Human Rights First and the U.S. Commission on International Religious Freedom

hold a discussion on Expedited Removal and Detention of Asylum Seekers–New Research and Reports

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LIST OF SPEAKERS

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ELEANOR ACER

Thank you everyone. We appreciate you all coming and getting here at 9 a.m. on this August morning. We know it was quite an endeavor and we're really, terrifically happy to have such a great audience with us.

If folks can just take their seats who are still milling around the room and we'll start in just one minute.

Okay. I think we're good. My name is Eleanor Acer. I am the Senior Director for Refugee Protection at Human Rights First, a U.S. based human rights organization that advocates for U.S. leadership on human rights globally and U.S. compliance with human rights commitments here at home.

I want to begin by thanking the law firm of Jones Day – and Laura K. Tuell, the firmwide head of pro bono here at Jones Day for their hospitality in welcoming us today and hosting today's event.

We greatly appreciate the pro bono work of Jones Day and other law firms who are representing asylum seekers, including children and many who are held in immigration detention and undergo the Expedited Removal process. Both of which we'll be discussing today. Pro bono lawyers witness first-hand the many obstacles to legal counsel, to justice and to fairness that face asylum seekers who are subjected to Expedited Removal and detention in our immigration system.

In the wake of World War II, the United States helped lead efforts to create a regime that had rules and conventions that would govern human rights and refugee protection so that people who fled from persecution would have safe haven and no longer be at risk.

The U.S. chose to bind itself to the provisions of the U.N. Convention relating to the Status of

Refugees when it signed on to the Refugee Protocol. And the U.S., as you also know, is a party to the International Covenant on Civil and Political Rights.

In 1996, the U.S. Congress enacted into U.S. immigration law a process known as Expedited Removal. And that's a summary deportation process that sets up a gauntlet that people have to pass through – asylum seekers have to pass through before they're even allowed to apply for asylum.

The panelists today will be describing that process in detail as well as some of the challenges in that process. Due to that process, many legitimate asylum seekers don't even get a chance to apply for asylum or face great difficulties in the midst of that process. Those who undergo the process and succeed in passing that gauntlet are often held in immigration detention for many months, sometimes for longer.

In 2005, the U.S. Commission on International Religious Freedom issued a comprehensive report on the treatment of asylum seekers Expedited Removal and in detention. After that they issued a number of report cards and a report on detention and, as we'll hear today, a new updated report now nearly over 10 years after that initial report.

Many of the same problems, as you'll hear today, still exist in the Expedited Removal and detention systems. And the use of Expedited Removal and detention with respect to asylum seekers has increased sharply.

In September, President Obama will host a Leaders' Summit at the United Nations to discuss and identify steps that many nations around the world can take to better address and improve the treatment of refugees globally.

Today's panel identifies some steps the United States can take to improve its own treatment of those who are seeking refugee protection here in this country.

My colleague, Olga Byrne, at the end of the table will also outline some of the key findings of a Human Rights First report just released on U.S. detention, parole, and bond of asylum seekers.

Following those presentations, we are privileged today to hear reflections from representatives of the U.N. refugee agency, UNHCR, and the U.S. Department of Homeland Security.

This panel is an opportunity to discuss the challenges affecting asylum seekers in Expedited Removal and detention, reforms that could alleviate some of these challenges, example the United States for the rest of the world, and alternative approaches to receiving asylum seekers and extending them protection.

We thank you all for joining us. And I also really thank our excellent lineup of panelists. Just to briefly introduce them, to my direct right is Mark Hetfield, President and CEO of HIAS. Mark was the director of USCIRF's 2005 comprehensive study on asylum seekers in Expedited Removal. To his right is Elizabeth Cassidy, Co-Director for Policy and Research at the U.S. Commission on International Religious Freedom. Beside her is Tiffany Lynch, Senior Policy Analyst at USCIRF. And down at the end is my colleague, Olga Byrne, Senior Associate for Refugee Protection at Human Rights First. Then directly to my left, to give us their reflections, we have Mary Giovagnoli, Deputy Assistant Secretary for Immigration Policy at the U.S. Department of Homeland Security. And to her left we have Leslie Velez, Senior Protection Officer at the United Nations High Commissioner for Refugees Regional Office in Washington D.C. Thank you all.

Mark?

MARK HETFIELD

Thank you, Eleanor. As Eleanor said, my name is Mark Hetfield and I directed the original study on asylum seekers in Expedited Removal for the U.S. Commission on International Religious Freedom.

I oversaw a team of four experts as well as nearly 60 researchers. The research was done from 2003 to 2004, and released in 2005.

I want to give a little background first. In 1996, concerned that improperly documented non-citizens could enter the United States and then disappear while waiting for a hearing, Congress enacted and President Bill Clinton signed legislation creating Expedited Removal. A procedure which allowed immigration officers to summarily remove non-citizens who arrive in the U.S. without proper travel documents. And by that, it could

be false documents, it could be no documents, or it could be a visa that does not permit one to apply for asylum, which would be every visa. Prior to that time, an individual could not be removed from the United States without a hearing before an immigration judge. As we know most famously from Raoul Wallenberg, who issued 20,000 false Swedish passports to Hungarian Jews to rescue them from The Holocaust, the persecuted often do rely on false or improper documents to flee persecution and claim asylum. Acknowledging this, Congress and the Department of Justice created screening procedures to prevent bona fide asylum seekers from being mistreated or expeditiously removed to their persecutors.

The Expedited Removal process, however, occurs behind closed doors without outside monitoring by lawyers or judicial review. Much of the process is deliberately swift and opaque.

In order to verify that asylum seekers were being protected as intended by Congress in 1996, Congress authorized the U.S. Commission on International Religious Freedom to gain access to conduct a study on the process to look at four questions.

Whether immigration officers exercising Expedited Removal authority with regard to non-citizens who may be eligible for asylum were:

1. Improperly encouraging them to withdraw their applications for admission;
2. Incorrectly failing to refer them for an asylum hearing known as a credible fear determination – really an asylum screening;
3. Incorrectly removing them to countries where they may face persecution; and
4. Whether they were being detained improperly or under inappropriate conditions.

The Departments of Justice and Homeland Security cooperated with the Commission whose experts observed more than 400 inspections at seven ports of entry, reviewed more than 900 case files, and observed 19 detention facilities and all seven asylum offices.

What did we find? While the study report was over 500 pages, I will try to summarize it in less than five minutes.

(LAUGHTER)

DHS procedures require that an immigration officer explain to the non-citizen that he should ask for protection without delay if he has any fear of being returned home. Yet we found that in more than 50 percent of the Expedited Removal interviews that we observed, this information was not conveyed to the applicant.

DHS procedures require that the non-citizen review the sworn statement taken by the immigration officer, make any necessary corrections for errors and interpretation, et cetera, and then sign the statement. We found, however, that in 72 percent of the cases that we observed, the non-citizen signed his sworn statement without being given any opportunity to review it.

We found that the sworn statements taken by the immigration officer were not verbatim, were not verifiable - often attributed that information was conveyed to the non-citizen that was never, in fact, conveyed - and sometimes contained questions which were never even asked. This was all in the files. These sworn statements look like verbatim transcripts, but they are not. Yet we also found that in 32 percent of the cases where immigration judges in the subsequent asylum hearing found that the asylum applicants were not credible, the immigration judges specifically relied on these unreliable sworn statements.

DHS rules also require that when a non-citizen expresses a fear of return, he must be referred to an asylum officer to determine whether or not that fear is credible. Yet in nearly 15 percent of the cases that we observed, non-citizens who expressed a fear of return were nonetheless removed without a referral to an asylum officer.

DHS, it seemed, were training their officers in requirements to protect asylum seekers and refugees but then failing to verify that the officers were actually implementing these procedures.

The review of whether or not they were following those procedures was strictly a paper file review. The actual officers were not observed, were not recorded. That was our job, we observed them. DHS was not observing them to make sure they were following the rules.

While DHS had established national criteria to determine when asylum seekers in Expedited Removal should be released, we found no evidence that this criteria was being implemented at that time. We found wide variations in released rates from DHS office to DHS office. For example, we found that New Orleans released only 0.5 percent of asylum seekers prior to their asylum hearing. New Jersey released less than four percent. New York - eight percent. But San Antonio released 94 percent. Harlingen - 98 percent, and Chicago - 81 percent of asylum seekers.

The average non-citizen referred for a credible fear determination was released after 60 days, but one third were held for 90 days or more.

Congress also asked that we ascertain whether or not the asylum seekers were detained under inappropriate conditions. Based on our survey and visits to the largest of these facilities, we found that the facilities where asylum seekers are detained resembled, in every essential respect, conventional jails. Many facilities, in fact, were jails and prisons and in some of these facilities, asylum seekers slept alongside convicts serving criminal sentences or criminal non-citizens, even though ICE detention standards did not permit non-criminal detainees to be commingled with criminals.

ICE had experimented with alternatives to detention and also had opened a secure but less prison-like facility in Broward County, Florida. But that was a very lonely exception. The overwhelming majority of asylum seekers referred for credible fear were detained for weeks or months and sometimes years in penal facilities or facilities which were based on a penal model.

Finally, the study expressed concern that whether or not an asylum seeker was granted asylum depended largely on whether or not the asylum seeker was able to afford legal representation or find pro bono counsel. We found that one in four asylum seekers who were represented were granted asylum, whereas only one in 40 who were not were successful. The outcome of this – of the case also seemed to depend largely on pure luck, i.e., which immigration judge he or she was assigned to.

We found that among immigration judges sitting in the same city who hear a significant number of asylum cases, some granted close to zero percent of applications while others granted 80 percent.

While asylum seekers could appeal, one cannot rely on the appeal process to correct these disparities among immigration judges because we found that the Board of Immigration Appeals (BIA) at that time was reversing immigration judges only two to four percent of the time.

It's worth emphasizing that while we were conducting the study, DHS actually expanded Expedited Removal authority to include not just immigration inspectors at ports of entry but also Border Patrol agents in the Tucson and Laredo sectors along the southern border.

The Commission urged the Department after the Study not to expand Expedited Removal further until the serious flaws identified had been addressed, and noted that all of the Commission's recommendations on Expedited Removal could be enacted without any legislation.

Among our specific recommendations was that:

- A high level official be appointed to coordinate the process among the three DHS bureaus: ICE, CBP, and USCIS, engaged in the process;
- That DHS start following its own procedures about releasing asylum seekers from detention and not detaining them under jail-like conditions when they are detained; and
- That a number of quality assurance procedures and revisions be made to DHS and EOIR guidance and trainings to ensure that DHS and DOJ's own procedures designed to protect asylum seekers from wrongful detention or removal were being followed, such as video recording the taking of all sworn statements taken by CBP.

Nonetheless, the George W. Bush administration expanded Expedited Removal authority to Border Patrol agents across the entire southern border without addressing the study's major findings.

We were optimistic that reforms would be enacted after the extensive media coverage received by the Study 11 years ago, and after good meetings

with the leadership of EOIR as well as with then Homeland Security Secretary Chertoff.

Another recommendation that has not been followed was that DHS released more statistical information on an ongoing basis about who was being subject to Expedited Removal. Instead, the Obama administration has been releasing even less information then was available under the previous administration. What we do know, however, is that in the last year reviewed by the Study, 43,920 non-citizens were expeditiously removed from the United States. In 2013, 193,032 were removed. There certainly has been an expansion and that's why the release of this follow-up study by USCIRF is just so important. Thank you.

ELEANOR ACER

Thank you, Mark. Elizabeth Cassidy of USCIRF? Elizabeth?

ELIZABETH CASSIDY

Thanks – thanks Eleanor. As mentioned, I'm Elizabeth Cassidy from the U.S. Commission on International Religious Freedom. My colleague, Tiffany Lynch and I are the two staffers at the Commission who continue to follow the issues from Study that Mark just spoke about.

I'm going to talk about this new report we've just released. More than a decade after the study that Mark directed was released, this new report revealed continuing and new concerns about the treatment of asylum seekers in Expedited Removal and finds that most of USCIRF's 2005 recommendations have not been implemented.

Our research was less extensive than that for the 2005 study. But it did involve first-hand observations of DHS's processing and detention. It also involved interviews with detained asylum seekers, meetings with DHS officials, conversations with immigration attorneys and asylum service providers, and a review of public information.

In addition to meetings and research here in Washington D.C., we traveled to California, New York, New Jersey, Florida, Puerto Rico, and in Texas three times, in 2014 and 2015. And we visited five ports of entry, four Border Patrol stations, and five asylum offices. We also visited 15 immigration detention facilities around the United States between 2012 and 2015.

I'm going to talk about our key findings and recommendations on CBP's initial interviewing of non- citizens and about the information available to non-citizens in Expedited Removal. Tiffany will then speak about ICE detention and release and the overarching issues of management and funding.

On CBP's initial interviewing, as mentioned, USCIRF staff visited five ports of entry and four Border Patrol stations, touring facilities and meeting with officers. We also were able to observe some interviews – although only a few; many, many fewer than what the original study looked at. We saw both sides of the virtual processing that is now used for most border crossers in the Rio Grande Valley sector of Border Patrol. This has been used since 2013 for first time apprehension who speak English or Spanish. And what it entails is the non-citizen sits in-front of a computer monitor at the Border Patrol station in McAllen, Texas, and speaks over a phone handset to a Border Patrol agent in a station elsewhere - either El Paso, Texas or El Centro, California - through Skype and an Internet-based communicator

Despite the small number of interviews we were able to observe, we did see examples of non-compliance with procedures. Including failure to read back the answers and allow the interviewee to correct them before he or she signs the form, interviewing individuals together instead of separately and in private, failure to read the mandatory script from the form that Mark mentioned that advises a non-citizen if they have any fear of return or need for protection to raise it now, and failure to record answers correctly. We also observed fear claims being examined by CBP officials beyond those four questions. And in a conversation with two interviewing Border Patrol agents, we saw both a lack of knowledge of and non-compliance with DHS's policies on the withdrawal of fear claims.

In terms of the virtual processing, we saw that it does improve processing efficiency. However, its lack of privacy, impersonal nature, and particularly

the use of interviewing templates with standardized questions and responses raised concerns. While using a standard list of questions could itself be a good practice, having prepared answers seemed to prompt the interviewers to ask leading questions in important areas rather than eliciting an independent response from the interviewee.

Our research also revealed problems with Border Patrol's internal guidance on Expedited Removal processing. That guidance from 2014 is entitled "Credible Fear Determination." Although it correctly states that Border Patrol agents must ask the four required fear questions and record the responses, it conflates this questioning with the credible fear process and instructs Border Patrol agents on what constitutes and how to determine a credible fear of persecution or torture. That is not the role of Border Patrol agents but rather USCIS asylum officers under the Expedited Removal law.

USCIRF also was very troubled by the skepticism that some CBP officers with whom we met openly expressed of asylum claims either generally or from certain nationalities.

Additionally, the interviewing officers are overwhelmingly male and received no special training on interviewing vulnerable women and children who could have protection needs.

On these issues, our new report made the following key recommendations to CBP.

- The first is, again, reiterating the recommendations from the 2005 study – to video record all Expedited Removal interviews and require supervisor and headquarter review for quality assurance purposes.
- The second is to retrain all CBP officers and agents on their role in the Expedited Removal process, the proper procedures for interviewing non-citizens, and the special needs and concerns for asylum seekers and other vulnerable populations.
- The third is to establish a dedicated core of specially trained non-uniformed interviewers to interview women and children to identify fear claims and include – and ensure that female interviewers are included.

On my second point - the information that non-citizens receive - one overriding impression from our interviews of detained asylum seekers is their insufficient understanding of what is happening to them in Expedited Removal and the fear, stress, and uncertainty that this causes.

Non-citizens in CBP custody receive little information about Expedited Removal and their rights within it. The required forms that they receive at the end of their interview are not written in lay person terms and sometimes are not even provided in their own language. USCIRF has met with many detained asylum seekers over the years who said that despite having been given forms, they did not understand what would happen to them when they left CBP custody. And some still did not understand the process or their rights even after being in ICE detention where they have access to a Legal Orientation Program, or after having had their credible fear interviews where USCIS provides them with certain information. And in some cases, even after immigration court appearances. A particular concern is that released asylum seekers lack any real understanding of their responsibilities and the next steps in their asylum cases. Additionally, USCIRF was troubled by DHS's implementation in response to the surge of Central Americans in 2014 of programs referred to as the Honduran and Guatemalan pilot initiatives.

Under these initiatives, adults from these two countries who do not claim fear to Border Patrol remain in Border Patrol custody until shortly before ICE removes them.

This means that they do not have the opportunity to learn about their legal rights through the legal orientation programs that are available in most ICE detention facilities.

On these issues, we made the following key recommendations:

- First, that CBP develop a document that briefly and clearly explains the Expedited Removal process, its consequences, the right to seek protection, and the right to request a private interview and provide it to all individuals in a language they understand as soon as possible when they come into CBP custody;

- Second, that CBP and ICE ensure that programs that detain nationals of particular countries separately do not have the effect of preventing them from learning about their legal rights;
- Third, that Congress provide sufficient funding to ICE and EOIR to allow them to expand the Legal Orientation Program to make it available to all facilities that house asylum seekers.

And with that, I'll turn it over to Tiffany, who will speak about some of the other issues in our report.

TIFFANY LYNCH

Thank you, Elizabeth. As Mark mentioned, one of the issues that USCIRF looked at in the initial study was what were the detention conditions under which asylum seekers were held.

ICE is required to detain asylum seekers in Expedited Removal until an asylum officer determines that they have a credible fear of persecution or torture. At that time, ICE has the discretion to release them.

In 2005, USCIRF found that asylum seekers were being held under inappropriate conditions and that we recommended that they should not be held under such conditions and that they be released under more regulatory – regulated policies. And we remain concerned that those detention conditions are being used – are used to hold asylum seekers.

From 2012 to 2015, USCIRF visited 12 different adult detention immigration facilities. These facilities were in New Jersey, California, Florida, Arizona, and Texas. And again, we found that asylum seekers continue to be detained under inappropriate penal conditions before their credible fear interviews and even at times after they have been found to have a credible fear.

Of the facilities toured, 100 percent had some form of internal and external security barriers of restrictions of movement, including – and some including escort requirements or head counts. Most facilities afford little privacy to asylum seekers.

Many facilities afford little or no program activities and detainees are required to spend the majority of their days in their housing units.

Sixty-seven percent of facilities – asylum seekers wore prison-like jumpsuits which corresponded with their risk level. Of particular concern is the use of contracts with actual jails to hold asylum seekers.

One of our concerns – a longstanding USCIRF concern is that these detention conditions can retraumatize asylum seekers from previous persecution and torture under which they fled and could lead to premature withdrawals of asylum claims.

These conditions not only contradict USCIRF's 2005 recommendations but they also contradict ICE's own 2009 reform policy 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.

At the time of USCIRF's 2005 Study, as Mark noted, there was once a detention facility that stood out against the others, the Broward Transitional Center. With the 2009 reforms, we at USCIRF welcomed the expansion of new civil detention facilities such as the Karnes facility and Delaney and others.

But we are disappointed that there has been a withdrawal or backtracking from the use of some of these facilities and that we are seeing once again asylum seekers held in more penal-like institutions.

And USCIRF continues to recommend, as we have and we will continue to recommend, that – that ICE detain all adult asylum seekers who must be detained in civil detention facilities only.

USCIRF also visited a number of the family detention facilities. We visited Dilley, Berks, and Karnes family detention centers and we find that the U.S. government's detention of mothers and children in Expedited Removal who express a fear of return is inherently problematic and does not comply with the U.S. government's own standards for child detention as defined under the Flores Agreement.

All three of these facilities have some of the best practices of adult civil detention facilities, including freedom of movement and the ability to wear street or non-institutional clothing, private housing, and private toilets and showers. But these are important conditions for adults, not for children, and there is a difference.

So we continue to recommend that if families are placed in Expedited Removal, that they would be detained only in facilities that meet the standards of the Flores Agreement. And that they are individually reassessed as to the need for custody after a credible fear is found with the presumption for release.

As I mentioned earlier, after an asylum seeker is found to have a credible fear of persecution, ICE has a discretion to release them. USCIRF, as Mark had mentioned, we recommended that parole policies be put into regulations.

And in 2009, USCIRF welcomed an ICE directive on parole that allowed for a presumption of parole so that persons who were found to have credible fear and were neither a flight nor a security risk could be released. Although we welcomed this parole directive, in line with USCIRF recommendations, we also called for those – that directive to be put into regulation.

Since that time, we have also looked at alternatives to detention. That was not something that we looked at in the 2005 study. And we are happy to see that the use of alternatives to detention have increased and that they are being used more prominently, including through bond and Notice to Appear in other ATD programs. But we are concerned about the extensive use of ankle bracelets.

In particular, we are concerned by what seems to be an inconsistent use of release policies. Part of this is inconsistent bond rates that we have seen throughout our different detention facilities. Rates ranging from $1,000 to $7,000 without any sort of consistent mechanism or reason given to us about how a bond rate was reached. That such bond rates could be prohibitively high for release.

And then what's related to the 2009 parole directive - the 2014 memo by Secretary Johnson on prioritizing removal and detention of immigrant populations which called for border crossers as a Priority 1 level detention and an enforcement priority. At the same time, within this new directive and this memo, Secretary Johnson clarified that those who qualify for asylum or another form of relief should not be an enforcement priority. We're concerned that this memo is superseding the 2009 directive and is not – might be holding (ph) asylum seekers from being released when they should be released.

Another issue I wanted to talk about is the overall management and some of the overarching issues that we found in our report.

As Mark had mentioned, in 2005, we recommended that the Secretary appoint a high ranking official to coordinate refugee and asylum matters among the various implementing partners. We have seen in our report that while Secretary Chertoff did appoint somebody, that position right now seems – is vacant and that initial position didn't have the authority nor the resources as we initially envisioned.

From our meetings with DHS agency headquarters and others, there was a strong agreement among that this position had some sort of coordinating effort continued to be a continued important position that should be appointed and should be held.

So we continue to recommend that a high ranking official with sufficient authority and resources to make the reforms necessary to ensure protection of asylum seekers in Expedited Removal and to oversee its implementation be appointed.

And the final issue we wanted to raise is the discrepancy of funding amongst the various implementing agencies of Expedited Removal. And including the – particularly the prioritization of funding amongst those agencies involved in the enforcement aspects of Expedited Removal.

One report that we looked at was from Migration Policy Institute that found that CBP and ICE budgets increased almost 300 percent from FY 2002 to FY 2013, whereas EOIR's increased only by 70 percent. And then by the end of – this resulted in, as we know, a backlog in the adjudication of cases. Whereas by the end of August, 2014, the immigration courts had 450,000 pending individual removal cases that were waiting over 600 days to be heard. So we called for increase of funding for the adjudicatory aspects of Expedited Removal to enable USCIS and EOIR to adjust backlogs, conduct timely adjudications, and provide for due process rights.

That's it. Thank you.

ACER

Thank you very much, Tiffany. And now we're going to turn the program over to Olga Byrne of Human Rights First. Olga?

OLGA BYRNE

Great. Thanks Eleanor. Good morning everyone and thank you for joining us here.

As was mentioned earlier, I'll speak briefly about the report that we just issued at Human Rights First on U.S. detention of asylum seekers. Similar to Tiffany, I'll be speaking about – and our report covers issues in – in ICE custody and ICE detention and specifically on release policies and practices.

Our work on this report started about a year ago and was spurred by conversations that we were having with attorneys around the country who represent asylum seekers. They were telling us that it had become increasingly challenging to get parole on behalf of their clients or the people they were – they were supporting in detention.

This was concerning to us for a number of reasons. One of which is that there's actually a very clear policy directive which was issued by the Obama administration in 2009 that lays out the criteria for parole. The directive states that, in general, once an asylum seeker is determined to have a credible fear, then that person should be released from detention so long as they can show their identity and that they're not a flight risk or a security risk.

So we sought more information on the issue. We started by first talking to the attorneys in our own office who represent asylum seekers. We – we sent a FOIA request to ICE. We visited detention centers where asylum seekers are detained in California, New Jersey, Louisiana, Pennsylvania, and Texas. We conducted an in-depth survey of 50 attorneys around the country who work with asylum seekers in detention and then had detailed follow-up conversations with them about what they were observing in some of the cases – some of the case examples they were able to give. Many of which are featured in our report.

So I'll talk about some of our key findings and the related recommendations. First, we learned that there's been an increase in detention of asylum seekers in recent years. So the most recent data, which is from FY 2014, shows that over 44,000 asylum seekers were detained in ICE detention. Whereas in 2010, there were about 15,000 asylum seekers detained. That's about a threefold increase.

So you might note or be thinking that – that there has been an increase in asylum applicants, of course, in recent years. However, this increase in detention also is – there's also been a percentage increase. So even as the number of applicants has increased, ICE has detained a larger percentage of the – of the whole number.

Parole grants have decreased substantially. Government data shows that while 80 percent of parole applications were granted in 2012, that number dropped to 47 percent in 2015.

Our survey of attorneys around the country, as well as many of the case examples that we collected and which are featured in our report, show that it's a nation-wide phenomena. It wasn't restricted to a small number of field offices.

While several factors might be at play behind why this is happening, I would like to point out two key factors. The first is an old problem. Parole criteria have always been in guidance over the years. It's – it's been the case for decades. So over the years, repeatedly, new guidance is issued. It seems to be followed for a couple of years, and then problems arise again and again where an officer stops following or stops implementing it. We recommend, as we have in the past and as USCIRF has recommended, that these parole criteria be put into regulations to ensure more consistent application over the years.

Secondly, and this is the newer problem, asylum seekers are being denied parole based on a misinterpretation of the 2014 Priority Enforcement Memorandum, which was mentioned. This Priority Enforcement Memorandum was issued by President – or sorry – by Secretary Johnson in November, 2014, at the same time that President Obama announced the expansion of deferred action.

So to provide an example of a case where parole is denied based on the individuals being an alleged enforcement priority. A Colombian family of four

arrived at the Atlanta airport in 2015 to seek asylum. They actually came on valid visitor visas. But as Mark mentioned, that's – it's not a visa to seek asylum because that doesn't exist. So when they told officers at the airport that they would like to know the procedure for seeking asylum, they were put in detention. And they were all separated, including a six-year old girl who was separated for some time. The mother and the girl were eventually released to pursue their cases in the Philadelphia area. But the husband and the grandfather were held in detention at Irwin County Detention Center in Georgia. They passed their credible fear and at that time, they should have been eligible under the parole memo to be released. However, they were held as quote/unquote, "enforcement priorities."

So on – on the enforcement priorities, I'll – I'll briefly mention what the memo states and – and where the misinterpretation comes from. It states that individuals who have been apprehended at the border or ports of entry while attempting to illegally enter the United States are a Category 1 enforcement priority. There is an exception later on for individuals who qualify for asylum, but this is sort of buried in the document and it's – it's not very clear.

I'll also reiterate what Mark mentioned, that it's not illegal to seek asylum and international law recognizes that asylum seekers typically can't obtain travel documents because they don't really exist and they shouldn't be penalized for their manner of entry.

So in this case, the two men actually were not released until after six months in detention and after considerable advocacy. Human Rights First got involved in the case and the family's attorney was advocating on that significantly as well.

Next, we can't talk about release and detention without talking about bond. I first want to say that payment of bond is – is actually meant to facilitate relief by serving as a security - as an assurance or guarantee that the person is going to show up for their court proceedings. However, since neither ICE nor EOIR - the Executive Office for Immigration Review, which runs the immigration courts - since neither agency systematically considers an individual's ability to pay when setting bond, in practice, bond often serves to keep people detained. And in some cases it might make them vulnerable to exploitation by bail bondsmen companies or – or surety (ph) companies that take advantage of the situation.

I'll give you one case example of a prohibitively high bond case. A family of seven refugees arrived at the southern border at a port of entry and requested asylum. They were detained at the Eloy Detention Center in Arizona and only two of the seven could afford to get private counsel. And those two, at some point, did secure release. The other five were denied parole, and actually they were also denied based on being alleged enforcement priorities. In Arizona, people in this sort of category - being arriving asylum seekers - have access to a bond hearing after being detained for six months pursuant to a case called Rodriguez. So after six months, the other five had what are called Rodriguez (ph) bond hearings. But their bonds were set at between $40,000 and $45,000 each. So for the five of them, that added up to over $200,000 to get out of detention.

Of those five, two of them could no longer sustain the trauma of prolonged detention and withdrew their cases. And the other three were granted asylum outright by the Board of Immigration Appeals and were finally released, but only after ten months in detention.

In our – in our report we point out that the Department of Justice, which oversees the immigration courts, would agree with us that this practice is unfair.

The DOJ has actually been involved in litigation and other efforts to improve fairness in the criminal justice system with respect to setting bail amounts and has stated that a system which does not consider ability to pay, which effectively detains people because of their economic status, is a violation of equal protection.

So we recommend that EOIR as well as ICE, which also sets bond in some cases, consider – set up a way to consider ability to pay.

So I'll wrap up by saying that our report also covers several other issues such as the consequences of detention, you know, to the health of asylum seekers and their families, the cost to taxpayers, the expansion of alternative detention programs which have both positive and – and negative aspects - as

Tiffany eluded to - and finally, to the impediments to counsel that detention causes in many cases. With that I'll wrap it up.

ACER

Thank you very much, Olga. So – and thanks to all of the presenters for an excellent summary of the findings and recommendations of these various reports relating to the treatment of asylum seekers and Expedited Removal and detention.

I want to turn the discussion over now for some reflections from the UNHCR as well as from the U.S. Department of Homeland Security. And I – and I think we will start with Leslie Velez at UNHCR. Leslie?

LESLIE VELEZ

Thank you. Can you hear me?

HETFIELD

No.

ACER

Try this one. Use this one.

VELEZ

There we go. Thanks. Thank you for inviting the U.N. refugee agency to be a part of this panel. My first comment is to say, "oof." I congratulate everyone here for comprehensive research, not just round one but we have round two, years later looking at many different details.

The U.N. refugee agency's role is, you know, we have a duty to persons of concern, including refugees, to ensure that they have access to basic services: shelter, food, water. And protecting their rights, including the basic rights of being able to seek asylum and – and have that claim adjudicated.

And with that, our main role is to support governments around the world as they live up to their commitments and their obligations under the Convention and the 19 (inaudible) Protocol.

So here, you know, I think we've heard a lot of detailed challenges that point to some of the systemic, across the board challenges. So what I'm going to try to do is to zoom out into the bigger picture, contextualize this globally, and then offer some bigger picture solutions in terms of how UNHCR deals with – especially situations of influx around the world.

So I'm going to break this down a few ways. First, I think it's really important that we recognize the leadership role of the United States. And important because the United States not only is a leader, but also must lead by example, because for better or for worse, the entire world is watching what the United States does.

And then I want to contextualize this in talking about the current challenges at hand. Because it's one thing to have a certain framework in place, but it's difficult to implement that framework, especially in times of influx when there are a lot of refugees trying to access the system.

And then I'll move into bigger picture reflections offering five points. OK. So since the world is watching, leadership also has to start at home. So what do I mean by the United States serves as a global leader for refugee protection efforts? Here's a good example.

Everyone is aware of the situation in Syria. Since 2012, the U.S. government has supported Turkey to become a country of first asylum by providing nearly $380 million dollars worth of funding to host 2.5 million Syrian refugees since 2012. Okay?

So it's incredible recognition and partnership to UNHCR, not just for us to be able to do our work in support of Turkey, but bilateral agreements between the United States and Turkey as – as a sign of support to allow Turkey to be a country of asylum.

There's other examples - South Sudan, we see this now. Just this year, U.S. government is supporting – offering assistance to IDPs – refugees in South Sudan – South Sudanese refugees that are arriving now to neighboring countries. Over $86 million dollars for humanitarian assistance that includes health care, shelter, nutritional services, psychological and clinical treatments. Okay?

That said, the test of – of leadership really does start at home. And it's very important that the U.S. live out the leadership role domestically as a country of asylum. And our role is to help the United States, as we help all other governments, to mount an appropriate humanitarian response. Especially in times of growing numbers of refugees and migrants arriving at its borders.

So what do we have? We've got some positive aspects built into the U.S. laws. For example, we have the Trafficking Victims Protection Reauthorization Act that actually assumes that any unaccompanied child who arrives in the United States must be protected unless the government can prove otherwise. And so it offers this protective mechanism right off the bat. And that's the legal framework passed by Congress and – and that's – that's extremely positive when we're looking and comparing to other governments.

Even Expedited Removal, you know, it's very interesting because the governments – all governments, by signing on to the Convention and the Protocol, have a duty of non-refoulement, which is a duty to not return an individual to a place where they fear for their lives or freedoms. And easier said than done, especially when people move in – in migratory flows that are mixed. So some are refugees, some might be economic migrants, and how do you tell who is whom?

But the United States government, as implementing, I mean, every form that CBP has, triggers four questions.

In other words, the United States government is supposed to affirmatively ask every individual whether or not they fear return to their home government – or to their home country. And this is incredibly positive and this is a good a sign that the U.S. government is taking its responsibility and duty of non-refoulement very seriously.

There's also the parole guidance we just heard about - great. We – there is a new risk classification assessment process that was years to develop, which is an individualized review for each person before they are – are – end up in detention. So it exists now.

One of the largest problems, you know, with this is that categorically, the laws are set up to mandatorily detain a large number of people, including arriving asylum seekers. And there's alternatives to detention.

Okay. So there was a lot of progress and history and time, as early as 2008 to 2010. So what's happened? We've seen a challenge with the current influx and it's challenging a government's response. And – and this is common everywhere in the world, right? When – when someone – when there's a test to the system, it is the test of the system.

So let me contextualize this again. We see globally 65.3 million people have been forcibly displaced at the end of 2015. With the increasing global numbers of asylum seekers, it becomes a challenge to respond. Not just countries of asylum, most refugees are being hosted in developing countries. And the U.S. government, however, still remains a key country of asylum, and particularly in this region. So globally and in this region.

So let's take a quick peek at the trends. In 2014, there were approximately 45,000 credible fear interviews – that now we know what that is from the previous presenters. Of the credible fear interviews that were conducted, approximately 35,000 of those applicants were found to have a significant possibility of – of winning on their asylum or their torture claims for protection. And so again, that's 80 percent. In 2015, we're talking about nearly 43,000 credible fears. Thirty four thousand applicants were found to have a credible fear. Again, around the 80 percent mark across the board. In 2016, through April of 2016 – I'm going to offer that number because that is halfway through the fiscal year – 41,821 credible fears conducted. Thirty six thousand people have been found to have a credible fear. So the approval rate is up nearly to 86.9 percent - so 87 percent. And these numbers are the same as last numbers. And we're only halfway through the fiscal year. So the number of arrivals – U.S. is still on track to receive nearly 90,000 fear claims before the end of September 30.

So this is what's challenging the system. Okay. Let me then quickly move into some solutions. To break down refugee protection into a simple 101 methodology, you know, there's a process that UNHCR commonly does.

We break down our work into anyone who's – any asylum seeker who has yet to be recognized arrives. And they need to be registered. In other words, we need information. How many people, you know, in this family? How many individuals? What are their needs? Many have health issues. How many have disabilities? Immediately, what are their needs? To inform, how are these people going to be sheltered, food, public health? And how are they going to survive once they're sheltered, you know, to inform livelihoods? Are – is it going to be on food distributions and assistance or are there going to be, you know, opportunities for them to become self-sufficient as quickly as possible? Which is – is a win-win both for the refugee and the resources needed.

And the most important piece of this is that all of their claims must be adjudicated and in a very timely fashion for a number of different reasons. But once the claims are adjudicated then, you know, do you have a refugee that meets the definition?

And if so, then what are the solutions? Local integration? Voluntary repatriation? And some are able to have access to the resettlement's process.

And if they're not found to be a refugee, then what? And how do you respect the human rights of individuals and return if they do not have a fear of persecution?

So here's the good news. If that's the formula, how do you apply that kind of logic to the complicated legal system in the United States? And so here's a few pieces working in the U.S. favor is that the current numbers actually are manageable.

We are talking about 130,000 arrivals per year. This year will be higher than that. But 2014 was the peak at around between 130,000 to 140,000, if you add the unaccompanied children. When we compare that to the countries neighboring Syria, again I just spoke about 2.5 million refugees that are hosted in Turkey, this is manageable. It's possible to get ahead of this. It feels like a very large influx. And it certainly is. But it is manageable.

And we also have a global legal framework. We've got the Refugee Convention, the Protocol. The Executive Committee of UNHCR publishes conclusions. And governments, including the United States, have met multiple times throughout history to develop this global framework to address refugee situations. And many – we have 101 Ex Com conclusions. And we read them all the time. I isolated eight that are very specific actually to the topics we've discussed here. And they really speak to how to receive and shelter refugees.

And so this has been negotiated. This has been talked about. The legal framework is there. And again the challenge is living upto that in moments of – when it's hard to do that. So let's look at – I offered – here's the five reflections and I'll end this quickly.

Okay. So non-rejection at the border. Here, the rub is that allowing someone in to your borders isn't necessarily – is not a breach of international law. But sending someone back who might be a refugee is. Right? And so while it can be true, and it is true, that not all asylum seekers will meet the definition of refugee, sending all of them back will invariably result in sending back bona fide refugees. And that's the duty on states that cannot do this. So it really highlights the importance of non-refoulement. And here I'm going to zoom out for a second.

If we're looking at Expedited Removal, particularly in between ports of entry, it's – we often forget that it's a very powerful enforcement tool. It is also a discretionary tool when we're talking about the application of Expedited Removal between ports of entry. And I'm going to suggest that perhaps it's not so necessary.

So if we've got 80 percent on average, upwards of 80 percent of the arrivals from particular countries that are going through the credible fear process, and then you know once you get a credible fear it's congratulations you are now allowed to go into deportation proceedings in front of an immigration judge. So it begs the question.

I mean we look at the last couple of years. The United States government has invested upwards of $10 million into the initial screening. It has yielded the results and an excellent diagnosis that upwards of 80 percent of people coming from particular countries are passing this initial screening.

But it's not just the cost of money. The asylum officers who adjudicate asylum claims through the normal process have been diverted, and attention

prioritized to these screenings at the border. And so it's – we've got incredible backlog.

And timely adjudication is critical here. It's very critical and it's the crux of the integrity of the refugee protection system. Timely adjudications mean that it's a huge fraud prevention measure. We know this.

As UNHCR we do the refugee screenings in many different countries, and we know that we have to do it quickly. And it prevents fraud. It maintains the integrity of the system so that bona fide refugees have access and proceed accordingly. Those who don't then can proceed in a different way. And it lessens the vulnerabilities of the immigration enforcement system.

So if 85 percent of the people are going to deportation proceedings anyway, maybe particular trends that you know information learned from that should inform how this type of discretion is used and applied. And when discretion to use Expedited Removal, when you use it, then it mandates detention. So it is to say that even mandatory detention is discretionary in these instances. So making more informed use of it might help. And when using the discretion, I think it's important to recalibrate the risk tolerance and tip that more toward protection. You know trust that the immigration judges and that enforcement system, assuming that it's properly funded, will identify individuals that don't meet the refugee definition.

And then the enforcement mechanism you know can do its job. But it's – tipping the scale back that way is incredibly important. And I promise I'll only take 30 more seconds.

You know a big picture reflection is that the United States government is not registering asylum seekers. There is not registration process. And registration is very important. How many asylum seekers, people who intend to seek asylum in the United States, are currently in the United States? I'm here to tell you that no one can actually answer that question right now. Not UNHCR. And we're getting statistical information from many different bodies. We have to add the formula of how many current applications are in court. How many people claimed fear? Of the fear, how many have actually applied for asylum? How many affirmative asylum applications are there? And without registration there is no holistic and comprehensive view of the scale of the situation.

And then once there is registration, making sure that each one of these individuals has information. We call it counseling in the way that we do our work. Maybe we can call it legal counseling. Is that refugees also have rights and responsibilities in the process. So without having proper information, how will they know which – you know, how to move that?

And my final point is that when we talk about shelter for refugees, you know everyone understands that concept internationally. Everyone has seen images of refugee camps. There are no refugee camps in the United States. And I think that's a good thing.

And but there is so much reliance on detention. And shelter does not need to equate detention. You know and how detention is used. Again, these are one of the guidelines. There's Ex Com Conclusion 44 that speaks to this in terms of the legal framework. But in those circumstances can it be arbitrary? And it has to be authorized by law.

And I guess the main big message out of this one is that the use of detention for purposes of deterrence is not a legitimate use of restricting someone's liberty. And so being able to get that right.

And the final thought is that who's coordinating all of this in a post INS world? So we did hear about you know Expedited Removal. It came about when the Immigration Naturalization Service still exist. Now we have Homeland Security. Immigration judges are still in Department of Justice.

And when it first came out I mean I can recall that you know the commissioner would – and high-level governments would go on the Expedited Removal roadshow, if you will, to ports of entry to explain what it is, to really talk about the need to ensure proper screenings and access to asylum.

And now, especially in a post INS world where they're divided, we don't see the high-level coordination.

And so we want to echo the recommendation from USCIRF in particular about high-level coordination at DHS. But we push it maybe a little bit further to say high-level coordination from the top, from the White House.

And someone needs – the refugee protection system is splintered and deprioritized in the context in which it currently lives. And so really being able to draw focused attention to this would be helpful in the way forward. Thanks.

ACER

Thank you very much, Leslie.

Our final reflection is from Mary Giovagnoli, Deputy Assistant Secretary for Immigration Policy at the U.S. Department of Homeland Security.

MARY GIOVAGNOLI

Which immediately. . . .

ACER

Thank you, Mary.

GIOVAGNOLI

Which immediately sounds like a title in which one should be coordinating all of these things. So and we try.

Well thank you. Thank you, everybody, for a lot of very thought provoking and serious issues that need to be discussed.

And I think it's probably obvious that particularly because these reports have just come out I'm not going to be able to respond in any kind of point-by-point way to a lot of the specific issues that are articulated. And they merit a thorough review from all of our DHS components involved in the Expedited Removal process and in the detention of asylum seekers and such to give I think the full weight of a response that's required. But there is no doubt that there are lot of issues that we certainly can talk about.

I also have some limitations with respect to litigation and things like that. So bear with me if I sound evasive. I'm not trying to be. In fact, just the opposite. I really want to be able to engage in a constructive conversation here.

And so what I want to do is sort of give you a bit of an overview. Like Leslie I'm going to sort of zoom out to I think some of the bigger fundamental principles and issues that exist. And some of the trends that I saw in reviewing and reading the documents.

Especially with the USCIRF document. We were fortunate to see a preview to be able to have a little bit of sort of pre-publication dialogue. But – and it gave me some additional time I think to reflect on fundamentally what we're seeing.

So most of this is sort of big picture. But I have a few nuggets that I hope will be useful for you in the sort of the immediate and practical matter.

So I always start, and I think it's absolutely critical, particularly in this day and age, to start, when we're talking about immigration issues, from the premise that people of goodwill are involved on all sides of the matter.

And I'm really quite grateful, both to Human Rights First and USCIRF and UNHCR for taking that approach in the constructive criticism that I think that they're affording DHS.

Now it's often the case that when people drill down they'll be like oh that's one incident, or that's a limited circumstance and et cetera, et cetera.

And I'm also mindful of the fact that you know we have any number of officers in all parts of DHS who are trying their best to follow the law, who are compassionate, who are trying to meet the very, very complicated obligations of a very complicated and often confusing law. So that's why I think it's absolutely important to have that sort of baseline that you know people are trying to do the right thing, often in the face of very difficult situations.

And that leads me to my Hamilton moment, which is that at some point in the Hamilton production Angelica, the sort of kind of maybe love interest of Hamilton is faced with three fundamental truths at once. If you know the musical you know that song. If you don't, well now you have a reason to go look it up. That you can be aware of three or more things at once that are both real and true and in conflict with each other all at the same time.

So here are my three fundamental truths at once, based on the conversation that we've been having thus far. After 20 years, Expedited Removal, credible fear, the detention of asylum seekers remains as controversial as they were when the

1996 law was enacted. And they also remain part of a much bigger conversation and dialogue about the ongoing effects of that law 20 years later.

Number two, at each stage of the process fundamental and life changing decisions are made. And by necessity they're often made in a matter of minutes. If we're lucky, sometimes a matter of hours. But they're made increasingly difficult by, as Leslie said, a mixed flow of people, of reasons for coming here, and by decisions that have been made over time and haven't necessarily been reexamined sufficiently in the course of doing our daily business.

And fundamental truth number three, which continues to switch even as I like kept trying to write it down as I was listening to what everybody was saying was that you know I think essentially it's bifurcated.

First of all, I think once a tool has been put into place in any part of the government bureaucracy people are loath to give up that tool, especially if they don't know what is on the other side. And Expedited Removal is a tool that many people are – the law enforcement section of DHS see as very critical to their mission. And I think that there are a lot of really important challenges and conversations that we need to have about how Expedited Removal is applied. But I think it is a fundamental truth like with any other tool. Once a tool exists, it becomes very difficult to let it go.

Now here's the second part of that. Because the system itself is designed to address individualized needs, but have to address it in the context of you know 40,000, 50,000, 60,000 credible fear screenings. It's necessarily going to be in tension, always, with itself. And the decisions that are made are almost by their nature going to be subject to second guessing and requests for either re-interview or challenges to that fundamental judgment that was made.

And so when it all comes down to – if you had to put it all into one word, I would say that so much of what we're talking about in the context of Expedited Removal at large is this notion of judgment. That judgment is probably the fundamental tool that we have as public servants, that we have within DHS. And the proper use of that judgment, the use of discretion, the use of determining what is the appropriate process, the use of even determining whether or not you need to ask more questions because maybe your gut tells you that something's going on there, but you don't know. All of those things are questions of judgment. And to the degree that the system itself may be imperfect, the judgments that people make are always going to be under such incredible amount of scrutiny that it sometimes becomes difficult to sort of sort out what is the human side of this and what is the process side of this.

So with that in mind I want to address some of the things that people were talking about. And I'm going to start with what, ironically, is the easier part, which is detention. Because something that I want to reiterate that we are making effort to make sure people know and understand.

And I think that we have to keep doing a better job of it is that the 2009 parole memo that says that people who have a credible fear there should be a general presumption that you're going to be able to release those folks assuming identity and flight risk and all those things are met. That is still in effect. The 2014 directive from the Secretary about priority enforcement categories and such things like that was never meant to trump that. It remains in effect just as the vulnerable – or the victims memo that John Morton issued in 2011 also remains in effect.

These are things that go fundamentally to the idea of discretions of good judgment. And if you read carefully the whole scope of the Secretary's analysis in the 2014 directives, you will see that good judgment is I think the legacy that he wants to leave behind in terms of immigration. And so those memos have to be read in concert with, not in contradiction with the 2014 assessments.

And in addition to that, even as the months are ticking away on the Obama administration's time, our leadership is continuing to look at detention issues. They're continuing to look at detention conditions. They're continuing to look at many of the issues that were raised, particularly I think in the Human Rights First report. And we'll continue to engage with Human Rights First and others on it. So there's a very serious commitment to trying to continue to get it right.

Now, Expedited Removal. Remember I said that after 20 years it remains a contentious issue. But it

remains a contentious issue in the context of a 1996 law that fundamentally switched I think many of our immigration systems from a model where there was a lot of discretion to one that was overall more punitive.

And that it has had far more unintended consequences than I think Congress ever imagined.

And I see the two-minute mark. I'll do my best. But I got a lot to respond to.

ACER

You can have a little additional time.

GIOVAGNOLI

Thank you.

And so we always I think always have to put that in that context. That Expedited Removal and that set of tools are also in the context of a whole other set of things in terms of the relief that's available to people now in immigration proceedings.

The risks that people take if they stay in the country and then leave and try to come back in. They may never get back in again because of unlawful presence issues and things like that.

That the complexity of the immigration process has grown so dramatically that again not only – every decision is in some ways life changing at a minimum, if not life threatening.

And when that is the case, again I think this notion of judgment and how we're training our officers, what support they're getting. Those are all very legitimate questions and challenges to raise.

And you know I think we have to, as a department, and it certainly will be something that we look at as we look at all the USCIRF commissions – or excuse me, recommendations, is to really say what more do we need to do to really help provide that support to our officers to understand the full context in which what they're doing is happening.

And I will tell you that the issues that have been raised sort of across the board about coordination ring very, very true. You know coming into the administration – I grew up in the INS. I worked in USCIS. I did a number of things before I left the administration and worked in the nonprofit world in immigration policy for years. So I came back for the last two years here as a political appointee. And one of the things that I found was that DHS was a very different place. It had grown enormously.

And what there had been in INS, for all of its problems, was a real sense of interconnectivity because there was a place where the buck stopped. And that the detention folks and the inspection folks and the asylum folks and the lawyers and the policy people all had to come together at one table to you know address whatever the issues were that the commissioner was raising. And it is true that in the transition from INS to DHS we lost that. And I actually think that Expedited Removal and the issues that have continued to percolate up, our ability to handle the very complex problems that have been raised has really been made the worse for that.

And frankly I think it took DHS a long time to figure out just what a complicated self it had – complicated set of issues it had gotten itself into when it inherited all of the immigration issues. And we went from one agency to three major agencies, plus a lot of other agencies that have a little bit of a stake in the immigration thing.

So those are super complicated, difficult issues. So I actually very much support the idea that we need more coordination. We are actually working on it internally to try to move that along.

It takes a long time to turn any ship, I'm finding. And it's going to take I think continued support and continued discussion to figure out what the right way really is to coordinate so many critical cross-cutting issues across a huge agency with so many missions.

So I think it's also important to remember that you know these issues, vitally important issues, protection issues. And the Secretary, the Deputy Secretary, the leadership care about these things.

Nonetheless are competing with such a huge range of other issues, even in the immigration context, that we have to find a way to ensure that the voice of protection and the voice of balancing out the complicated needs and issues that occur at the border every day are very much kept in motion.

We do our best. We keep trying. We keep pushing. But lots more needs to be done.

And I think that that's a message that frankly isn't just a message that DHS or DOJ have to hear or have to embrace, but – and I will say one thing that really surprised me a little bit was that in the USCIRF recommendations Congress didn't get a little bit more of a set of recommendations about what they could do. Because frankly, yes, Congress needs to keep funding you all and needs to keep ensuring that we have accountability and ways to really assess this. But Congress needs, I think, to take a big reality check and sort of say after 20 years, after criticisms and concerns that fundamentally haven't changed, even though there's been an enormous amount of effort to change them, and there has been movement forward and sort of two steps forward, one step back kind of things within the administration, many administrations. Maybe it's time for us to say this process maybe just doesn't work anymore, if it ever worked. And if it doesn't work, does it not work for a particular population?

Is it that it doesn't work because what was envisioned in 1996 and how we attempted to implement it were based largely on a model that dealt with port of entry where you have far more issues where you can sort of control the flow, the understanding, the types of cases that may come through. And the minute that you open it up to issues along the border, it becomes a much bigger and more complicated process.

Now mind you, as I said, I'm not saying – I'm not making any statement about whether or not we should get rid of Expedited Removal or anything like that. In fact, what I'm saying is the opposite.

That we need to examine very carefully what the right tools are for the world we live in today. And my question is whether the tools that were proposed in 1996 are the appropriate tools today.

And particularly in the context of the evolution, and very much in the last year if you look at it, in the evolution of the U.S. government's approach to the Central American and Northern Triangle issues where we have just announced that we are going to be you know starting in-country refugee processing. And we have been working with UNHCR and other partners in the region to try to address more comprehensively what's happening down there. Again, I think there becomes a question of what are the right tools for this – these populations that we're seeing now.

It's a challenge across the board, right. I mean the challenge of the kinds of refugees, the kinds of protection needs that are arising now are not the needs of 20 years ago. They're not the needs of 50 years ago. And in the context of that ever changing, ever fluid momentum, we have a set of immigration laws that are fundamentally stuck 30, 40, 50 years in the past.

So I always come back to this. I'm a broken record on it. I'm a complete 100 percent believer in the Obama administration's support for comprehensive immigration reform. It won't solve all the problems we're talking about here today. But if we take it seriously what it does is create a baseline that allows us to have a more – a smarter, more efficient, better regulated flow of legal immigration.

We deal with the folks who are here. We deal with the folks who want to come in. And if we create a system that works, then we will reduce a lot of the issues that we have at the border, which will give us, I think, more of the opportunities that we need to be able to address with greater care, with greater clarity, more systematically the very real issues that do come up.

So we've got a lot of work to do. We've got a lot of great people within the Department who want to do that work. We continue to need all of you. And we continue to need to have a dialogue that is real and transparent. And that really does start with the idea that you can hold a lot of fundamental truths in your head at the same time, and they can all be real. But we can make it better if we work together. Thank you.

ACER

Thank you very much, Mary, and Leslie as well, for your reflections.

We're going to open up the conversation now for questions from our audience. And my excellent colleague Andrew here is going to have a microphone in his hand. So we're going to try to take rounds. We'll take – if there's a number of questions we'll take a couple of questions first and then open it up to the panel.

So I see some hands up, Andrew, if you want to just – yes, thanks.

QUESTION

Good morning. And thank you very much for the great presentation. My name is Theresa. I'm an LL.M student at Georgetown Center. I have just a quick question.

I'm sure you know that Kenya has declared to close their Dadaab refugee camp where we have like the biggest camp, refugee camp for refugees in the world. Is USA a destination country for UNHCR as you plan to relocate them? Just is USA one of the destination countries that you intend to settle them? And if yes, so the current reforms mandate that number? Because I know many people would be looking at coming either this way, leaving the developing country. Thank you.

ACER

Let's take a few more and then we'll take all the questions, we'll have the panel address them as a group.

QUESTION

Thank you very much for the presentation has been very brilliant and very enriching. Before going into my question, I'm Helena Yadi (ph) from Cameroon, Georgetown University.

I first of all want to find out if all the various presentation could be found in this book. And if not, I don't know if it was a copy of your presentation.

Now my question is actually what happened to those asylum seekers who could not go through the procedure to become – to obtain the asylum status?

ACER

OK. Great. Thank you so much.

QUESTION

I'm Dr. Allen Keller from New York University School of Medicine. I had the great privilege of being one of the experts on the earlier USCIRF Study with Mark.

And I just want to acknowledge the current USCIRF report and incredible efforts. And just Mark, whose tenacity and dedication made that Study happen.

I think it's important to remember that the immigration reform occurred under a Democratic president. And so maybe perhaps the second President Clinton will have a chance to fix what a profound, profound problems.

So I'd like to add a few truths to those that the Assistant Secretary stated, and hear the panel's comments on them.

Truth number one is dialogue is important. From the USCIRF Study there were a lot of discussions. And I can tell you under the Obama administration there's been an incredible dialogue ongoing between ICE officials and the NGO community. We don't agree a lot, but at least we keep talking.

Second truth. Facts matter and data matters. Mark did a yeoman's job of creating a system, or we all did, for documenting what's happening. And unfortunately that system was dismantled, let alone not sustained. And that's really sad.

I was – led that part of the study where we were monitoring what went on in the interview rooms. And even with us in the rooms the information wasn't provided. And so I just shudder at you know God only knows what's happening you know on the border outside of an airport or much more uncontrolled.

The third truth. Immigration detention is dangerous. It is well documented from research my colleagues and I have done, many others, that it's bad for the health. I recently was an expert with Human Rights Watch on a report which showed a lot of the deaths in immigration detention we were able to review could have been prevented.

And then the sad final truth. I'd like to hope that well we can now reassess. You know 1996 was a long time ago. But 1996 was the result of xenophobia. And that xenophobia still continues. And I hope we can fix that.

The last truth, which actually I think, though I have enormous admiration for the President and for Secretary Johnson. The last truth is the Central American crisis is a refugee crisis.

And that we have treated as a nation of refugees, this crisis, with the law enforcement criminalization approach really should and will

go down as one of the utter disgraces of the Obama administration. And I hope they look to fix that. Because having sat in the room with so many of these women and children fleeing, they're not here for a – you know, for a green card. They're here because they had no choice. And those changes that were made, the Secretary's statement you know, or directive, came because we wanted – the President wanted to look tough on the border so we could have you know the DREAM Act. And in so doing he threw a population of women and children under a bus. I hope we address that. I hope the president does and the next administration does.

ACER

Great. Do we have additional – thank you very much, Allen. Do we have any additional questions before we turn this to the panelists?

So I'm going to just turn Allen's last point into a question to make it easier for our panelists to address, and then just recap quickly.

First of all, in terms of copies of the presentations, if you want to, I think if you've given your email and registration outside, we will definitely I think send a link if there's a C-SPAN link, which will give you at least the audio as well. But feel free to give me your email. And if we do have any of the presentations in writing, I'm happy to share.

So just to recap. The last question I think really was some of the messaging used by the Secretary and the administration that was so law enforcement, criminal – law enforcement focused, deterrence focused. Did that send the wrong message in terms of how U.S. officials on the front line should be treating asylum seekers at our border?

And what steps in addition to, I think which was mentioned, the recent resettlement initiative. But what additional steps can be made to right the course and to send this clear message that the U.S. should be abiding by its refugee protection commitments, including many that have long existed in law and policy.

We also had a question on Kenya and resettlement of Somalis. We had a question on rejected asylum seekers and what happens to them. How to maintain monitoring and data, as well as the health impact of detention on asylum seekers.

And I think that we will start down at the end, Olga, if you don't mind, quickly. And then I think you might want to comment on the health impact question. And then maybe a few others want to chime in.

BYRNE

Sure. Thanks, everyone, for those questions. So I'll respond on the health impact. Thank you, Allen, for raising that point.

Our organization, Human Rights First, has actually been focusing a lot on the health impact with respect to family detention in particular, which we haven't talked about so much other than Tiffany mentioned briefly.

In that context it's more than clear that even very short term detention of you know a couple of weeks or so is harmful to children and their parents, you know and the whole family to the extent that losing your liberty impacts the family relationship, the parent's ability to parent.

We have worked with medical researchers who have found that there are long-term negative developmental consequences to children. So to that end we have really pushed for an end to detaining children once and for all.

ACER

Great. And I think the American Academy of Pediatrics has weighed in as well as other national organizations, in addition to the widely respected NYU Program for Survivors of Torture.

BYRNE

Yes.

ACER

I don't know, Leslie, Mark, others if you wanted to weigh in. And of course, Mary, there were a few questions for you.

HETFIELD

Sure. OK. So I have a couple of comments that I suppose tie into both Mary's statement as well as Allen's statement.

One is I think it's really important to emphasize that one of the most – to me, working on the Study, I was kind of surprised at the outcome for many reasons.

One is we found that Expedited Removal as legislation was fine. That it was possible to protect refugees and asylum seekers within the language that was written by Congress and signed by President Clinton.

The problem was in the implementation. And that DHS could have rectified all of the problems that we identified that related to that agency. And we – that's I think why we took kind of an optimistic tone of our report. This is our report released 11 years ago with the Statue of Liberty on it. Eleven years later look what they've issued, barbed wire.

(LAUGHTER)

Because after 11 years of waiting for changes I think the optimism has kind of died down a little bit.

The second point I wanted to make relates to that first point, which is that we – some of our findings did relate to what Mary referred to as judgment.

But what really upsets me as a lawyer and as somebody who's worked in the refugee field for over 25 years, is that the Commission identified inherent systemic flaws that created problems, that created immigration officers not following their own procedures.

And as I said, we documented this 72 percent of the time. Seventy-two percent of the time the noncitizen was not allowed to review his statement and correct it, but was forced to sign it. Half the time information that the file reported was conveyed to the applicant was not conveyed to the applicant.

Why does this happen? It happens because DHS only does a paper review. They don't record the proceedings. Nobody's watching. And the immigration officers got into such bad habits that with us sitting in the room they didn't follow their own procedures 72 percent of the time.

So we recommended don't just train them. You have to monitor them. You have to actually sit in there and make sure they're following the procedures. You have to video record their procedures, which is done in most developed countries in their asylum procedures.

Those were not – the CBP expanded Expedited Removal without taking into account any of those recommendations. And they didn't dispute our findings. They just didn't address them or improve them. And that's what upsets me 11 years after.

One other comment I want to make, and it's kind of a small comment. But it's really haunted me for the last 12 years. And that is we did visit about a dozen detention facilities. And what Tiffany referred to as a lack of privacy was a definite understatement.

What we saw, and maybe this has improved, I'd like to know what you meant by lack of privacy. It doesn't mean you can't go into a room by yourself and read a book. What it means is that in many of the facilities you live in what's called a pod with a couple of dozen other asylum seekers.

In that pod you eat, you sleep, you go to the bathroom and you take a shower all out in the open, all at the same time, with the guards there watching you. You can be eating over here and having people going to the bathroom you know 50 feet away.

I mean that is the type of lack of privacy that we are talking about. It's not that oh I can't go into a room by myself and get some me time you know. So I think it's really important to emphasize that. That was a real eye opener for me.

They even had – and one facility even had cameras on the toilets. In addition to them being open, there was a control room where the penal officers – no pun intended, could watch people go to the bathroom. And for some reason while there couldn't be male officers watching women go to the bathroom, women officers were allowed to watch men going to the bathroom.

So I mean these were the types of humiliations that we saw. And I don't know. I haven't been in a facility in 11 years. I'd like to know if those types of things have gotten better. But it continues to haunt me that this is the way the United States treats asylum seekers.

CASSIDY

I just want to comment on a couple things and then I can let Tiffany talk more about the detention. But essentially they're not that different.

On Allen's point about the facts and data mattering, I completely agree. And as we found in this research, it can be hard to find the data. And I'm sure Human Rights First has experience with this, and get the data among other things, with DHS having the separate components and agencies implementing this.

You know the different agencies keep data in different ways. And that was something we struggled with in this research, despite the cooperation that we got from DHS in doing this second update.

Another thing echoing Mark. I mean I was – we were surprised. We didn't sit in on nearly the number of interviews that they did in the first study. You had your team of what did you say, 60 researchers and four experts. We had the two of us. So it was a little bit of a different endeavor.

But as I said, we did sit in on interviews and we watched video processing ones. And I was surprised that people still were doing things wrong in front of us as we were watching, knowing that we were writing a report that was going to be public about this.

When, as Mark said, the procedures are very clear. There are certain procedures that are supposed to be – that are supposed to be followed.

And finally I just want to echo Allen on the Central American crisis. I mean we at the Commission, we tend to – we focus in our other work on situations of religious persecution overseas, which tend to be in other parts of the world.

But we've now sat with a number of – in all of our research trips we you know spoke with detainees from the various Central American countries, including mothers and children. And the stories are horrific. That's the fact of the matter. And I think it's borne out by the fact that 80 some percent of people are passing their credible fear interviews. And also borne out by the response of the Obama administration recently announced on the in-country processing and the expansion of the child program.

LYNCH

So with regard to detention, yes, a lot of those conditions remain. The lack of privacy as you have fully described. And pods, open – sometimes referred to as open dorm rooms. I sort of refer to as pods where you're sleeping with bunkbeds and you have a section on the side that's where you could have your meals.

Sometimes you could go out to a cafeteria to have meals. You watch TV. You do your daily stuff there. You know showers, no privacy. No curtains on showers. No doors on toilets.

When I did mention progress there had been a few new facilities which moved toward more privacy, which we welcomed. You know smaller rooms with – that would house two to eight people. And there would be a restroom with a shower and a toilet that was private. So you had some sort of privacy there.

Interestingly, one of the facilities that had these private bedrooms, they still had an open restroom shower area. And to speak to Mark's discomfort, even in this facility I was touring I wanted to inspect, to see what the privacy was like in the shower room and it was wide open and somebody was showering, and I backed out immediately. I didn't feel comfortable. I didn't feel that that person's privacy should be invaded. So I just quickly asked and noted what the conditions were like in that shower. And that shower, and moved away.

But it's unfortunate that some of these facilities that were moving toward a more civil detention facility. Partly because of the surge. They had to rearrange and house some of the women and children there. But they backed away from that. And more and more asylum seekers since 2009, 2011, 2012 are being put back into these facilities where there's lack of privacy.

And again full – you know video monitoring throughout the facility, escorts being required as you're moving between parts of the facility. Checks. You know sometimes you're checked to see if you're bringing anything from the cafeteria into your pod area. Searches. Census count eight times a day making sure you're where you need to be.

These type of serf conditions that you think of when people are in jail and people are overseeing you. That's what we see in a lot of these facilities.

ACER

Thank you all.

Before we pass the microphone to my colleagues here to the left I just wanted to say that from our perspective at Human Rights First, having worked with asylum seekers and Expedited Removal for many years, we've concluded that the Expedited Removal process itself is inherently flawed due to its lack of safeguards.

And that these kinds of problems are to some extent you know inevitable because it's a system that doesn't have basic safeguards like immigration court hearings. So it's a slightly different take.

VELEZ

And I'll add to that just to say OK, Expedited Removal was used. The credible fear process has proved useful to inform who is in this flow. We now know that upwards of 80 percent of individuals who claim fear actually are found to have it. So it just begs the bigger question here is then if it's discretionary in certain circumstances then why use it?

And so that's something that can be changed immediately. And it's not about let everyone in uncurtailed. It's about putting them into deportation proceedings.

And some of the lessons learned from the past is that might happen, but people need information. They need legal counsel. They need to know where they're supposed – what they're supposed to do, where they're supposed to show up.

How do you change venue from you know I have a court hearing in Harlingen and I'm going to Seattle, Washington because that's where my family is? Which offers actually something very positive is that when it comes to detention – and remember, because someone's in deportation proceedings or in Section 240 proceedings, you don't need Expedited Removal in order to detain someone. And if someone's in proceedings then detention can be used. Which is to say that it needn't be mandatory. So that swaths of people go in. But going through an individualized assessment.

And the U.S. government now has a tool to be able to do that, to look at security concerns, to evaluate documentation. Is this person who they say they need to be? But to move them out of the system you know as quickly as possible.

And with every crisis there's opportunity. And so we – there are this very large two-, three-family detention facilities. But now there is the largest case management based alternative to detention program being run by the U.S. government. It's the largest in the world. And this is – you know every crisis there needs to be opportunity. And opportunity seized. And I think that that's one of them. Because at the end of the day you know it shouldn't be hard for a country that's committed to honoring and reviewing asylum seekers and offering surrogate protection should they meet the definition, it should not be hard to access the territory, to access the asylum system. And to be put in detention is a cause for concern.

I mean in our office we're receiving a number of calls which are very concerning of people who already passed their screening, are in the asylum process, have not been released and are choosing to abandon their claim simply because the context in which they're being detained. So we have someone that's already been screened by the U.S. government as a legitimate or bona fide refugee pursuing the process who simply cannot stay in these types of conditions and are leaving and trying to figure out other ways of surviving. And that's not a good state of affairs.

Given that we have the opportunity to use discretion in the current legal framework to make better informed decisions. I would say that that's the first step.

And on the question of Dadaab, just to quickly address that. So with the closure we have a queue already of about 14,0000 individuals who are – I mean we're looking toward repatriation, voluntary repatriation to individuals who can go home. And there's many individuals who still feel that they cannot. And so trying to facilitate that with repatriation packages. What kind of support do they need to go home?

And as always in any context around the world, the slots for resettlement, 12 million refugees, 100,000 slots per year. You know it's based on acute risk. It's done by a risk analysis if that's the solution that's necessary.

But hopefully you know we've received assurances from the government that the human rights will be respected. And it's our job to support the government and to keep a close eye on that and ensure that these individuals are able to access safety and their rights.

ACER

If you need a reminder I have a list of some of the questions –

GIOVAGNOLI

I wrote them down.

ACER

There was a question on rejected asylum seekers I think at the beginning. And also the sort of law enforcement deterrence message, you know what kind of signal did it send or repercussions. Are there things that can be done to counter – to give a message that is more of a refugee protection message as well?

GIOVAGNOLI

I think that, again, I want to echo the – my gratitude for the very important points that people are raising.

And the very sort of uncomfortable place that you've put me in terms of acknowledging the incredible and constant, I think, need to remember that the dignity of each person that DHS cares for, apprehends, puts in custody, adjudicates their case has to be foremost at the thought of everything we do with our thousands and thousands of officers and folks who work in this area.

And you know we have to have that reminder time and again because it can be very easy, particularly with the crush of cases to I think sort of isolate one's actions and not think about the picture as a whole.

So I'm going to go back to one of my earlier points which is I think that some of this is precisely because we don't have the structure in DHS. We need to improve our structure in DHS for managing immigration across the board because we don't.

And I think that the secretary's efforts toward sort of a unity of effort approach and model on immigration and other issues really does reflect the idea that we have to actually think about every step of the process together. So when one expands Expedited Removal what does that do to the asylum program? What does it do to detention and removal? Where does it increase pressures? Where does it decrease pressures? Bottom line, what does it do to the individuals involved? And I think that as a matter of sort of historical record, we just haven't done that well enough.

And we I think are trying to move toward that. I do think that the next administration it's really one of the biggest and most important challenges in the immigration field that they have to deal with is sort of 2.0 on how we manage our immigration system overall.

Now some extremely tough questions and some things that I don't have answers to. I think that you know when we raise these issues to people, and many people do raise the issues about detention.

As people have said there are extensive working groups. There are internal reviews. There are the civil rights and civil liberties organizations within DHS spend an enormous amount of time reviewing complaints and concerns about conditions of detention seekers – or conditions of detention, the impact on asylum seekers, things like that. And you know frequently there are answers. They're not answers that everyone agrees with. But there are answers as to why things are done the way they're done.

And so I think fundamentally you know there are certain things. And it goes back to this idea that when people have tools they're going to use them. We have to keep pushing, pushing, pushing to make those tools as safe and as respectful as possible. I will say that there are efforts in place to continue to examine conditions of detention, to continue to build on and improve those things that are many of the things that were raised today.

But I think the other thing that is really important, and I'm glad to see that Mark and Eleanor differ a little bit on whether or not Expedited Removal as

a statutory premise works. Because then I can just sort of be in the middle of it all.

I think fundamentally no matter how hard we try, we are going to keep coming back to these issues until we face up to the fact that our immigration system itself, the entire thing, really needs a reboot. And the issues that people are pushing and pressing on and challenging, you know I think it's absolutely right.

One of the reasons why it's so difficult in the immigration context is that the xenophobia and the fear. Often when people pass laws and want to try to address that, they target immigrants. They target the immigration system. And it, I think, makes it incredibly difficult at times to do all the things that we put down on paper. Doesn't mean that's right.

And people have used their litigation skills at this table and throughout the room and elsewhere, ably, to keep pushing us. And that's what it requires.

Keep pushing us, to keep challenging us, and to shame not just any administration, but I think Congress into really focusing on those things that matter within the context of a protection system that does what it's supposed to do. So.

ACER

Thank you very much, Mary.

So I think we've got five more minutes left and we're going to need to wind down shortly. But I just wanted to see if there were one or two more final questions. And if not we'll just wrap up quickly.

Perfect. I think the panelists will be here for a few more minutes if folks do have an additional final question.

I want to again thank our host at Jones Day. That law firm and many others have done tremendous pro bono representation work for asylum seekers held in immigration detention and otherwise. And we greatly appreciate that contribution to access to counsel.

And I really want to thank the U.S. Commission on International Religious Freedom and UNHCR, Department of Homeland Security for sending its representatives to participate in today's discussion. Thank you all.