

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**

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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.¹ 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.² 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 1.1.³

¹ 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.

² 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.

³ 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 10th secondary

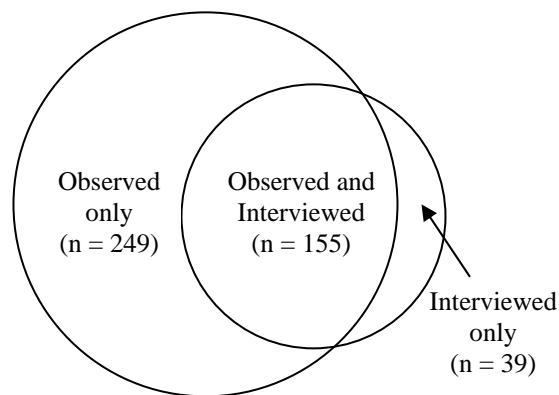
investigation interview while at Atlanta every interview was observed by two raters. In total, 93 paired ratings were available for analysis. Inter-rater reliability varied across the data collected with many variables being reliably assessed and others that were more difficult to establish reliable coding. When reliability was unacceptable (Kappa coefficient below .4 or intraclass correlation coefficient below .6), variables were excluded from subsequent data analysis.⁴ 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



⁴ 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.⁵ 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.⁶

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 ^a	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

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

⁵Under 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)).

⁶ 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 occur⁷.

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

⁷ 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 ^a	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

^aInterviewing 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

I-867A	2 nd 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 rd 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 th 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.
I-867B Fear Questions	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 nd paragraph	278 (75.3%)	72 (19.5%)	19 (5.1%)	--	--
I867A 3 rd paragraph	206 (56.0%)	142 (38.6%)	20 (5.4%)	--	--
I867A 4 th 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.⁸

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 ⁹	Newark	San Ysidro
I867A 2 nd paragraph	37 (94.9%)	22 (91.7%)	12 (75.0%)	86 (97.7%)	19 (67.9%)	120 (69.4%)
I867A 3 rd paragraph	35 (89.7%)	23 (95.8%)	12 (75.0%)	87 (97.8%)	14 (50.0%)	55 (32.2%)
I867A 4 th 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,¹⁰ as did the rate associated with asking the third fear question (“Would you be harmed...?”).¹¹ 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 2nd paragraph from

⁸ The number and corresponding percentages vary somewhat because of missing data.

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

¹⁰ 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 2nd, 3rd, and 4th paragraphs, respectively.

¹¹ 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 4th paragraph pertaining to U.S. providing protection to those fleeing persecution.¹² 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 2nd and 4th) were actually read more often in videotaped observations compared to direct observation.¹³ 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.

¹² 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.

¹³ 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 2nd, 3rd, and 4th 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 2nd 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 3rd and 4th 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 3rd 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.¹⁴ The odds of being referred for a Credible Fear interview increased seven times when the 4th paragraph was read to aliens relative to when it was not.¹⁵

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

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

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

	Referred	Not referred
Read 4 th paragraph	51 (31.1%)	113 (68.9%)
Not read 4 th 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.¹⁶

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

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

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

¹⁶ Spearman’s Rho (ρ)=.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).¹⁷

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.¹⁸ 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

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

¹⁸ $\chi^2=5.11$, $p < .05$, 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.¹⁹ 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

¹⁹ 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.²⁰ 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.²¹ 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.

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

²¹ 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).²²

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 4th 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.²³

²² 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.

²³ 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 ^a	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

^a 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.²⁴ 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).²⁵ 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

²⁴ 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.

²⁵ 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).²⁶ 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.

²⁶ 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.²⁷ 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

²⁷ 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.²⁸

²⁸ 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 concerns²⁹). 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

²⁹ 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).³⁰ 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.³¹

At some sites, CBP officers themselves imposed additional study limitations. The most notable example was in Houston, where CBP officials were initially quite receptive.³² 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.

³⁰ 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.

³¹ 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).

³² 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 different³³. 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.

³³ $\chi^2=10.14$, $p < .01$

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 interview³⁴.

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.

³⁴ $\chi^2=7.55$, $p < .05$

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 outcome³⁵, 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 origin³⁶, with a higher proportion of cases from Latin America among those we did not observe or interview.

³⁵ $\chi^2= 37.95, p < .001$

³⁶ $\chi^2= 14.68, p < .01$

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 nd paragraph	158 (80.6%)	38 (19.4%)
I867A 3 rd paragraph	151 (76.6%)	46 (23.4%)
I867A 4 th 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 3rd paragraph (“This may be your only opportunity to present information...”) and referral for Credible Fear³⁷

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

Table 2.7a: Association between reading the 4th paragraph (“US law provides protection...”) and referral for Credible Fear³⁸

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

³⁷ $\chi^2= 2.51, p = .11, OR = 1.95$

³⁸ $\chi^2= 2.43, p = .12, OR = 1.88$

Table 2.8a: Fear inquired about directly by officer³⁹

	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 Interview⁴⁰

	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

³⁹ $r_s = .10, p = .16$

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

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