12,953
Los Angeles	2,502	2,704	1,155	204	6,565
Chicago	842	742	513	172	2,269
New York (JFK)	733	749	323	211	2,016
San Francisco	177	321	156	160	814
Newark	280	221	92	108	701
Atlanta	120	194	106	90	510
Washington	112	65	55	37	269
Houston	54	75	59	64	252
Dallas	19	20	26	9	74
Other	1,213	845	1,850	1,175	5,083

Source: Office of Detention and Removal Operations - Immigration and Customs Enforcement  
at U.S. Department of Homeland Security

DHS Table 5.0: Aliens Expedientiously Removed, Referred for Credible Fear Interview or Withdrawn at Atlanta, FY 2000-2003

	POE Total, FY 2000-2003		9,442													
	Expedientiously removed (1)				Referred for credible fear interview				Withdrawn (2)				Total			
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01		FY 02	FY 03	
<b>All</b>	<b>836</b>	<b>819</b>	<b>668</b>	<b>549</b>	<b>2,872</b>	<b>120</b>	<b>194</b>	<b>106</b>	<b>90</b>	<b>510</b>	<b>1,028</b>	<b>1,226</b>	<b>1,698</b>	<b>2,108</b>	<b>6,060</b>	
<b>Country of citizenship</b>																
Mexico	362	222	115	92	791	8	11	41	34	94	NA	NA	NA	NA	NA	
Brazil	106	109	124	78	417	30	53	-	-	83	NA	NA	NA	NA	NA	
Peru	57	88	83	23	251	4	24	22	7	57	NA	NA	NA	NA	NA	
Guatemala	43	40	52	73	208	7	13	5	5	30	NA	NA	NA	NA	NA	
El Salvador	41	58	44	47	190	5	4	-	4	13	NA	NA	NA	NA	NA	
Costa Rica	34	30	30	41	135	13	-	-	-	13	NA	NA	NA	NA	NA	
Colombia	24	50	33	26	133	12	-	-	-	12	NA	NA	NA	NA	NA	
Jamaica	11	16	22	26	75	-	-	8	*	*	NA	NA	NA	NA	NA	
Panama	14	20	13	7	54	*	8	-	-	*	NA	NA	NA	NA	NA	
Venezuela	9	17	14	7	47	-	10	-	-	10	NA	NA	NA	NA	NA	
Other countries	135	169	138	129	571	41	71	30	40	182	NA	NA	NA	NA	NA	

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

DHS Table 5.1: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrawn at Chicago, FY 2000-2003

Country of citizenship	Expeditiously removed (1)			Referred for credible fear interview			Withdrawn			Total					
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03						
	865	816	588	464	2,733	842	742	513	172		2,269	217	329	423	469
<b>All</b>															
<b>Mexico</b>	527	455	324	237	1,543	581	457	392	153	1,583	NA	NA	NA	NA	NA
Poland	72	59	62	24	217	120	151	51	-	322	NA	NA	NA	NA	NA
Brazil	9	19	14	37	79	47	31	23	7	108	NA	NA	NA	NA	NA
Pakistan	13	36	10	18	77	25	46	4	-	75	NA	NA	NA	NA	NA
India	30	14	17	11	72	15	*	*	4	*	NA	NA	NA	NA	NA
Guatemala	25	28	5	4	62	6	14	-	-	20	NA	NA	NA	NA	NA
Czechoslovakia, former	13	21	9	8	51	8	7	-	-	15	NA	NA	NA	NA	NA
Jamaica	16	25	7	*	*	6	6	-	-	12	NA	NA	NA	NA	NA
Costa Rica	*	25	*	*	*	8	*	-	-	*	NA	NA	NA	NA	NA
Lithuania	*	*	12	9	*	-	*	6	-	*	NA	NA	NA	NA	NA
Other countries	160	134	128	116	632	26	30	37	8	134	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

DHS Table 5.2: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrew at Dallas, FY 2000-2003

Country of citizenship	Expeditiously removed (1)			Referred for credible fear interview						Withdrew			Total		
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01		FY 02	FY 03
	585	477	393	267	1,722	19	20	26	9	74	174	178		192	96
<b>All</b>															
<b>Mexico</b>	394	254	180	98	926			11	-	11	NA	NA	NA	NA	NA
Peru	28	53	38	42	161	8	-	-	-	8	NA	NA	NA	NA	NA
Guatemala	24	14	36	33	107	-	-	5	-	5	NA	NA	NA	NA	NA
El Salvador	14	26	30	10	80	-	5	-	-	5	NA	NA	NA	NA	NA
Brazil	11	11	19	21	62	-	-	-	*	*	NA	NA	NA	NA	NA
Costa Rica	18	8	11	7	44	-	-	-	-	-	NA	NA	NA	NA	NA
Chile	8	8	17	8	41						NA	NA	NA	NA	NA
Belize	5	13	5	5	28						NA	NA	NA	NA	NA
India	9	4	4	*	NA						NA	NA	NA	NA	NA
Venezuela	6	8	5	-	19						NA	NA	NA	NA	NA
Other countries	68	78	48	43	254	11	15	10	9	45	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

DHS Table 5.3: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrawn at Houston, FY 2000-2003

	Expeditiously removed (1)			Referred for credible fear interview			Withdrawn			
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total
<b>POE Total, FY 2000-2003</b>	<b>5,757</b>									
<b>All</b>	<b>825</b>	<b>841</b>	<b>548</b>	<b>407</b>	<b>2,621</b>	<b>54</b>	<b>75</b>	<b>59</b>	<b>64</b>	<b>252</b>
						<b>1,284</b>	<b>838</b>	<b>485</b>	<b>277</b>	<b>2,884</b>
<b>Country of citizenship</b>										
Mexico	368	317	179	130	994	11	19	13	9	52
Guatemala	95	108	75	20	298	8	6	-	*	*
El Salvador	77	80	51	37	245	-	13	*	-	*
Ecuador	71	89	31	23	214	-	-	*	12	*
Peru	28	39	50	31	148	9	-	4	-	13
Colombia	54	38	23	16	131	6	4	*	-	*
Honduras	31	36	26	18	111	-	-	-	9	9
Costa Rica	18	12	10	23	63	-	*	4	-	*
Brazil	8	36	5	6	55	4	*	-	-	*
Belize	7	12	11	7	37	-	*	-	-	*
Other countries	68	74	87	96	325	16	33	38	34	178

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.



DHS Table 5.4(b): Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrew at Los Angeles, FY 2000-2003

POE Total, FY 2000-2003 14,233

	Expeditiously removed (1)			Referred for credible fear interview			Withdrew								
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total					
<b>All</b>	<b>1,369</b>	<b>1,392</b>	<b>1,138</b>	<b>846</b>	<b>4,745</b>	<b>2,502</b>	<b>2,704</b>	<b>1,155</b>	<b>204</b>	<b>6,565</b>	<b>660</b>	<b>493</b>	<b>934</b>	<b>836</b>	<b>2,923</b>
<b>Country of citizenship</b>															
Mexico	456	311	257	212	1,236	1,868	1,862	806	66	4,602	NA	NA	NA	NA	NA
China, People's Republic	163	361	166	24	714	252	239	49	16	556	NA	NA	NA	NA	NA
Guatemala	116	95	55	38	304	*	9	72	51	*	NA	NA	NA	NA	NA
Philippines	57	39	126	80	302	45	63	*	-	*	NA	NA	NA	NA	NA
Brazil	99	114	15	22	250	16	21	15	*	52	NA	NA	NA	NA	NA
Indonesia	66	78	51	37	232	19	26	*	5	*	NA	NA	NA	NA	NA
El Salvador	62	38	43	57	200	11	31	7	*	*	NA	NA	NA	NA	NA
Peru	39	44	84	31	198	9	23	5	*	*	NA	NA	NA	NA	NA
India	43	20	35	37	135	6	21	6	-	33	NA	NA	NA	NA	NA
Korea (South)	-	24	28	29	81	5	23	-	-	28	NA	NA	NA	NA	NA
Other countries	268	268	278	279	1,093	271	386	195	66	1,294	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for Other countries.

DHS Table 5.5: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrawn at Miami, FY 2000-2003

Country of citizenship	FY 2000		FY 2001		FY 2002		FY 2003		Total	Referred for credible fear interview			Withdrawn			Total												
	19,262		1,569		1,549		1,730			5,849		2,251			5,059			3,335			2,308			12,953				
	FY 00	FY 01	FY 01	FY 02	FY 02	FY 03	FY 03	Total		FY 00	FY 01	FY 02	FY 03	Total	FY 00		FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02
<b>All</b>	1,001	1,569	1,549	1,730	5,849	2,251	5,059	3,335	2,308	12,953	363	66	23	8	4													
<b>Country of citizenship</b>																												
Brazil	143	261	595	679	1,678	Colombia	191	1,897	974	391	NA	NA	NA	NA														
Colombia	86	136	124	139	485	Haiti	831	969	711	747	NA	NA	NA	NA														
Peru	82	164	127	112	485	China, People's Republic	553	733	572	360	NA	NA	NA	NA														
Dominican Republic	61	255	45	28	389	Guyana	19	141	252	234	NA	NA	NA	NA														
Bolivia	21	105	128	97	351	Albania	25	113	150	57	NA	NA	NA	NA														
Ecuador	57	115	71	61	304	Turkey	75	153	27	21	NA	NA	NA	NA														
Jamaica	34	73	55	73	235	Ecuador	49	97	86	39	NA	NA	NA	NA														
Guatemala	26	43	59	51	179	El Salvador	4	112	106	34	NA	NA	NA	NA														
Venezuela	19	38	45	73	175	India	15	166	49	17	NA	NA	NA	NA														
Nicaragua	9	25	19	41	94	Sri Lanka	114	99	6	13	NA	NA	NA	NA														
Costa Rica	4	10	23	39	76	Georgia	-	-	32	191	NA	NA	NA	NA														
Other countries	459	344	258	337	1,398	Other countries	375	579	370	204	NA	NA	NA	NA														

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

**DHS Table 5.6: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrew at New York, FY 2000-2003**

POE Total, FY 2000-2003	Expeditiously removed (1)			Referred for credible fear interview						Withdrew					
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total
16,189	2,787	2,917	2,927	2,355	10,986	733	749	323	211	2,016	652	567	920	1,048	3,187
<b>Country of citizenship</b>															
Dominican Republic	374	640	698	302	2,014	151	114	16	9	290	NA	NA	NA	NA	NA
Brazil	336	360	292	372	1,360	89	40	23	19	171	NA	NA	NA	NA	NA
Jamaica	222	282	225	204	933	51	64	21	11	147	NA	NA	NA	NA	NA
Trinidad & Tobago	87	124	147	137	495	16	37	39	6	98	NA	NA	NA	NA	NA
Ecuador	191	103	57	35	386	7	49	34	7	97	NA	NA	NA	NA	NA
India	103	107	73	91	374	50	21	8	10	89	NA	NA	NA	NA	NA
Poland	80	87	83	63	313	20	21	12	19	72	NA	NA	NA	NA	NA
Colombia	96	85	51	37	269	39	19	5	5	68	NA	NA	NA	NA	NA
Ghana	94	54	44	69	261	19	40	4	-	63	NA	NA	NA	NA	NA
Pakistan	49	51	74	68	242	18	22	7	10	57	NA	NA	NA	NA	NA
Other countries	1,155	1,024	1,183	977	4,339	273	322	154	115	864	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

DHS Table 5.7: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrew at Newark, FY 2000-2003

	Expeditiously removed (1)			Referred for credible fear interview			Withdrew			Total					
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03						
<b>POE Total, FY 2000-2003</b>	<b>5,838</b>														
<b>All</b>	<b>658</b>	<b>674</b>	<b>466</b>	<b>410</b>	<b>2,208</b>	<b>280</b>	<b>221</b>	<b>92</b>	<b>108</b>	<b>701</b>	<b>983</b>	<b>537</b>	<b>600</b>	<b>809</b>	<b>2,929</b>
<b>Country of citizenship</b>															
Dominican Republic	64	157	128	107	456	60	57	18	*	NA	NA	NA	NA	NA	NA
Ecuador	121	113	51	41	326	25	23	11	18	77	NA	NA	NA	NA	NA
Jamaica	57	45	50	28	180	31	18	-	-	49	NA	NA	NA	NA	NA
Colombia	86	44	19	21	170	19	11	-	7	37	NA	NA	NA	NA	NA
Costa Rica	45	41	24	48	158	13	-	*	*	*	NA	NA	NA	NA	NA
Brazil	45	57	24	8	134	11	7	-	-	18	NA	NA	NA	NA	NA
Peru	38	31	28	19	116	12	5	-	-	17	NA	NA	NA	NA	NA
India	23	12	6	40	81	-	8	-	8	16	NA	NA	NA	NA	NA
Mexico	18	19	19	6	62	5	5	5	5	15	NA	NA	NA	NA	NA
Guatemala	10	25	8	5	48	11	4	-	-	15	NA	NA	NA	NA	NA
Other countries	151	130	109	87	477	93	83	58	75	457	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

DHS Table 5.8: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrew at San Francisco, FY 2000-2003

	POE Total, FY 2000-2003		2,666		Expedientiously removed (1)						Referred for credible fear interview						Withdrew		Total	
	FY 00		FY 01		FY 02		FY 03		Total		FY 00		FY 01		FY 02		FY 03			Total
	161	141	176	356	834	177	321	156	160	814	413	415	190	-	1,018					
<b>Country of citizenship</b>																				
Philippines	28	13	62	167	270	91	51	85	119	346	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Mexico	70	56	40	74	240	47	133	32	9	221	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Guatemala	6	14	8	6	34	-	10	15	12	37	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Indonesia	7	6	9	9	31	6	30	-	-	36	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
China, People's Republic	8	5	*	7	*	8	23	4	-	35	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Peru	4	*	*	13	*	*	17	-	-	*	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
India	5	*	8	5	*	-	9	4	-	*	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
El Salvador	*	6	4	4	*	-	*	-	6	*	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Mongolia	-	-	4	12	16	-	8	-	-	8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Thailand	*	*	5	5	*	-	4	*	-	*	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Other countries	33	41	36	54	243	25	36	16	14	131	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

DHS Table 5.9: Aliens Expeditiously Removed, Referred for Credible Fear Interview or Withdrawn at Washington, FY 2000-2003

POE Total, FY 2000-2003 1,700

Country of citizenship	Expeditiously removed (1)			Referred for credible fear interview			Withdrawn			Total					
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03		Total				
	75	82	94	292	543	112	65	55	37		269	191	145	155	397
El Salvador	11	16	25	34	86	18	10	15	11	54	NA	NA	NA	NA	NA
Brazil	*	*	-	53	*	10	12	5	4	31	NA	NA	NA	NA	NA
Guatemala	8	10	11	24	53	19	*	4	-	*	NA	NA	NA	NA	NA
Ghana	*	5	5	19	*	6	5	-	-	11	NA	NA	NA	NA	NA
Costa Rica	18	5	*	*	*	-	-	8	-	8	NA	NA	NA	NA	NA
India	*	5	*	10	*	4	4	-	-	8	NA	NA	NA	NA	NA
Mexico	5	4	*	6	*	-	4	-	*	*	NA	NA	NA	NA	NA
Pakistan	-	*	*	13	*	6	-	-	-	6	NA	NA	NA	NA	NA
Czechoslovakia, former	-	*	4	8	*	5	-	-	-	5	NA	NA	NA	NA	NA
Nigeria	-	-	*	12	*	5	-	-	-	5	NA	NA	NA	NA	NA
Other countries	33	37	49	113	404	39	30	23	22	141	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

**DHS Table 6: Aliens Expeditiously Removed or Referred for Credible Fear Interview at Southern Land Ports of Entry, FY 2000-03**

	Expeditiously removed		Referred for credible fear interview		Withdrawn	
	Number	Percent	Number	Percent	Number	Percent
<b>All Southern Land POEs</b>	<b>175,981</b>	<b>100.0%</b>	<b>4,479</b>	<b>100.0%</b>	<b>293,820</b>	<b>100.0%</b>
<b>Ports of entry</b>						
San Ysidro, CA	85,936	48.8%	2,976	66.4%	92,838	31.6%
					San Ysidro, CA	
					Juarez-Lincoln	
Calexico, CA	23,879	13.6%	1,016	22.7%	Bridge, TX	47,738
Nogales, AZ	17,883	10.2%	147	3.3%	Laredo, TX	40,715
Paso Del Norte Bridge, TX	7,751	4.4%	73	1.6%	Paso del Norte, TX	22,846
Douglas, AZ	6,510	3.7%	66	1.5%	Del Rio, TX	22,420
Other	34,022	19.3%	201	4.5%	Other	67,263
<b>Country of citizenship</b>						
Mexico	144,113	81.9%	1,261	28.2%	NA	NA
Guatemala	436	0.2%	770	17.2%	NA	NA
Brazil	325	0.2%	376	8.4%	NA	NA
Honduras	287	0.2%	332	7.4%	NA	NA
El Salvador	255	0.1%	151	3.4%	NA	NA
Korea	123	0.1%	149	3.3%	NA	NA
Belize	76	0.0%	121	2.7%	NA	NA
Dominican Republic	75	0.0%	108	2.4%	NA	NA
Jamaica	70	0.0%	61	1.4%	NA	NA
Colombia	59	0.0%	56	1.3%	NA	NA
Other countries	30,162	17.1%	1,094	24.4%	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security





**DHS Table 8.0: Aliens Expeditiously Removed or Referred for Credible Fear Interview  
at San Ysidro, FY 2000-2003**

POE Total, FY 21 182,285

	Expeditiously removed (1)			Referred for credible fear interview			Withdrawn (2)								
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total					
<b>All</b>	<b>37,298</b>	<b>26,506</b>	<b>7,180</b>	<b>15,487</b>	<b>86,471</b>	<b>874</b>	<b>997</b>	<b>734</b>	<b>371</b>	<b>2,976</b>	<b>28,349</b>	<b>29,465</b>	<b>19,921</b>	<b>15,103</b>	<b>92,838</b>
<b>Country of citizenship</b>															
Mexico	36,909	26,067	6,898	15,007	84,881										
Guatemala	77	109	37	78	301	232	156	327	47	762	NA	NA	NA	NA	NA
Brazil	18	73	77	90	258	69	99	90	84	342	NA	NA	NA	NA	NA
El Salvador	58	41	19	58	176	140	143	19	13	315	NA	NA	NA	NA	NA
Korea	6	27	16	61	110	19	45	63	69	196	NA	NA	NA	NA	NA
Honduras	12	24	10	42	88	60	46	33	9	148	NA	NA	NA	NA	NA
Belize	15	19	23	15	72	43	52	16	23	134	NA	NA	NA	NA	NA
Jamaica	41	13	9	*	*	17	49	24	18	108	NA	NA	NA	NA	NA
Peru	5	12	9	10	36	38	42	15	13	108	NA	NA	NA	NA	NA
Colombia	13	9	5	7	34	17	17	6	12	52	NA	NA	NA	NA	NA
Other countries	144	112	77	119	452	226	327	132	77	762	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Othe**

**DHS Table 8.1: Aliens Expeditiously Removed or Referred for Credible Fear Interview at Hidalgo, FY 2000-2003**

	POE Total, FY 2000-;		Expeditionarily removed (1)						Referred for credible fear interview			Withdrawn (2)			Total	
	FY 00	FY 01	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02		FY 03
<b>All</b>	<b>2,425</b>	<b>1,849</b>	<b>1,849</b>	<b>710</b>	<b>833</b>	<b>5,817</b>	<b>185</b>	<b>77</b>	<b>557</b>	<b>197</b>	<b>1,016</b>	<b>3,017</b>	<b>3,041</b>	<b>2,499</b>	<b>2,663</b>	<b>11,220</b>
<b>Country of citizenship</b>																
Mexico	2,357	1,833	1,833	666	792	5,648	Cuba	178	68	554	189	989	NA	NA	NA	NA
Honduras	15	*	*	*	6	*	Honduras	-	-	*	*	*	NA	NA	NA	NA
Guatemala	11	4	4	*	4	*							NA	NA	NA	NA
El Salvador	7	*	*	*	4	*							NA	NA	NA	NA
Brazil	*	*	*	*	5	*							NA	NA	NA	NA
Colombia	*	*	*	*	-	*							NA	NA	NA	NA
Belize	4	-	*	*	*	*							NA	NA	NA	NA
Costa Rica	*	*	*	*	-	*							NA	NA	NA	NA
Dominican Republic	*	*	*	*	-	*							NA	NA	NA	NA
Poland	*	-	*	*	-	*							NA	NA	NA	NA
Other countries	31	12	12	44	22	169	Other countries	7	9	3	8	27	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection at U.S. Department of Homeland Security

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other c**

**DHS Table 8.2: Aliens Expeditiously Removed or Referred for Credible Fear Interview at Calexico, FY 2000-2003**

POE Total, FY 2000 29,385

	Expeditiously removed (1)			Referred for credible fear interview			Withdrawn (2)			Total					
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03		Total				
<b>All</b>	<b>8,317</b>	<b>7,155</b>	<b>3,801</b>	<b>4,337</b>	<b>23,610</b>	<b>51</b>	<b>48</b>	<b>22</b>	<b>26</b>	<b>147</b>	<b>1,319</b>	<b>2,388</b>	<b>1,249</b>	<b>672</b>	<b>5,628</b>
<b>Country of citizenship</b>															
Mexico	8,280	7,107	3,766	4,296	23,449	*	11	10	5	*	NA	NA	NA	NA	NA
Guatemala	7	7	8	11	33	*	5	*	10	*	NA	NA	NA	NA	NA
Honduras	8	10	*	6	*	11	*	-	-	*	NA	NA	NA	NA	NA
El Salvador	*	12	4	6	*	*	9	-	-	9	NA	NA	NA	NA	NA
Brazil	*	4	5	-	*	13	-	-	-	13	NA	NA	NA	NA	NA
Korea	-	-	*	8	*	5	-	-	-	5	NA	NA	NA	NA	NA
Chile	*	5	*	*	*	-	-	4	-	4	NA	NA	NA	NA	NA
Ecuador	*	*	5	-	*	-	*	-	-	*	NA	NA	NA	NA	NA
Paraguay	-	*	*	*	*	-	*	-	-	*	NA	NA	NA	NA	NA
Peru	*	-	*	*	*	-	*	-	-	*	NA	NA	NA	NA	NA
Other countries	22	10	13	10	128	22	23	8	11	116	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

DHS Table 8.3: Aliens Expeditiously Removed or Referred for Credible Fear Interview at Champlain, FY 2000-2003

POE Total, FY 2000-20003 15,152

Country of citizenship	Expeditiously removed (1)			Referred for credible fear interview			Withdrawn (2)			Total					
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03						
<b>All</b>	<b>86</b>	<b>61</b>	<b>57</b>	<b>27</b>	<b>231</b>	<b>30</b>	<b>19</b>	<b>8</b>	<b>-</b>	<b>57</b>	<b>3,700</b>	<b>3,333</b>	<b>3,758</b>	<b>4,073</b>	<b>14,864</b>
Canada	41	21	29	12	103	16	*	5	-	*	NA	NA	NA	NA	NA
Haiti	8	4	4	*	*	-	5	-	-	5	NA	NA	NA	NA	NA
St. Vincent & the Grenadines	*	6	*	*	*	*	-	-	-	*	NA	NA	NA	NA	NA
Mexico	4	-	*	*	*	*	-	-	-	*	NA	NA	NA	NA	NA
El Salvador	*	6	-	-	*	*	-	-	-	*	NA	NA	NA	NA	NA
France	*	-	*	*	*	*	-	-	-	*	NA	NA	NA	NA	NA
Congo, Republic	*	*	*	-	*	*	-	-	-	*	NA	NA	NA	NA	NA
Jamaica	*	-	*	*	*	*	-	-	-	*	NA	NA	NA	NA	NA
Peru	*	-	*	*	*	*	-	-	-	*	NA	NA	NA	NA	NA
Costa Rica	-	-	*	*	*	*	-	-	-	*	NA	NA	NA	NA	NA
Other countries	33	24	24	15	128	14	14	3	-	52	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\*-Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**

**DHS Table 8.4: Aliens Exeditiously Removed or Referred for Credible Fear Interview at Niagra Falls, FY 2000-2003**

POE Total, FY 2000: 90,833

Country of citizenship	Exeditiously removed (1)			Referred for credible fear interview			Withdrawn (2)			Total					
	FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03						
<b>All</b>	<b>325</b>	<b>215</b>	<b>130</b>	<b>104</b>	<b>774</b>	<b>-</b>	<b>16</b>	<b>20</b>	<b>14</b>	<b>50</b>	<b>25,562</b>	<b>23,247</b>	<b>23,100</b>	<b>18,100</b>	<b>90,009</b>
Canada	115	66	50	41	272	-	7	12	*	*	NA	NA	NA	NA	NA
Pakistan	22	26	11	4	63	-	-	*	9	*	NA	NA	NA	NA	NA
India	27	7	12	5	51	-	6	-	-	6	NA	NA	NA	NA	NA
Mexico	19	18	*	4	*	-	-	-	-	-	NA	NA	NA	NA	NA
Malaysia	4	11	11	*	*	-	-	-	-	-	NA	NA	NA	NA	NA
Guyana	18	*	*	*	*	-	-	-	-	-	NA	NA	NA	NA	NA
Jamaica	10	4	*	*	*	-	-	-	-	-	NA	NA	NA	NA	NA
Korea	14	*	*	*	*	-	-	-	-	-	NA	NA	NA	NA	NA
Israel	*	7	*	*	*	-	-	-	-	-	NA	NA	NA	NA	NA
Philippines	5	*	*	8	*	-	-	-	-	-	NA	NA	NA	NA	NA
Other countries	91	76	46	42	388	-	3	8	5	44	NA	NA	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Other countries**.

**DHS Table 8.5: Aliens Expeditiously Removed or Referred for Credible Fear Interview at Buffalo, FY 2000-2003**

POE Total, FY 2000-20003	97	Expeditiously removed (1)						Referred for credible fear interview						Total
		FY 00	FY 01	FY 02	FY 03	Total	FY 00	FY 01	FY 02	FY 03	Total			
<b>All</b>	<b>32</b>	<b>22</b>	<b>8</b>	<b>5</b>	<b>67</b>	<b>3</b>	<b>16</b>	<b>5</b>	<b>6</b>	<b>30</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Country of citizenship</b>														
Canada	17	7	5	*	*		7			7	NA	NA	NA	NA
Jamaica	*	*	*	-	*	Cuba					NA	NA	NA	NA
Trinidad & Tobago	*	*	*	-	*						NA	NA	NA	NA
India	*	-	-	-	*						NA	NA	NA	NA
Australia	*	-	-	-	*						NA	NA	NA	NA
Guyana	*	-	-	-	*						NA	NA	NA	NA
Nigeria	*	-	-	-	*						NA	NA	NA	NA
Pakistan	*	-	-	-	*						NA	NA	NA	NA
Ukraine	-	*	-	-	*						NA	NA	NA	NA
Argentina	-	*	-	-	*						NA	NA	NA	NA
Other countries	15	15	3	5	67	Other countries	3	9	5	6	23	NA	NA	NA

Source: U.S. Immigration and Customs Enforcement-Office of Detention and Removal Operations, and U.S. Customs and Border Protection

(1) Figures do not include cases referred for credible fear interviews or legal status cases.

(2) Figures not available.

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been suppressed and are included in the total for **Othe**

**DHS Table 9: Countries of Citizenship for Aliens Referred for Credible Fear Claims, FY 2000-03**

	Pending Beginning	Cases Received	Credible Fear		Not Found	Dissolved	Closed Withdrawn (1)	Other	Pending End
			Found	%					
<b>Total</b>	<b>1,843</b>	<b>39,422</b>	<b>37,022</b>	<b>93.91%</b>	<b>429</b>	<b>1,741</b>	<b>150</b>	<b>543</b>	<b>1,380</b>
<b>Country of Citizenship</b>									
China	486	11,451	11,447	29.04%	54	18	12	108	298
Colombia	88	4,389	4,016	10.19%	43	299	20	11	88
Cuba	287	4,093	3,979	10.09%	*	9	-	120	270
Haiti	72	3,909	3,845	9.75%	38	28	*	17	52
Sri Lanka	140	2,310	2,341	5.94%	*	*	-	38	64
Albania	48	981	950	2.41%	*	20	-	15	41
Iraq	202	969	970	2.46%	-	*	*	*	194
Guyana	10	743	702	1.78%	10	28	*	*	8
El Salvador	42	587	451	1.14%	42	95	7	10	24
India	10	557	505	1.28%	12	32	*	8	8
Other countries	458	9,433	7,816	19.83%	230	1,212	111	216	333

Source: U.S. Department of Homeland Security, Citizenship and Immigration Services

(1) Refers to withdrawals made at the time of the Credible Fear Interview, not at the Port of Entry (POE).

\* - Total number from country is three or less. Due to privacy concerns of the individuals involved, these numbers have been hidden.

**DHS Table 10: Countries of Citizenship for Aliens Referred for Credible Fear Claims by Fiscal Year**

	Pending Beginning	Cases Received	Credible Fear		Closed			Pending End
			Found	Not Found	Dissolved	Withdrawn (1)	Other	
<b>Country of Citizenship, FY 2000</b>								
<b>All</b>	<b>402</b>	<b>10,315</b>	<b>9,285</b>	<b>150</b>	<b>373</b>	<b>19</b>	<b>144</b>	<b>746</b>
China	179	4,024	3,952	26	7	-	47	171
Haiti	27	1,064	1,045	7	3	-	10	26
Sri Lanka	58	987	985	1	-	-	15	44
Cuba	14	557	491	-	4	-	8	68
Colombia	4	342	260	9	43	3	1	30
Iraq	6	263	79	-	1	-	-	189
Albania	11	250	232	1	7	-	6	15
Ukraine	2	185	175	-	6	-	1	5
Somalia	12	166	160	-	1	-	2	15
Yugoslavia	3	151	123	-	1	-	13	17
Pakistan	5	142	106	2	20	-	4	15
Other countries	81	2,184	1,677	104	280	16	37	151
<b>Country of Citizenship, FY 2001</b>								
<b>All</b>	<b>772</b>	<b>13,140</b>	<b>12,932</b>	<b>119</b>	<b>400</b>	<b>33</b>	<b>205</b>	<b>223</b>
China	178	3,838	3,916	25	3	3	19	50
Colombia	29	2,222	2,133	6	57	4	6	45
Haiti	31	1,081	1,095	6	1	-	3	7
Sri Lanka	52	1,008	1,040	2	1	-	12	5
Cuba	71	410	377	1	1	-	94	8
Albania	16	380	372	-	8	-	2	14
India	3	314	306	2	2	-	3	4
Iraq	190	291	477	-	-	-	2	2
El Salvador	10	222	184	11	23	1	2	11
Pakistan	17	200	178	5	16	1	6	11
Other countries	175	3,174	2,854	61	288	24	56	66
<b>Country of Citizenship, FY 2002</b>								
<b>All</b>	<b>353</b>	<b>9,867</b>	<b>9,124</b>	<b>112</b>	<b>493</b>	<b>42</b>	<b>140</b>	<b>309</b>
China	86	2,403	2,407	2	3	3	34	40
Cuba	13	2,166	1,974	1	3	-	12	189
Colombia	46	1,240	1,130	23	117	4	3	9
Haiti	9	752	739	12	3	-	2	5
Iraq	5	355	356	-	-	1	2	1
Guyana	1	257	242	8	7	-	-	1
Sri Lanka	19	253	251	-	-	-	10	11
Albania	14	243	241	2	3	-	5	6
El Salvador	17	175	134	15	29	3	7	4
Armenia	1	160	151	1	-	-	1	8
Other countries	142	1,863	1,499	48	328	31	64	35
<b>Country of Citizenship, FY 2003</b>								
<b>All</b>	<b>316</b>	<b>6,100</b>	<b>5,681</b>	<b>48</b>	<b>475</b>	<b>56</b>	<b>54</b>	<b>102</b>
China	43	1,186	1,172	1	5	6	8	37
Haiti	5	1,012	966	13	21	1	2	14
Cuba	189	960	1,137	-	1	-	6	5
Colombia	9	585	493	5	82	9	1	4
Guyana	1	289	273	1	12	1	2	1
Georgia	-	205	203	-	1	-	1	-
Armenia	8	117	119	2	1	1	-	2
Albania	7	108	105	-	2	-	2	6
El Salvador	4	91	67	2	22	3	-	1
Ukraine	4	69	57	1	11	2	1	1
Other countries	46	1,478	1,089	23	317	33	31	31

Source: U.S. Department of Homeland Security, Citizenship and Immigration Services

(1) Refers to withdrawals made at the time of the Credible Fear Interview, not at the Port of Entry (POE).

**DHS Table 11: Aliens Referred for Credible Fear Interviews by Asylum Office and Year**

	Cases Received				Credible Fear				Not Found				Closed				Withdrawn (1)		Total		
	FY 00	FY 01	FY 02	FY 03	FY 00	FY 01	FY 02	FY 03	FY 00	FY 01	FY 02	FY 03	FY 00	FY 01	FY 02	FY 03	FY 00	FY 01		FY 02	FY 03
<b>Total</b>	10,315	13,140	9,867	6,100	9,285	12,932	9,124	5,681	150	119	112	48	373	400	493	475	19	33	42	56	78,764
<b>Asylum Office</b>																					
Arlington	269	395	284	202	191	303	199	136	5	-	2	1	51	87	96	62	1	2	1	1	2,288
Chicago	1,025	856	613	216	1,008	831	611	199	12	18	1	1	16	14	2	-	-	7	6	12	5,448
Houston	816	616	2,275	1,220	679	559	2,011	1,335	15	1	8	2	57	31	60	70	1	-	-	2	9,758
Los Angeles	3,717	4,048	2,203	765	3,321	4,316	2,159	693	26	39	9	2	30	40	32	55	2	7	12	13	21,488
Miami	2,585	5,217	3,177	2,658	2,495	5,185	3,105	2,524	40	27	80	23	23	7	39	72	14	2	9	20	27,302
Newark	817	982	777	603	642	818	609	425	27	23	10	17	103	121	186	147	1	3	-	1	6,312
New York	671	628	332	232	550	532	255	165	12	9	1	1	90	98	75	67	-	1	1	-	3,720
San Francisco	415	398	206	204	399	388	175	204	13	2	1	1	3	2	3	2	-	11	13	7	2,447

Source: U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services

(1) Refers to withdrawals made at the time of the Credible Fear Interview, not at the Port of Entry (POE).

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

STATISTICAL REPORT ON DETENTION, FY 2000-2003

FEBRUARY 2005

Special Tabulations Prepared with Assistance from the  
U.S. Department of Homeland Security,  
U.S. Bureau of Immigration and Customs Enforcement -  
Office of Detention and Removal Operations (ICE-DRO)

Assembled and Introduced by Cory Fleming and Fritz Scheuren  
NORC University of Chicago

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## PREFACE

The Study of Asylum Seekers in Expedited Removal (the Study) was undertaken by experts appointed by the US Commission on International Religious Freedom (the Commission) to respond to four questions posed by the International Religious Freedom Act (IRFA) of 1998. Specifically, the Study is to review whether immigration officers performing duties under section 235(b) of the Immigration and Nationality Act (INA) (8 U.S.C. 1225(b)) 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.

The Study has several components, including collection of statistics; thorough sample file review; direct observations of the removal process; surveys of Department of Homeland Security (DHS) officials and detention center personnel; as well as interviews with individuals seeking asylum.

The present report consists of a compilation of administrative data tabulated by the experts for the Study with support from the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (ICE-DRO). ICE reviewed an earlier draft of this report and provided comments that have been taken into account in the final report. The compilation and accompanying descriptive summaries were prepared under my general direction by Cory Fleming and Fritz Scheuren. Let me also take this opportunity to express my deep appreciation for the care, diligence, speed, and expertise of the ICE staff, Michael Hoefler, Teresa Logue, Susan Mathias, and particularly Elizabeth Herskovitz and John Bjerke.

Mark Hetfield  
Commission on International Religious Freedom

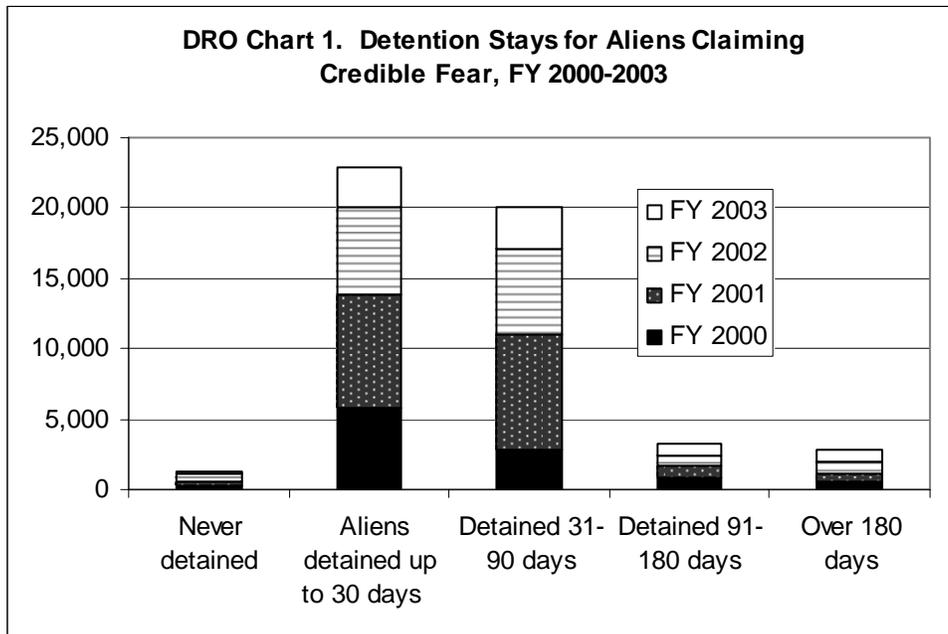
February 2005

## Special Tabulations Prepared with Assistance from the U.S. Department of Homeland Security

### DESCRIPTIVE SUMMARY

This Report consists of a compilation of special tabulations produced with assistance from the Office of Detention and Removal Operations (DRO) within the U.S. Department of Homeland Security. The tables and charts included here were designed as background for the Study of Asylum Seekers in Expedited Removal (the Study) being undertaken by experts designated by the U.S. Commission on International Religious Freedom (the Commission), pursuant to section 605 of the International Religious Freedom Act of 1998 (IRFA).

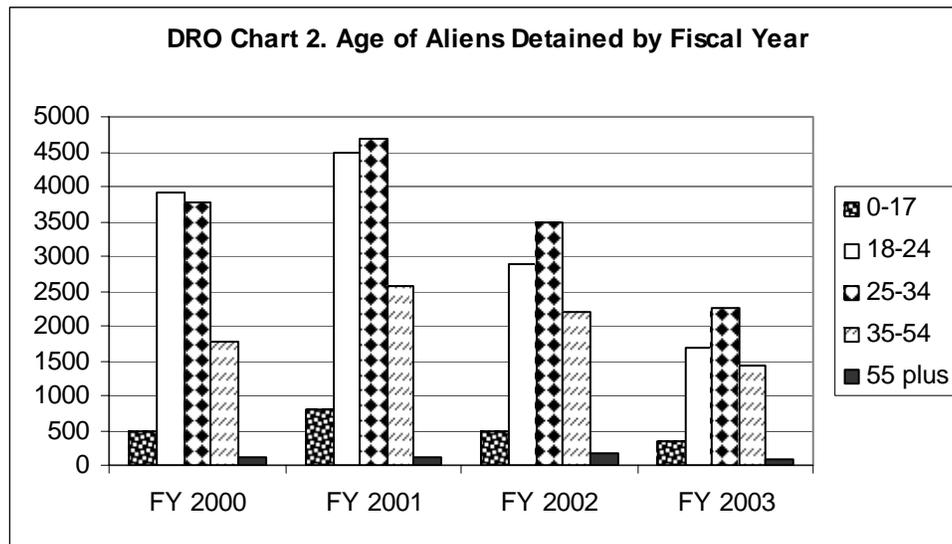
The tabulations are quite extensive, and some explanation of them is appropriate. Table 1, summarized in DRO Chart 1 (below), shows the total number of aliens in detention after being referred for credible fear interviews rose from FY 2000 to FY 2001, and then dropped in FY 2002 and again in FY 2003.



*Based on DRO Table 1.*

The DRO Table 2 series shows the total number of aliens referred for credible fear interview at a U.S. port of entry (POE) and denotes the country of citizenship. The People’s Republic of China leads the list of countries of citizenship for all four fiscal years studied. As all aliens awaiting credible fear determinations must be detained by law, the finding that between 193 and 489 aliens were “not detained” each year is likely due to DHS data entry (or other) error.

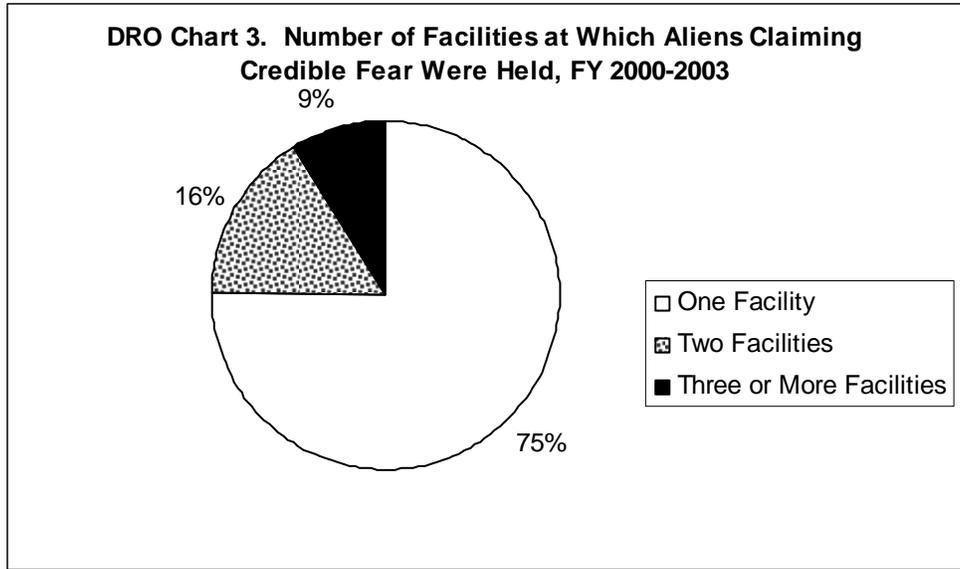
The DRO Table 3 series, as summarized by DRO Chart 2 below, examines the age and gender of aliens referred for a credible fear interview at POEs who were detained. Not unexpectedly, the largest number of aliens being detained after being referred for a credible fear interview fell into the 25-34 age cohort, followed closely by the 18-24 age cohort.



Based on DRO Tables 3.0-3.2.

The DRO Table 4 series looks at the type of detention facilities where aliens are placed, including service processing centers, federal prisons, state and local jails and contract facilities. DHS is increasingly utilizing private contract facilities to detain asylum seekers subject to Expedited Removal proceedings, and decreasing its reliance on state and local jails.

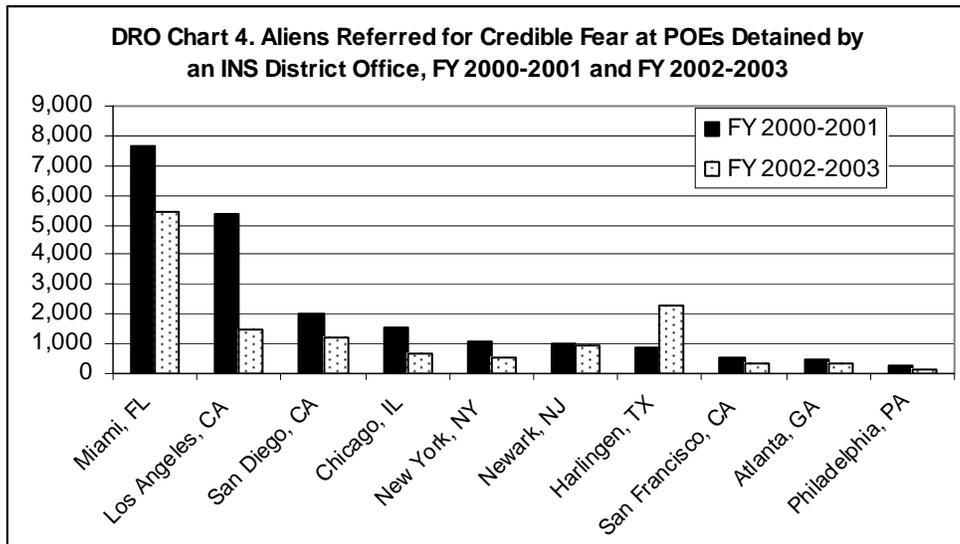
The DRO Table 5 series, summarized in DRO Chart 3 below, details the number of facilities an alien referred for a credible fear interview may stay in during the asylum process. Over the course of four years (FY 2000-2003), the vast majority of detainees stayed in only facility; however, a significant number (about 9 percent) were held in three or more facilities.



*Based on DRO Tables 5.0-5.3.*

The DRO Table 6 series shows the length of detention stay for aliens referred for a credible fear interview. While most detainees are held less than 90 days, the average length of stay is considerable. In FY 2003, it was over two months (64 days) overall.

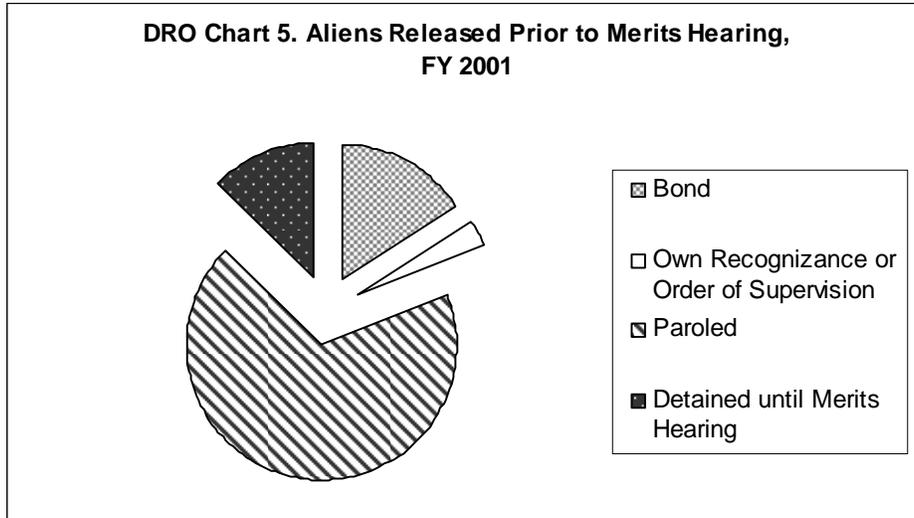
The DRO Table 7 series, as illustrated by DRO Chart 4 below, demonstrates that all major DHS Districts - except Harlingen, Texas - detained fewer aliens referred for credible fear in FY 2003 than in FY 2001. Los Angeles stands out, where the number of asylum seekers detained declined by more than 90 percent between FY 2001 and FY 2003.



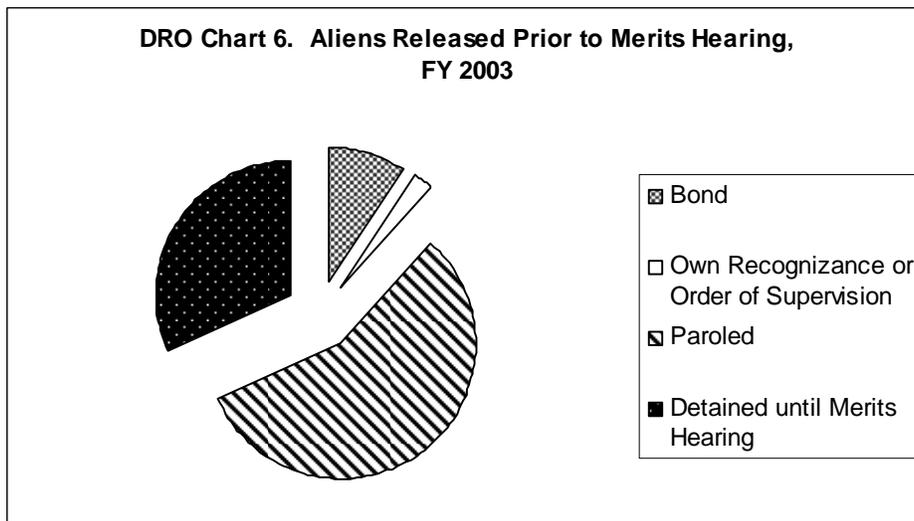
*Based on DRO Tables 7.0-7.3.*

The DRO Table 7 series, as illustrated by DRO Charts 4, 5, 6 and 7, further examines the type and rate of release for aliens referred for a credible fear determination. In the aggregate

over FY 2000-2003, the INS District Offices in Miami and Los Angeles have the highest caseloads of aliens referred for credible fear who are detained. Of those POEs with the heaviest volume of credible fear referrals, Harlingen, Texas was the only site with an increase in comparing pre- and post- 9/11 case loads.



*Based on DRO Tables 8.0-8.3.*



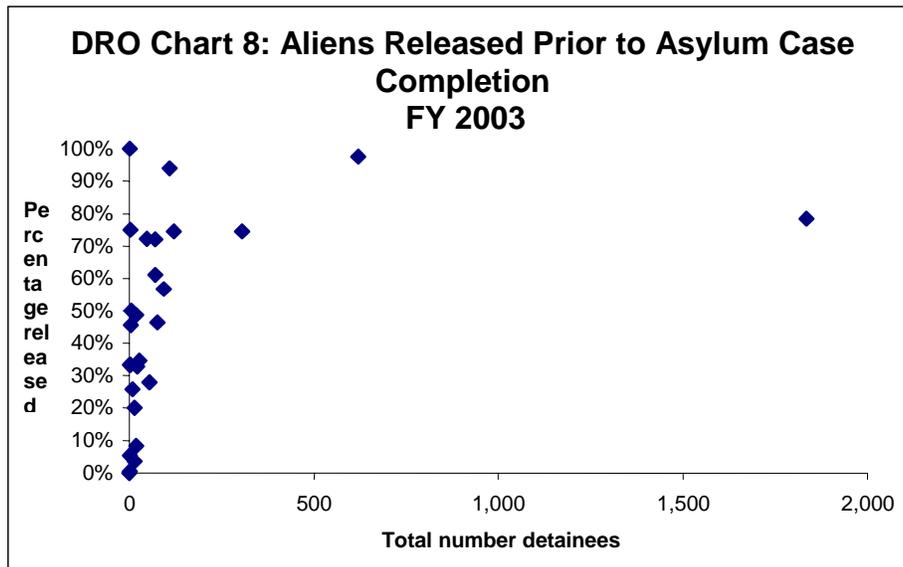
*Based on DRO Tables 8.0-8.3.*

Most interestingly, DRO Chart 7 shows the significant disparity among INS districts regarding the release of asylum seekers subject to Expedited Removal. In FY 2001, while 86 percent of aliens were released from detention prior to their asylum hearing, two districts, Harlingen and Los Angeles, released 98 percent of asylum seekers, while Honolulu, Newark and Houston released fewer than 20 percent. After 9/11, however, the national release rate dropped by 27 percent, with only 62.5 percent of asylum seekers released prior to their asylum hearings in FY 2003. That year, Harlingen was still releasing almost 98 percent of asylum seekers prior to hearing, but Los Angeles was releasing only 30 percent. New Jersey released even fewer asylum seekers than before (less than 4 percent). New Orleans released the smallest percentage of asylum seekers of the major districts, releasing only 0.5 percent of asylum seekers from detention (down from 71.1 percent in FY 2001). DRO Chart 8 shows the variation in these release rates for FY 2003.

**DRO Chart 7. Aliens Released Prior to Immigration Judge's Final Decision on Asylum Claim  
Comparison of FY 2001 to FY 2003**

INS District Office	FY 2001			FY 2003		
	Released *	Held *	%	Released	Held	%
Miami, FL	4,966	156	97.0%	1,835	502	78.5%
Los Angeles, CA	2,722	56	98.0%	76	179	29.8%
San Diego, CA	969	73	93.0%	305	98	75.7%
Chicago, IL	659	35	95.0%	120	28	81.1%
Harlingen, TX	293	6	98.0%	620	15	97.6%
San Francisco, CA	264	58	82.0%	93	67	58.1%
Philadelphia, PA	192	94	67.1%	71	44	61.7%
New York, NY	149	397	27.3%	18	197	8.4%
Atlanta, GA	125	112	52.7%	55	139	28.4%
Newark, NJ	77	397	16.2%	14	377	3.6%
Washington, DC	58	36	61.7%	21	42	33.3%
Boston, MA	58	15	79.5%	3	6	33.3%
Detroit, MI	50	15	76.9%	6	6	50.0%
El Paso, TX	39	37	51.3%	47	16	74.6%
New Orleans, LA	32	13	71.1%	1	190	0.5%
San Juan, PR	30	8	78.9%	70	27	72.2%
St. Paul, MN	19	22	46.3%	0	2	0.0%
Buffalo, NY	17	24	41.5%	18	15	54.5%
Baltimore, MD	14	22	38.9%	2	34	5.6%
Phoenix, AZ	13	42	23.6%	27	48	36.0%
Houston, TX	10	58	14.7%	14	54	20.6%
Seattle, WA	9	30	23.1%	9	22	29.0%
Dallas, TX	8	22	26.7%	5	6	45.5%
Portland, OR	5	2	71.4%	2	0	100.0%
San Antonio, TX	3	1	75.0%	109	7	94.0%
Honolulu, HI	2	9	18.2%	1	2	33.3%
Denver, CO	2	3	40.0%	3	1	75.0%
Portland, ME	2	3	40.0%	NA	NA	NA
Cleveland, OH	1	0	100.0%	0	1	0.0%
Helena, MT	0	2	0.0%	0	1	0.0%
Omaha, NE	0	0	NA	NA	NA	NA
Kansas City, MO	NA	NA	NA	0	4	0.0%
<b>TOTAL</b>	<b>10,788</b>	<b>1,748</b>	<b>86.1%</b>	<b>3,545</b>	<b>2,130</b>	<b>62.5%</b>

\* **Released** is defined as those aliens released on bond (BOND), own recognizance (OR), or paroled (PARO). **Held** is defined as aliens Not Released/Unknown, Deported (DEP), Voluntary Departure (VD), and Case Terminated (TERM). The percentage was calculated using  $N = \text{Released}$  and  $D = \text{Released} + \text{Held}$ . Aliens who withdraw their application for admission or dissolve their asylum claims before an asylum officer (WITH), are released into the custody of the U.S. Marshals Service (USM), or are released under order of supervision (OS) have been excluded from these statistics. (See DRO Tables 7.0-7.3 for further information.)



Based on DRO Tables 7.3.

The DRO Table 8 series breaks aliens referred for credible fear interview into two categories, “detained at some point” and “not detained.” According to the Table 8 series, between 2.4 percent and 5 percent of aliens referred for credible fear were “never detained.” According to DHS, these statistics are probably the result of data input error, as aliens referred for credible fear must, by law, be detained until the time of their credible fear determination.<sup>1</sup>

#### SOURCES AND LIMITATIONS OF THE DATA

No integrated statistical reporting system on detention currently operates with the U.S. Department of Homeland Security. Different field offices use different data management systems, and the interoperability among these systems is not always apparent. In some offices, paper systems for counting applications are still maintained. The efforts to convert these operational detention systems to a single unified information system appear to be still in their infancy in many places.

<sup>1</sup> While detention of all aliens referred for credible fear is mandatory, there were significant discrepancies in FY 2003 between statistics kept by CBP in PAS (Performance Analysis System) and statistics kept by ICE in its APSS (Automated Prisoner Scheduling System) database. According to PAS, in FY 2003 there were 1408 aliens in Hidalgo, Texas referred for a credible fear interview. According to APSS, however, there were only 833. Similarly, according to PAS, in Brownsville, Texas there were 2613 aliens referred for credible fear interviews in FY 2003. According to APSS data, there were only 1956. The DHS Office of Immigration Statistics reports that these discrepancies are largely attributable to local ICE decisions not to detain Cubans subject to Expedited Removal. DHS has informed us that Cuban nationals subject to Expedited Removal are now being detained up until their credible fear hearing. Since the Cuban nationals who were not detained were never entered into the APSS database, however, they are not among the aliens counted in Table 8 series as having been “referred for credible fear but not detained.”

The fiscal years covered in this report span the period before and after the creation of currently configured Office of Detention and Removal Operations. In our work, naturally, we found many efforts still underway to adapt earlier standalone systems in this post 9/11 world.

Notwithstanding these difficulties and with the expert assistance of the DRO staff, we were able to display comparable information on the Expedited Removal process across DRO and other elements of DHS, in a way useful for the Commission's purposes. Despite the complexities of managing very large data sets in a systematic fashion across many different offices within a department, the overall DRO results presented here fairly represent detention data for the Expedited Removal process. Certainly, percentage distributions can be relied upon as well as relative changes over time.

Confidentiality requirements by DRO restrict the public versions of these tables to reporting only cell counts of six (6) or more. All nonzero cells of less than 6 are asterisked (\*). Zero cells have been identified by a dash (-). Summary totals in the tables have also been examined to be sure that indirect disclosure (e.g., disclosure by subtraction) did not occur.

As a check on our work, we reviewed the earlier GAO report on Expedited Removal<sup>2</sup> and found that for the year 2000, which overlapped between the two studies, the results are comparable.

As a further check, the regular reports that DHS and its predecessor organizations produced were also examined, notably the annual INS and later DHS reports for the years tabulated here. For those readers interested in the setting that Expedited Removal data sit in, these reports are highly recommended, if only for their definitions and for an understanding of the much larger missions that DHS and its Office of Detention and Removal Operations has, especially in the post 9/11 world.

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<sup>2</sup> United States General Accounting Office. 2000. *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*. GAO/GGD-00-176.

## TABLE SETS

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**DRO Table 1. Length of Stay in Detention for Aliens Referred for Credible Fear Interview by Fiscal Year**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

**FY 2000**

Credible Fear cases	<b>10,342</b>
Never detained	305
Detained 30 days or fewer	5,778
Detained 31-90 days	2,865
Detained 91-180 days	822 1 still detained
Detained more than 180 days	572 4 still detained

**FY 2001**

Credible Fear cases	<b>12,956</b>
Never detained	312
Detained 30 days or fewer	8,127
Detained 31-90 days	3,056
Detained 91-180 days	848 3 still detained
Detained more than 180 days	613 13 still detained

**FY 2002**

Credible Fear cases	<b>9,752</b>
Never detained	492
Detained 30 days or fewer	6,104
Detained 31-90 days	1,661 1 still detained
Detained 91-180 days	698 1 still detained
Detained more than 180 days	797 35 still detained

**FY 2003**

Credible Fear cases	<b>6,005</b>
Never detained	196
Detained 30 days or fewer	2,933
Detained 31-90 days	1,123 1 still detained
Detained 91-180 days	856
Detained more than 180 days	897 160 still detained

**DRO Table 2.0. Country of citizenship for aliens referred for credible fear interview at port of entry, FY 2000**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Country of Citizenship	Total	Detained at some point	Not detained
<b>Total</b>	<b>10,336</b>	<b>10,030</b>	<b>306</b>
China, People's Republic	3,945	<b>3,853</b>	92
Haiti	1,072	<b>1,053</b>	19
Sri Lanka	999	<b>968</b>	31
Cuba	563	<b>545</b>	18
Colombia	350	<b>341</b>	9
Iraq	301	<b>291</b>	10
Albania	256	<b>239</b>	17
Ukraine	191	<b>187</b>	4
Somalia	171	<b>168</b>	3
Yugoslavia	153	<b>143</b>	10
Pakistan	139	135	4
Guatemala	113	110	3
Sierra Leone	103	102	1
Ghana	107	101	6
El Salvador	94	91	3
Lebanon	90	89	1
Nigeria	87	81	6
Turkey	81	80	1
Ecuador	79	79	0
India	80	77	3
Armenia	74	73	1
Ethiopia	62	61	1
Mexico	57	56	1
Peru	59	56	3
Russia	54	47	7
Sudan	49	47	2
Bangladesh	46	46	0
Brazil	49	43	6
Niger	45	41	4
Cameroon	40	40	0
Afghanistan	45	39	6
Guyana	38	38	0
Jamaica	42	37	5
Iran	36	36	0
Honduras	34	34	0
Bulgaria	29	29	0
Congo, Democratic Republic	31	29	2
Eritrea	27	27	0
Congo, Republic	27	25	2
Guinea	26	22	4
Jordan	19	19	0

Country of Citizenship	Total	Detained at some point	Not detained
Cote d'Ivoire	18	18	0
Kenya	18	17	1
Romania	17	16	1
Algeria	15	15	0
Liberia	15	15	0
Bolivia	14	14	0
Dominican Republic	14	14	0
Egypt	14	14	0
Indonesia	14	14	0
Dominica	13	13	0
Poland	13	13	0
Angola	12	11	1
Macedonia	11	11	0
Nicaragua	11	11	0
Philippines	11	11	0
Belarus	10	10	0
Uganda	10	10	0
Venezuela	9	9	0
Chile	8	8	0
France	9	8	1
Gambia, The	8	8	0
Israel	8	8	0
Rwanda	12	8	4
Burundi	8	7	1
Panama	7	7	0
Senegal	6	6	0
Syria	6	6	0
Tanzania	6	6	0
Burma	5	5	0
Canada	5	5	0
Kazakhstan	6	5	1
Lithuania	7	5	2
United Kingdom	5	5	0
Yemen	5	5	0
Costa Rica	4	4	0
Germany	4	4	0
Mauritania	4	4	0
Nepal	4	4	0
Thailand	4	4	0
Togo	4	4	0
Uzbekistan	4	4	0
Vietnam	4	4	0
Azerbaijan	3	3	0
Bosnia-Herzegovina	3	3	0
Cambodia	3	3	0
Estonia	4	3	1
Georgia	3	3	0
Paraguay	3	3	0
South Africa	3	3	0

Country of Citizenship	Total	Detained at some point	Not detained
Trinidad & Tobago	3	3	0
Argentina	3	2	1
Burkina Faso	2	2	0
Croatia	2	2	0
Czechoslovakia	3	2	1
Denmark	2	2	0
Hungary	2	2	0
Ireland	2	2	0
Korea	4	2	2
Latvia	2	2	0
Mali	2	2	0
Moldova	4	2	2
Portugal	2	2	0
Slovak Republic	2	2	0
Sweden	2	2	0
Bahamas, The	1	1	0
Bahrain	1	1	0
Barbados	1	1	0
Fiji	1	1	0
Greece	1	1	0
Hong Kong	1	1	0
Japan	1	1	0
Kuwait	1	1	0
Kyrgyzstan	1	1	0
Laos	1	1	0
Libya	1	1	0
Madagascar	1	1	0
Malaysia	1	1	0
Mongolia	1	1	0
Morocco	1	1	0
Saudi Arabia	1	1	0
Soviet Union	1	1	0
Spain	1	1	0
Suriname	1	1	0
Tajikistan	1	1	0
Tunisia	1	1	0
Turkmenistan	1	1	0
United Arab Emirates	1	1	0
Zimbabwe	1	1	0
St0 Vincent & the Grenadines	1	0	1
Unknown	7	6	1

**DRO Table 2.1 Country of citizenship for aliens referred for credible fear interview at port of entry, FY 2001**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Country of Citizenship	Total	Detained at some point	Not detained
<b>Total</b>	<b>12,963</b>	<b>12,650</b>	<b>313</b>
China, People's Republic	3,819	<b>3,779</b>	40
Colombia	2,199	<b>2,169</b>	30
Haiti	1,062	<b>1,053</b>	9
Sri Lanka	974	<b>949</b>	25
Albania	374	<b>345</b>	29
Cuba	405	<b>345</b>	60
India	307	<b>304</b>	3
Iraq	266	<b>261</b>	5
El Salvador	223	<b>222</b>	1
Pakistan	196	<b>189</b>	7
Ukraine	186	183	3
Turkey	173	173	0
Guyana	160	160	0
Lebanon	138	137	1
Ecuador	133	129	4
Guatemala	111	108	3
Bangladesh	99	98	1
Afghanistan	92	91	1
Brazil	92	91	1
Ethiopia	91	88	3
Sudan	86	86	0
Niger	88	81	7
Peru	84	80	4
Eritrea	76	76	0
Sierra Leone	74	73	1
Somalia	71	69	2
Armenia	69	68	1
Bulgaria	68	68	0
Iran	63	63	0
Ghana	62	60	2
Nigeria	58	57	1
Mexico	60	54	6
Jamaica	51	49	2
Poland	40	40	0
Yugoslavia	44	40	4
Dominican Republic	40	36	4
Guinea	38	36	2
Cameroon	35	35	0
Honduras	36	35	1
Jordan	34	34	0
Macedonia	36	34	2

Country of Citizenship	Total	Detained at some point	Not detained
Russia	35	34	1
Romania	33	31	2
Congo, Democratic Republic	29	29	0
Bolivia	28	27	1
Venezuela	25	24	1
Indonesia	23	23	0
Dominica	21	21	0
Georgia	20	19	1
Congo, Republic	15	15	0
Egypt	15	15	0
Israel	16	15	1
Nicaragua	15	15	0
Algeria	15	14	1
Syria	14	14	0
Angola	14	13	1
Korea	13	13	0
Uganda	15	13	2
Rwanda	12	12	0
Kenya	11	11	0
Argentina	12	9	3
Liberia	10	9	1
Chile	8	8	0
Gambia, The	8	8	0
Nepal	8	8	0
Senegal	8	8	0
Belize	7	7	0
Cote d'Ivoire	7	7	0
Morocco	7	7	0
Panama	7	7	0
Philippines	7	7	0
Togo	7	7	0
Yemen	7	7	0
Zimbabwe	7	7	0
Lithuania	6	6	0
Mali	7	6	1
Tanzania	10	6	4
Trinidad & Tobago	7	6	1
Costa Rica	5	5	0
Mauritania	5	5	0
Vietnam	5	5	0
Belarus	4	4	0
Hungary	13	4	9
Moldova	5	4	1
Bosnia-Herzegovina	4	3	1
Canada	6	3	3
Czechoslovakia	3	3	0
Germany	3	3	0
Kyrgyzstan	3	3	0
Thailand	3	3	0

Country of Citizenship	Total	Detained at some point	Not detained
Uruguay	4	3	1
Uzbekistan	3	3	0
Azerbaijan	2	2	0
Burkina Faso	2	2	0
Burma	3	2	1
Burundi	6	2	4
Cambodia	2	2	0
Estonia	2	2	0
Fiji	2	2	0
Ireland	2	2	0
Italy	2	2	0
Kazakhstan	2	2	0
Libya	2	2	0
Slovak Republic	2	2	0
Spain	2	2	0
Suriname	3	2	1
Antigua-Barbuda	1	1	0
Australia	1	1	0
Bahamas, The	1	1	0
Belgium	1	1	0
Bhutan	1	1	0
Chad	1	1	0
France	1	1	0
Japan	1	1	0
Malawi	1	1	0
Paraguay	1	1	0
Saudi Arabia	1	1	0
Slovenia	1	1	0
South Africa	2	1	1
Soviet Union	1	1	0
Taiwan	1	1	0
Tunisia	1	1	0
United Kingdom	1	1	0
Zambia	2	1	1
Mongolia	2	0	2
Norway	1	0	1
Unknown	18	17	1

**DRO Table 2.2. Country of citizenship for aliens referred for credible fear interview at port of entry, FY 2002**

Source: Office of Detention and Removal Operations, U0S0 Department of Homeland Security

Country of Citizenship	Total	Detained at some point	Not detained
<b>Total</b>	<b>9,749</b>	<b>9,260</b>	<b>489</b>
China, People's Republic	2,327	<b>2,313</b>	14
Cuba	2,185	<b>1,791</b>	394
Colombia	1,230	<b>1,221</b>	9
Haiti	760	<b>760</b>	0
Iraq	348	<b>346</b>	2
Guyana	268	<b>267</b>	1
Sri Lanka	249	<b>243</b>	6
Albania	236	<b>227</b>	9
El Salvador	169	<b>164</b>	5
Armenia	161	<b>158</b>	3
Ecuador	121	120	1
India	105	103	2
Brazil	94	94	0
Niger	94	94	0
Dominican Republic	82	82	0
Dominica	81	81	0
Peru	73	69	4
Guatemala	64	63	1
Ghana	47	47	0
Georgia	45	45	0
Bolivia	47	44	3
Ukraine	43	43	0
Mexico	48	42	6
Cameroon	41	41	0
Nigeria	34	34	0
Eritrea	33	33	0
Turkey	33	33	0
Pakistan	31	31	0
Bulgaria	30	29	1
Ethiopia	28	27	1
Russia	26	26	0
Indonesia	23	23	0
Honduras	22	22	0
Sierra Leone	22	22	0
Argentina	24	21	3
Jamaica	19	19	0
Venezuela	20	19	1
Bangladesh	18	18	0
Guinea	17	16	1
Romania	16	16	0
Yugoslavia	16	16	0

Country of Citizenship	Total	Detained at some point	Not detained
Iran	15	15	0
Liberia	15	15	0
Poland	16	15	1
Somalia	17	15	2
Kenya	13	13	0
Congo, Democratic Republic	11	11	0
Gambia, The	11	11	0
Congo, Republic	11	10	1
Lebanon	10	10	0
Nicaragua	11	10	1
Egypt	10	9	1
Korea	9	9	0
Lithuania	9	9	0
Philippines	10	9	1
Burma	10	8	2
Israel	8	8	0
Jordan	8	8	0
Senegal	8	8	0
Burundi	7	7	0
Costa Rica	7	7	0
Moldova	7	7	0
Rwanda	7	7	0
Uzbekistan	7	7	0
Zimbabwe	8	7	1
Afghanistan	13	6	7
Angola	6	6	0
Chile	6	6	0
Macedonia	6	6	0
Mali	6	6	0
Sudan	7	6	1
Togo	6	6	0
Azerbaijan	5	5	0
Czechoslovakia	5	5	0
Uganda	5	5	0
Belarus	4	4	0
Cambodia	4	4	0
Canada	6	4	2
Mongolia	4	4	0
Taiwan	5	4	1
Trinidad & Tobago	4	4	0
Cote d'Ivoire	3	3	0
Croatia	3	3	0
Mauritania	3	3	0
Tanzania	3	3	0
Belize	2	2	0
Central African Republic	2	2	0
Estonia	2	2	0
Fiji	2	2	0
France	2	2	0

Country of Citizenship	Total	Detained at some point	Not detained
Italy	2	2	0
Panama	2	2	0
Slovak Republic	2	2	0
Thailand	2	2	0
United Kingdom	2	2	0
Vietnam	2	2	0
Algeria	1	1	0
Grenada	1	1	0
Laos	1	1	0
Latvia	1	1	0
Morocco	1	1	0
Nepal	1	1	0
New Zealand	1	1	0
Paraguay	1	1	0
Slovenia	1	1	0
South Africa	1	1	0
Soviet Union	1	1	0
Spain	1	1	0
Sweden	1	1	0
Tajikistan	1	1	0
Unknown	34	33	1

**DRO Table 2.3. Country of citizenship for aliens referred for credible fear interview at port of entry, FY 2003**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Country of Citizenship	Total	Detained at some point	Not detained
<b>Total</b>	<b>5,986</b>	<b>5,793</b>	<b>193</b>
China, People's Republic	1,152	<b>1,140</b>	12
Haiti	998	<b>995</b>	3
Cuba	956	<b>864</b>	92
Colombia	560	<b>554</b>	6
Guyana	274	<b>273</b>	1
Georgia	199	<b>197</b>	2
Armenia	116	<b>116</b>	0
Albania	106	<b>101</b>	5
El Salvador	88	<b>85</b>	3
Ukraine	68	<b>65</b>	3
Guatemala	66	64	2
Brazil	62	62	0
Sri Lanka	59	58	1
India	58	56	2
Iraq	54	54	0
Honduras	50	50	0
Ecuador	49	49	0
Nigeria	53	48	5
Peru	50	47	3
Bolivia	46	46	0
Dominican Republic	44	44	0
Mexico	52	40	12
Ghana	38	37	1
Venezuela	37	34	3
Turkey	33	33	0
Bulgaria	28	28	0
Cameroon	28	28	0
Cote d'Ivoire	27	27	0
Jamaica	27	27	0
Liberia	27	25	2
Burma	22	21	1
Ethiopia	21	21	0
Congo, Republic	20	20	0
Guinea	21	20	1
Argentina	34	19	15
Niger	22	18	4
Pakistan	18	17	1
Senegal	16	16	0
Nicaragua	15	15	0
Russia	15	15	0
Sierra Leone	15	15	0

Country of Citizenship	Total	Detained at some point	Not detained
Yugoslavia	15	15	0
Costa Rica	13	13	0
Lebanon	17	12	5
Romania	12	12	0
Iran	11	11	0
Israel	12	11	1
Gambia, The	10	10	0
Indonesia	11	10	1
Uzbekistan	10	10	0
Egypt	9	9	0
Congo, Democratic Republic	8	8	0
Kenya	8	8	0
Korea	8	8	0
Poland	9	8	1
Togo	8	8	0
Nepal	7	7	0
Singapore	7	7	0
Vietnam	7	7	0
Chile	6	6	0
Czechoslovakia	7	6	1
Mongolia	6	6	0
Somalia	6	6	0
Tanzania	6	6	0
Belize	5	5	0
Burundi	5	5	0
Mauritania	5	5	0
South Africa	5	5	0
Sudan	5	5	0
Uganda	5	5	0
Belarus	4	4	0
Macedonia	4	4	0
Benin	3	3	0
Cambodia	3	3	0
Central African Republic	3	3	0
Eritrea	3	3	0
Malaysia	3	3	0
Thailand	3	3	0
Trinidad & Tobago	4	3	1
Zimbabwe	3	3	0
Algeria	2	2	0
Angola	2	2	0
Canada	3	2	1
Chad	2	2	0
Czech Republic	2	2	0
Dominica	2	2	0
Latvia	2	2	0
Mali	2	2	0
Paraguay	2	2	0
Philippines	2	2	0

Country of Citizenship	Total	Detained at some point	Not detained
Saudi Arabia	2	2	0
Soviet Union	2	2	0
Tunisia	2	2	0
Afghanistan	1	1	0
Australia	1	1	0
Azerbaijan	1	1	0
Bahamas, The	1	1	0
Bangladesh	1	1	0
Barbados	1	1	0
Botswana	1	1	0
Burkina Faso	1	1	0
Gabon	1	1	0
Germany	1	1	0
Grenada	1	1	0
Italy	1	1	0
Jordan	1	1	0
Kyrgyzstan	1	1	0
Lithuania	1	1	0
Moldova	1	1	0
Morocco	1	1	0
Panama	1	1	0
Rwanda	1	1	0
Slovenia	1	1	0
Spain	1	1	0
Suriname	1	1	0
Syria	1	1	0
Turkmenistan	1	1	0
Zambia	1	1	0
Unknown	34	32	2

**DRO Table 3.0. Gender and age of aliens referred for credible fear interview at port of entry, FY 2000**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>10,336</b>	<b>100.0%</b>	<b>10,030</b>	<b>97.0%</b>	<b>306</b>	<b>3.0%</b>
Female	3,627	35.1%	3,481	34.7%	146	47.7%
Male	6,709	64.9%	6,549	65.3%	160	52.3%
Unknown age	3		3		0	
0	26		24		2	
1	23		19		4	
2	29		24		5	
3	28		24		4	
4	22		20		2	
5	17		13		4	
6	25		19		6	
7	30		24		6	
8	29		20		9	
9	41		29		12	
10	33		28		5	
11	22		17		5	
12	29		23		6	
13	23		15		8	
14	19		18		1	
15	34		30		4	
16	54		51		3	
17	89		88		1	
18	478		474		4	
19	469		462		7	
20	635		627		8	
21	658		646		12	
22	646		635		11	
23	570		562		8	
24	519		511		8	
25	444		433		11	
26	455		441		14	
27	467		455		12	
28	426		418		8	
29	441		425		16	
30	359		350		9	
31	405		395		10	
32	323		314		9	
33	289		280		9	
34	261		253		8	
35	251		242		9	

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
36	255		248		7	
37	207		200		7	
38	141		138		3	
39	147		146		1	
40	141		136		5	
41	100		98		2	
42	113		107		6	
43	68		65		3	
44	71		71		0	
45	58		58		0	
46	48		45		3	
47	50		49		1	
48	41		41		0	
49	25		24		1	
50	19		19		0	
51	26		24		2	
52	23		23		0	
53	11		11		0	
54	13		13		0	
55	15		15		0	
56	7		7		0	
57	13		13		0	
58	12		12		0	
59	9		9		0	
60	6		6		0	
61	6		6		0	
62	6		6		0	
63	4		4		0	
64	9		7		2	
65	2		2		0	
66	4		3		1	
68	1		1		0	
69	3		3		0	
70	5		4		1	
71	1		0		1	
72	1		1		0	
73	1		1		0	
78	1		1		0	
83	1		1		0	

**DRO Table 3.1. Gender and age of aliens referred for credible fear interview at port of entry, FY 2001**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>12,963</b>	<b>100.0%</b>	<b>12,650</b>	<b>97.6%</b>	<b>313</b>	<b>2.4%</b>
Female	4,048	31.2%	3,879	30.7%	169	54.0%
Male	8,915	68.8%	8,771	69.3%	144	46.0%
0	67		53		14	
1	57		52		5	
2	45		34		11	
3	60		55		5	
4	41		37		4	
5	53		50		3	
6	45		41		4	
7	50		45		5	
8	47		44		3	
9	49		47		2	
10	43		42		1	
11	43		38		5	
12	39		35		4	
13	48		45		3	
14	24		23		1	
15	41		40		1	
16	40		39		1	
17	69		68		1	
18	579		569		10	
19	629		618		11	
20	678		670		8	
21	680		673		7	
22	686		671		15	
23	680		673		7	
24	632		623		9	
25	609		604		5	
26	530		515		15	
27	519		509		10	
28	541		533		8	
29	508		491		17	
30	503		489		14	
31	456		443		13	
32	425		417		8	
33	362		359		3	
34	331		326		5	
35	344		333		11	
36	349		344		5	

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
37	292		280		12	
38	253		248		5	
39	193		185		8	
40	188		182		6	
41	166		164		2	
42	152		150		2	
43	115		112		3	
44	96		95		1	
45	87		86		1	
46	63		63		.	
47	81		78		3	
48	75		73		2	
49	48		45		3	
50	40		39		1	
51	26		24		2	
52	29		29		.	
53	27		26		1	
54	21		21		.	
55	15		14		1	
56	13		13		.	
57	9		9		.	
58	17		17		.	
59	11		9		2	
60	5		5		.	
61	6		6		.	
62	3		2		1	
63	7		6		1	
64	4		4		.	
65	3		3		.	
66	2		2		.	
67	2		2		.	
68	3		3		.	
69	2		2		.	
70	1		1		.	
72	2		1		1	
74	1		1		.	
75	1		1		.	
77	1		.		1	
78	1		1		.	

**DRO Table 3.2. Gender and age of aliens referred for credible fear interview at port of entry, FY 2002**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>9,749</b>	<b>100.0%</b>	<b>9,260</b>	<b>95.0%</b>	<b>489</b>	<b>5.0%</b>
Female	3,826	39.2%	3,511	37.9%	315	64.4%
Male	5,922	60.7%	5,748	62.1%	174	35.6%
Unknown	1	0.0%	1	0.0%	.	
Unknown age	2		1		1	
0	47		17		30	
1	31		23		8	
2	46		25		21	
3	37		24		13	
4	50		40		10	
5	45		24		21	
6	43		27		16	
7	39		26		13	
8	28		22		6	
9	23		13		10	
10	53		36		17	
11	48		32		16	
12	38		27		11	
13	31		23		8	
14	32		25		7	
15	38		30		8	
16	49		46		3	
17	43		37		6	
18	410		402		8	
19	401		398		3	
20	442		438		4	
21	400		390		10	
22	412		404		8	
23	429		424		5	
24	444		438		6	
25	437		428		9	
26	404		393		11	
27	411		400		11	
28	400		386		14	
29	347		336		11	
30	386		363		23	
31	349		337		12	
32	325		313		12	
33	293		281		12	
34	261		251		10	

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
35	259		246		13	
36	295		286		9	
37	262		244		18	
38	225		215		10	
39	189		184		5	
40	140		133		7	
41	138		133		5	
42	105		102		3	
43	96		90		6	
44	96		95		1	
45	77		76		1	
46	80		79		1	
47	65		64		1	
48	47		45		2	
49	48		46		2	
50	42		41		1	
51	34		34		.	
52	27		27		.	
53	27		25		2	
54	33		32		1	
55	31		31		.	
56	23		23		.	
57	20		20		.	
58	19		18		1	
59	15		14		1	
60	9		8		1	
61	22		21		1	
62	10		10		.	
63	4		4		.	
64	5		5		.	
65	9		9		.	
66	4		3		1	
67	4		4		.	
68	3		3		.	
69	1		1		.	
70	2		1		1	
71	1		1		.	
72	2		1		1	
73	1		1		.	
74	1		1		.	
75	1		1		.	
76	2		2		.	
79	1		1		.	

**DRO Table 3.3. Gender and age of aliens referred for credible fear interview at port of entry, FY 2003**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>5,986</b>	<b>100.0%</b>	<b>5,793</b>	<b>96.8%</b>	<b>193</b>	<b>3.2%</b>
Female	2,316	38.7%	2,207	38.1%	109	56.5%
Male	3,670	61.3%	3,586	61.9%	84	43.5%
0	23		18		5	
1	20		18		2	
2	18		18		.	
3	27		22		5	
4	32		24		8	
5	19		16		3	
6	17		14		3	
7	28		24		4	
8	26		20		6	
9	27		21		6	
10	22		19		3	
11	16		14		2	
12	17		14		3	
13	23		19		4	
14	17		11		6	
15	16		11		5	
16	22		19		3	
17	30		27		3	
18	186		182		4	
19	221		220		1	
20	231		229		2	
21	241		237		4	
22	260		258		2	
23	259		254		5	
24	299		293		6	
25	295		287		8	
26	270		265		5	
27	245		239		6	
28	239		236		3	
29	245		242		3	
30	230		226		4	
31	233		230		3	
32	197		195		2	
33	188		186		2	
34	157		154		3	
35	152		146		6	
36	176		170		6	

Gender & Age	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
37	154		151		3	
38	134		126		8	
39	115		112		3	
40	96		91		5	
41	90		88		2	
42	81		75		6	
43	75		74		1	
44	57		55		2	
45	59		54		5	
46	51		50		1	
47	37		35		2	
48	39		37		2	
49	44		43		1	
50	37		37		.	
51	31		30		1	
52	27		27		.	
53	20		18		2	
54	14		14		.	
55	18		16		2	
56	14		14		.	
57	11		11		.	
58	9		9		.	
59	6		6		.	
60	9		9		.	
61	6		6		.	
62	4		4		.	
63	3		3		.	
64	5		4		1	
65	2		2		.	
66	1		1		.	
67	2		2		.	
68	2		2		.	
69	1		1		.	
70	1		1		.	
71	2		2		.	
73	1		1		.	
80	1		1		.	
82	1		1		.	
86	1		1		.	
87	1		1		.	

**DRO Table 4.0: Location of Aliens Detained for Credible Fear Interview by Fiscal Year, FY 2000-2003**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

	FY 2000		FY 2001		FY 2002		FY 2003		TOTAL	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Service Processing Centers	6,028	42.8%	8,450	45.1%	6,650	48.7%	3,975	38.0%	25,103	45.0%
Federal Prisons	119	0.8%	71	0.4%	87	0.6%	149	3.0%	426	0.8%
State and Local Jails	5,485	38.9%	6,685	35.7%	3,905	28.6%	2,491	22.5%	18,566	33.3%
Contract Facilities	2,464	17.5%	3,512	18.8%	3,006	22.0%	2,748	36.6%	11,730	21.0%
<b>Total</b>	<b>14,096</b>		<b>18,718</b>		<b>13,648</b>		<b>9,465</b>		<b>55,825</b>	

**DRO Table 4.1. Detention facilities for aliens referred for credible fear interview at port of entry, FY 2000**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Facility and state	FY 2000 Asylum seekers <sup>1</sup>	FY 2001 Asylum seekers <sup>1</sup>	FY 2002 Asylum seekers <sup>1</sup>	FY 2003 Approximate Stay Count
<b>Total all stays</b>	<b>14,096</b>	<b>18,718</b>	<b>13,648</b>	<b>9,363</b>
<b>Alabama</b>	<b>3</b>	<b>21</b>	<b>24</b>	<b>138</b>
Cherokee County Jail	-	6	6	5
Escambia County Detention Center	-	-	-	1
Etowah County Jail (AI)	3	15	18	132
<b>Alaska</b>	<b>4</b>	<b>-</b>	<b>1</b>	<b>1</b>
Cook Inlet Pretrial, Anch	1	-	1	1
State Cor Ctr Annex Ancho	3	-	-	-
<b>Arizona</b>	<b>63</b>	<b>108</b>	<b>69</b>	<b>124</b>
CCA Cent.Az.Det.Ctr. (C.C.A.-Usm Contract)	1	3	1	14
CCA, Florence Correctional Center	7	22	6	10
Eloy Federal Contract Fac (INS & Bop Contract)	2	2	10	70
Florence Staging Facility	25	55	2	27
Florence SPC	21	21	33	1
Southwest Key Juvenile Sh	5	3	15	2
Tucson INS Hold Room (Holding Area)	2	2	2	-
<b>California</b>	<b>5,086</b>	<b>6,567</b>	<b>3,361</b>	<b>1,479</b>
Barrett Honor Camp	213	24	-	-
Bhc Cedar Vista (Hosp.) (Hospital)	2	-	-	-
Casa San Juan (Catholic Charities)	108	118	117	39
Corr.Corp.Of America - San Diego (Private)	637	782	663	440
Descanso Detention Fac.	73	16	-	-
El Centro SPC	48	183	42	18
Glenn County Jail	4	6	2	6
Hosana Girls Ranch	3	-	-	5
Hosanna Homes For Boys	12	7	10	9
Imperial County Jail	5	60	-	-
Kern County Jail (Lerdo)	87	34	5	15
LOS Cust Case	687	1,404	811	281
LOS Padrinos Juvenile Hall	15	22	29	2
Marin Co. Jail	53	19	-	-
Marin Juvenile Hall	-	1	-	-
Mira Loma Det.Center (County Contract Fac.)	1,513	1,888	637	82
North County Jail	13	3	-	-
Oakland City Jail	120	291	153	157
Pacific Furlough Facility (Contract)	-	103	-	-
Sacramento County Jail	1	37	12	2
San Mateo Juvenile Hall	-	2	1	-
San Diego County Juv.Hall	8	-	-	1
San Pedro SPC	1,063	836	574	105
Santa Ana City Jail	1	37	8	-
Santa Ana County Jail	15	73	48	56
Santa Clara County Jail	1	-	-	5
Santa Rita Jail	-	-	-	1

Facility and state	FY 2000 Asylum seekers1	FY 2001 Asylum seekers1	FY 2002 Asylum seekers1	FY 2003 Approximate Stay Count
Snd District Staging	309	314	90	64
Southwest Keys Juv. Fac. (Private Facility)	11	6	9	10
Tehama County Jail	1	-	-	-
Wackenhut Corrections Corp	-	-	1	37
Westminster Custody	-	-	2	2
Yolo County Jail	5	-	-	-
Yuba County Jail	78	301	147	142
<b>Colorado</b>	<b>14</b>	<b>6</b>	<b>2</b>	<b>4</b>
Denver Contract Det. Fac.	14	6	2	4
<b>Connecticut</b>	<b>18</b>	<b>15</b>	<b>3</b>	<b>2</b>
Hartford Corr Center	9	7	3	1
Hartford Office	1	-	-	-
Laffayette Sheriff's Lock	-	1	-	-
York Corr Inst	8	7	-	1
<b>Florida</b>	<b>2,715</b>	<b>6,688</b>	<b>4,601</b>	<b>3,490</b>
Bay County	1	-	1	2
Boystown (Arch Dioceses)	18	19	17	13
Bradenton Detention Center (Igsa, 2 Yr Contract)	5	11	1	6
Cedars Medical Center (Hospital)	3	-	-	-
Citrus County Jail	2	-	-	-
Clay County Jail	3	1	2	2
Columbia Kendal Hospital	-	1	5	6
Comfort Suites Hotel	2	1,089	1,033	714
Dade County Correctional	-	-	1	-
Ft Lauderdale City Jail	2	3	1	1
Hillsborough County Jail	3	4	-	-
Indian River County Jail	1	-	-	-
Jackson Memorial Hospital	1	1	3	9
Krome North SPC	2,628	4,605	2,976	2,073
Monroe County Jail	2	2	4	1
Orange County Jail	26	26	3	18
Palm Beach County Jail	11	4	1	12
Palmetto Hospital	-	16	22	8
Sarasota County Jail	-	-	-	2
Turner Guiford Knight (Tgk) Jail	1	900	440	36
US Marshals,S.Dist.FI	-	6	-	8
Wackenhut Corrections Corp	1	-	89	578
Wakulla County Jail	-	-	-	1
Windmoor Hosp.(Harborview) (Hospital)	5	-	-	-
Women's Detention Center	-	-	2	-
<b>Georgia</b>	<b>210</b>	<b>301</b>	<b>269</b>	<b>336</b>
Atlanta Dist. Hold Rm	-	-	-	61
Atlanta Pretrial Detn Ctr	2	18	14	21
Chatham Co Jail	-	-	-	1
Colquitt County Jail	3	20	33	54
Csc So.Fulton Munic.Jail (Municipal Jail)	36	-	-	-
Dekalb Co Jail	157	165	-	-
Ga Baptist Children Home (Private Juvenile Facility)	6	4	3	2
Harris County Jail	-	3	34	45
Kennesaw City Jail	2	55	82	117
Lincoln County Jail	1	-	2	-
Paulding Co Georgia	3	30	87	30

Facility and state	FY 2000 Asylum seekers1	FY 2001 Asylum seekers1	FY 2002 Asylum seekers1	FY 2003 Approximate Stay Count
Walker County Jail		6	14	5
<b>Guam</b>	<b>8</b>	<b>6</b>	<b>21</b>	<b>3</b>
Department Of Corrections	8	5	16	3
Department Of Youth Affairs (Secure Nonsecure)	-	1	5	-
<b>Hawaii</b>	<b>56</b>	<b>59</b>	<b>37</b>	<b>2</b>
Honolulu Federal Detention Center	1	6	31	2
INS District Office	55	53	6	-
<b>Idaho</b>	<b>1</b>	<b>2</b>	-	<b>2</b>
Ada County Jail	-	1	-	-
Bonneville Co. Jail	1	-	-	-
Haile Det. Center	-	-	-	1
Twin Falls County Jail	-	1	-	1
<b>Illinois</b>	<b>1,882</b>	<b>1,589</b>	<b>1,273</b>	<b>347</b>
Blue Island P.D.	13	-	-	-
Brookfield Police Dept.	49	30	42	3
Calumet City P.D.	10	-	-	-
Coles County Jail	3	29	28	1
Cumberland County Jail	1	3	23	-
Dewitt County Jail	-	5	-	-
Dupage County Jail	457	230	142	47
Elgin Police Dept. Jail	21	20	28	2
Ford County Jail	2	48	31	11
INS Airport Hold	547	466	293	64
Juvenile Facility, Chi (Tia Contract Fac.)	39	10	10	-
Mchenry County Sheriff's (Police)	240	311	162	68
Mundelein Police Dept.	32	14	7	-
North Chicago P.D.	79	61	55	6
Ogle County Jail	19	22	18	-
Rock Island County Jail	-	30	10	-
Sangamon County Jail	-	5	-	-
Stickney Police Dept.	31	-	-	-
Stone Park Police Dept.	166	181	171	75
Tri-County Jail	59	95	213	70
Waukegan City Jail	37	29	40	-
Western Springs Police Dp	77	-	-	-
<b>Indiana</b>	<b>3</b>	<b>2</b>	<b>43</b>	-
Marion County Jail	3	-	-	-
St. Joseph County Jail	-	2	43	-
<b>Iowa</b>	<b>2</b>	<b>1</b>	-	-
Linn County Jail	1	1	-	-
Pottawattamie County Jail	1	-	-	-
<b>Kentucky</b>	<b>6</b>	-	<b>3</b>	<b>8</b>
Boone County Jail	3	-	1	4
Fayette County Detention Center	-	-	-	1
Grayson County Jail, Ky	-	-	-	2
Kenton County Jail	3	-	2	-
Warren County Regional	-	-	-	1
<b>Louisiana</b>	<b>133</b>	<b>49</b>	<b>69</b>	<b>462</b>
Avoyelles Women's Corr Cn	13	2	3	9
Calcasieu Parish Prison	-	2	-	-
Concordia Parish C C	1	-	-	30
Nol D D & P	1	7	7	7

Facility and state	FY 2000 Asylum seekers1	FY 2001 Asylum seekers1	FY 2002 Asylum seekers1	FY 2003 Approximate Stay Count
Oakdale Fed.Det.Center	1	1	3	3
Orleans Parish Juvenile Fac	3	-	-	-
Orleans Parish Sheriff	81	27	18	162
Pine Prairie Correctional Center	2	6	15	11
Plaquemines Parish Det. Center	-	-	-	14
Tangipahoa Parish Jail	26	-	-	8
Tensas Parish Det. Cntr.	5	4	23	218
<b>Maine</b>	-	<b>4</b>	<b>1</b>	<b>1</b>
Cumberland County Jail	-	3	1	1
Maine Dept Of Corrections	-	1	-	-
<b>Maryland</b>	<b>78</b>	<b>86</b>	<b>86</b>	<b>62</b>
Bal D D & P	-	-	-	1
Carroll County Detention Center	12	13	18	8
Dorchester Co Det Cntr	2	3	11	10
Howard County Det Cntr	14	35	32	20
Knight Protective (Contract Guard Serv.)	8	5	4	-
St. Mary's Co Det Cntr	4	1	3	1
Wicomico Co Det	32	19	11	12
Worcester Co. Jail	6	10	7	10
<b>Massachusetts</b>	<b>113</b>	<b>105</b>	<b>33</b>	<b>29</b>
Boston Police Dept	32	13	-	-
Boston SPC	15	11	3	6
Bristol Cnty Ndartmouth	18	27	9	14
Greenfield House Of Corr.	-	2	1	-
Nashua St. Jail	19	7	-	-
Norfolk Cnty Dedham	1	-	-	4
Plymouth County H.O.C.	5	8	11	3
Ramada Hotel	21	37	9	-
Suffolk Hoc Sbay	2	-	-	2
<b>Michigan</b>	<b>219</b>	<b>123</b>	<b>86</b>	<b>32</b>
Belleville Pd, Belvil, Mi	66	38	30	6
Calhoun Co., Battle Cr,Mi	32	14	8	7
Dearborn Police Dept.	4	-	-	-
Det Pd 3rd Prec	1	-	-	-
Det Pd 4th Prec.	1	-	-	-
Det Pd 5th Prec.	2	-	-	-
Det Pd 7th Prec.	1	-	-	-
Detroit Police 1st Pct.	10	-	-	-
Monroe Co., Monroe, Mi.	90	59	47	11
Monroe County, Youthcenter	-	-	1	-
St.Clair Co.,Pt.Huron,Mi.	-	1	-	-
U.S. Immigration, Detroit	11	7	-	-
Van Buren County Jail, Mi	1	4	-	-
Van Buren Township Pd	-	-	-	8
<b>Minnesota</b>	<b>74</b>	<b>80</b>	<b>30</b>	<b>2</b>
Anoka County Jail	1	-	-	-
Carver Co. Juvy Detention	-	1	-	-
Carver County Jail	28	31	9	2
Hennipen County Workhouse	2	-	-	-
Kittson Co. Jail	1	-	-	-
Minn.C.F., Rush City	18	14	7	-
Minn.C.F, Oak Park Hgts	-	1	-	-

Facility and state	FY 2000 Asylum seekers1	FY 2001 Asylum seekers1	FY 2002 Asylum seekers1	FY 2003 Approximate Stay Count
Ramsey Adc Annex, Spm	2	1	2	
Ramsey County Jail	-	2	-	-
Sherburne County Jail	19	26	9	-
Sibley County Jail, Mn	1	-	-	-
Washington County Jail	2	3	3	-
Wright Co. Jail	-	1	-	-
<b>Missouri</b>	<b>8</b>	<b>-</b>	<b>-</b>	<b>4</b>
Mississippi County Detention Cente	4	-	-	4
Warren County Justice Ctr	4	-	-	-
<b>Montana</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>1</b>
Chouteau County Jail	1	-	-	-
Hel District Custody	-	1	-	-
Jefferson County Jail	1	2	-	1
Missoula County	-	1	-	-
Toole County	-	-	1	-
<b>Nevada</b>	<b>23</b>	<b>8</b>	<b>6</b>	<b>32</b>
Las Vegas City Jail	8	4	2	17
North Las Vegas	14	4	4	15
Washoe County Jail	1	-	-	-
<b>New Hampshire</b>	<b>21</b>	<b>3</b>	<b>-</b>	<b>-</b>
Hillsborough County Jail	13	-	-	-
Nh State Prison For Women	3	-	-	-
Rockingham County Jail	5	3	-	-
<b>New Jersey</b>	<b>633</b>	<b>603</b>	<b>568</b>	<b>446</b>
Bergen County Jail	1	4	-	4
Camden County Jail		1	-	-
Elizabeth Contract D.F. (INS Contract Det Fac)	591	505	511	416
Hudson County Jail	23	49	22	14
Middlesex County Jail	2	6	6	3
New INS Os Hold Room (Holding Area)		1	22	-
Passaic County Jail	11	24	2	1
Sussex County Jail	5	13	5	8
<b>New Mexico</b>	<b>2</b>	<b>2</b>	<b>-</b>	<b>-</b>
Santa Fe Cornell Det. Fac.	2	-	-	-
Torrance Estancia, Nm	-	2	-	-
<b>New York</b>	<b>674</b>	<b>689</b>	<b>389</b>	<b>277</b>
Albany County Jail	3	5	2	1
Buffalo SPC (INS Owned 7 Operated)	13	25	27	26
Clinton County Jail	10	9	6	6
Colombia County Jail	-	3	-	-
Erie Co Holding Center	6	1	4	4
Erie County Correctional	-	1	9	-
Franklin County Jail	3	1	1	1
Genesee County Jail	2	-	1	6
Holiday Inn, (With 7 Yr.Old Boy)	85	64	7	6
INS Wackenhut Con Fac, NY	534	551	317	218
Madison County Jail	-	5	1	1
Montgomery County Jail	2	2	-	-
Niagara County Jail		1	2	5
Oneida County Jail	1	1	1	-
Orleans County Jail	-	-	8	3
Schnectady County Jail	3	1	3	-

Facility and state	FY 2000 Asylum seekers1	FY 2001 Asylum seekers1	FY 2002 Asylum seekers1	FY 2003 Approximate Stay Count
Schoharie County Jail	-	1	-	-
Varick Street SPC	11	18	-	-
Wyoming County Jail	1	-	-	-
<b>North Carolina</b>	<b>3</b>	<b>7</b>	<b>12</b>	<b>9</b>
Forsyth County Jail	-	2	-	-
Johnston County Detention Center	-	1	-	-
Mecklenburg (Nc) Co Jail	3	4	12	9
<b>Ohio</b>	<b>2</b>	<b>2</b>	-	<b>4</b>
Bedford Heights City	1	-	-	-
Maple Heights City Jail	1	-	-	1
Medina County Jail	-	1	-	-
North Royalton City Jail	-	1	-	-
Seneca County Jail	-	-	-	2
Trumbull County Jail	-	-	-	1
<b>Oklahoma</b>	-	<b>1</b>	-	-
Canadian County, El Reno, (County Jail)	-	1	-	-
<b>Oregon</b>	<b>19</b>	<b>16</b>	<b>10</b>	<b>11</b>
Columbia County Jail	-	-	1	-
Grant County Jail	3	5	3	-
Medford Sub-Office	-	1	-	-
Northern Oregon Corr.Fac.	8	3	3	11
Northern Oregon Juv.Det. (Juvenile Det. Fac.)	-	2	-	-
Portland District Office	-	4	2	-
Yamhill County Correction	8	1	1	-
<b>Pennsylvania</b>	<b>214</b>	<b>370</b>	<b>220</b>	<b>152</b>
Allegheny Co. Jail	2	3	3	-
Bedford County Jail	2	8	-	-
Berks Co. Juv	8	5	8	7
Berks County Family Shelter	-	123	61	70
Berks County Jail, Pa	8	7	4	7
Berks County Secured Juvenile	-	1	3	-
Cambria County Jail, Pa	2	1	1	-
Carbon County Correctionl	8	2	1	-
Erie County Jail, Pa	-	1	1	-
Lackawana Cnty Jail, Pa	-	-	1	-
Lehigh County Jail, Pa	2	-	-	-
Montgomery Cnty Jail, Pa	3	4	5	-
Phi District Office	1	1	-	-
Philadelphia Detention Ct	1	-	-	-
Pike County Jail	-	1	-	2
Roundhouse Phi, Pa	-	-	2	-
York County Jail, Pa	177	213	130	66
<b>Puerto Rico</b>	<b>53</b>	<b>77</b>	<b>104</b>	<b>544</b>
Airport DDP	22	32	44	175
Airport Hotel, Saj. (Hotel)	-	-	6	12
Aquadilla SPC	8	19	11	239
Guaynabo Mdc (San Juan)	23	26	43	118
<b>Rhode Island</b>	<b>34</b>	<b>33</b>	<b>7</b>	-
Aci, Cranston Ri	33	33	7	-
Wyatt Detention Center (Private Operation)	1	-	-	-
<b>South Carolina</b>	<b>7</b>	<b>5</b>	<b>1</b>	<b>2</b>
Charleston County Correct	3	2	-	1

Facility and state	FY 2000 Asylum seekers1	FY 2001 Asylum seekers1	FY 2002 Asylum seekers1	FY 2003 Approximate Stay Count
Columbia Care Center (Hospital)	4	3	-	1
York County Detention Center	-	-	1	-
<b>Tennessee</b>	<b>14</b>	<b>23</b>	<b>29</b>	<b>6</b>
Blount County Justice Ctr	-	-	-	2
Davidson Co. Sheriff Dept	1	-	-	-
Memphis Shelby County Juv	-	2	-	-
Shelby Co. Sheriff Office	4	2	5	-
Western Tennessee Det. Fac.	9	19	24	4
<b>Texas</b>	<b>775</b>	<b>579</b>	<b>1,926</b>	<b>969</b>
Bedford City Jail	3	10	8	-
Big Spring Corr. Center (Cornell-Bop Contract)	-	1	-	-
Brazoria County Det. Ctr	12	10	16	1
Cameron County Jail	-	-	-	1
Catholic Charities (Hou) (Catholic Charities)	1	-	1	5
Charter Palms Hospital	-	1	1	-
Comal Cty Jail	5	2	2	-
Dallas County Jail	24	16	15	5
Denton County Jail	7	8	12	1
El Paso SPC	40	92	38	66
Eules City Jail	10	6	10	8
Ft. Bend County Jail	18	10	3	-
Grayson County Jail	-	7	-	-
Guadalupe Cty Jail	1	-	1	2
Hays County Juvenile Center	-	-	1	-
Houston Contract Det.Fac. (C.C.A.)	80	76	75	55
Hudspeth County Jail	2	-	-	-
Hutto CCA (Private Contractor)	-	-	-	1
Iles Shelter (Juvenile Shelter)	27	9	17	1
Jefferson County Jail	1	-	-	10
Johnson County Jail	1	1	-	-
Karnes Cty Corr Ctr (Public Private)	7	1	-	-
Laredo Contract Det. Fac. (INS Contract Fac.)	3	6	60	130
Liberty Cty Juv Det Cente	-	1	-	-
Mansfield L.E. Center	-	1	-	-
Navarro Co Justice Ctr	2	4	2	-
Newton County Corr. Ctr.	6	7	31	33
Port Isabel SPC	519	294	1,614	639
Roger Hashem Juvenile Justice Ctr.	-	-	1	-
Rolling Plains Detention Center	1	8	12	6
Southwest Key - Houston	-	-	-	2
Valley Baptist Hospital	-	2	3	2
Wackenhut Facility (Private Contractor)	1	2	3	1
Walker County Jail	-	1	-	-
West Oaks Hospital	1	-	-	-
Wharton County Jail	2	3	-	-
Wilson County Jail	1	-	-	-
<b>U.S. Virgin Islands</b>	<b>-</b>	<b>6</b>	<b>1</b>	<b>51</b>
St T Criminal Just Complx (Local Not Federal)	-	1	-	-
St X Golden Grove (Female Detainees)	-	5	1	51
<b>Vermont</b>	<b>-</b>	<b>2</b>	<b>10</b>	<b>-</b>
Franklin County Jail, Vt	-	2	9	-
Vt. Dept. Of Corrections	-	-	1	-

Facility and state	FY 2000 Asylum seekers <sup>1</sup>	FY 2001 Asylum seekers <sup>1</sup>	FY 2002 Asylum seekers <sup>1</sup>	FY 2003 Approximate Stay Count
<b>Virginia</b>	<b>420</b>	<b>269</b>	<b>160</b>	<b>148</b>
Alexandria City Jail	4	3	3	-
Arlington Co Jail	49	58	41	52
Central Va Regional Jail	7	15	6	-
Clarke Fred'k Winch. (Regional Jail)	7	-	2	-
Fairfax Co Jail	20	-	4	-
Hampton Roads Regional Jail	1	2	2	14
No. Va. Juvenile Det	1	-	-	-
Pamunkey Reg Jail (Regional Jail)	41	27	14	26
Piedmont Reg Jail (Regional Jail)	77	74	39	27
Portsmouth City Jail	1	5	7	-
Prince William (Regional Jail)	70	13	13	9
Rapp Sec Center (Regional Jail)	54	28	21	12
Riverside Reg Jail (Regional Jail)	42	28	7	8
Virginia Beach	46	16	1	-
<b>Washington</b>	<b>368</b>	<b>83</b>	<b>60</b>	<b>57</b>
Catholic Social Services (Foster Care Inst.)	-	-	-	1
Econolodge Motel	-	3	3	-
Forks City Jail	11	5	8	4
Martin Hall Juvenile (Juvenile Facility)	11	-	-	-
Regional Justice Center	44	-	1	-
Seatac Fed.Det.Center	94	31	10	18
Seattle Contract Det.Fac.	180	42	37	34
Yakima County	28	2	1	-
<b>Wisconsin</b>	<b>136</b>	<b>124</b>	<b>132</b>	<b>126</b>
Dodge County Jail, Juneau	-	-	9	43
Kenosha County Jail	-	-	13	23
Ozaukee County Jail	-	-	64	53
Racine County Jail	55	94	13	2
St. Croix County Jail	7	-	-	-
Walworth County Jail	74	25	27	5
Waukesha County Jail	-	5	6	-

<sup>1</sup>An individual alien is counted only once for each facility. Additional detention periods by the alien in that facility are not included in this table.

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**DRO Table 5.0. Number of facilities for aliens referred for credible fear interview at port of entry, FY 2000**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Facilities per detainee	Count	Percent
<b>Total detainees</b>	<b>10,030</b>	
1	7,502	74.80%
2	1,656	16.51%
3	504	5.02%
4	175	1.74%
5	90	0.90%
6	39	0.39%
7	30	0.30%
8	14	0.14%
9	6	0.06%
10	5	0.05%
11	3	0.03%
12	3	0.03%
14	1	0.01%
15	2	0.02%

Interpretation: 7,502 asylum seekers who had a detention stay were detained in only 1 facility; 1,656 asylum seekers were detained in 2 facilities; etc.

**DRO Table 5.1. Number of facilities for aliens referred for credible fear interview at port of entry, FY 2001**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Facilities per detainee	Count	Percent
<b>Total detainees</b>	<b>12,650</b>	
1	9,744	77.03%
2	1,953	15.44%
3	534	4.22%
4	248	1.96%
5	91	0.72%
6	27	0.21%
7	21	0.17%
8	16	0.13%
9	5	0.04%
10	4	0.03%
11	1	0.01%
12	1	0.01%
13	3	0.02%
15	1	0.01%
22	1	0.01%

**DRO Table 5.2. Number of facilities for aliens referred for credible fear interview at port of entry, FY 2002**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Facilities per detainee	Count	Percent
<b>Total detainees</b>	<b>9,260</b>	
1	7,137	77.07%
2	1,400	15.12%
3	406	4.38%
4	152	1.64%
5	79	0.85%
6	37	0.40%
7	15	0.16%
8	8	0.09%
9	6	0.06%
10	11	0.12%
11	3	0.03%
12	1	0.01%
13	1	0.01%
14	1	0.01%
17	1	0.01%
19	1	0.01%
22	1	0.01%

**DRO Table 5.3. Number of facilities for aliens referred for credible fear interview at port of entry, FY 2003**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Facilities per detainee	Count	Percent
<b>Total detainees</b>	<b>5,793</b>	
1	3,977	68.65%
2	981	16.93%
3	353	6.09%
4	211	3.64%
5	150	2.59%
6	63	1.09%
7	25	0.43%
8	9	0.16%
9	8	0.14%
10	7	0.12%
11	3	0.05%
12	2	0.03%
13	4	0.07%

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**DRO Table 6.0. Length of detention for aliens referred for credible fear interview at port of entry, FY 2000**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Length of stay for asylum seekers who have been released from detention:

<90 days	8,456
91-180 days	847
>180 days	587
Total	9,890

Length of stay for asylum seekers who were detained but the detention status in April 2003 is unknown:

<90 days	72
91-180 days	7
>180 days	5
Total	84

Length of stay for asylum seekers still in detention on April 7, 2003:

<90 days	11	including	11	with orders of removal
91-180 days	7		6	
>180 days	38		31	
Total	56		48	

Asylum seekers detained and released before filing for asylum:	3
Asylum seekers never detained:	303
Total asylum seekers:	10,336

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**DRO Table 6.1. Length of detention for aliens referred for credible fear interview at port of entry, FY 2001**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Length of stay for asylum seekers who have been released from detention:

<90 days	10,941
91-180 days	895
>180 days	602
Total	12,438

Length of stay for asylum seekers who were detained but the detention status in April 2003 is unknown:

<90 days	111
91-180 days	5
>180 days	6
Total	122

Length of stay for asylum seekers still in detention on April 7, 2003:

<90 days	9	including	4	with orders of removal
91-180 days	9		6	
>180 days	72		60	
Total	90		70	

Asylum seekers detained and released before filing for asylum: 7

Asylum seekers never detained: 306

Total asylum seekers: 12,963

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**DRO Table 6.2. Length of detention for aliens referred for credible fear interview at port of entry, FY 2002**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Length of stay for asylum seekers who have been released from detention:

<90 days	7,637
91-180 days	736
>180 days	477
Total	8,850

Length of stay for asylum seekers who were detained but the detention status in April 2003 is unknown:

<90 days	34
91-180 days	3
>180 days	7
Total	44

Length of stay for asylum seekers still in detention on April 7, 2003:

<90 days	5	including	3	with orders of removal
91-180 days	8		3	
>180 days	353		193	
Total	366		199	

Asylum seekers detained and released before filing for asylum: 4

Asylum seekers never detained: 485

Total asylum seekers: 9,749

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**DRO Table 6.3. Length of detention for aliens referred for credible fear interview at port of entry, FY 2003**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Length of stay for asylum seekers who have been released from detention:

<90 days	3,882	average	23.8
91-180 days	885	average	128.7
>180 days	497	average	263.0
Total	5,264	average	64.0

Length of stay for asylum seekers whose detention records are unresolved:

<90 days	21
91-180 days	11
>180 days	5
Total	37

Length of stay for asylum seekers still in detention on March 7, 2004:

<90 days	9	including	4 with orders of removal
91-180 days	50		14
>180 days	433		217
Total	492		235

Asylum seekers detained and released before filing for asylum: 5

Asylum seekers never detained: 188

Total asylum seekers: 5,986

**DRO Table 7.0. Type and rate of release for aliens referred for credible fear interview at port of entry, FY 2000**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

INS District Office	Total Detained	Total Released	Percent Released	Release Codes									Not released or unknown
				BOND	DEP	OR	OS	PARO	TERM	USM	VD	WITH	
<b>Total</b>	<b>10,030</b>	<b>9,890</b>	<b>98.6%</b>	<b>1,869</b>	<b>1,004</b>	<b>1,020</b>	<b>70</b>	<b>5,346</b>	<b>494</b>	<b>24</b>	<b>12</b>	<b>51</b>	<b>140</b>
Anchorage, AK	1	0	0.0%	.	.	.	.	.	.	.	.	.	1
Atlanta, GA	196	194	99.0%	5	73	25	4	75	4	8	.	.	2
Baltimore, MD	36	34	94.4%	2	18	.	1	9	3	.	1	.	2
Boston, MA	79	72	91.1%	.	13	1	1	53	4	.	.	.	7
Buffalo, NY	26	23	88.5%	3	12	3	.	2	1	.	.	2	3
Chicago, IL	851	845	99.3%	.	27	2	1	813	.	1	.	1	6
Cleveland, OH	2	2	100.0%	1	1	.	.	.	.	.	.	.	.
Dallas, TX	26	22	84.6%	4	9	2	.	3	4	.	.	.	4
Denver, CO	12	12	100.0%	1	5	1	.	5	.	.	.	.	.
Detroit, MI	107	105	98.1%	86	5	.	9	2	2	.	.	1	2
El Paso, TX	35	34	97.1%	5	12	11	2	2	1	.	1	.	1
Harlingen, TX	542	540	99.6%	10	4	22	.	502	2	.	.	.	2
Honolulu, HI	11	10	90.9%	1	2	1	1	.	5	.	.	.	1
Houston, TX	96	93	96.9%	4	57	3	3	4	6	.	2	14	3
Kansas City, MO	4	4	100.0%	.	4	.	.	.	.	.	.	.	.
Los Angeles, CA	2,604	2,549	97.9%	1,080	33	917	23	474	15	2	3	2	55
Miami, FL	2,543	2,537	99.8%	62	77	2	3	2,386	1	6	.	.	6
New Orleans, LA	93	90	96.8%	21	36	1	.	16	9	6	.	1	3
New York, NY	524	520	99.2%	.	211	.	.	161	147	.	.	1	4
Newark, NJ	504	496	98.4%	.	192	.	2	90	185	.	2	25	8
Omaha, NE	2	2	100.0%	1	.	.	1	.	.	.	.	.	.
Philadelphia, PA	155	148	95.5%	3	24	10	1	99	11	.	.	.	7
Phoenix, AZ	55	54	98.2%	5	28	.	3	8	10	.	.	.	1
Portland, OR	4	4	100.0%	.	4	.	.	.	.	.	.	.	.
San Antonio, TX	4	4	100.0%	1	.	1	.	1	1	.	.	.	.
San Diego, CA	962	954	99.2%	325	33	8	2	557	26	.	2	1	8
San Francisco, CA	189	188	99.5%	135	9	.	3	21	20	.	.	.	1
San Juan, PR	26	25	96.2%	9	6	.	.	10	.	.	.	.	1
Seattle, WA	176	167	94.9%	76	51	6	8	3	20	1	1	1	9
St. Paul, MN	35	33	94.3%	2	13	1	.	7	8	.	.	2	2
Washington, DC	130	129	99.2%	27	45	3	2	43	9	.	.	.	1

- DEP= released for removal from the United States
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- OS= released on an order of supervision
- PARO= paroled into the United States
- TERM= released, case terminated
- USM= released to U.S. Marshals
- VD= released for voluntary departure from the United States
- WITH= released, alien withdraws application

**DRO Table 7.1. Type and rate of release for aliens referred for credible fear interview at port of entry, FY 2001**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

INS District Office	Total Detained	Total Released	Percent Released	Release Codes									Not released or unknown
				BOND	DEP	OR	OS	PARO	TERM	USM	VD	WITH	
<b>Total</b>	<b>12,650</b>	<b>12,438</b>	<b>98.3%</b>	<b>1,966</b>	<b>1,173</b>	<b>345</b>	<b>51</b>	<b>8,477</b>	<b>351</b>	<b>8</b>	<b>12</b>	<b>55</b>	<b>212</b>
Atlanta, GA	245	240	98.0%	1	106	16	6	108	1	1	.	1	5
Baltimore, MD	40	36	90.0%	9	17	.	4	5	1	.	.	.	4
Boston, MA	74	69	93.2%	2	9	2	1	54	1	.	.	.	5
Buffalo, NY	42	37	88.1%	4	19	1	.	12	.	.	.	1	5
Chicago, IL	696	692	99.4%	2	31	.	2	657	.	.	.	.	4
Cleveland, OH	1	1	100.0%	.	.	.	.	1	.	.	.	.	.
Dallas, TX	31	27	87.1%	7	13	1	1	.	4	.	1	.	4
Denver, CO	5	5	100.0%	2	3	.	.	.	.	.	.	.	.
Detroit, MI	70	66	94.3%	42	7	2	5	6	4	.	.	.	4
El Paso, TX	78	76	97.4%	6	27	9	2	24	8	.	.	.	2
Harlingen, TX	299	295	98.7%	4	2	1	.	288	.	.	.	.	4
Helena, MT	3	2	66.7%	.	1	.	.	.	.	1	.	.	1
Honolulu, HI	11	8	72.7%	2	4	.	.	.	2	.	.	.	3
Houston, TX	83	81	97.6%	6	45	1	2	3	9	.	2	13	2
Los Angeles, CA	2,784	2,775	99.7%	1,134	37	254	5	1,334	8	.	2	1	9
Miami, FL	5,123	5,038	98.3%	9	69	4	1	4,953	.	.	2	.	85
New Orleans, LA	51	50	98.0%	16	12	.	2	16	.	4	.	.	1
New York, NY	546	538	98.5%	.	285	.	.	149	104	.	.	.	8
Newark, NJ	509	486	95.5%	3	252	1	1	73	121	.	1	34	23
Omaha, NE	1	1	100.0%	.	.	.	.	.	.	1	.	.	.
Philadelphia, PA	289	276	95.5%	12	42	8	.	172	36	.	3	3	13
Phoenix, AZ	58	55	94.8%	5	34	.	2	8	5	.	.	1	3
Portland, ME	5	4	80.0%	1	2	.	.	1	.	.	.	.	1
Portland, OR	7	7	100.0%	5	.	.	.	.	2	.	.	.	.
San Antonio, TX	5	5	100.0%	1	1	1	1	1	.	.	.	.	.
San Diego, CA	1,048	1,040	99.2%	472	54	37	6	460	10	.	1	.	8
San Francisco, CA	329	326	99.1%	151	45	1	6	112	10	1	.	.	3
San Juan, PR	38	33	86.8%	3	3	.	.	27	.	.	.	.	5
Seattle, WA	41	35	85.4%	2	10	6	2	1	14	.	.	.	6
St. Paul, MN	43	42	97.7%	11	12	.	1	8	9	.	.	1	1
Washington, DC	95	92	96.8%	54	31	.	1	4	2	.	.	.	3

DEP= released for removal from the United States

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OS= released on an order of supervision

PARO= paroled into the United States

TERM= released, case terminated

USM= released to U.S. Marshals

VD= released for voluntary departure from the United States

WITH= released, alien withdraws application

**DRO Table 7.2. Type and rate of release for aliens referred for credible fear interview at port of entry, FY 2002**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

INS District Office	Total Detained	Total Released	Percent Released	Release Codes									Not released or unknown
				BOND	DEP	OR	OS	PARO	TERM	USM	VD	WITH	
<b>Total</b>	<b>9,260</b>	<b>8,850</b>	<b>95.6%</b>	<b>1,223</b>	<b>1,337</b>	<b>63</b>	<b>33</b>	<b>5,942</b>	<b>185</b>	<b>13</b>	<b>10</b>	<b>44</b>	<b>410</b>
Atlanta, GA	170	156	91.8%	1	75	6	.	71	2	.	.	1	14
Baltimore, MD	41	33	80.5%	1	30	1	.	1	.	.	.	.	8
Boston, MA	23	18	78.3%	.	3	.	.	15	.	.	.	.	5
Buffalo, NY	44	38	86.4%	.	17	.	.	21	.	.	.	.	6
Chicago, IL	504	489	97.0%	.	17	1	.	466	3	1	1	.	15
Dallas, TX	29	24	82.8%	10	11	.	.	2	.	.	1	.	5
Denver, CO	2	2	100.0%	.	2	.	.	.	.	.	.	.	.
Detroit, MI	48	27	56.3%	22	3	.	.	.	1	.	.	1	21
El Paso, TX	33	30	90.9%	2	.	2	1	16	7	.	2	.	3
Harlingen, TX	1,627	1,623	99.8%	5	1	4	.	1,613	.	.	.	.	4
Helena, MT	1	1	100.0%	.	1	.	.	.	.	.	.	.	.
Honolulu, HI	12	11	91.7%	2	3	1	.	1	4	.	.	.	1
Houston, TX	104	97	93.3%	6	61	1	.	3	1	1	3	21	7
Los Angeles, CA	1,250	1,117	89.4%	381	57	24	1	605	44	5	.	.	133
Miami, FL	3,110	3,088	99.3%	6	265	.	3	2,807	3	.	1	3	22
New Orleans, LA	69	56	81.2%	8	32	6	1	.	4	5	.	.	13
New York, NY	309	289	93.5%	.	223	.	.	29	37	.	.	.	20
Newark, NJ	511	473	92.6%	2	382	1	.	28	43	.	.	17	38
Philadelphia, PA	159	135	84.9%	2	40	.	.	79	14	.	.	.	24
Phoenix, AZ	40	34	85.0%	.	18	.	2	14	.	.	.	.	6
Portland, ME	1	1	100.0%	.	1	.	.	.	.	.	.	.	.
Portland, OR	2	2	100.0%	1	1	.	.	.	.	.	.	.	.
San Antonio, TX	59	58	98.3%	39	3	1	.	12	2	1	.	.	1
San Diego, CA	776	742	95.6%	608	26	5	4	91	8	.	.	.	34
San Francisco, CA	168	160	95.2%	103	17	1	20	18	1	.	.	.	8
San Juan, PR	52	49	94.2%	.	2	.	1	46	.	.	.	.	3
Seattle, WA	40	30	75.0%	2	13	8	.	.	4	.	2	1	10
St. Paul, MN	13	8	61.5%	3	2	.	.	1	2	.	.	.	5
Washington, DC	63	59	93.7%	19	31	1	.	3	5	.	.	.	4

DEP= released for removal from the United States

OR= released on recognizance

OS= released on an order of supervision

PARO= paroled into the United States

TERM= released, case terminated

USM= released to U.S. Marshals

VD= released for voluntary departure from the United States

WITH= released, alien withdraws application

**DRO Table 7.3. Type and rate of release for aliens referred for credible fear interview at port of entry, FY 2003**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

INS District Office	Total Detained	Total Released	Percent Released	Release Codes									Not Released
				BOND	DEP	OR	OS	PARO	TERM	USM	VD	WITH	
<b>Total</b>	<b>5,793</b>	<b>5,264</b>	<b>90.9%</b>	<b>479</b>	<b>1,388</b>	<b>78</b>	<b>56</b>	<b>2,988</b>	<b>197</b>	<b>27</b>	<b>16</b>	<b>35</b>	<b>529</b>
Atlanta, GA	197	122	61.9%	1	64	4	3	50	.	.	.	.	75
Baltimore, MD	37	28	75.7%	.	25	.	1	2	.	.	.	.	9
Boston, MA	10	8	80.0%	1	3	1	.	1	1	1	.	.	2
Buffalo, NY	37	37	100.0%	.	13	.	4	18	2	.	.	.	.
Chicago, IL	164	147	89.6%	.	8	5	16	115	2	.	1	.	17
Cleveland, OH	2	2	100.0%	.	1	.	1	.	.	.	.	.	.
Dallas, TX	11	10	90.9%	.	3	1	.	4	.	.	2	.	1
Denver, CO	4	3	75.0%	.	.	.	.	3	.	.	.	.	1
Detroit, MI	16	14	87.5%	6	3	.	.	.	1	4	.	.	2
El Paso, TX	65	64	98.5%	2	4	.	2	45	11	.	.	.	1
Harlingen, TX	636	629	98.9%	33	7	.	1	587	1	.	.	.	7
Helena, MT	1	1	100.0%	.	1	.	.	.	.	.	.	.	.
Honolulu, HI	3	3	100.0%	1	1	.	.	.	1	.	.	.	.
Houston, TX	89	76	85.4%	6	39	3	2	5	2	.	.	19	13
Kansas City, MO	4	1	25.0%	.	1	.	.	.	.	.	.	.	3
Los Angeles, CA	259	232	89.6%	11	105	31	3	34	44	.	3	1	27
Miami, FL	2,345	2,261	96.4%	1	403	1	3	1,833	11	.	4	5	84
New Orleans, LA	198	92	46.5%	1	77	.	.	.	5	7	2	.	106
New York, NY	215	195	90.7%	.	152	.	.	18	25	.	.	.	20
Newark, NJ	400	345	86.3%	2	293	.	1	12	29	.	.	8	55
Philadelphia, PA	118	98	83.1%	24	9	1	1	46	15	.	.	2	20
Phoenix, AZ	78	71	91.0%	.	39	.	3	27	2	.	.	.	7
Portland, OR	2	2	100.0%	.	.	2	.	.	.	.	.	.	.
San Antonio, TX	129	126	97.7%	21	.	.	.	88	4	13	.	.	3
San Diego, CA	411	365	88.8%	262	40	20	6	23	12	2	.	.	46
San Francisco, CA	164	154	93.9%	88	36	.	4	5	21	.	.	.	10
San Juan, PR	97	90	92.8%	.	18	.	.	70	.	.	2	.	7
Seattle, WA	35	31	88.6%	1	13	8	4	.	5	.	.	.	4
St. Paul, MN	2	2	100.0%	.	2	.	.	.	.	.	.	.	.
Washington, DC	64	55	85.9%	18	28	1	1	2	3	.	2	.	9

- DEP= released for removal from the United States
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- PARO= paroled into the United States
- TERM= released, case terminated
- USM= released to U.S. Marshals
- VD= released for voluntary departure from the United States
- WITH= released, alien withdraws application

**DRO Table 8.0. Disposition of cases for aliens referred for credible fear interview at port of entry, FY 2000**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Case disposition	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>10,336</b>	<b>100.0%</b>	<b>10,030</b>	<b>97.0%</b>	<b>306</b>	<b>3.0%</b>
Granted asylum	1,899	18.4%	1,838	18.3%	61	19.9%
Removed from the U.S.	919	8.9%	904	9.0%	15	4.9%
Unexecuted removal order	3,718	36.0%	3,653	36.4%	65	21.2%
Other closure <sup>1</sup>	1,268	12.3%	1,201	12.0%	67	21.9%
Pending	2,532	24.5%	2,434	24.3%	98	32.0%

Includes actions by INS (or succeeding DHS component) through early April, 2003, and actions by the Executive Office for Immigration Review through early April, 2003.

<sup>1</sup>"Other closure" includes other forms of relief, withdrawal of application for admission to the United States, administrative closure through case termination.

**DRO Table 8.1. Disposition of cases for aliens referred for credible fear interview at port of entry, FY 2001**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Case disposition	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>12,963</b>	<b>100.0%</b>	<b>12,650</b>	<b>97.6%</b>	<b>313</b>	<b>2.4%</b>
Granted asylum	1,644	12.7%	1,628	12.9%	16	5.1%
Removed from the U.S.	1,065	8.2%	1,048	8.3%	17	5.4%
Unexecuted removal order	3,229	24.9%	3,181	25.1%	48	15.3%
Other closure <sup>1</sup>	1,006	7.8%	908	7.2%	98	31.3%
Pending	6,019	46.4%	5,885	46.5%	134	42.8%

Includes actions by INS (or succeeding DHS component) through early April, 2003, and actions by the Executive Office for Immigration Review through early April, 2003.

<sup>1</sup>"Other closure" includes other forms of relief, withdrawal of application for admission to the United States, administrative closure through case termination.

**DRO Table 8.2. Disposition of cases for aliens referred for credible fear interview at port of entry, FY 2002**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Case disposition	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>9,749</b>	<b>100.0%</b>	<b>9,260</b>	<b>95.0%</b>	<b>489</b>	<b>5.0%</b>
Granted asylum	395	4.1%	390	4.2%	5	1.0%
Removed from the U.S.	1,148	11.8%	1,146	12.4%	2	0.4%
Unexecuted removal order	1,517	15.6%	1,486	16.0%	31	6.3%
Other closure <sup>1</sup>	474	4.9%	441	4.8%	33	6.7%
Pending	6,215	63.8%	5,797	62.6%	418	85.5%

Includes actions by INS (or succeeding DHS component) through early April, 2003, and actions by the Executive Office for Immigration Review through early April, 2003.

<sup>1</sup>"Other closure" includes other forms of relief, withdrawal of application for admission to the United States, administrative closure through case termination.

**DRO Table 8.3. Disposition of cases for aliens referred for credible fear interview at port of entry, FY 2003**

Source: Office of Detention and Removal Operations, U.S. Department of Homeland Security

Case disposition	Total		Detained at some point		Not detained	
	Count	Percent	Count	Percent	Count	Percent
<b>Total</b>	<b>5,986</b>	<b>100.0%</b>	<b>5,793</b>	<b>96.8%</b>	<b>193</b>	<b>3.2%</b>
Granted asylum	312	5.2%	310	5.4%	2	1.0%
Removed from the U.S.	1,237	20.7%	1,229	21.2%	8	4.1%
Unexecuted removal order	934	15.6%	886	15.3%	48	24.9%
Other closure	431	7.2%	392	6.8%	39	20.2%
Pending	3,072	51.3%	2,976	51.4%	96	49.7%

Includes actions by INS (or succeeding DHS component) through December 2003, and actions by the Executive Office for Immigration Review through December 2003.

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

**STATISTICAL REPORT ON IMMIGRATION COURT PROCEEDINGS,  
FY 2000-2004**

FEBRUARY 2005

Special Tabulations Prepared with Assistance from the  
U.S. Department of Justice (DOJ)  
Executive Office for Immigration Review (EOIR)

Assembled and Introduced by Susan Kyle, Cory Fleming, and Fritz Scheuren  
NORC University of Chicago

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**Outcome of Affirmative Asylum Cases Referred to EOIR**

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## PREFACE

The Study of Asylum Seekers in Expedited Removal (the Study) was undertaken by experts appointed by the U.S. Commission on International Religious Freedom (the Commission) to respond to four questions posed by Congress in Section 605 of the International Religious Freedom Act (IRFA) of 1998. Specifically, the Study is to determine whether immigration officers performing duties under section 235(b) of the Immigration and Nationality Act (INA) (8 U.S.C. 1225(b)) 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.

The Study has several components, including collection of statistics; thorough sample file review; direct observations of the removal process; surveys of Department of Homeland Security (DHS) officials and detention center personnel; as well as interviews with individuals seeking asylum.

The present report consists of a compilation of administrative data tabulated by the experts for the Study with support from the U.S. Department of Justice Executive Office for Immigration Review (EOIR). EOIR reviewed an earlier draft of this report and provided comments that have been taken into account in the final report. The compilation and accompanying descriptive summaries were prepared under my general direction by Susan Kyle, Cory Fleming, and Fritz Scheuren. Let me also take this opportunity to express my deep appreciation for the care, diligence, speed, and expertise of the EOIR team including Deputy Chief Immigration Judge Thomas Pullen, Ana Mann, Steven Lang, Charles Adkins-Blanche, Pam Calvert, Isabelle Chewning, Brett Endres, Cecelia Espenosa, and especially Marta Rothwarf.

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Immigration Counsel  
U.S. Commission on International Religious Freedom

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# Special Tabulations Prepared with Assistance from the U.S. Department of Justice

## DESCRIPTIVE SUMMARY

This Report consists of a compilation of special tabulations produced with assistance from the Executive Office of Immigration Review (EOIR) within the U.S. Department of Justice (DOJ). The tables included here were designed as background for the Study of Asylum Seekers in Expedited Removal (the Study) being undertaken by experts designated by the U.S. Commission on International Religious Freedom (the Commission), pursuant to section 605 of the International Religious Freedom Act (IRFA) of 1998.

The tabulations are quite extensive and hence some summarization is warranted. The charts provide an overview of immigration court proceedings for asylum seekers subject to Expedited Removal: (1) the outcomes of immigration court asylum proceedings; (2) EOIR review of negative credible fear determinations; (3) immigration court asylum proceeding outcomes for represented and unrepresented aliens; (4) failure to appear frequencies for released aliens; (5) withdrawals of asylum applications by detention status; (6) the outcome of appeals before the Board of Immigration Appeals (BIA); and (7) the outcome of cases referred to EOIR from the Affirmative Asylum process (for comparative purposes). The data lay out the geographical composition of aliens seeking asylum in the U.S and the court proceedings during a five-year period from fiscal year (FY) 2000-2004. The data universe is based on the number of credible fear receipts from the Department of Homeland Security (DHS) in FY 2000-2003 matched with the correlating EOIR completed cases, which span pre-FY 2000-2004.<sup>1</sup>

Confidentiality requirements restrict the public versions of these basic and text tables to report only cell counts of six (6) or more for nationality statistics. All nationality nonzero cells of less than 6 are asterisked (\*). Zero cells are identified by a dash (-). Percentages representing less than six (6) divided by the total are represented by a pound (#). Summary totals have also been examined to ensure indirect disclosure does not occur.

The data examine the outcomes of cases of asylum seekers subject to Expedited Removal by nationality, application decision, and fiscal year during pre-FY 2000-2004 (basic table set 1).<sup>2</sup> Text table A reveals 28 percent of aliens were granted relief from FY 2000-2004, similar to 30 percent cite by GAO in 2000.<sup>3</sup>

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<sup>1</sup> Since the data reflects completed EOIR cases over time, in some cases FY 2000 has fewer cases than subsequent years because many cases received in FY 2000 were completed after FY 2000.

<sup>2</sup> Note that all charts and text tables in this summary are based on data presented in the table sets, available at [www.uscirf.gov](http://www.uscirf.gov).

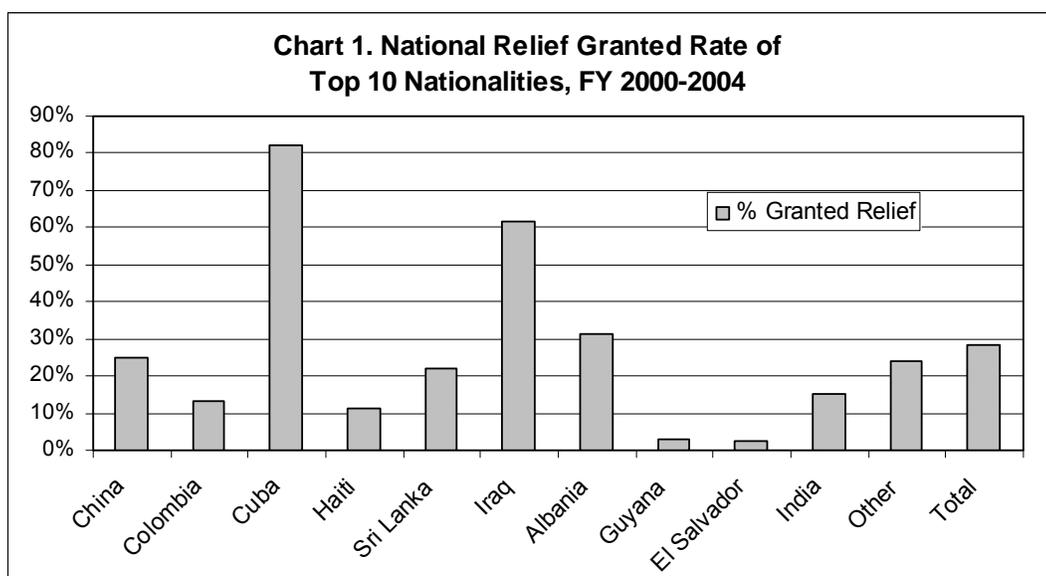
<sup>3</sup> United States General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO/GGD-00-176, September 2000.

Table A. Outcome of Cases of Aliens Referred to EOIR Post Credible Fear Determination by Nationality, FY 2000-2004

Nationality	FY 2000-2004				
	Asylum Granted	CAT Withholding or Deferral Granted <sup>a</sup>	Adjustment Granted	Granted Relief	Total Cases Completed
China	2285	37	*	25%	9277
Colombia	407	*	8	13%	3152
Cuba	35	*	2495	82%	3079
Haiti	292	*	*	11%	2675
Sri Lanka	374	23	-	22%	1785
Iraq	464	29	-	61%	803
Albania	199	*	*	31%	652
Guyana	16	-	-	3%	510
El Salvador	*	6	*	3%	476
India	62	*	*	15%	448
Other	1554	84	18	24%	6978
Total	5690 <sup>n</sup>	197	2528	28%	29835

(\*) = 5 or less, (-) = 0, <sup>a</sup> CAT: Convention Against Torture, <sup>n</sup>rounded total >5688 & <5693  
Based on Basic EOIR Tables 1.

Chart 1 below shows the top ten nationalities and their rate of relief granted, including asylum, Convention Against Torture (CAT) withholding or deferral, and adjustment of status granted. The *total cases completed* consists of applications for asylum granted, CAT withholding or deferral granted, adjustment of status granted, asylum or CAT relief withdrawn, and ordered removed including deportation order, exclusion order, removal order, voluntary departure orders, and Immigration and Naturalization Service (INS) or DHS Expedited Removal orders.



Note: China n=9277, Colombia n=3152, Cuba n=3079, Haiti n=2675, Sri Lanka n=1785, Iraq n=803, Albania n=652, Guyana n=510, El Salvador n=476, India n=448, Other n=6978, Total n=29835  
Based on Basic EOIR Tables 1.

The same case outcome classification information as basic table 1 is further divided by 14 immigration courts in jurisdictions visited by Commissioners and/or Commission experts in the course of the Study (basic table sets 1.1 to 1.14).<sup>4</sup> These 14 immigration courts<sup>5</sup> represent 83 percent of the total cases adjudicated from FY 2000-2004 for asylum seekers subject to Expedited Removal.<sup>6</sup> Below are 13 summary tables listing the top five nationalities in each immigration court<sup>7</sup>.

Table B. **Miami:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
Cuba	14	*	2155	87%	2505
Haiti	190	*	*	11%	1705
Colombia	195	-	8	12%	1642
Sri Lanka	-	-	-	-	291
Guyana	6	-	-	2%	264
Other	173	*	12	13%	1403
Total	578	*	2176	35%	7810

(\*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.8.

Table C. **New York:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
China	1625	25	-	25%	6542
Sri Lanka	7	*	-	4%	214
Colombia	64	-	-	31%	205
Albania	76	*	-	60%	128
Guyana	*	-	-	#	76
Other	148	*	8	28%	572
Total	1925 <sup>a</sup>	33	8	25%	7736

(\*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total, <sup>a</sup>rounded total >1920 & <1925  
Based on Basic EOIR Tables 1.10.

<sup>4</sup> Basic tables 1.1-7 to 1.14-7 discuss case outcome by Immigration Judge and application decision for FY 2000-2003. These tables are discussed in *Selected Statistical Analysis of Immigration Judge Rulings on Asylum Applications, FY 2000-2003*, Baier, February 2005.

<sup>5</sup> EOIR determined that providing the complete data for all immigrations courts nationwide would be too large a task; hence a (non-random) sample of 14 courts was selected and provided for the Study. This report does not aim to make any inferences to other courts not part of this study.

<sup>6</sup> The percentage determined by the total number of cases adjudicated in the 14 courts (the aggregate of basic EOIR tables 1.1-2 to 1.14-6) divided by the total number of cases adjudicated nationally (the aggregate of basic EOIR tables 1-2 to 1-6).

<sup>7</sup> Guaynabo is not included in the summary tables because the majority of the sample would be suppressed to adhere to the confidentiality rule of five (5).

Table D. **Elizabeth and Queens** (Detention Facilities): Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
Sri Lanka	207	*	-	56%	370
Colombia	12	*	-	5%	256
China	66	-	-	29%	225
Nigeria	26	*	-	17%	155
Haiti	6	-	-	6%	106
Other	372	8	-	28%	1360
Total	689	12	-	28%	2472

(\*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.3.

Table E. **San Diego**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
Iraq	239	16	-	66%	389
Ukraine	17	*	-	13%	150
China	8	-	-	8%	101
Guatemala	6	*	-	12%	57
El Salvador	-	-	-	-	47
Other	62	8	16	16%	531
Total	332	28	16	29%	1275

(\*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.11.

Table F. **Krome** (Detention Facility): Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
Haiti	28	*	-	7%	404
Colombia	*	-	-	#	173
Guyana	*	-	-	#	57
Dominican Republic	-	-	-	-	28
Ecuador	-	-	-	-	25
Other	13	*	-	7%	206
Total	47	*	-	6%	893

(\*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total

Based on Basic EOIR Tables 1.5.

Table G. **Newark:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
China	77	*	-	28%	283
Colombia	14	-	-	8%	170
Haiti	6	*	-	11%	72
Sri Lanka	8	-	-	15%	54
Albania	8	-	-	30%	27
Other	42	*	7	21%	253
Total	155	9	7	20%	859

(\*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.9.

Table H. **San Francisco:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
Sri Lanka	84	9	-	37%	254
China	62	*	-	47%	134
India	32	*	*	51%	67
Afghanistan	29	*	-	84%	37
El Salvador	-	*	*	#	37
Other	126	9	6	51%	276
Total	333	23	8	45%	805

(\*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total

Based on Basic EOIR Tables 1.12.

Table I. **Los Angeles:** Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
Sri Lanka	*	-	-	#	147
China	49	*	-	40%	128
Armenia	10	*	-	16%	82
Colombia	20	*	-	40%	52
Cuba	*	-	37	76%	50
Other	121	*	*	37%	345
Total	202	11	40 <sup>a</sup>	31%	804

(\*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total, <sup>a</sup>rounded total >37 & <42

Based on Basic EOIR Tables 1.7.

Table J. **Chicago**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
China	17	-	*	12%	151
Sri Lanka	-	*	-	#	73
Ukraine	-	-	-	-	39
Albania	12	-	*	34%	38
Pakistan	*	-	-	14%	35
Other	69	*	11	28%	290
Total	103	*	13	19%	626

(\* ) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total  
Based on Basic EOIR Tables 1.2.

Table K. **Atlanta**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
China	*	-	-	#	159
Sri Lanka	8	-	-	10%	79
Colombia	-	-	-	-	61
Haiti	*	-	-	#	36
El Salvador	-	-	-	-	29
Other	25	*	*	12%	243
Total	37	*	*	7%	607

(\* ) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total  
Based on Basic EOIR Tables 1.1.

Table L. **Lancaster** (Mira Loma Detention Facility): Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
China	19	*	-	18%	119
Armenia	*	-	-	#	40
Sri Lanka	7	*	-	23%	39
India	*	-	-	#	13
Colombia	-	-	-	-	12
Other	16	*	-	22%	88
Total	46	8	-	17%	311

(\* ) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total  
Based on Basis EOIR Tables 1.6.

Table M. **Houston**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
Colombia	8	-	-	10%	78
China	*	-	-	13%	23
Cuba	*	-	8	41%	22
El Salvador	-	-	-	-	21
Sri Lanka	*	*	-	33%	18
Other	31	-	-	23%	133
Total	48	*	8	19%	295

(\*) = 5 or less, (-) = 0

Based on Basic EOIR Tables 1.4.

Table N. **San Pedro (Detention Facility)**: Outcome of Cases of Top 5 Nationalities of Aliens Referred to EOIR Post Credible Fear Determination, FY 2000-2004

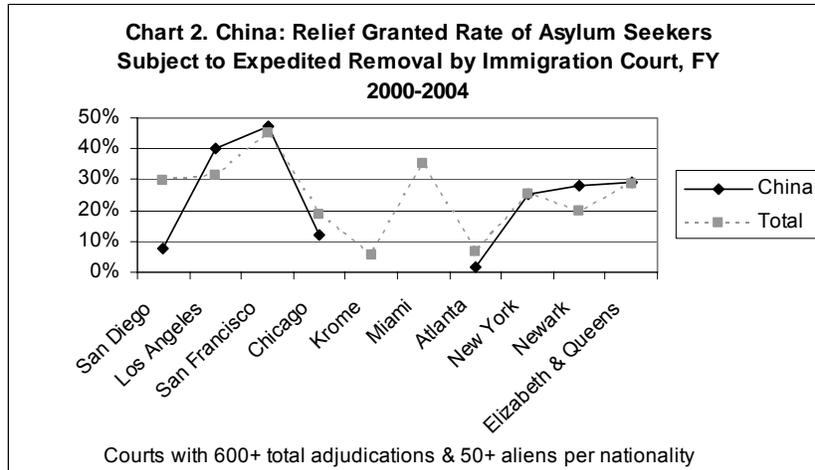
Nationality	Asylum Granted	CAT Withholding or Deferral Granted	Adjustment Granted	Granted Relief	Total Cases Completed
China	16	-	-	25%	63
Armenia	26	-	-	53%	49
El Salvador	-	*	-	#	16
Mexico	-	-	-	-	11
Colombia	*	-	-	#	8
Other	20	*	-	35%	65
Total	64	*	-	33%	212

(\*) = 5 or less, (-) = 0, (#) = percentage representing 5 or less/total

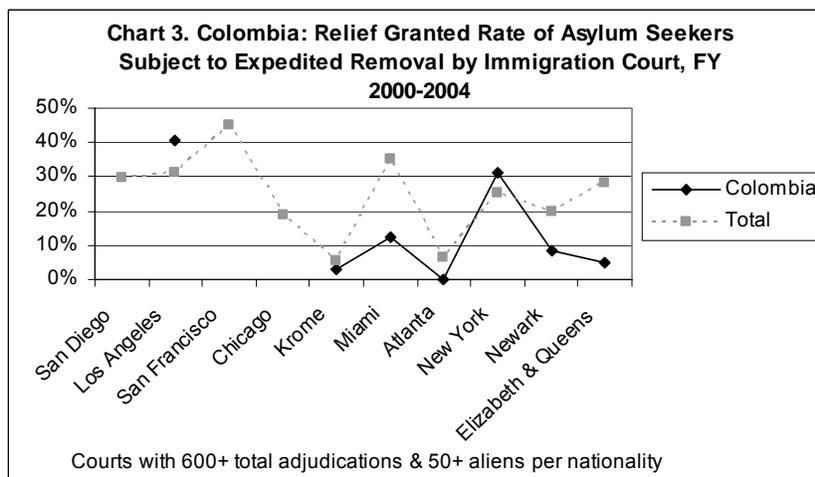
Based on Basic EOIR Tables 1.14.

Through analyzing the above text tables, three nationalities were determined to appear most frequently in these courts, China, Colombia, and Haiti. Chart 2, 3, and 4 below reveal the disparity between the rate of relief granted to asylum seekers subject to Expedited Removal by the national total and these three nationalities. Grant rates for asylum seekers from the People's Republic of China follow the respective court averages closer than Colombians or Haitians. Colombian and Haitian grant rates differ significantly from the Miami, Newark, and Elizabeth and Queens immigration court averages. Additionally, San Francisco, Miami, and New York grant rates are significantly higher than those of Krome and Atlanta.<sup>8</sup>

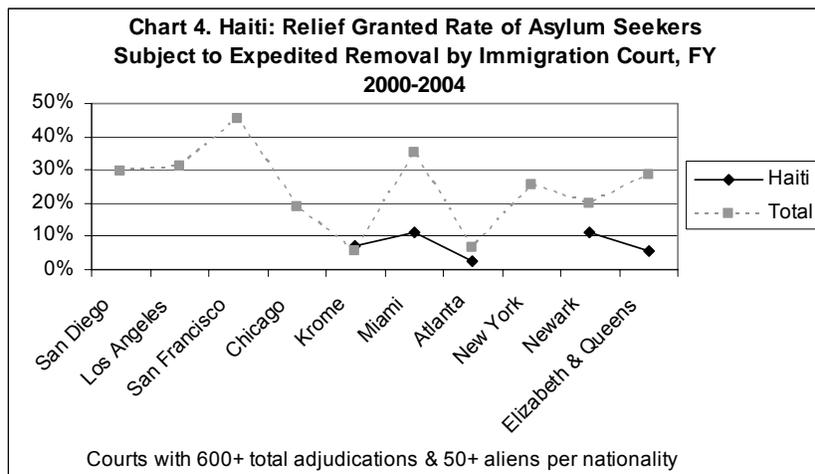
<sup>8</sup>Differences from city to city may be explained by different approaches by different courts, but may also be attributed to other factors. For example, a certain city may receive many members of a certain nationality, who may then move to another area and not appear for court in that city. A large number of cases denied for failure to appear would reveal a low grant rate. In contrast, a "destination city", which attracts members of certain nationalities, may have a higher grant rate attributable to a higher appearance rate. For an examination of variations among judges within the same courts See *Selected Statistical Analysis of Immigration Judge Rulings on Asylum Applications, FY 2000-2003*, Baier, Feb. 2005.



Based on Basic EOIR Tables 1.1-1.14.

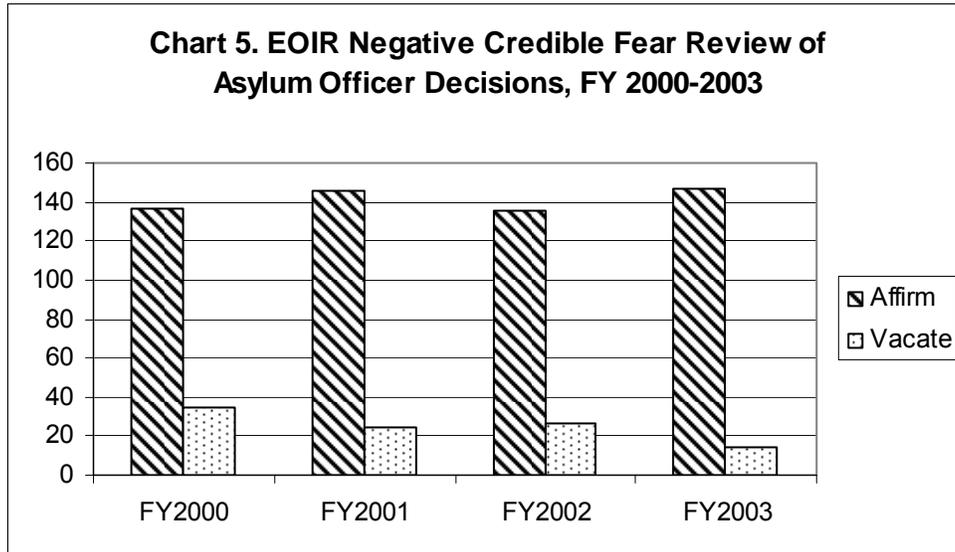


Based on Basic EOIR Tables 1.1-1.14.



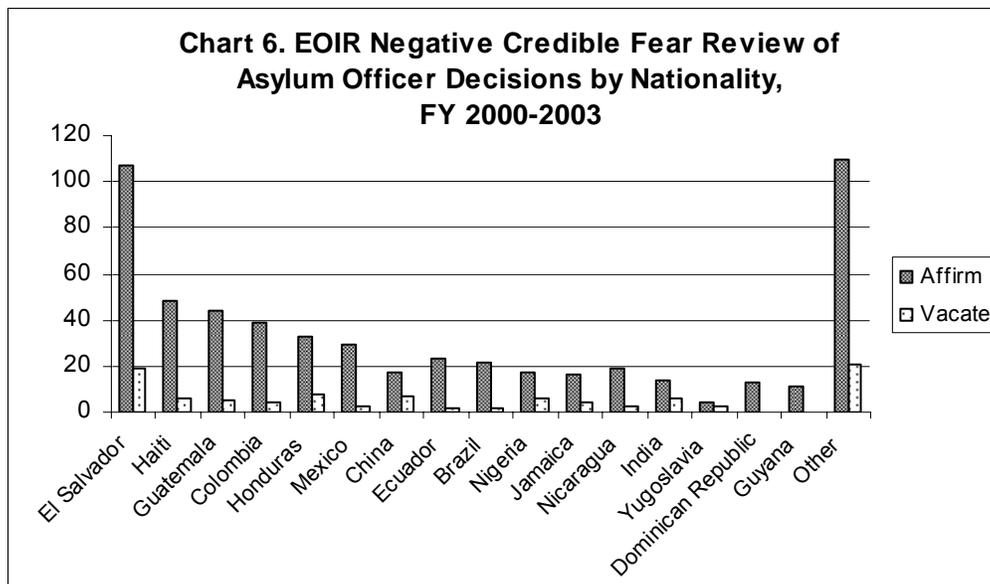
Based on Basic EOIR Tables 1.1-1.14.

Whereas basic table sets 1 and 1.1-1.14 show the outcome of immigration court asylum proceedings, the Study also analyzed the decisions of the immigration court review of negative credible fear determinations by asylum officers separated by nationality and base city, FY 2000-2003 (basic table set 2). While the vast majority of such negative credible fear determinations are affirmed by immigration judges, regardless of nationality or location, the percentage of vacated cases is not insignificant, as seen below in Chart 5.



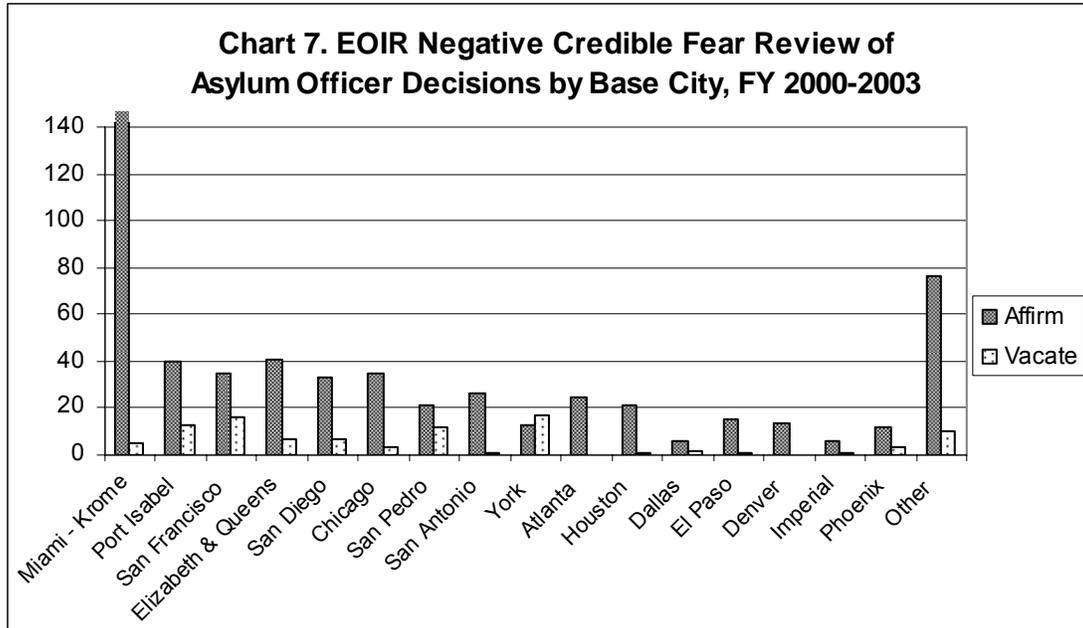
Affirmed: Immigration Judge agrees with negative credible fear determination  
 Vacate: Immigration Judge overturns negative credible fear determination  
 Based on Basic EOIR Tables 2.

Additionally, chart 6 shows the number of Salvadorian cases reviewed are more than double the number of cases reviewed of any other nationality.



Based on Basic EOIR Tables 2.

When examining the number of negative credible fear reviews by base city in Chart 7, Miami overshadows all other cities 3 to 1, reflecting the significantly higher number of credible fear referrals in Miami.<sup>9</sup>

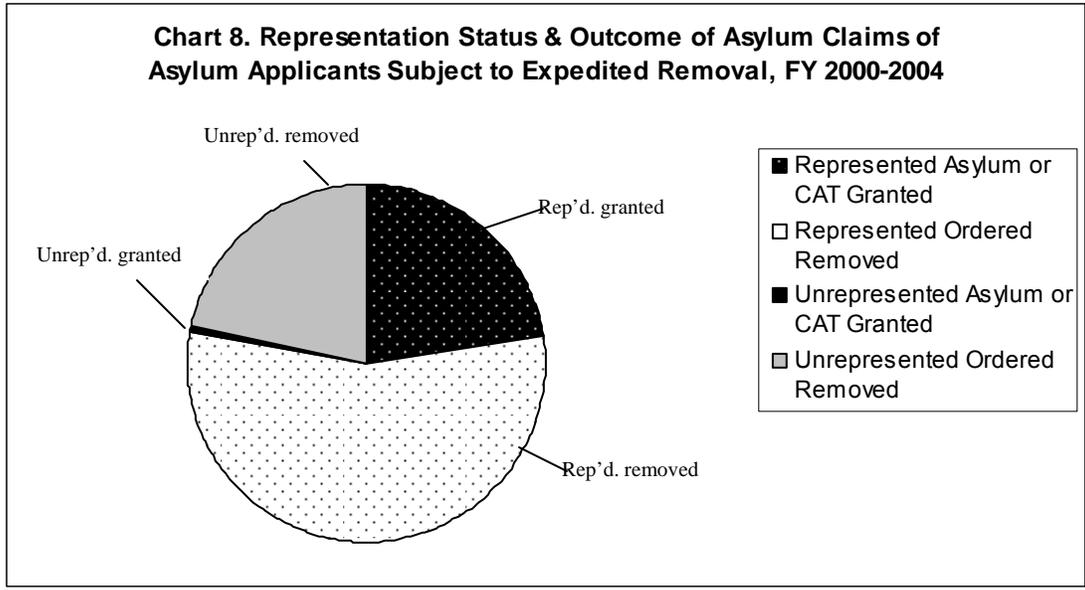


Based on Basic EOIR Tables 2.

The Study further analyzed the outcome of cases for asylum seekers subject to Expedited Removal during pre-FY 2000-2004 by adding the relationship of representation status and base city (basic table set 3). This information is summarized for FY 2000-2004 in basic table 3-1. Nearly all aliens granted asylum were represented by an attorney or a BIA accredited representative (98 percent of 5,693 total cases). Whereas when the total cases adjudicated<sup>10</sup> are combined the percentage of represented aliens decreases (78 percent of 29,835). Chart 8 below shows that while about 25 percent of adjudicated cases concerned unrepresented aliens, this population was granted asylum or CAT relief less than 2.3 percent of the time.

<sup>9</sup> See Chart 3, Credible Fear Claims Made at Top 10 Airports, *Statistical Report on Expedited Removal, Credible Fear, and Withdrawal FY 2000-2003*, Felming and Scheuren, Feb. 2005.

<sup>10</sup> Total cases adjudicated includes asylum granted, CAT withholding or deferral granted, application for asylum or CAT relief withdrawn, ordered removed, and adjustments of status granted.



Based on Basic EOIR Table 3-1.

\*Adjustments and Withdrawals not included.

Further details on representation status by base city, pre-FY 2000-2004 are provided in basic tables 3-2 to 3-13. Text tables P<sup>11</sup> and Q<sup>12</sup> show that the ratio of unrepresented aliens generally fared nearly as poorly in sites with low rates of legal representation as in the sites with high rates of legal representation. Only in the smallest site represented, Imperial, California, did unrepresented asylum seekers do as well or better than the national average of represented asylum seekers.

<sup>11</sup> Base cities chosen by selecting the top 15 cities with the highest percentage of represented aliens, with total adjudicated cases > 20.

<sup>12</sup> Base cities chosen by selecting the top 15 cities with the highest percentage of unrepresented aliens, with total adjudicated cases > 20.

Table P. Representation Status of Aliens Granted Asylum or CAT Relief by Base City with Highest Percentage of Represented Aliens, FY 2000-2004

Base City	Rep Total Adj	Unrep Total Adj	Rep Asylum or CAT Granted	Unrep Asylum or CAT granted	Total Adjudicated
Memphis, TN	85%	15%	23%	13%	104
Lancaster, CA	82%	18%	19%	12%	311
Hartford, CT	83%	17%	25%	12%	149
Detroit, MI	88%	12%	34%	12%	585
Bloomington (St. Paul), MN	81%	19%	35%	9%	117
San Francisco, CA	86%	14%	50%	8%	805
<b>Mean</b>	86%	14%	31%	5%	2575
New York City, NY	94%	6%	27%	3%	7737
Seattle, WA	88%	12%	27%	2%	334
<b>Median</b>	85%	15%	27%	2%	323
<b>Average (all cases)</b>	78%	22%	25%	2%	29835
Elizabeth, NJ	82%	18%	31%	1%	1423
Boston, MA	81%	19%	26%	1%	539
Newark, NJ	85%	15%	22%	1%	866
Honolulu, HI	95%	5%	67%	-	107
Phoenix, AZ	93%	7%	68%	-	70
Philadelphia, PA	93%	7%	19%	-	293
Varick SPC, NY	82%	18%	8%	-	177

Ranked by Top 15 highest percentage of unrepresented aliens granted asylum or CAT relief (-) = 0  
Based on Basic EOIR Table 3-2 to 3-12.

Table Q. Representation Status of Aliens Granted Asylum or CAT Relief by Base City with Highest Percentage of Unrepresented Aliens, FY 2000-2004

Base City	Rep Total Adj	Unrep Total Adj	Rep Asylum or CAT Granted	Unrep Asylum or CAT granted	Total Adjudicated
Imperial, CA	57%	43%	17%	33%	21
El Centro SPC, CA	26%	74%	7%	9%	58
El Paso SPC, TX	58%	42%	30%	8%	92
Houston SPC, TX	57%	43%	25%	6%	162
<b>Mean</b>	52%	48%	23%	5%	1925
Florence SPC, AZ	44%	56%	41%	5%	72
Port Isabel SPC, TX	15%	85%	13%	4%	54
New Orleans, LA	60%	40%	23%	4%	198
Orlando, FL	62%	38%	35%	4%	353
<b>Median</b>	57%	43%	23%	4%	82
San Antonio, TX	38%	62%	15%	4%	87
Harlingen, TX	48%	52%	28%	4%	52
East Mesa, CA	52%	48%	23%	3%	77
<b>Average (all cases)</b>	78%	22%	25%	2%	29835
Krome North SPC, FL	60%	40%	8%	2%	893
Atlanta, GA	61%	39%	9%	1%	599
El Paso, TX	55%	45%	57%	-	38
Batavia SPC, NY	57%	43%	11%	-	47

Ranked by Top 15 highest percentage of unrepresented aliens granted asylum or CAT relief (-) = 0  
Based on Basic EOIR Table 3-2 to 3-13.

The frequency of court decisions based on failure to appear (FTA) of asylum seekers subject to Expedited Removal, released from DHS custody, is broken down by fiscal year and nationality for FY 2000-2003 (basic table set 4). In text table R, the top 14 nationalities are ranked by highest frequency of decision based on FTA, and in text table S by the total number of FTA.<sup>13</sup> This frequency is based on the total FTA in relation to the total immigration court decisions made. This however, is not a measurement of the number of aliens who failed to appear for court. Rather, it is a measurement of the number of orders issued for a failure to appear out of the total number of orders issued. In addition, according to EOIR, an alien who changes venue may be ordered removed in the original court on the basis of failure to appear, but then subsequently appear in court at the second venue. FTA statistics are not adjusted for appearances in subsequent years at a second venue. Nevertheless, the frequencies are useful to indicate nationalities with higher and lower propensities to appear for their hearings.

As is evident from text tables R and S, Sri Lankan nationals have by far the highest number of negative decisions for FTA. While only 6 percent of total immigration judge decisions for released aliens relate to Sri Lankan applicants, 28 percent of immigration judge decisions for FTA related to Sri Lankan applicants. The national total shown below, 22 percent, is significantly lower than the rate reported by GAO in 2000, 42 percent.<sup>14</sup> This is likely due to the statistics for the Study represent a longer duration of time, more than four years, while the GAO statistics represent a 30 month snapshot. A disproportionate number of cases completed within such a snapshot are likely to be closures for FTA, since many cases that proceed to an asylum merits hearing are not decided in the same year they are commenced.

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<sup>13</sup> Nationalities were selected with more than 100 total FTA.

<sup>14</sup> United States General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO/GGD-00-176, September 2000, 6. It is interesting to note that the Department of Justice commented to GAO that the high FTA rate calculated by GAO was attributable to the relatively short time frame of the study; and that “over time more cases will be closed in which aliens will have appeared for their removal hearings, and consequently, this would result in a reduction of the failure to appear rate, to as low as 25 percent.”

Table R: Failure to Appear for Released Aliens Referred to EOIR Post Credible Fear, FY 2000-2003

Nationality	Failures to Appear (FTA)			Total IJ Decisions for Released Aliens Plus Administrative Closures	FTA Decision Freq.
	In Absentia Orders	Administrative Closures	Total FTA		
Sri Lanka	876	33	909	1118	81%
Dominican Republic	64	*	*	82	79%
Ecuador	120	*	*	156	79%
Georgia	60	-	60	89	67%
El Salvador	88	22	110	167	66%
Turkey	105	-	105	165	64%
Brazil	56	-	56	90	62%
Guyana	162	-	162	263	62%
Ukraine	71	*	*	123	60%
India	73	*	*	160	47%
Colombia	427	*	*	1284	34%
Haiti	157	29	186	1591	12%
Cuba	81	17	98	1144	9%
China	432	26	458	6348	7%
Other	250	24	274	1958	14%
Total ALL Nationalities	3022	165	3187	14738	22%

(\*) = 5 or less, (-) = 0

Ranked highest to lowest by Top 14 nationalities with highest frequency of decision based on FTA Based on Basic EOIR Table 4-2.

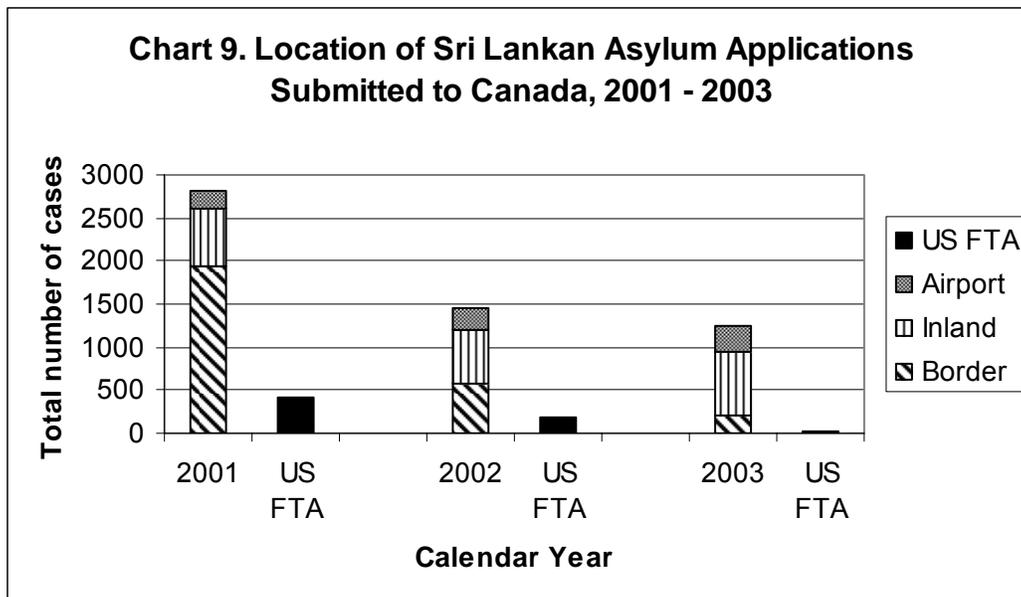
Table S: Failure to Appear for Released Aliens Referred to EOIR Post Credible Fear, FY 2000-2003

Nationality	Failures to Appear (FTA)			Total IJ Decisions for Released Aliens Plus Administrative Closures	FTA Rank
	In Absentia Orders	Administrative Closures	Total FTA		
Sri Lanka	876	33	909	1118	1
China	432	26	458	6348	2
Colombia	427	*	*	1284	3
Haiti	157	29	186	1591	4
Guyana	162	-	162	263	5
Ecuador	120	*	*	156	6
El Salvador	88	22	110	167	7
Turkey	105	-	105	165	8
Cuba	81	17	98	1144	9
India	73	*	*	160	10
Ukraine	71	*	*	123	11
Dominican Republic	64	*	*	82	12
Georgia	60	-	60	89	13
Brazil	56	-	56	90	14
Other	250	24	274	1958	
Total ALL Nationalities	3022	165	3187	14738	

(\*) = 5 or less, (-) = 0

Ranked highest to lowest by Top 14 nationalities with highest total number of decisions based on FTA Based on Basic EOIR Table 4-2.

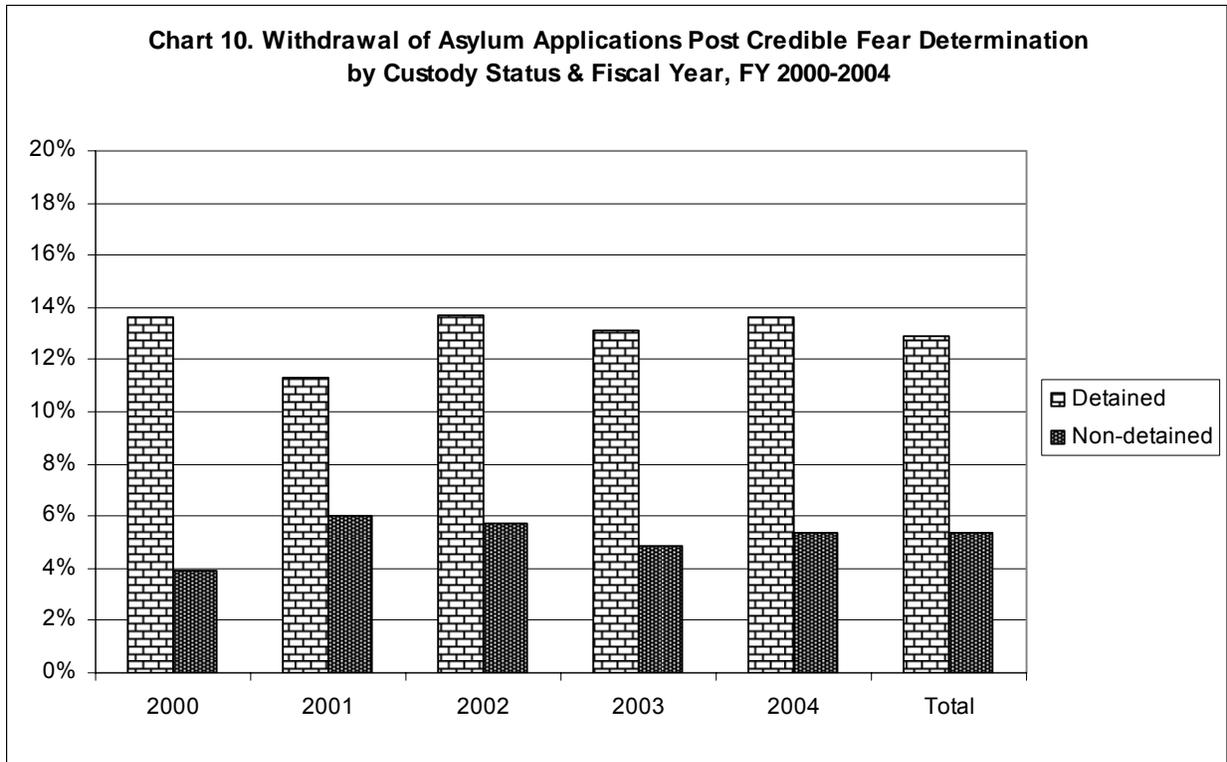
A variety of sources reported that the high failure to appear rate among Sri Lankans is attributable to their desire to use the U.S. as a transit country to apply for asylum in Canada, where there is a strong Sri Lankan Community. Consequently, the Study obtained statistics from the United Nations High Commission on Refugees (UNHCR) Canada office in Ottawa (basic table 4-3), to examine whether there is a correlation between the Sri Lankans who fail to appear for asylum proceedings in the U.S. and Sri Lankans who apply for asylum in Canada. Indeed, the number of Sri Lankan asylum seekers in Canada applying at the boarder and inland is consistently higher than the number of Sri Lankan FTAs in the U.S. Also note that in preparation for the implementation of the U.S.-Canada Safe Third Country Agreement, in January 2003 Canada made it less attractive for aliens to apply for asylum at the border.<sup>15</sup> In addition to the overall decrease in applicants, there was an increase in the number of Sri Lankan asylum applicants applying in the interior of Canada while the number of Sri Lankan asylum applicants applying at the border decreased.



Based on Basic Table 4-3.

The Study also examined detention and asylum withdrawal rates over pre-FY 2000-2004 (basic table set 5). Chart 10 below shows withdrawal rates are significantly higher for detained aliens and there is no significant change of withdrawal rates over time.

<sup>15</sup> Specifically, on January 23, 2003 Citizenship and Immigration Canada (CIC) directed that, after scheduling asylum claimants for asylum interviews at land border posts, Canadian immigration officials would no longer seek assurances from the United States that the asylum seeker would not be detained while waiting in the United States for his or her Canadian asylum interview. U.S. Committee for Refugees, “Canada” in, *World Refugee Survey 2004*, (2004). This appeared to be a step in preparation for the U.S.-Canada Safe Third Country Agreement, officially known as the “Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries.”



Note: Detained n=4614, Non-detained n=15575, FY 2000 n=849, FY 2001 n=3965, FY 2002 n=6172, FY 2003 n=6561, FY 2004 n=2642, Total n=20249  
Based on Basic EOIR Tables 5.

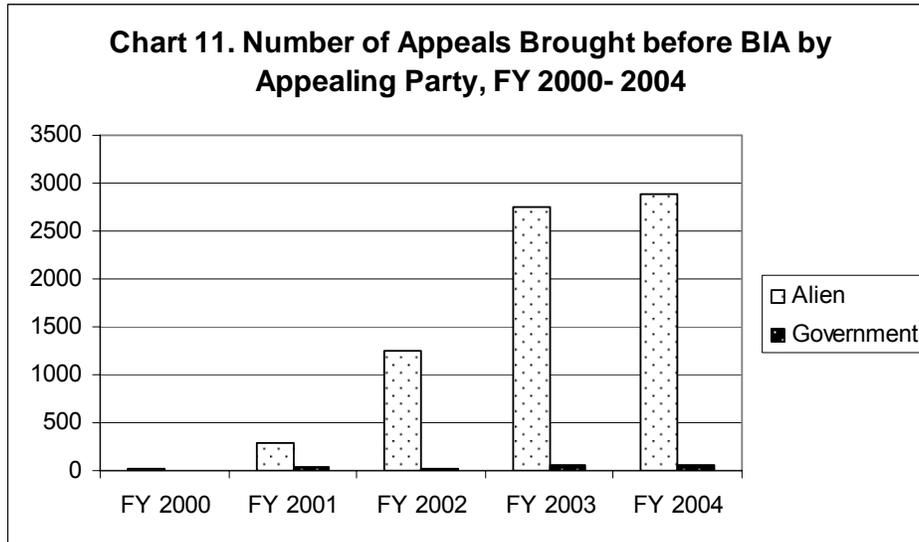
The appealing party and outcome of asylum cases of aliens subject to Expedited Removal before the Board of Immigration Appeals (BIA) during pre-FY 2000-2004 is illustrated in basic table 6. When an alien or DHS disagrees with an immigration judge’s decision in an asylum case, either party may appeal the decision to the BIA. The BIA is not a separate appellate entity, but is the administrative appellate authority located within EOIR, the same organization which administers the immigration judges.<sup>16</sup>

Appeals by the alien made up 98 percent of the appeals decided from FY 2002 – 2004. The high percentage of appeals by the alien does not represent the actual occurrence of denials of asylum claims, which is lower, 72 percent. Rather, it shows that many approved cases are not appealed by the government. Chart 11 further shows a significant increase in the number of asylum cases subject to Expedited Removal brought before the BIA from FY 2002 to 2003. In FY 2004, the BIA received and adjudicated 50 percent more cases than in 2001.<sup>17</sup> As shown in Chart 12, while 23 percent of appeals brought by aliens referred for credible fear were sustained

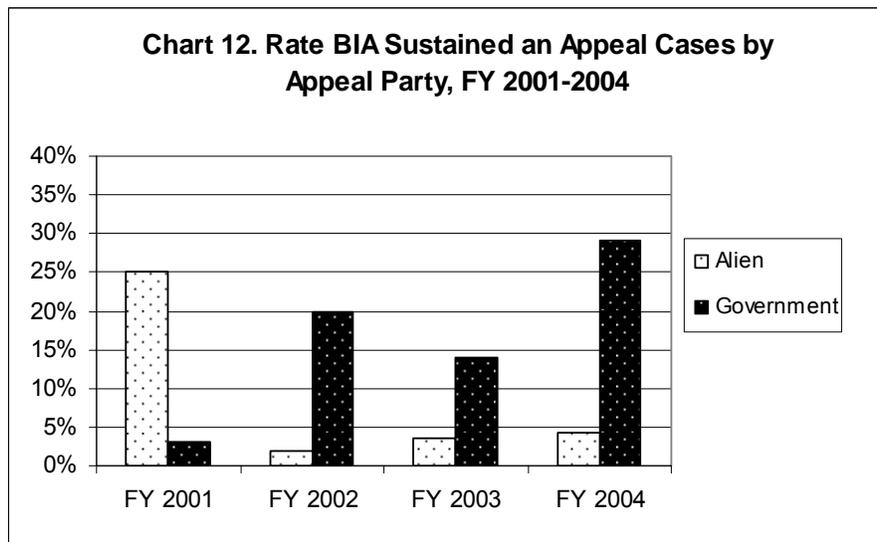
<sup>16</sup> According to EOIR, while the Board “is a component of EOIR, the Board nevertheless is comprised of independent adjudicators. No one in EOIR, not even the Chairman of the Board, may influence the Board’s decision making authority. The Board’s decisions are governed only by law or regulation, and Board members are charged to exercise their independent judgment and discretion.” See 8 C.F.R. 1003.1(d) (2004).

<sup>17</sup> Figures provided by EOIR, January 12, 2005. In 2001, the Board received 27,900 new appeals and adjudicated 31,800. By 2004 the Board received 41,300 new cases and adjudicated 48,700. Letter to Mark Hetfield, USCIRF, from Marta Rothwarf, Associate General Counsel, Executive Office for Immigration Review (EOIR), January 12, 2005.

in 2001, in the last three years the BIA has sustained on average 3 percent of appeals brought by such aliens.<sup>18</sup> The sustain rate for the government, with a much smaller number of appeals filed, is significantly higher, averaging 19 percent in the last three years. Appeals in which both the alien and the government filed an appeal or the appeal was certified to the BIA constituted less than a fraction of 1 percent of all appeals heard, and are not included in the summary table.<sup>19</sup>



Based on EOIR Table 6.



Note: Alien n=7171, Government n=160, FY 2001 n=331, FY 2002 n=1280, FY 2003 n=2813, FY 2004 n=2951

Based on Basic EOIR Table 6.

<sup>18</sup> In a Memorandum written to Board Members on March 15, 2002, BIA chairman Lori Scialabba authorized the use of single Board Member affirmance without opinion, for asylum, withholding of removal, and CAT cases.

<sup>19</sup> It is important to note that EOIR does not maintain statistics of whether the BIA decision results in the removal or relief for the alien, just whether the appeal was sustained or dismissed. An alien's appeal does not necessarily mean the alien was denied relief by the Immigration Judge. For example the alien may be appealing a decision in which (s)he was denied asylum but granted protection against removal under the Convention Against Torture.

Table T: Outcome of Appeals for Asylum Seekers Subject to Expedited Removal by Alien Appeal, FY 2001-2004

FY Appeal Decided	Alien Appeal				Total Cases Adjudicated
	Sustain	Dismiss	Remand	Other	
FY 2001	23%	66%	-	16%	291
FY 2002	2%	93%	-	5%	1251
FY 2003	3%	94%	-	4%	2750
FY 2004	4%	93%	1%	4%	2879

(-) = 0

Based on Basic EOIR Table 6.

Table U: Outcome of Appeals for Asylum Seekers Subject to Expedited Removal by Government Appeal, FY 2001-2004

FY Appeal Decided	Government Appeal				Total Cases Adjudicated
	Sustain	Dismiss	Remand	Other	
FY 2001	2%	79%	-	18%	38
FY 2002	19%	45%	-	35%	20
FY 2003	12%	55%	-	31%	51
FY 2004	27%	55%	2%	14%	51

(-) = 0

Based on Basic EOIR Table 6.

The Study analyzed national statistics on the outcome of affirmative asylum cases for FY 2000-2003 (basic table 7). Affirmative asylum applicants are not, by definition, Expedited Removal cases. Rather, they are applications filed by asylum seekers who have already entered the U.S. Asylum applicants in immigration court face a DHS attorney who usually argues against approving the application for asylum. In contrast, affirmative asylum seekers are interviewed in a non-adversarial hearing by an asylum officer. The asylum officer will either approve the application or refer it to an immigration judge for further consideration in an adversarial removal proceeding.

Shortly after the implementation of Expedited Removal, the Department of Justice considered implementing a proposal to allow asylum officers to approve asylum for eligible applicants at the time of the credible fear determination, also a non-adversarial interview. Asylum seekers for whom asylum officers found a credible fear who had not yet demonstrated eligibility for asylum would be referred to an immigration judge for an adversarial asylum proceeding. One concern with this proposal was that an asylum officer's decision to refer, rather than approve, an application from an asylum seeker subject to Expedited Removal might prejudice the immigration judge. The Study requested the statistics in text table V to determine the extent to which immigration judges approve affirmative cases which are referred, but not approved, by asylum officers.

Immigration judges approve asylum for approximately 20 percent of affirmative asylum applicants referred to them, approximately the same approval rate as asylum seekers referred to immigration judges after a positive credible fear determination, 19 percent, as illustrated in basic

table set 1.<sup>20</sup> These statistics do not demonstrate that immigration judges are prejudiced by an asylum officers decision to refer, rather than approve, an affirmative asylum application.

Table V: Affirmative Asylum EOIR Case Completions by Disposition, FY 2000 - 2003

FY	Grant	% Grant	Deny	% Deny	Abandon	% Abandon	Withdraw	% Withdraw	Other**	% Other	Total
2000	6,701	18%	10,570	28%	3,624	10%	6,883	18%	9,960	26%	37,738
2001	6,781	21%	8,558	27%	3,390	11%	4,890	15%	8,511	26%	32,130
2002	7,665	20%	9,904	26%	3,924	10%	6,741	18%	9,706	26%	37,940
2003	9,910	20%	12,794	26%	3,926	8%	12,392	25%	10,146	21%	49,168
Total	31,057	20%	41,826	27%	14,864	9%	30,906	20%	38,323	24%	156,976

\*\*Includes Administrative Closures and Asylum Applications Not Acted On Based on Basic EOIR Table 7.

## SOURCES AND LIMITATIONS

Unlike the Department of Homeland Security (DHS), the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has one statistical reporting system. However, no integrated statistical reporting system currently operates between DHS and DOJ. To create the universe of files used to create the basic tables DHS provided EOIR with a file of 40,694 credible fear receipts for the period October 1, 1999 through September 30, 2003. EOIR manipulated the file to eliminate duplicate records, and was left with a file of 40,206 records. Of these, EOIR was able to match 36,799 in its ANSIR system (91.5 percent).

Although the source data from DHS was based on receipts, the EOIR data reflects the completion of each EOIR case. Fiscal years reflected in the basic tables indicate the year EOIR completed the case. Due to this, the number of cases for FY 2000 is smaller than following years because many cases received in FY 2000 were completed in subsequent years. Additionally, FY 2004 was not complete at the time of EOIR reporting, thus the relevant FY 2004 computations may not be complete. Even though the DHS data file covered the period FY 2000 - FY 2003, basic tables show some pre-2000 completions because of anomalies in matching the file. The charts in this report include FY 2000-2004, while the complete basic table set includes tables initiating from pre FY 2000.

The basic tables that discuss the outcome of cases have minor discrepancies where a few cases that did not fit into the designed categories.<sup>21</sup> Also the categories created are not mutually exclusive; the same case may be counted in more than one category.<sup>22</sup> For this reason some of these cases may be counted more than once in such basic tables.

<sup>20</sup> Text table V represents cases referred to EOIR from the DHS Asylum Office. The category *other* includes administrative closures and asylum application not acted on.

<sup>21</sup> Cases granted some other form of relief.

<sup>22</sup> For example, an alien who withdraws an application for relief may subsequently file for another form of relief, or may be ordered removed by the Immigration Judge. Another possible example is an alien was ordered removed for a failure to appear in one court, then subject to another order in another court in a subsequent year.

To calculate the withdrawals of asylum application by detention status EOIR matched the above DHS records to its ANSIR system and found that 1,950 aliens withdrew their asylum application or their application for relief under CAT (basic table set 5). Some aliens actually withdrew applications for both types of relief, therefore are counted twice.

To create statistics for the Board of Immigration Appeal (BIA) (basic table 6) EOIR took the file of 36,799 ANSIR records, and matched it to the Board of Immigration Appeals Processing System. Of the cases identified in the ANSIR system, 10,399 had filed appeals, of which 7,419 had been decided by the BIA as of the date of the report.

With the expert assistance of the EOIR staff, we were in able to display comparable information on the adjudication of aliens subject to Expedited Removal in a way that is useful for the Study's purposes.

Confidentiality requirements restrict the public versions of tables representing nationality to report only cell counts of six (6) or more. All nonzero cells of less than 6 are asterisked (\*). Zero cells have been identified by a dash (-). Percentages representing less than five (5) divided by the total are represented by a pound (#). Summary totals in the tables have also been examined to be sure that indirect disclosure (e.g., disclosure by subtraction) did not occur.

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5. United States General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO/GGD-00-176, September 2000.
6. U.S. Committee on Refugees, "Canada" *World Refugee Survey 2004*, 2004.

## BASIC TABLE SETS

The EOIR Table Sets are over 200 pages in length, therefore not included with this report. The Table Sets are available at [www.uscirf.gov](http://www.uscirf.gov).

The Table Sets are summarized in the above report.

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

**SELECTED STATISTICAL ANALYSES OF IMMIGRATION JUDGE  
RULINGS ON ASYLUM APPLICATIONS, FY 2000-2003**

FEBRUARY 2005

Patrick Baier  
National Opinion Research Center (NORC)

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## Preface

The *Study of Asylum Seekers in Expedited Removal* (the Study) was undertaken by the *U.S. Commission on International Religious Freedom* (the Commission) to respond to four questions posed by Congress in Section 605 of the *International Religious Freedom Act* (IRFA) of 1998.

Specifically, the Study is to determine whether immigration officers performing duties under section 235(b) of the *Immigration and Nationality Act* (INA) (8 U.S.C. 1225(b)) 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.

The Study has several components, including direct data collection, thorough sample file reviews, direct observations of the removal process, and interviews with individuals seeking asylum. The study also made a systematic effort to review previous studies, notably the 2000 *General Accounting Office* (GAO) Study and to compile statistical tabulations that either already existed or which were requested by the Commission from administrative data available from the agencies involved in Expedited Removal.

The present report presents an analysis of administrative data tabulated by the Commission for the Study from the U.S. Department of Justice, *Executive Office for Immigration Review* (EOIR). The compilation and accompanying descriptive summaries were prepared under my general direction by Patrick Baier with assistance from Fritz Scheuren, Cory Fleming and Susan Kyle.

Let me also take this opportunity to again express my deep appreciation for the care, diligence, speed, and expertise of the EOIR staff led by Marta Rothwarf. These were Amy Dale, Kevin Chapman, Scott Rosen, and especially Isabelle Chewing, Brett Endress and Cecelia Espenoza.

Mark Hetfield  
Immigration Counsel  
U.S. Commission on International Religious Freedom  
October 2004

# 1 Introduction

This report analyzes data about asylum applications, collected during the Fiscal Years 2000 to 2003 at fourteen (14) U.S. Immigration Courts: Atlanta, Chicago, Elizabeth (including Queens), Houston, Krome, Lancaster, Los Angeles, Miami, Newark, New York City, San Juan (Guaynabo), San Francisco, San Diego, and San Pedro. The report presents statistical summaries and highlights statistically significant differences in decisions on asylum applications, both across courts and among the judges at an individual court.

There are significant differences in the acceptance rates of asylum applications from court to court. However, the assignment of asylum cases to courts is clearly not random, but is determined by the applicant's port of entry. Whether the observed differences are due to the different profiles of asylum seekers at different courts, or whether other reasons are involved is subject for further research. Similarly the data shows differences in the decisions reached by individual judges at a court, but again this report refrains from interpreting these differences beyond a mathematical analysis of their statistical significance.

In Section 2 below, the data underlying these analyses is described. Section 3 determines the acceptance rates for asylum applications found at different courts. Section 4 is a brief introduction to Analysis of Variance (ANOVA), the main tool used for studying the effect of courts and judges on the outcome of asylum applications. This section is technical and not necessary for a broad understanding of the findings presented in this report. The following Section 5 applies these techniques to courts and judges. Concluding remarks are made in Section 6.

## 2 Expedited Removal Data

The expedited removal data for this report were provided as a collection of tables [4], one for each of the 14 immigration courts, which display summary data of decisions made by the individual judges at the court. The identities of the judges or of the applicants were not revealed on the tables, and only

summary data were displayed.

The data used for this analysis comprise the time period of Fiscal Year 2000 through Fiscal Year 2003. The *Department of Homeland Security* (DHS) provided EOIR with a file of 40,694 credible fear receipts for the period October 1, 1999 through September 30, 2003. EOIR manipulated the file to eliminate duplicate records, and was left with a file of 40,206 records. Of these, EOIR was able to match 36,799 in its ANSIR system (91.5%) [4].

The categories shown in the tables classify the primary outcomes of these selected cases as follows:

1. Asylum granted
2. *Convention Against Torture* (CAT) withholding or deferral granted
3. Application for asylum or CAT relief withdrawn
4. Ordered removed
5. Adjustment of status granted

There were a few cases that did not fit into these categories; e.g., cases granted some other form of relief. Note also that these categories are not mutually exclusive; the same case may be counted in more than one category. For example an alien who withdraws an application for relief may subsequently file for another form of relief, or may be ordered removed by the Immigration Judge. For this reason some of these cases may be counted more than once in this table [4]. It was not possible to identify such multiple entries, and here lies a potential source of non-sampling error.

This report is concerned with the data from fourteen (14) courts.<sup>1</sup> Included are only the cases where the judge either granted asylum to the applicant, or a removal order was issued. Other outcomes, such as deferrals, withdrawals or adjustments of status were excluded. Removal Orders include

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<sup>1</sup>The EOIR determined that providing the complete data from all immigration courts nationwide would be a too large task; hence a (non-random) sample of 14 courts was selected and provided for this study. This report does not aim to make any inferences to other courts not part of this study.

the decisions of: Deportation Order, Exclusion Order, Removal Order, Voluntary Departure Orders, and DHS Expedited Removal Orders affirmed by an Immigration Judge [4].

### 3 Acceptance Rates

This section provides summaries of the data used for the analyses in this report in Subsection 3.1. Displayed are the numbers of accepted and rejected asylum applications by court. Subsection 3.2 displays graphically the corresponding acceptance rates, together with confidence intervals around the estimates.

#### 3.1 Summary data by court

The table below lists the 14 immigration courts which are part of this study. The data used are summarized by court. The more detailed data at the level of individual judges used for this analysis is available separately [3, 4].

**Table 1.** Data Summary by Court

Code	Court	Number of Judges	Asylum granted	Ordered Removed	Total
ATL	Atlanta, GA	12	37	516	553
CHI	Chicago, IL	9	103	494	597
ELZ	Elizabeth, NJ <sup>2</sup>	14	689	1407	2096
HOU	Houston, TX	8	48	236	284
KRO	Krome, FL	10	47	789	836
LAN	Lancaster, CA	5	46	241	287
LOS	Los Angeles, CA	53	202	548	750
MIA	Miami, FL	25	578	4676	5254
NEW	Newark, NJ	9	155	585	740
NYC	New York City, NY	64	1925	5386	7311
SAJ	Guaynabo, PR	12	* <sup>3</sup>	*	51
SFO	San Francisco, CA	37	333	374	707
SND	San Diego, CA	11	332	868	1200
SPD	San Pedro, CA	9	64	109	173

## 3.2 Acceptance rates by court

The acceptance rate  $p_i$  at court  $i$  is

$$p_i = \frac{a_i}{a_i + r_i}$$

where  $a_i$  is the total number of accepted cases at court  $i$  (from column “Asylum granted”), and correspondingly  $r_i$  are the total rejections (see column “Ordered removed”).

Figure 1 shows estimated acceptance rates for the fourteen different immigration courts, together with two-sided 95% confidence intervals around the estimates. The vertical lines indicate the point estimates of  $p_i$  for the courts, while the horizontal bars are 95% confidence limits around the acceptance rates.

For example, the acceptance rate for Atlanta (ATL) is estimated to be  $p_{\text{ATL}} = 6.6\%$ , and from the size of the sample we can estimate the margin of error to be  $\pm 2\%$ . The overall average of 21.89% is displayed as a vertical line through the data. Newark is the court closest to this average.

The interpretation of this statistical data is as follows. If we assume that every immigration court consistently applies the same policies and procedures over time, and that any factors that may influence decisions (legal or administrative procedures, personnel appointments, political events, etc.) remain constant, we can model the decision made on an application as a “binomial variable” (a variable that has only two possible outcomes - success or failure). Such variables are completely determined by a single parameter: The probability of a “success” (acceptance of an asylum application). Under the assumptions outlined above we can treat the value of  $p_i$  (the success or acceptance rate at court  $i$ ) as a characteristic of the court.

We have the (nearly) complete data for a fixed period of time and therefore we can directly compute the acceptance rate, at least for this period of

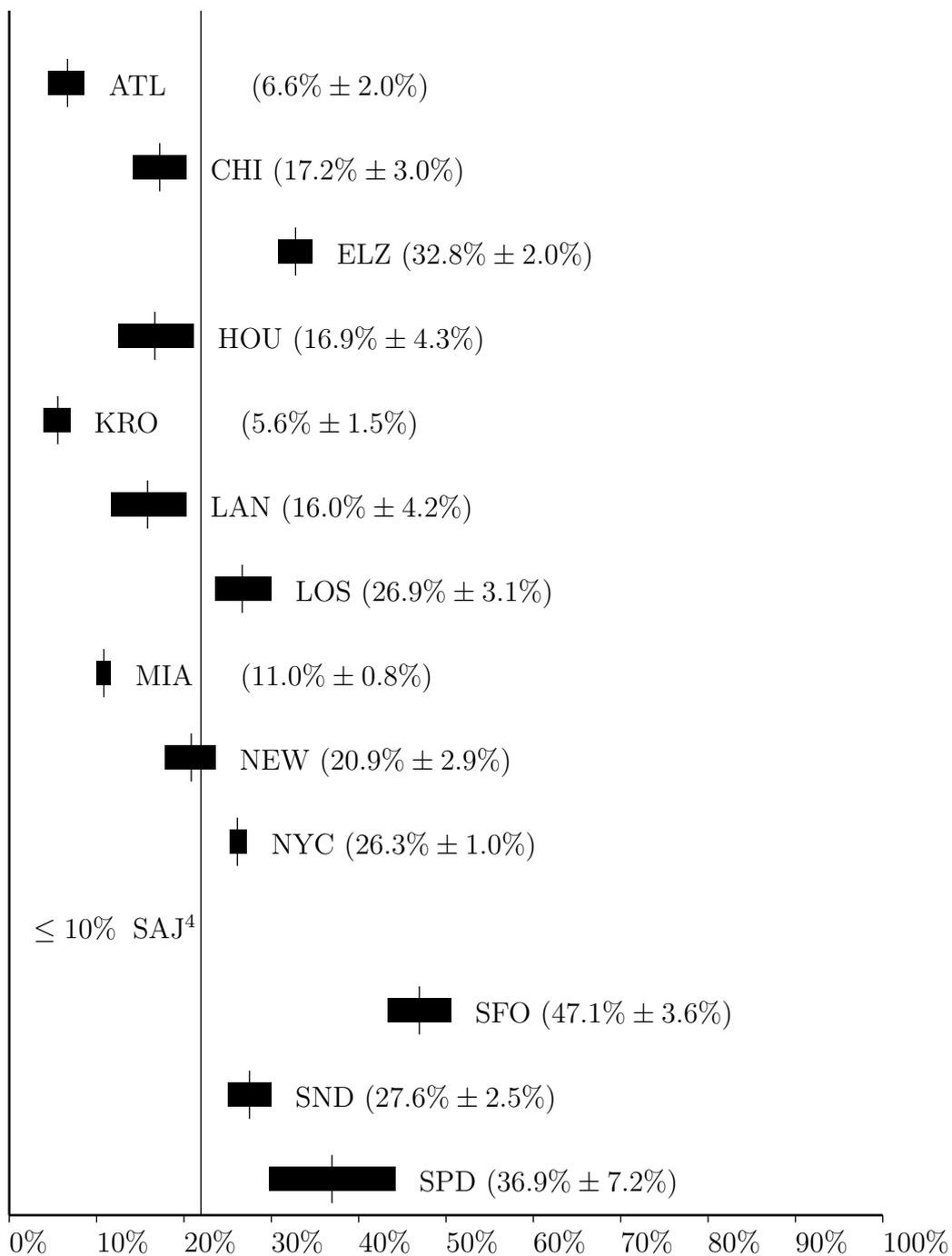
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<sup>2</sup>Includes Queens, NY

<sup>3</sup>\* = five or fewer cases. According to DHS confidentiality policies, the actual number is not disclosed.

<sup>4</sup>The percentage corresponds to five or fewer cases and hence cannot be disclosed under DHS rules.

**Figure 1. Court Acceptance Rates**



time. However, it is common to consider such data as coming from a theoretical “super-population” of all possible asylum cases that might come to the court, and use the collected data to estimate what the acceptance rate for this hypothetical super-population would be.

Statistically, this amounts to treating the sample as a random sample from an infinite population to which we can make an inference (see [1]).

## 4 Analysis of Variance (ANOVA)

This section starts with a brief and informal introduction to Analysis of Variance (ANOVA) - by way of examples and without mathematical detail - in Subsection 4.1. ANOVA is discussed in more detail in most basic textbooks on mathematical statistics. A good (but by far not the only) reference is [2]. The following Subsection 4.2 introduces some nomenclature needed to put the judge data into the framework of ANOVA.

### 4.1 An informal introduction to ANOVA

Analysis of variance is a technique that enables the statistician to identify “effects” that cause the data to vary and to determine the significance of these effects. Mathematically, ANOVA is very similar to (linear) regression, but it can be more generally applied to categorical variables as well as numeric variables. The “downside” is that it does not allow for as simple a graphical illustration as the regression line in linear regression, and hence it is often perceived as somewhat abstract.

We think of the decision by an immigration judge on an asylum application as a “random variable.” Of course, this is not to suggest that the judge would toss a coin to come to his decision, but just that we do not know the merits of a case and the considerations made by the ruling judge, hence, lacking this knowledge, the judge’s decision appears like a random variable to us.

However, we do have some basic information about the cases - the court where the case was submitted and which judge ruled on the case. In Figure

1 we see that acceptance rates differ significantly across courts. There are also differences in the acceptance rates of individual judges, as shown in the diagrams on pages 14 and 15. ANOVA allows us, loosely speaking, to quantify “how much of the overall variability in the decisions is accounted for by the court (and judge).”

The general idea is that the random variable of interest (the decision made on an asylum application) can be “modeled” by one or more known variables (the court and judge to which the case was referred), up to an error term. The better the model, the smaller the error term.

**Example.** *Suppose the members of a national farmers’ union report their annual corn crop yield per acre to their organization. The nationwide data is likely to display more variability than the data within a state or region, because relevant factors such as climate, temperature, soil condition etc. are relatively uniform within a small region, but not across geographically distant regions. Hence we expect to find different regional averages in the reported data, and the data within a region will be more tightly centered around its local (regional) mean or average. In other words, the data within a single region will have smaller variance than the nationwide data, because the effects of regional differences on the data are factored out.*

ANOVA is a mathematical procedure of decomposing the variance into a component that comes from the model (variance between regions) and an error component (part of the overall variance that cannot be explained by regional differences).

If more auxiliary information is available about the population (e.g. farming methods employed by a farmer), it might be possible to strengthen the model and “explain” an even larger component of the variance. Once the best fitting model is found, the remaining “error component” is the remaining uncertainty or variability about which we cannot make any predictions.

## 4.2 Application to the asylum data

We have a population of  $N = 20,839$  asylum cases (the total number of cases where a decision was made to either grant asylum or order the removal of an applicant; other cases, such as deferrals, were excluded).

The population is divided into courts ( $n = 14$  courts) and within courts it is further divided by judge, where every judge is at only one court and the number of judges per court varies.

In order to avoid unstable estimates for judges who hear only very few cases, at each court the judges with the fewest cases were combined and treated as one single judge, so that each “judge” had at least 14 cases, but still retaining at least two judges per court to be able to look at effects across judges.<sup>5</sup>

The following table shows how this collapsing was done. We use

$n_o$	=	Original number of judges
$n_c$	=	Number of judges collapsed
$n_f$	=	Final number of judges after collapsing
$n_1$	=	Minimum number of cases per judge after collapsing
$n_2$	=	Upper bound on the number of cases per judge below which judges were combined

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<sup>5</sup>The judges were ordered by their number of processed cases. The judges with the fewest cases were combined and treated as one single judge for the analysis. The general rule for determining how many judges should be collapsed was to use the minimum number of judges so that both the combined “pseudo judge” and all the remaining judges had 14 cases or more. In some cases, the next smallest judge was included in addition if this judge would have otherwise been an outlier with respect to the number of processed cases; in other words, if the range of the judge sizes could be reduced by expanding the collapse. While this decision rule is somewhat *ad hoc*, it was deemed to be appropriate for bringing the data into a form where a meaningful analysis of judge and court effects could be performed.

**Table 2.** Judges and number of cases per judge.

Court	$n_o$	$n_c$	$n_f$	$n_1$	$n_2$
ATL	12	9	4	43	15
CHI	9	2	8	22	20
ELZ	14	9	6	52	14
HOU	8	2	7	26	20
KRO	10	6	5	28	12
LAN	5	2	4	17	12
LOS	53	29	25	15	10
MIA	25	2	24	19	18
NEW	9	2	8	46	45
NYC	64	24	41	18	11
SAJ	12	11	2	15	5
SFO	37	21	17	14	7
SND	11	2	10	53	46
SPD	9	8	2	72	63

(See Table 1 for the court abbreviations.) The original number of judges  $n_o$  can be determined from  $n_c$  and  $n_f$  as

$$n_o = n_c + n_f - 1.$$

## 5 Sum of squares decomposition

The decomposition of the sum of squares, the basic mathematical procedure underlying ANOVA, is carried out in Subsections 5.1 and 5.2. Subsection 5.3 derives the mean square errors and Subsection 5.4 the  $F$ -ratios. Mean squares are normalized by the degrees of freedom to make them comparable and determine the significance of effects from the quantiles of a standard  $F$ -distribution.

### 5.1 Court effects

We label population elements (applications) by triples  $(i, j, k)$  where  $1 \leq i \leq n = 14$  is the court,  $1 \leq j \leq n_i$  is the  $j$ -th judge at court  $i$  (where there are

a total of  $n_i$  judges), and  $1 \leq k \leq n_{ij}$  is the  $k$ -th case heard by judge  $j$  at court  $i$ .

Let  $x_{ijk}$  be a binomial variable with  $x_{ijk} = 1$  if case  $(i, j, k)$  is accepted and  $x_{ijk} = 0$  otherwise.

In total, 4562 out of 20839 cases have been accepted, which gives us an overall acceptance rate of

$$p = \frac{\sum_{i,j,k} x_{ijk}}{\sum_{i,j,k} 1} = \frac{4562}{20839} = 21.89\%.$$

Let  $p_i$  be the acceptance rate at court  $i$  and  $p_{ij}$  the acceptance rate for judge  $j$  at court  $i$ .

$$p_i = \frac{\sum_{j=1}^{n_i} \sum_{k=1}^{n_{ij}} x_{ijk}}{\sum_{j=1}^{n_i} n_{ij}},$$

$$p_{ij} = \frac{1}{n_{ij}} \sum_{k=1}^{n_{ij}} x_{ijk}$$

Note that the overall acceptance rate is just the overall average or mean of the “flag” variable  $x$ , and the acceptance rate for a court is accordingly the average or mean over just that court, and similarly by judge.

$$p = \bar{x}_{...}, \quad p_i = \bar{x}_{i...}, \quad p_{ij} = \bar{x}_{ij.} \quad .$$

A one-way analysis of variance (using the stratification by court only) can be carried out by decomposing the total sum of squares (squared differences from the mean), given in (1) below.

$$SS_{\text{Tot}} = \sum_{i=1}^n \sum_{j=1}^{n_i} \sum_{k=1}^{n_{ij}} (x_{ijk} - p)^2 \quad (1)$$

The variance of  $x$  is the total sum of squares divided by the degrees of freedom ( $df = N - 1$ , where  $N$  is the total number of cases), or roughly the average (rather than total) square deviation.

$$\text{Var}(x) = \frac{SS_{\text{Tot}}}{N - 1}.$$

However, the algebra is simpler if we decompose the sum of squares of  $x$ , rather than the variance.

Recall the definitions

$$SS_{\text{Court}} = \sum_{i=1}^n n_i (p_i - p)^2 \quad (2)$$

$$SS_{\text{Err}} = \sum_{i=1}^n \left( \sum_{j,k} (x_{ijk} - p_i)^2 \right) \quad (3)$$

We then have

$$SS_{\text{Tot}} = SS_{\text{Court}} + SS_{\text{Err}}.$$

This differs from the common look of the ANOVA formulas only in the fact that the inner summation in (3) is indexed jointly by  $(j, k)$ ; however, if we relabeled the pairs  $(j, k)$  by a single variable, say  $m$ , the above would just reduce to the known formulas for one-way ANOVA. This would be the standard one way ANOVA using only the court to model responses, but not the judge.

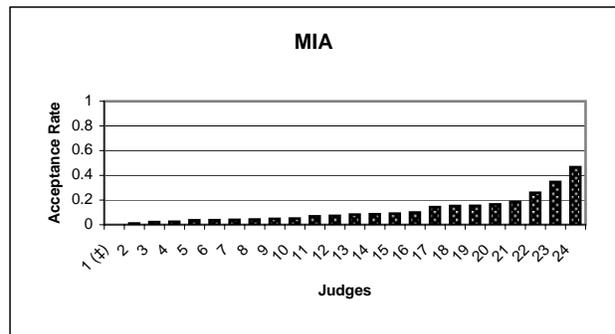
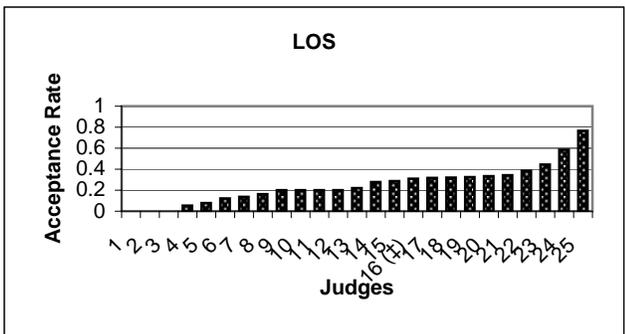
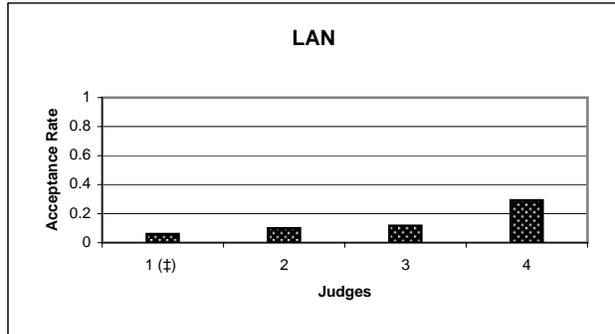
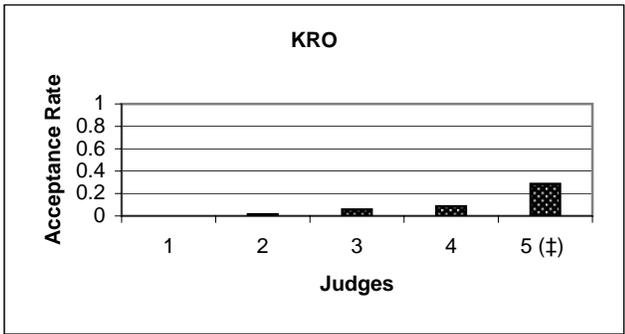
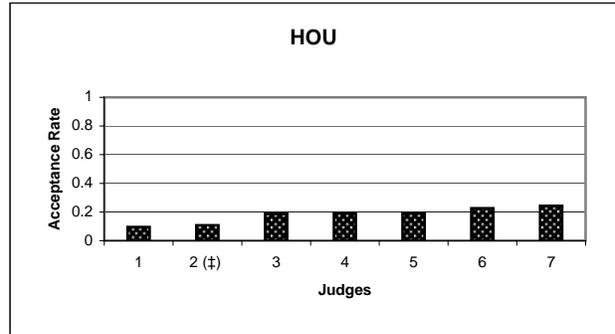
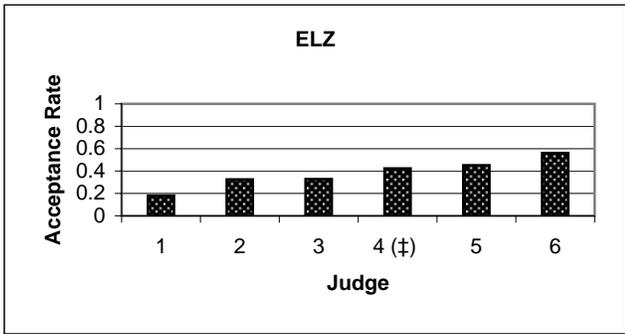
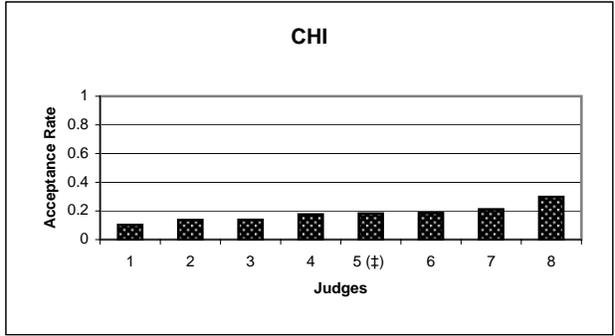
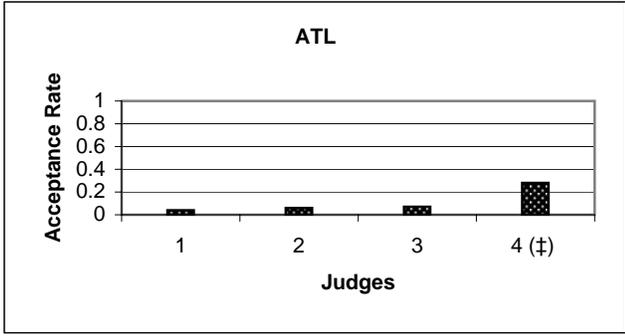
A calculation of this simple one-way model yields

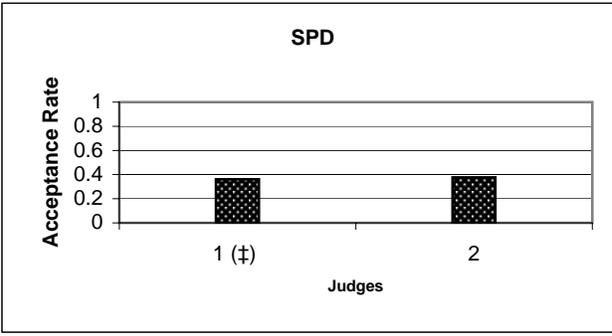
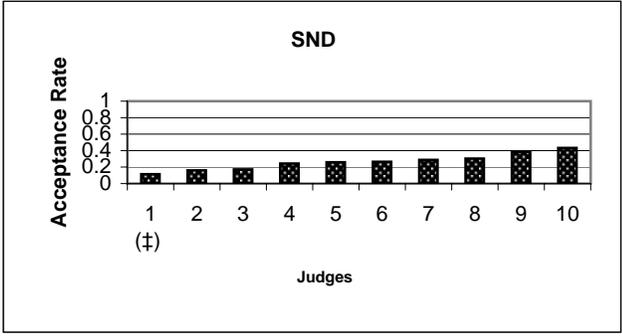
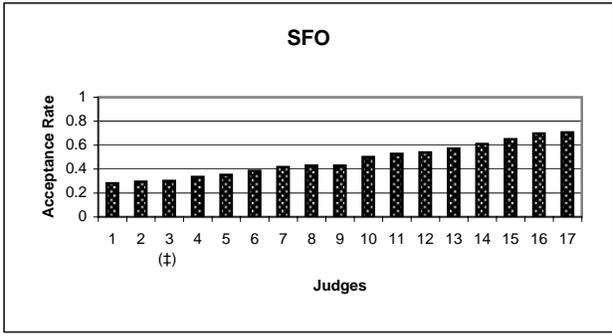
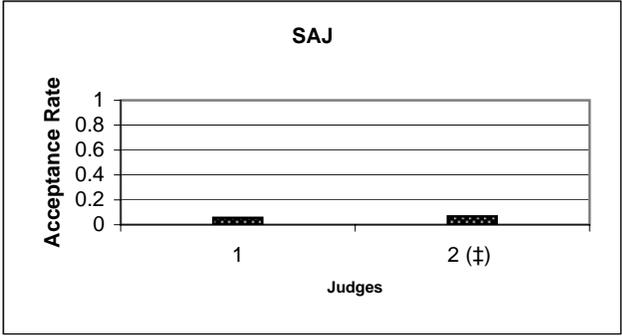
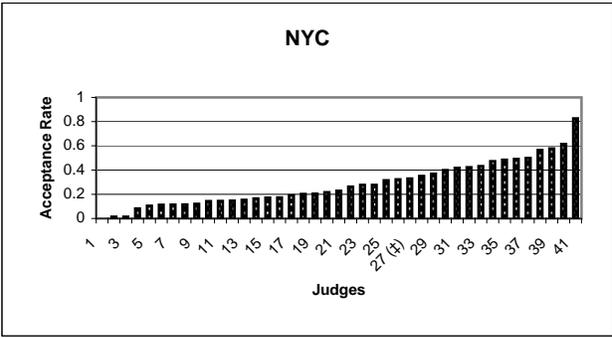
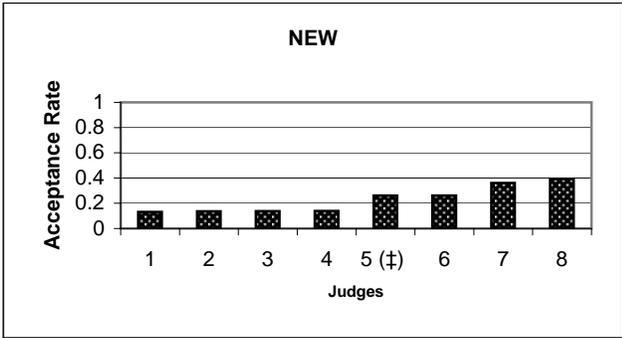
$$\begin{aligned} SS_{\text{Tot}} &= 3563.30 \\ SS_{\text{Court}} &= 196.03 \\ SS_{\text{Err}} &= 3367.27. \end{aligned}$$

## 5.2 Judge effects

We cannot carry out a two-way ANOVA here that would include the judges as independent variables, because the second stratifier, judge, is only defined within a court. Hence we need to use a nested effect to incorporate the judges. First, we display graphically the different acceptance rates for each judge, separately by court.

The judges are ordered by ascending acceptance rate. The “combined” judges are identified by a †. Their ordered ranks are as follows: Atlanta (4), Chicago (5), Elizabeth (4), Houston (2), Krome (5), Lancaster (1), Los Angeles (16), Miami (1), Newark (5), New York (27), Guaynabo (2), San Francisco (3), San Diego (1), San Pedro (1).





In order to grasp these differences mathematically, we restrict attention to the term in parentheses in the formula (3) for  $SS_{\text{Err}}$ . Note that within a fixed court (for fixed  $i$ ), the judge at that court is a stratifying variable, and we can further decompose the sum of squares by splitting the term in parentheses into a model and an error term. Hence

$$\begin{aligned} SS_{\text{Err}} &= \sum_{i=1}^n \left( \sum_{j=1}^{n_i} n_{ij} (p_{ij} - p_i)^2 + \sum_{j=1}^{n_i} \sum_{k=1}^{n_{ij}} (x_{ijk} - p_{ij})^2 \right) \\ &= \sum_{i=1}^n \left( SS_{\text{Judge},i} + SS_{\text{Err},i}^{(2)} \right) \\ &= SS_{\text{Judge}} + SS_{\text{Err}}^{(2)} \end{aligned}$$

By incorporating judges like this we can “model an additional component of the sum of squares” and hence reduce the error term further. We thus get

$$\begin{aligned} SS_{\text{Mod}}^{(2)} &= SS_{\text{Court}} + SS_{\text{Judge}} \\ &= SS_{\text{Court}} + \sum_{i=1}^n SS_{\text{Judge},i} \\ &= \sum_{i=1}^n \left( n_i (p_i - p)^2 + \sum_{j=1}^{n_i} n_{ij} (p_{ij} - p_i)^2 \right) \end{aligned} \quad (4)$$

$$\begin{aligned} SS_{\text{Err}}^{(2)} &= \sum_{i=1}^n SS_{\text{Err},i}^{(2)} \\ &= \sum_{i=1}^n \left( \sum_{j=1}^{n_i} \sum_{k=1}^{n_{ij}} (x_{ijk} - p_{ij})^2 \right) \end{aligned} \quad (5)$$

If we carry out these calculations for the given data set, we obtain

$$SS_{\text{Tot}}^{(2)} = 3563.30 \quad (6)$$

$$SS_{\text{Mod}}^{(2)} = 371.78 + 196.03 = 567.81 \quad (7)$$

$$SS_{\text{Err}}^{(2)} = 2995.49. \quad (8)$$

To interpret this decomposition, we need to do further calculations with the sums of squares. This will take the rest of this section.

### 5.3 Mean squares

The reason for considering sums of squares rather than variances was that the formulas need not be adjusted for different “degrees of freedom”<sup>6</sup> associated with the model and error terms. However, as it stands, the absolute values of the model and error components do not give us direct information about the significance of effects.

We can calculate the mean squares for the model and the error by dividing the sum of squares through the appropriate degrees of freedom.

The simple one-way ANOVA ( $df(\text{Mod}) = 14 - 1 = 13$ ) has

$$MS_{\text{Court}} = \frac{SS_{\text{Court}}}{df(\text{Court})} = \frac{196.03}{13} = 15.08 \quad (9)$$

$$MS_{\text{Err}} = \frac{SS_{\text{Err}}}{df(\text{Err})} = \frac{3367.27}{20825} = 0.16. \quad (10)$$

The corresponding “root mean square error (RMSE)” is

$$\text{RMSE} = \sqrt{MS_{\text{Err}}} = \sqrt{0.16} = 0.40.$$

For the two-way model we get

$$MS_{\text{Mod}}^{(2)} = \frac{SS_{\text{Mod}}^{(2)}}{df^{(2)}(\text{Mod})} = \frac{567.81}{162} = 3.51 \quad (11)$$

$$MS_{\text{Err}}^{(2)} = \frac{SS_{\text{Err}}^{(2)}}{df^{(2)}(\text{Err})} = \frac{2995.49}{20676} = 0.14 \quad (12)$$

with root mean square error  $\text{RMSE} = \sqrt{0.14} = 0.38$ . Note the degrees of freedom are

$$df^{(2)}(\text{Mod}) = \left( \sum_{i,j} n_{ij} \right) - 1 = 162,$$

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<sup>6</sup>The “degrees of freedom” of a statistic, e.g. the mean or sum of squares of a sample, are roughly the number of input variables whose value can be varied freely without changing the statistic. For example, for an  $n$ -tuple  $(x_1, \dots, x_n)$  to attain a prescribed mean  $\mu$  we can arbitrarily assign values to  $n - 1$  of the variables, say,  $x_1, \dots, x_{n-1}$ . Then  $x_n = n\mu - (x_1 + \dots + x_{n-1})$  is determined by the requirement that the mean be  $\mu$ . Hence this statistic, like the sum of squares, has  $n - 1$  degrees of freedom. More precisely, if the statistic can be given as a continuously differentiable function  $f(x_1, \dots, x_n)$  of its input variables, then  $df = \dim(\ker(Df(x)))$  where  $x$  is a regular point of  $f$  (that is a point where the derivative  $Df(x)$  has maximal rank).

and consequently

$$df^{(2)}(\text{Err}) = N - df^{(2)}(\text{Mod}) - 1 = 20676.$$

From the mean squares we can construct  $F$ -ratios which allow us to determine the significance of effects.

## 5.4 $F$ -ratios

The  $F$ -ratio is commonly defined as

$$F = \frac{MS_{\text{Mod}}}{MS_{\text{Err}}}.$$

Under the null-hypothesis

$$H_0: p_{i1} = p_{i2} = \dots = p_{in_i}$$

the  $F$ -ratio is a statistic whose distribution is an  $F$ -distribution. This distribution depends on two parameters, the degrees of freedom of the model and error terms. A large  $F$ -ratio (beyond the 95%-quantile of the  $F$ -distribution) would lead us to reject the null-hypothesis.

From our decomposition of the sum of squares into a court term, a judge term, and an error term, we get the following values

$$F_{\text{Court}} = \frac{MS_{\text{Court}}}{MS_{\text{Err}}} = \frac{15.08}{0.16} = 93.26 \quad (13)$$

$$F_{\text{Mod}}^{(2)} = \frac{MS_{\text{Mod}}^{(2)}}{MS_{\text{Err}}^{(2)}} = \frac{3.51}{0.14} = 24.19 \quad (14)$$

See (9) and (10) for (13), and (11) and (12) for (14). Both of those values are highly significant, even at a 99.9% confidence level, in other words, the  $p$ -values satisfy  $p \ll 0.001$ . This means that, given the observed data, we can be almost certain that the acceptance rates across courts, respectively judges (within and across) courts are not the same.

Finally, let us look at individual courts and the effect of judges by court. Note that we can write

$$MS_{\text{Mod}}^{(2)} = \frac{SS_{\text{Court}}}{df^{(2)}(\text{Mod})} + \sum_{i=1}^n \frac{SS_{\text{Judge},i}}{df^{(2)}(\text{Mod})}$$

$$\begin{aligned}
&= \frac{1}{df^{(2)}(\text{Mod})} \sum_{i=1}^n \left[ n_i(p - p_i)^2 + \sum_{j=1}^{n_i} n_{ij}(p_i - p_{ij})^2 \right] \\
&= \frac{df(\text{Court})}{df^{(2)}(\text{Mod})} MS_{\text{Court}} + \sum_{i=1}^n \frac{df(\text{Judge}, i)}{df^{(2)}(\text{Mod})} MS_{\text{Judge}, i}.
\end{aligned}$$

We obtain the following values for the judge effects within individual courts:

**Table 3.** Sum of squares, mean squares, and  $F$ -ratios by court.

Court	$SS_{\text{Judge}, i}$	$df$	$MS_{\text{Judge}, i}$	$SS_{\text{Err}, i}$	$df$	$MS_{\text{Err}, i}$	$F$ -Ratio
ATL	2.1706	3	0.7235	32.3538	549	0.0589	12.28
CHI	1.2779	7	0.1826	83.9516	589	0.1425	1.28
ELZ	18.6264	5	3.7253	443.8846	2090	0.2124	17.54
HOU	0.9452	6	0.1575	38.9421	277	0.1406	1.12
KRO	2.0980	4	0.5245	42.2596	831	0.0509	10.31
LAN	2.2894	3	0.7631	36.3378	283	0.1284	5.94
LOS	19.4101	24	0.8088	128.1846	725	0.1768	4.57
MIA	57.2373	23	2.4886	457.1761	5230	0.0874	28.47
NEW	6.8462	7	0.9780	115.6875	732	0.1580	6.19
NYC	238.3106	40	5.9578	1179.8334	7270	0.1623	36.71
SAJ	0.0013	1	0.0013	2.8222	49	0.0576	0.02
SFO	11.9307	16	0.7457	164.2249	690	0.2380	3.13
SND	10.6269	9	1.1808	229.5197	1190	0.1929	6.12
SPD	0.0096	1	0.0096	40.3141	171	0.2358	0.04
Total	371.7802	149	0.0025	2995.4921	20676	0.1449	24.19

There are only four courts, Chicago (CHI), Houston (HOU), Guaynabo (SAJ) and San Pedro (SPD), where the judge effects are insignificant, even at low confidence levels. That is, there is no indication in the available data that different judges accept asylum applications at different rates. In the two last cases, however, Guaynabo and San Pedro, all judges except the one with the largest number of cases were collapsed, so that only two “judges” were left to compare. Hence the judge effect is only of limited use since it essentially compares the judge with the largest number of cases against all others.

On the other side, the judge effects for five courts, Atlanta (ATL), Elizabeth (ELZ), Krome (KRO), Miami (MIA), and New York City (NYC), are

highly significant, even at a 99.9% confidence level<sup>7</sup>.

Note that the total sum of squares from this table plus the sum of squares from the one way ANOVA yields (see (5)) the sum of squares for the model using the nested judge effect.

$$\sum_{i=1}^n SS_{\text{Judge},i} + SS_{\text{Court}} = 371.78 + 196.03 = 567.81.$$

The corresponding degrees of freedom are

$$\sum_{i=1}^n df(\text{Judge}, i) + df(\text{Court}) = 149 + 14 - 1 = 162$$

and hence we can calculate the value

$$MS_{\text{Mod}}^{(2)} = \frac{567.81}{162} = 0.14,$$

as given in (7).

## 6 Conclusion

We observe that the overall variability in the decisions made on immigration and asylum applications can be modeled to some extent by the court where an application is processed and the judge handling it.

Obviously, great care is needed in drawing conclusions from the observed differences across courts since these may well be caused by differences in the

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<sup>7</sup>For a judge who handles  $n_{ij}$  cases the number of granted applications is a  $B(n_{ij}, p_{ij})$  distributed binomial variable. For large  $n_{ij}$  we can use the normal approximation to model this variable and test the null hypothesis  $H_0: p_{i1} = \dots = p_{in_i}$ . In calculating the  $F$  ratios and their significance, we need to issue a note of caution that some of the judges (even after collapsing) had too few cases for their observed acceptance rate to attain normality. This makes the individual comparison of such judges to other judges and the calculation of type I and type II errors more difficult, especially since the standard error  $\sqrt{\frac{p_{ij}(1-p_{ij})}{n_{ij}}}$  of a binomial variable depends on its mean  $p_{ij}$ . However, all courts were large enough overall so that a very large  $F$ -ratio is still a strong indicator for the failing of the null hypothesis.

applicant populations arriving at different courts, due to their geographic location and connection to global travel routes.

However, arguably, within a court the assignment of cases to judges may be “random” (in the sense that there is no association between the case itself and the judge whom it is assigned to). This would suggest that there should be no “judge effect.” However, this is not supported by the data, and further research into the causes seems warranted.

## References

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- [4] U.S. Commission on International Religious Freedom. EOIR Tables - Judge Data, provided as a collection of Excel tables `EOIR_Tables_1.n-7(xxx).xls`