



BARRIERS TO PROTECTION

THE TREATMENT OF ASYLUM SEEKERS IN EXPEDITED REMOVAL

REPORT HIGHLIGHTS

ICE's Detention of Asylum Seekers in Expedited Removal

Unprecedented numbers of individuals worldwide are forcibly displaced by conflict or persecution or migrating in search of improved economic opportunities. These large, mixed flows of people require that nations have credible, effective immigration laws and processes to identify and protect *bona fide* refugees and asylum seekers. In the United States, the Expedited Removal process is one system intended to do this.

In August 2016, the U.S. Commission on International Religious Freedom (USCIRF) issued *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, a report assessing the U.S. government's initial processing of non-citizens to identify those seeking asylum and its detention of asylum seekers. This document highlights USCIRF's findings and recommendations in *Barriers to Protection* related to the U.S. Immigration and Customs Enforcement's (ICE) detention and release practices. Penal detention conditions or prolonged detention can risk re-traumatizing asylum seekers who experienced or fear persecution or torture and can lead them to prematurely terminate their asylum applications and return to their countries of origin, simply to get out of detention.

Within the Department of Homeland Security (DHS), ICE is responsible for the detention of asylum seekers. After a DHS asylum officer determines that an asylum seeker has a credible fear of persecution or torture, ICE has the discretion to release or continue to detain him or her while the asylum case is pending.

In *Barriers to Protection*, USCIRF found that asylum seekers are detained under inappropriate penal conditions before their credible fear interviews, and in some cases even after credible fear is found. Despite 2009 reforms to move to a civil detention model, ICE uses criminal prisons and jails and private prison-like facilities to hold an increasing number of asylum seekers. The detention of mothers and children is especially problematic; children

should not be detained even under civil conditions. ICE's 2009 parole directive and increased use of Alternatives to Detention (ATD) programs have improved release opportunities after credible fear findings, but the parole directive is not codified in regulations. ICE does not have uniform procedures to determine bond amounts, and it extensively uses ankle bracelets without individually assessing an asylum seeker's non-appearance risk.

DETENTION CONDITIONS

Between 2012 and 2015, USCIRF visited 12 adult detention facilities throughout the United States to observe facility conditions, meet with officials, and interview asylum seekers. The adult facilities ranged from those based on a civil detention model, to those based on a penal model, to county jails also housing convicted criminals.

USCIRF found that asylum seekers are detained under inappropriate penal conditions before their credible fear interviews, and in some cases, even after being found to have a credible fear. ICE's immigration detention standards are based on the American Correctional Association's jail detention standards for pre-trial felons. Of particular concern is ICE's use of criminal prisons and jails and private immigration detention facilities designed like criminal prisons to hold increasing numbers of asylum seekers.

Immigrant detention centers holding the vast majority of asylum seekers in Expedited Removal have high degrees of external and internal security, no freedom of movement, no privacy, and little or no programming or activities. This contradicts ICE's own 2009 detention reform policies that state that asylum seekers should be held in civil detention facilities which are externally secure but allow for internal freedom of movement, broad-based and accessible indoor and outdoor recreation opportunities, contact visits, privacy, and the ability to wear non-institutional clothing.

ICE's civil detention facilities afford greater freedom of movement and privacy than other facilities, while also preserving security. However, these facilities house only 17 percent of asylum seekers in ICE detention.

Since 2013, ICE has used a Risk Classification Assessment (RCA) tool to guide ICE officers' decisions on detention, release, and level of supervision for each individual who comes into ICE's custody, including asylum seekers in Expedited Removal. The vast majority of asylum seekers are classified for low-level custody, and under ICE regulations may not interact or be housed with high-level detainees. This system should allow ICE to identify asylum seekers and give them priority for housing in civil detention facilities, but USCIRF's monitoring suggested that this was not always the case.

VICTIMS OF TORTURE

Asylum seekers detained under Expedited Removal can include individuals who were victims of torture before arriving in the United States, who may be re-traumatized by being in detention. Ideally, asylum seekers who were victims of torture with special medical needs would be identified through the RCA or the medical screening done by ICE on intake. Unfortunately, however, ICE officers lack the necessary medical training to identify victims of torture and fail to provide privacy when asking the RCA special vulnerability questions. Asylum seekers and survivors of torture also can be overlooked, ignored, or inadequately treated because of ICE medical staff's high caseloads and because these detainees are generally unable or afraid to advocate for themselves.

USCIRF's detention center visits raised concerns about detention staff's insufficient awareness of, or training on, the special needs and concerns of asylum seekers and/or torture victims. Cultural awareness training is mandatory only at ICE facilities, not at other facilities used by the agency. At only two detention centers did officers indicate to USCIRF that they had received what they viewed as specific training on identifying and interacting with victims of torture, but further questioning determined that this training only addressed cultural sensitivity issues. This continued lack of training and sensitivity is especially disappointing given ICE's other efforts to raise detention staff's awareness of other vulnerabilities, including a campaign to identify, treat, and raise awareness of victims of trafficking and sexual and gender-based violence while in ICE custody.

RELEASE OF ASYLUM SEEKERS

Asylum seekers in Expedited Removal are subject to mandatory detention until an asylum officer determines that they have a credible fear of persecution. After that determination, asylum seekers who verify their identity and demonstrate that they are neither flight nor security risks may be released while their cases continue. Those who enter the United States at a port of entry are eligible for release under a 2009 parole guidance memo; those who enter between the ports of entry or are apprehended within 100 miles of the border can be released through bond, order of recognizance, notice to appear, order of supervision, or ATD programs.

Parole

Under ICE's 2009 parole directive, asylum seekers who enter the United States at ports of entry are automatically reviewed for parole eligibility after an asylum officer determines they have a credible fear of persecution or torture. If an asylum seeker establishes credible fear, identity, community ties, and that s/he is not a security risk, the officer must find "exceptional overriding factors" to deny parole. Parole denials require an explanation and must be signed by a field office director or deputy director, and can be appealed based upon changed circumstances or additional evidence.

Positive parole determinations are routinely accompanied by a requirement to pay a bond prior to release; some asylum seekers granted parole are unable to pay and therefore remain in detention. There does not appear to be a uniform mechanism to determine bond amounts. USCIRF heard of bond amounts ranging from \$1,500 minimum to \$7,000, and was given varying explanations of what these amounts were based on, including RCA questions, past practice, or the availability of detention bed space.

Alternatives to Detention

Asylum seekers who do not arrive at a port of entry can be released through a bond, order of recognizance, Notice to Appear, order of supervision, or ATD programs. ATD programs include electronic monitoring, telephonic or in-person reporting requirements, and/or case management support and supervision services to ensure court appearances. ATDs have been proven to have high rates of compliance and are cost effective.

When reviewing asylum seekers for possible placement in an ATD program or release after a positive credible fear determination, ICE officers are to consider their security and flight risks. However, it appears that electronic monitoring is being used extensively without full individualized assessments of whether an asylum seeker is a non-appearance risk. ICE's ATD electronic monitoring programs that require asylum seekers to wear ankle bracelets stigmatize asylum seekers as criminals.

FAMILY DETENTION

ICE operates three family detention centers, with a 3,100-bed capacity. ICE detains only female-headed households at the South Texas Family Residential Center and the Karnes County Residential Center. Male-headed households may be detained at the Berks Family Shelter or released under a Notice to Appear.

Detention Conditions

USCIRF inspected all three family detention centers. These facilities have some of the best practices of adult civil detention centers, including freedom of movement, the wearing of street or non-institutional clothes, private housing units holding only a few families at one time, private toilets and showers, and extended recreation time. Nevertheless, both the South Texas Family Residential Center and the Karnes County Residential Center present an institutional and jail-like setting inappropriate for children and counter to the U.S. government's own standards for child detention as defined in a 1997 legal settlement known as the *Flores* Agreement. Both are secure facilities that look like prison or jail complexes, with hardened perimeters secured with fencing, razor wire, and/or barbed wire/concertina coils, and multiple locked external doors. Internally, the women's and children's freedom of movement is restricted by locked doors and prohibitions on accessing some areas, as well as set schedules. Headcounts are another measure of internal security. The *Flores* Agreement requires ICE and DHS to hold children in their custody in the least restrictive setting, in non-secure facilities licensed to care for dependent, not delinquent, minors.

The Berks facility, however, does not have a hardened perimeter fence, and residents are permitted to walk the grounds outside of the facility and to go on field trips. Residents also have full freedom of movement within the facility and self-scheduling during daylight hours.

Detention Conditions' Impact on Mothers and Children

Of particular concern is the impact of detention on mothers' and children's mental and physical health. Detaining women and children can cause or exacerbate trauma. Service providers report that some children experienced depression, post-traumatic stress disorder, bed wetting, loss of appetite, weight loss, developmental regressions, anxiety, and social withdrawal. Family detention also negatively impacts mothers' mental health, many of whom are reported to suffer from post-traumatic stress disorder resulting from the trauma they experienced in their home countries and/or along the journey to the United States. Detention also restricts mothers' ability to parent, make decisions for, and provide routines for their children.

Release of Women and Children

ICE has released many asylum-seeking Central American women and children under notices to appear solely due to lack of bed space, not on individualized custody and supervision assessments. Release orders and instructions are in English and presented to the women without a full explanation.

In May and June 2015, in response to criticism of family detention, DHS announced a series of reforms, including that DHS would: (1) review cases of families detained more than 90 days to determine the necessity of continued custody; (2) offer release through a bond or other mechanism to asylum-seeking families determined by USCIS to have credible fear; and (3) offer bond "at a level that is reasonable and realistic, taking into account ability to pay, while also encompassing risk of flight and public safety."

USCIRF's visits to Dilley and Karnes followed the announced reforms. USCIRF was told that women and children were being released pursuant to the new policy, but that release decisions were not transparent or organized. However, USCIRF also was told by legal assistance providers at the detention facilities that more women and children were being detained at the facilities. USCIRF also was told that the women who were being released by ICE typically were being put in an electronic monitoring ATD program rather than receiving a bond, and then successfully appealing ICE's release decision to immigration judges, who ruled that they should be released through a bond.

RECOMMENDATIONS

To address the above issues, USCIRF recommends that ICE:

- Detain all adult asylum seekers who must be detained, whether before or after a credible fear determination, in civil facilities only.
- Ensure that staff at any facility where asylum seekers are detained are specially trained in dealing with vulnerable populations such as victims of persecution or torture.
- Codify the 2009 parole directive into regulations, and continue to document and monitor parole decisions to ensure that the directive's criteria are being properly applied.
- Create a national standardized bond calculation and worksheet to make individualized bond determinations.
- Require an individualized re-assessment of the need for custody for all detainees with a positive credible fear finding, not just for arriving aliens eligible for parole under the 2009 parole directive, and apply a presumption of bond for detainees found to have credible fear who do not fall under the parole directive.
- Increase the use of Alternatives to Detention, such as monitored release, for asylum seekers, beyond bond and parole opportunities.
- If families are placed in Expedited Removal, detain them only in facilities that meet the standards of the *Flores* Agreement and individually re-assess the need for custody after credible fear has been found, with a presumption of release.