

Thank you, Ms. Newland, Ms. Acer, and Mr. Zinglar.

In 2005, when the United States Commission on International Religious Freedom released its *Report on Asylum Seekers in Expedited Removal*, we posed many new questions and raised concerns about the implementation of the Expedited Removal process. The Commission then urged the Department of Homeland Security and others to continue to review and analyze the hundreds of pages of data we had compiled for ways to improve the Expedited Removal process.

We are happy to participate today in the release of Human Rights First's new report on the conditions of asylum seekers in detention. This new report shows that, unfortunately, many of the problems that the Commission identified four years ago remain, and in some cases, have worsened.



Expedited Removal is a complicated subject, and the Commission's 2005 report was the product of many months of painstaking research, interviews, and site visits. Nevertheless, the report can be boiled down to one question: Was the Expedited Removal system being implemented in the way Congress intended, ensuring secure borders but also fair and humane treatment of legitimate asylum-seekers?

The answer was no.

The Study identified serious flaws that placed asylum seekers at risk of being returned to countries where they may face persecution, as well as in the treatment of refugees and asylum seekers in detention.

Among the identified flaws were:

- Regulations and procedures being implemented inconsistently;
- Legitimate asylum seekers being detained like criminals;
- Detention personnel lacking appropriate training on the special needs of asylum seekers in detention; and
- Asylum claims being adjudicated inconsistently by immigration judges.

The Commission's report also identified a series of needs including:

- Increased coordination among the entities in the Departments of Homeland Security and Justice that implement Expedited Removal;
- Increased alternatives to detention or detention in non-jail-like facilities;

- Increased opportunities for *pro bono* counsel for asylum seekers; and
- Increased quality assurance procedures.

The Commission made a number of recommendations on ways to fix these problems while remaining true to the law. None need congressional action. All of the recommendations can be implemented by the Departments of Homeland Security and Justice.

In 2007, the Commission took another look at Expedited Removal policy, this time through the lens of our recommendations. We issued a Report Card grading the agencies responsible for Expedited Removal on their implementation of the Commission's recommendations. Unfortunately, many of the agencies, particularly those within the Department of Homeland Security, received failing grades. We found that many of the problems we had identified in 2005 remained.

In fact, although former Secretary of Homeland Security Michael Chertoff met twice with the Commission, it was not until late November 2008, almost four years after the release of the Study and in the waning days of the Bush administration, that DHS formally responded to the Commission's study.

Regrettably, the information in the DHS response and other information obtained by the Commission shows that to date, few of the Commission's recommendations have been adequately or fully implemented.

And unfortunately, as evidenced by this morning's event, the answer to our question, "Is the Expedited Removal system being implemented in the way Congress intended it to be, ensuring secure borders but also fair and humane treatment of legitimate asylum-seekers?" remains no.

Today's event focuses on detention and the U.S. Immigration and Customs Enforcement agency, or ICE, but I would like to mention that the Commission's Expedited Removal Study found serious flaws throughout the Expedited Removal process.

The Commission made two overarching recommendations in the Study. The first was to create a high-level refugee coordinator position; and the second was to address implementation and coordination issues before expanding the Expedited Removal program. DHS failed on both accounts. While former Secretary Chertoff did appoint a Senior Advisor for Refugee and Asylum Policy in February 2006, the Senior Advisor does not have sufficient staff or the necessary authority within DHS. We are happy to see that strengthening the Senior Advisor position among the recommendations in this Human Rights First report, as well as other publications of theirs.

In addition, DHS has expanded Expedited Removal.

We also made a number of recommendations to the Customs and Border Protection Agency, or CBP, U.S. Citizenship and Immigration Service, and Department of Justice. Some of our recommendations have been implemented, but others have not. The Commission continues to

recommend that CBP add videotape monitoring systems to all border patrol stations and ports of entry or employing testers to verify that procedures are followed correctly. And although rejected by DHS under the Bush Administration, we hope that the new Administration allows Asylum Officers to grant asylum at the credible fear stage.

Now on to the detention of asylum seekers. In mandating the Commission to undertake the Study, Congress specifically asked the question “Are immigration officers detaining asylum seekers improperly or under inappropriate conditions?”

The Study concluded that the answer to this question was yes.

Asylum seekers were being kept under conditions that were virtually identical to conventional domestic prisons and jails.

In surveying facilities where asylum seekers were detained, the following conditions were observed:

- Asylum seekers were detained with criminal offenders, including sharing sleeping quarters;
- Except for at one facility, staff was not trained to be sensitive to the special needs or concerns of asylum seekers, or to recognize or address the special problems of victims of torture and other trauma;
- Detention facilities were extremely security conscious, employing inmate “counts,” invasive searches, and constant sight and sound surveillance;
- Restraints, including handcuffs, were used on detainees;
- Movements and privacy were restricted;
- Detainees were required to wear uniforms rather than street clothes;
- Mental health services were limited; and
- Contact with the outside world, including social and family visits and phone calls, were limited.

Many asylum seekers have suffered severe and sometimes recent trauma prior to their seeking asylum. The detention conditions described above may “re-traumatize” asylum seekers, leading to long-term consequences. Detained asylum seekers with whom Commission experts met spoke of suffering physical as well as mental abuse. Many spoke of depression and concerns for their uncertain future.

These detention conditions also negatively impact the proper implementation of the Expedited Removal process. Despite credibly fearing return to their home countries, the Study found that

some asylum seekers may decide to terminate their asylum applications because of the trauma they experience in detention. Today's report finds that this pattern is continuing.

The Commission recommended that ICE change its detention standards so that non-criminal asylum seekers are not detained under penal conditions. Unfortunately, four years after the Study, we find today that the detention of asylum seekers under prison-like conditions continues. Using handcuffs and at times shackles, requiring the wearing of prison uniforms, and limiting the freedom of movement and contact with family members seem to remain standard practice for ICE in detaining asylum seekers in Expedited Removal.

Such confinement is unnecessarily severe and a matter of grave concern, especially as there are legal alternatives to such detentions. However, ICE and DHS have been unwilling to develop alternatives to detention, as we recommended. It is particularly disturbing to see in today's report that, contrary to the Commission's recommendation, Human Rights First is reporting that the use of detention is increasing. As this report documents, over the past six years at least 42,000 asylum seekers have been detained, 6,000 the past two years alone. Furthermore, the Commission is dismayed that the new performance-based standards for detention facilities are based on correctional standards which are inappropriate for asylum seekers.

While detention is required before the credible fear interview, once that has been completed, ICE can release or parole an asylum seeker who meets specific criteria. These criteria required that the alien establish credible fear, community ties, identity, and that they are not a security risk. However, in the course of the investigation, the Study experts heard stories of asylum seekers being detained for years and found great variations from city to city in the release rates of aliens who met those criteria.

The Commission recommended that ICE codify the *existing* parole criteria into regulations and develop standardized forms and national review procedures to ensure their proper application. However, ICE issued a Policy Directive in November 2007 requiring that an asylum seeker who meets the original criteria must now *also* establish that there are medical reasons which warrant release, that he or she is a juvenile or a government witness in a legal proceeding, or that release would be "in the public interest," although "the public interest" is not defined.

At the time the Policy Directive was announced, the Commission said it feared that it would actually extend detention for asylum seekers. It appears that this is happening: Human Rights First reports today that parole rates are decreasing. In the DHS's November 2008 response to the Commission's study, we were told that from the time the parole directive was announced through June 2008, only 107 asylum seekers were granted parole out of 215 who requested it. Yet Human Rights First reports that 842 new asylum seekers could have been eligible to apply for parole during the same period.

The Commission calls on DHS to rescind the November 2007 parole criteria and comply with the Commission's initial recommendation that parole should be granted to *bona fide* asylum seekers who have a credible fear and who pose neither a security nor flight risk.

As for those asylum seekers who do need to be detained, the Commission recommended that

detention workers should be trained on the needs of asylum seekers and that non-jail-like facilities should be adopted on a widespread basis.

The Commission has welcomed the release of a training module on cultural awareness and asylum issues for detention officers in December 2007. We also have called for the expansion of the training to include intergovernmental service agreement (IGSA) staff, who work at facilities where more than 50% of asylum seekers are held. This training, however, does not make up for the fact that vulnerable asylum seekers continue to be detained in jail-like facilities.

The Commission recommended that facilities such as the one in Broward County, Florida, which balances security concerns with the mental health and emotional needs of asylum seekers, be replicated. The Broward County facility is a secure facility, but provides for freedom of movement, has a liberal contact and visiting policy, and offers a full range of activities and programs. It is also cost-effective, costing slightly less than the average detention rate per alien per night.

However, the increased use of detention facilities, including mega facilities, for immigrants and asylum seekers and the treatment of asylum seekers in such facilities described by Human Rights First contradicts both Commission recommendations and the goals of Expedited Removal.

In addition to its negative emotional effects, detention has other negative consequences for asylum seekers in Expedited Removal. The Commission's Study found that whether or not an asylum seeker is granted asylum depends largely on whether he or she is able to find pro bono counsel to represent him or her in the hearing before the immigration judge. Our Study found that one in four asylum seekers who are represented are granted asylum, whereas only one in 40 unrepresented asylum seekers succeed.

The Study also found that asylum seekers with the lowest rates of representation tended to be detained in more rural areas. Asylum seekers in rural detention centers are disadvantaged. Few attorneys trained in or experienced in asylum cases live in or visit those areas.

As documented today, the building and use of detention centers in rural locations is negatively impacting asylum seekers' cases. We are troubled by Human Rights First's finding that one-third of asylum seekers detained in rural locations are not represented by legal counsel. While ICE, U.S.C.I.S., and the Justice Department have expanded non-governmental *pro bono* legal programs, which was recommended and commended by the Commission, it is difficult for these programs to reach asylum seekers in the rural detention centers described today. Such programs must continue to be expanded by the Obama Administration.

The Commission hopes that the new Administration will address the flaws that we, Human Rights First, and others have identified in the Expedited Removal process.

We are pleased that Secretary of Homeland Security Janet Napolitano has already made two announcements regarding U.S. detention centers. The first was naming a Special Advisor on Detention and Removal Operations. The second was an agency-wide directive requiring a review of DHS's immigration and border security programs. In this directive, Secretary

Napolitano specifically ordered that immigration detention policies be evaluated, including the new performance-based detention standards, efforts to segregate different groups of detainees, and the prospects of expanding community-based alternatives to detention or facilities, specifically citing the Broward County, Florida facility. While no other announcements have been made, we hope that these developments are positive signs for the reduction of the use of jail-like facilities to house asylum seekers and an increase in the use of alternatives to detention.

The Commission continues to urge the implementation of all of the recommendations found in the *Report on Asylum Seekers in Expedited Removal*.

Thank you.