



**Statement of the American Immigration Lawyers Association**  
**Submitted to the**  
**Committee on the Judiciary of the U.S. House of Representatives**  
**Hearing on “Asylum Abuse: Is it Overwhelming our Borders?”**

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The American Immigration Lawyers Association (AILA) submits this statement to the Committee on the Judiciary. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 13,000 attorney and law professor members.

This statement addresses primarily the concerns of asylum seekers who are subject to the summary deportation procedure known as “expedited removal” that is applied to many individuals apprehended at or within 100 miles of a U.S. border. Though critics of the U.S. asylum system assert that even more stringent requirements should be placed on asylum seekers at the border, the fact is asylum screening at the border and security protocols are already extremely rigorous. Moreover, expedited removal restricts the opportunity for individuals to seek asylum and sometimes results in wrongful deportations of vulnerable individuals who have a well-founded fear of persecution. Our laws must balance the aims of border security without compromising protections for those seeking asylum.

Welcoming and protecting those fleeing persecution is a deeply rooted American value that has defined our country since its founding and is firmly established in our laws. In 1968, the U.S. acceded to the 1967 U.N. Protocol Relating to the Status of Refugees, which extends the obligation of *non-refoulement*, or the duty to not return a refugee to a country where their life or freedom would be threatened on the basis of certain grounds, an obligation that was first enshrined in the 1951 Convention Relating to the Status of Refugees.<sup>1</sup> Additionally, the U.S. is bound under the U.N. Convention Against Torture, to not return an individual to a country where the person would likely face torture. In 1980, the U.S. enacted the Refugee Act to bring its laws into compliance with international law and has continued to be a leader in the area of asylum and refugee protections internationally.

The U.S. asylum system still suffers from serious flaws that have compromised the protections it provides to asylum seekers. Most significantly, asylum seekers arriving at the border are often turned away and summarily deported by Border Patrol without the opportunity to obtain even a preliminary “credible fear” interview before an asylum officer. Thousands of asylum seekers are held in detention, often for extremely long periods over a year or more. The immigration courts are severely underfunded, preventing judges from hearing cases promptly and forcing asylum seekers to wait years.

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<sup>1</sup> United Nations Treaty Collection,  
[http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSO&mtdsg\\_no=V~2&chapter=5&Temp=mtdsg2&lang=en](http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSO&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en)

## **Expedited Removal and Credible Fear Interviews**

In 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), Congress gave broad authority to the federal government to deport certain individuals through a process called “expedited removal.” Expedited removal severely truncated procedural protections for certain classes of noncitizens seeking admission to the U.S. Under current practice, those subject to expedited removal may be ordered removed after only a brief interview with an enforcement officer, with no hearing before an immigration judge and extremely limited procedural protections.

Expedited removal initially applied only to noncitizens seeking admission at a port of entry (and to a limited class of individuals who arrive to the U.S. by sea) – a position in which asylum seekers often find themselves. But in 2004, the Department of Homeland Security (DHS) extended application of expedited removal to the interior of the country, to include anyone apprehended within 100 miles of the U.S./Mexico border who has been present in the U.S. for 14 days or more and who lacks proper documentation or entered without inspection. Expedited removals now account for more than 30 percent of annual removals by Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) combined.

The expedited removal process authorizes immediate removal with few procedural protections: There is no right to counsel, no right to present evidence other than what the individual has on his or her person when apprehended, and most importantly, no hearing before an immigration judge. Expedited removal gives enforcement officials, who may lack adequate training, the power to make a legal finding of removability and to order individuals removed with little oversight or possibility for redress, even when that decision is legally incorrect.

Thousands of asylum seekers are subject to expedited removal each year.<sup>2</sup> To protect the right of those subject to expedited removal to request asylum, Congress established the credible fear process which requires a U.S. Citizenship and Immigration Services (USCIS) Asylum Officer to interview the individual to determine preliminarily if he or she might qualify for asylum before the person can be removed from the country.

The current credible fear process provides rigorous security checks to counter fraud and safeguard our national security. For those who may be subject to expedited removal, the process begins with the enforcement officer, who must ask a series of questions to identify anyone who is afraid of return and must record accurate answers to those questions. Those answers are recorded on Form I-876AB Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act. If the individual expresses a fear of return, the enforcement officer should refer the case to a USCIS Asylum Officer, who will conduct an interview with the individual while he or she is in detention. That person remains detained until the Asylum Officer determines they have a credible fear of persecution or torture. If the officer determines the individual lacks credible fear, he or she is subject to immediate removal. While detained, individuals still awaiting a decision on credible fear

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<sup>2</sup> USCIS. Credible Fear Workload Report. Summary FY09-13. *available at* <http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2012/December%202012/Credible-FearFY2009-FY2012.pdf> In FY 2013, 20,532 credible fear interviews were given to asylum seekers subjected to expedited removal.

are run through preliminary biographic and biometric checks.<sup>3</sup> Any determination by the officer that an individual has a credible fear is then reviewed by a supervisor. If the individual is found to have a credible fear, USCIS will run additional security checks and finally place the individual in removal proceedings. Only at that point is the individual able to obtain a hearing before an immigration judge to present his or her case. Before an individual is granted asylum by a judge, the individual is checked through immigration, law enforcement, and intelligence databases housed in DHS, FBI, Department of Defense, Department of State, and other agencies.<sup>4</sup>

### **Detention of Asylum Seekers Pending Credible Fear Determinations**

Asylum seekers subject to expedited removal must be detained, pursuant to federal law, while they are being interviewed and awaiting a determination of credible fear. Thousands of asylum seekers each year are held in jails and jail-like facilities, with criminal aliens and with staff ill-equipped to interact with psychologically-vulnerable victims, where they often experience additional trauma which hinders their ability to adequately present their case and may cause them to prematurely withdraw their asylum claims.<sup>5</sup> Detention leaves asylum seekers isolated with no guaranteed access to legal counsel, which further impairs their ability to navigate the complex asylum process.<sup>6</sup>

For asylum seekers arriving at a U.S. port of entry who are found to have a credible fear, ICE has discretion to grant parole from detention for individuals who establish their identities, pose neither a flight risk nor a danger to the community, and have no additional factors that weigh against their release. This limited procedure reflects a common-sense policy that individuals who pose no threat, much less victims who are seeking protection, do not need to be detained.

### **Improving the Asylum Process**

To address the perception that too many people come to America's borders seeking asylum, some have proposed increasing mandatory detention or creating other barriers for asylum seekers. These steps will not necessarily improve national security but will certainly compromise the due process rights of vulnerable asylum seekers. Effective anti-fraud measures already exist in the adjudications process, and arbitrary or harsh rules often prevent bona fide asylum seekers from seeking, much less obtaining the protection they need.

AILA recommends the following reforms to ensure asylum seekers subject to expedited removal have a meaningful opportunity to seek protection from persecution.

- AILA's immigration lawyer members report that Border Patrol agents are issuing removal orders without asking about a fear of return. They are also misrepresenting the individuals' answers in the Form I-867AB, Record of Sworn Statement to reflect that the individual had expressed no fear of return, and are not referring individuals for credible fear interviews. In some cases agents recorded that the individuals expressed no fear of return despite the fact that the individual expressed a fear of return.

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<sup>3</sup> Testimony of Joseph Langois, Associate Director of USCIS Refugee, Asylum, and International Operations, before House Committee on Oversight and Government Reform, Subcommittee on National Security Hearing "Border Security Oversight, Part III: Examining Asylum Requests." July 17, 2013.

<sup>4</sup> Ibid.

<sup>5</sup> U.S. Commission on International Religious Freedom, *Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms*. April 2013.

<sup>6</sup> Center for Victims of Torture, *Tortured and Detained: Survivor Stories of U.S. Immigration Detention*. November 2013.

Such practices violate U.S. obligations under international treaties and its own laws to ensure asylum seekers at the border are given adequate opportunity to be heard before they are returned to a place of possible persecution or torture. AILA recommends DHS develop and implement more robust training on the expedited removal and credible fear processes to ensure that all immigration officers provide a reasonable opportunity for asylum seekers to obtain credible fear interviews. This training should be coordinated among USCIS, CBP and ICE. DHS should also develop and implement rigorous quality control and oversight mechanisms, especially regarding how officers and agents complete the Form I-867AB.

- The immigration court system and funding for the courts have not kept up with the dramatic increases in immigration enforcement over the past two decades. As of October 2013, the immigration courts had a backlog of 348,773 cases that far exceeds its capacity.<sup>7</sup> There are only about 250 immigration judges handling this enormous caseload, and immigration judges handle far higher caseloads than other administrative law judges, sometimes twice the cases per year.<sup>8</sup> There are even fewer attorney advisors to assist immigration judges in handling such an immense case load. As a result, asylum seekers frequently must wait years after their initial arrival before their asylum hearing is conducted. For those in detention, the backlog of cases can result in longer detention times and compound the damaging trauma experienced by victims of persecution. Congress should fund the immigration courts at a level commensurate with its funding for enforcement to properly address court backlogs and provide adequate staffing and resources for the immigration courts.
- For asylum seekers, the backlog results in long wait times during which they face an uncertain future. For those in detention, the backlog of cases can result in longer detention times that already have negative effects on victims of trauma. USCIS should hire sufficient additional Asylum Officers to meet the burgeoning need that is placing stress on the entire asylum system.

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<sup>7</sup> Immigration Court Backlog Tool, TRAC Immigration, [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/)

<sup>8</sup> Executive Office for Immigration Review Immigration Court Listing, <http://www.justice.gov/eoir/sibpages/ICadr.htm>