

# AN OVERVIEW OF ASYLUM POLICY

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## HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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MAY 3, 2001  
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## AN OVERVIEW OF ASYLUM POLICY

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THURSDAY, MAY 3, 2001

U.S. SENATE,  
SUBCOMMITTEE ON IMMIGRATION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:01 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Sam Brownback, Chairman of the Subcommittee, presiding.

Present: Senators Brownback, DeWine, and Feinstein.

### OPENING STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Chairman BROWNBACK. The hearing will come to order.

I would like to welcome you to this first hearing on asylum under my chairmanship of the Senate Subcommittee on Immigration. This hearing will give a broad overview of asylum policy where we will attempt to identify areas where corrections are due and necessary.

First, for the record, let it be known I intend to aggressively promote the proper treatment of those who arrive at our shores seeking freedom from persecution. In his 1801 first annual message, President Thomas Jefferson asked a piercing question that is true today, 200 years later: "Shall oppressed humanity find no asylum in this globe?"

The answer is, yes, they shall, and America has provided and shall always provide asylum to those escaping tyranny, in 1801 or in 2001.

Further, it must be our continued aim that upon reaching these shores, persecution would end, dignity would be restored, and justice would prevail. This is a practical expression of America's core identity as both the defender of human dignity for the most vulnerable and a gracious refuge of escape for those fleeing gross injustice. We are a better Nation because of the asylees amongst us.

As we give refuge to those worldwide who are desperate and facing extraordinary persecution, we are a better Nation because of our generosity. Moreover, asylees represent the best of American values. Often they are people who have stood alone at great personal cost. They have taken stands against hostile governments for principles which are fundamental to us, such as political and religious liberty. Therefore, as Americans with a noble legacy, we must continue to examine our asylum policies, ever vigilant that these most vulnerable asylee claimants receive fairness and justice.

Throughout our history as a Nation, our refuge and asylum systems have reflected varied policy extremes. In 1939, more than 900 Jews aboard the SS St. Louis were within sight of Miami and they were yet denied entry and forced to return to Europe. Many were murdered in concentration camps. Yet when World War II ended, the United States led the effort to establish universal norms for human rights. The resulting adoption by the United Nations of the Universal Declaration of Human Rights on December 10, 1948 included a right to asylum.

Over the next 30 years, the United States provided refuge to numerous people fleeing communism, including those involved in underground democracy movements in Hungary, Cuba, and Southeast Asia. Yet it was not until the Refugee Act of 1980 that Congress enacted a comprehensive system available to those with “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”

The Act provided that every person deemed inadmissible by an immigration officer at a port of entry had two rights: first, a right to a hearing before an immigration judge; and, second, a right to appeal an adverse judicial order. This was the norm for several years until passage of a new law in 1996. Notably, in that law, judicial review was partially, yet significantly, stripped and replaced with a process known as expedited removal. The flawed results of that law will be discussed highlighted in today’s testimony.

In this frequently employed procedure, an immigration officer is granted final authority to exclude particular classes of people, with a supervisor’s authorization, without judicial review or right of appeal, barring re-entry for 5 years. The policy challenge is twofold: First, we must ensure that persons fleeing persecution are not wrongly turned away at our shores because of unfair procedures. And, second, it must be remembered throughout the asylum process that today’s asylee applicant may be tomorrow’s American citizen. The bottom line is that all asylee applicants, future Americans or not, are entitled to humane treatment as a matter of justice.

And let common sense prevail. No one escaping religious persecution should be restricted in their reasonable access to chaplains and scripture studies while in U.S. detention facilities, if they should be there at all. No one escaping torture and barbarous incarceration because of their stand for democracy should be detained in a U.S. facility in a windowless room for 23 hours a day for several months, or even years. This should not be. We are better than this, and we can do better than this. There are present problems with asylum we must begin to address.

This is my goal. When this generation of asylees produces the next generation of Americans, I want that family story to be one of deliverance and celebration, and not one of bureaucratic mishandling and poor treatment.

That is why I have invited three asylees here today from Afghanistan, the Congo, and Tibet to testify today about their asylum experiences. Additionally, there are several more asylees in the audience ready to talk with people after the hearing. Their dramatic stories should cause us to reflect on how we can do better.

Our distinguished witnesses include experts in their field, and their testimony will provide an overview of asylum law while identifying problem areas. Such issues include current INS detention practices, the annual 10,000 cap for asylee adjustments of status, expedited removal, punishment for use of false documents by those escaping persecution, and the 1-year filing deadline for asylum applicants.

I look forward to working together on this crucial task of promoting dignity, justice, and humanity in our asylum system.

I am pleased to be joined by my colleague from California, and I would be happy to turn the microphone to her for an opening statement.

Senator FEINSTEIN. Thanks very much, Mr. Chairman. Thank you for holding these hearings, and if I may, I would like to introduce a statement from the ranking member, Senator Leahy, into the record.

Chairman BROWNBACK. Without objection.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

The asylum issues on the agenda today are among the most important immigration issues this Congress should address. I commend Senator Brownback for holding this important hearing, and for his efforts to reach out to Senator Kennedy and me in determining what witnesses and issues would be appropriate for today's hearing. And I thank the distinguished panels of witnesses who will testify today, including both the advocates and religious leaders who devote their careers to these issues, and the refugees whose desire to come to the United States has enabled them to overcome some of the obstacles that our current asylum system places in their way.

Throughout most of its history, the United States has provided a safe harbor for people seeking refuge on our shores. Our first colonies were founded by those fleeing religious persecution, and our nation's success has been driven by the energy and commitment of emigrants from nations around the globe, including those who flee the political, religious, and ethnic prejudice and persecution that still regrettably infects countries on every continent. As Americans, we have much to be proud of—our commitment to those seeking to emigrate to the United States remains an example to those countries that follow a more exclusionary path. But we cannot be indifferent to the ways in which we have failed to honor our historic commitment to refugees. Our witnesses will be highlighting some of those ways in their testimony today.

*First*, we maintain an expedited removal system at our ports of entry that lacks the necessary safeguards to ensure that people fleeing persecution are not returned to face their oppressors. Under this system, INS inspectors have wide-ranging authority to expel people entering the United States either without documentation or with facially valid documentation that the inspector simply suspects is fraudulent. This system—established during the anti-immigration mood that seized this Congress in 1996—ignores the reality that those who flee persecution do not always have time to obtain travel documents from the government that is persecuting them. It is true that those who know to say they are seeking asylum will not be immediately removed. But many who reach our shores have little or no knowledge of English or American immigration law, and have a deep distrust for government officials based on their experiences at home. Our current system fails those people and violates our commitments.

In the last Congress, Senator Brownback and I introduced the Refugee Protection Act, which was cosponsored by Senators Kennedy and Durbin on this subcommittee. That bill would have restricted the use of expedited removal to times of immigration emergencies, an approach that the Senate supported in 1996 in a bipartisan vote to amend the Illegal Immigration Reform and Immigrant Responsibility Act. (The provision was removed in a fiercely partisan conference committee.) I am eager to work with Senator Brownback again to introduce a new version of the Refugee Protection Act in the coming weeks.

*Second*, this hearing will look at the one-year filing deadline for asylum claims, which was also created in 1996. In the Refugee Protection Act, Senator Brownback

and I proposed that the deadline be subject to a good cause exception, so that meritorious asylum claims brought after the deadline could still be considered. I believe we should consider eliminating the deadline altogether for those making affirmative asylum claims, and retain it—but with a good cause exception—only for those who make an asylum claim after proceedings have been brought against them. Many people who merit asylum, such as those who may have been tortured, may have difficulty recounting the persecution they underwent. Other deserving candidates may be unaware of the time limit. I believe we should seek to expand the ability of deserving asylum applicants to obtain refuge in the United States—modifying current law in this area is one important avenue.

*Third*, this hearing will examine the INS' detention of asylum seekers. Under current practice, the INS regularly detains asylum seekers whom immigration judges have found to have a credible fear of persecution. These detention periods can last for months or years, under conditions that are inappropriate for people who stand accused of no crime, and who have in fact entered the United States in accord with our laws. I have grown increasingly concerned about this issue as we have heard reports of the mistreatment of detainees, and I am interested to hear from those who closely follow this issue.

*Finally*, we will hear today about the 10,000 annual cap governing how many asylees can become legal permanent residents of the United States. I believe we should increase that cap and help asylees build their lives in the United States, instead of placing them in a bureaucratic limbo.

I hope this hearing prompts serious consideration of the problems with our current asylum policies, and legislation that might be able to fix them. I am eager to join my colleagues from both sides of the aisle in that effort.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR  
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Mr. Chairman, the one issue I would like to mention today—and this particularly concerns me—is the manner in which children that come into this country seeking asylum are treated under our immigration system. Each year, the INS apprehends over 5,000 unaccompanied minors. These children are immediately detained and placed in deportation proceedings. There an immigration judge determines whether or not they have the right to legally remain in the United States.

A substantial portion of these unaccompanied minors have valid asylum claims, yet under current policy, they are often denied the opportunity to present these claims. Worse yet, their experiences of detention and isolation are often as traumatic as the persecution they fled in their home countries.

Unbelievably, some children who are in INS custody are subjected to such punitive actions as shackling, the use of leg manacles, and strip searches. Others are housed with violent juvenile offenders.

Unaccompanied minors are the most vulnerable of the world's asylum seekers, and they deserve our support and protection. Many have fled the horrors of their homeland: child prostitution, bonded labor, female genital mutilation, and forced recruitment as child soldiers. They often lack the capacity to navigate the complexities of our immigration system without the assistance of a responsible adult to objectively act in their best interest.

I recently introduced the Unaccompanied Alien Child Protection Act of 2001 because I believe that our Nation has an obligation to better protect these children.

Let me just give you one example of what I am talking about. Yung Hong fled China alone when he was only 15 years old. He grew up in an abusive household in Fujian Province. There his parents beat him severely. They also forced him to quit school and



work, apparently to help pay off their debts to the government for having Hong's sister, the second child in the family. Hong fled to the United States in 1998 where he was held in INS custody in a juvenile prison for over a year. There he was not provided with any educational or social services in his native Mandarin language, and he was required to fill out his asylum application in English. In other words, he was at the mercy of the U.S. Government to help him with his application.

Unfortunately, with their overworked schedules, the immigration officers on hand were unable to assist Hong with his asylum claim. Even if they were able to help, Hong did not know how to ask. Nevertheless, he did his best through an interpreter to answer every question the immigration judge asked of him at his immigration trial.

During the proceeding, though, no one thought to ask him about some of the basics of his claim, such as whether his family subjected him to forced child labor to compensate the government for their violation of China's one-child policy, and whether he would be in danger because, on arriving in the U.S., he helped Federal prosecutors bring to justice the alien smugglers who transported him here in an overcrowded vessel.

The immigration judge denied Hong's asylum on May 17th of last year. Afterwards, Hong obtained free counsel from the Catholic Legal Immigration Network in Los Angeles. His lawyer appealed his case before the Board of Immigration Appeals. On March 21, 2001, just a short time ago, 3 years after Hong arrived in the United States, the board remanded Hong's case back to the immigration judge, stating that Hong was not granted an opportunity to seek new counsel when his first counsel abandoned him, a right he did not know he possessed. The board allowed him to present his case again before the immigration judge, this time, though, with the assistance of his new counsel. On his second try, Hong was granted asylum, but only after he spent 3 years in INS custody.

Cases like this are but the tip of the iceberg. They demonstrate a major problem with our immigration system. It is managed by a bureaucracy ill equipped to help the thousands of unaccompanied children in need of special protection.

I have joined with Senator Graham of Florida and other colleagues in introducing S. 121, bipartisan legislation which would address this problem. The bill would place into law important protections for vulnerable children who are in INS custody. Among its provisions are those that would:

One, create a special Office of Children's Services within the Department of Justice that would be responsible for ensuring that the children's needs are met and that their best interests are held paramount in all proceedings and actions involving them;

Two, it would streamline INS procedures to provide better agency coordination when an unaccompanied child comes into Federal custody;

And, three, the bill would establish minimum standards for the custody or, where appropriate, detention of unaccompanied alien children to assure that they are housed in appropriate settings.

The bill would develop a core of child welfare professionals to act as guardians ad litem and to help the children articulate their

needs and make recommendations regarding their custody, detention, release, and removal based on the best interests of each child.

It would ensure adequate legal representation for the children, either through pro bono legal services or appointed counsel, to help them understand the gravity of the immigration proceedings they face.

It would ensure that children awaiting adjudication of their asylum claims do not age out, which is a real problem. And it would require training for INS adjudicators, immigration judges, and other personnel on how to address children's needs in asylum claims.

Mr. Chairman, Senator Graham and I have written to you to ask that you hold a hearing on the manner in which unaccompanied alien children are treated while in INS custody, and I would like to place a copy of that letter to you in the record today.

[The prepared statement and letter follows:]

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Thank you, Mr. Chairman, for holding this hearing today on asylum law and policy. There is one issue I'd like to mention that particularly concerns me—the manner in which children who come to this country seeking asylum are treated under our immigration system.

Each year, the INS apprehends over 5,000 unaccompanied minors. These children are immediately detained and placed in deportation proceedings. There, an immigration judge determines whether or not they have the right to remain legally in the United States.

A substantial portion of these unaccompanied minors have valid asylum claims. Yet, under current policy, they are often denied the opportunity to present their claims. Worse yet, their experiences of detention and isolation are often as traumatic as the persecution they fled in their home countries. Unbelievably, some children who are in INS custody are subjected to such punitive actions as shackling, the use of leg manacles, and strip searches. Others are housed with violent juvenile offenders.

Unaccompanied minors are the most vulnerable of the world's asylum seekers, and they deserve our support and protection. Many have fled the horrors of their homeland—child prostitution, bonded labor, female genital mutilation, and forced recruitment as child soldiers. They often lack the capacity to navigate the complexities of our immigration system without the assistance of a responsible adult to objectively act in their best interest.

I introduced the "*Unaccompanied Alien Child Protection Act of 2001*" because I believe that our nation has an obligation to better protect these children.

Let me just give one example of what I'm talking about:

*Young Hong* fled China alone when he was only 15 years old. He grew up in an abusive household in the Fujian province. There, his parents beat him severely.

They also forced him to quit school and work—apparently to help pay off their debts to the Chinese government for having Hong's sister, the second child in the family.

Hong fled to the U.S. in 1998, where he was held in INS custody in a juvenile prison for over a year. There he was not provided any educational or social services in his native Mandarin language. And, he was required to fill out his asylum application in English. In other words, he was at the mercy of the United States government to help him with his application.

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During the proceeding, no one thought to ask him about some of the basics of his claim—such as, whether his family subjected him to forced child labor to compensate the government for their violation of China's one-child policy; and whether he would be in danger because, upon arriving in the U.S., he helped

federal prosecutors bring to justice the alien smugglers who transported him here on a overcrowded vessel.

The immigration judge denied Hong's asylum claim on May 17, 2000. Afterwards, Hong obtain free counsel from the Catholic Legal Immigration Network in Los Angeles, CA. His lawyer appealed his case before the Board of Immigration Appeals.

On March 21, 2001, three years after Hong arrived in the U.S., the Board remanded Hong's case back to the immigration judge, stating that Hong was not granted any opportunity to seek new counsel when his first counsel abandoned him—a right he did not know he possessed. The Board allowed him to present his case again before the immigration judge, this time with the assistance of his new counsel. On his second try, Hong was granted asylum, but only after he had spent three years in INS custody.

And cases like this are but the tip of the iceberg. They demonstrate a major problem with our immigration system. It is managed by a bureaucracy ill equipped to help the thousands of unaccompanied children in need of special protection.

I have joined with Senator Graham and other colleagues in introducing S. 121, bipartisan legislation that would address this problem. This bipartisan bill would place into law important protections for vulnerable children who are in INS custody. Among its provisions are those that would—

- create a special Office of Children's Services within the Department of Justice that would be responsible for ensuring that the children's needs are met and that their best interests are held paramount in all proceedings and actions involving them;
- streamline INS procedures to provide better agency coordination when an unaccompanied child comes into federal custody;
- establish minimum standards for the custody (or, where appropriate, detention) of unaccompanied alien children to ensure they are housed in appropriate settings;
- develop a corps of child welfare professionals to act as guardians *ad litem* and to help the children articulate their needs and make recommendations regarding their custody, detention, release, and removal, based upon the best interests of each child;
- ensure adequate legal representation for the children, either through *pro bono* legal services or appointed counsel to help them understand the gravity of the immigration proceedings they face;
- ensure that children awaiting adjudication of their asylum claims do not “age-out”; and
- require training for INS adjudicators, immigration judges, and other personnel on how to address children's needs in asylum claims;

Senator Bob Graham and I have written you, Mr. Chairman, to ask that you hold a hearing on the manner in which unaccompanied alien children are treated while in INS custody. I would like to place a copy of that letter into today's hearing record.

Mr. Chairman, you are well known for your strong support for people fleeing persecution, and your strong support for children. I hope that you will join me and co-sponsor my bill. And I hope I can count on your support for both a fair and swift hearing on this problem and prompt action on S. 121.

Thank you, Mr. Chairman.

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HON. DIANNE FEINSTEIN  
UNITED STATES SENATE  
Washington, DC 20510-0504  
April 23, 2001

Hon. Sam Brownback  
Chairman  
Subcommittee on Immigration  
303Hart Senate Office Building  
Washington, DC 20510

Dear Mr. Chairman:

We are writing to request a hearing at the earliest possible date to examine the plight of the more than 4,600 unaccompanied children who are in the Immigration and Naturalization Service's (INS) custody each year, traumatized and in great need of special attention.

Last year, four high profile cases have shaken both Congress' and the public's confidence in the INS's ability to deal with unaccompanied children in a way that reflects their best interests. These cases are:

- *Elian Gonzalez*, a six-year old child from Cuba, suffered physical and emotional trauma after being lost at sea for two days and witnessing the death of his mother. He has now been reunited with his father and family in Cuba.
- *Two young Haitian children* arrived on a raft shortly after Elian Gonzalez and were returned to Haiti while their mother remained in the U.S. to file for asylum. After protests and several weeks of separation from their mother, Federal authorities finally permitted the children to be reunited with their mother the U.S.
- *A 15-year old Chinese girl* was held in a juvenile jail for eight months. At her asylum hearing, the young girl could not wipe away the tears from her face because her hands were chained to her waist. According to her lawyer, "her only crime was that her parents had put her on a boat so she could get a better life over here." The INS held her in detention six weeks after she had received political asylum.
- *Phanupong Khaisri*, a two-year old Thai national, was brought to the U.S. by two individuals falsely claiming to be his parents, but who were actually part of a major alien trafficking ring. The child, who entered the U.S. with severe flu-like symptoms has been diagnosed as HIV positive. After inquiries by Congressional offices and a federal court order, the INS agreed to allow the child to remain in the U.S. until the agency could provide proper medical attention and determine what course of action would be in his best interest.

These cases are but the tip of the iceberg. Last year, 4,600 unaccompanied children many of whom had been previously victimized or persecuted were held in INS detention. Of that number, nearly 2,000 were held in correctional centers with juvenile offenders. Moreover, many of these children remained in INS detention for prolonged periods. One Chinese youth was held in a juvenile correctional facility for five years.

Given these facts, we believe Congress should reexamine the way in which the immigration system handles foreign minors. As you know, we recently introduced S. 121, the "Unaccompanied Alien Child Protection Act of 2001," which seeks to reform the manner in which the federal government treats unaccompanied children in U.S. custody. This bill is premised on the idea that we have a special obligation to ensure that every child who comes into contact with the INS is afforded fair and humane treatment. That does not appear to be the case today.

We suggest the hearing include: (1) an examination of the particular circumstances causing children to travel to the U.S. without a parent or guardian; (2) the suitability of the facilities in which they are placed; (3) options for alternative placement; and (4) the Federal government's capacity to adequately address the special needs of alien children who are in its custody. A discussion involving various immigration law and child welfare experts may well provide groundwork for needed change within the INS to ensure proper placement of the children. For your convenience, we have attached a list of suggested panels and participants.

We look forward to working with you to schedule a hearing. We and our respective staffs are prepared to provide you with whatever additional information you may need as the Committee prepares to address this important issue. If you or your staff have any questions on this matter, please do not hesitate to call us or have your staff contact LaVita Strickland at 2249641 or Caroline Berver at 202-224-0852.

Sincerely,

DIANNE FEINSTEIN  
*U.S. Senator*

BOB GRAHM  
*U.S. Senator*

---

PROPOSED JUDICIARY COMMITTEE HEARING ON JUVENILES IN THE CUSTODY OF THE  
IMMIGRATION AND NATURALIZATION SERVICE

*Panel I—Members of Congress.* Members of Congress who have introduced public and private bills on behalf of children should be permitted to testify on the need

for reforming our immigration laws to provide the Attorney General discretion to handle children's cases in a way that comports with their best interests.

*Panel II—Government Witnesses Panel.* An overview of the manner in which the INS and other federal agencies deal with unaccompanied alien children, with a particular focus on custody, detention and release, family reunification, interaction between federal and state authorities, and the special needs children face in adjudications and asylum. The witnesses should be prepared to address statistics on the number of children held in INS custody, the nationalities of the children encountered, types of cases, and case outcomes.

SUGGESTED WITNESSES:

- John Ashcroft, Attorney General, U.S. Department of Justice;
- John J. Pogash, National Juvenile Coordinator and Juvenile Program Director, Immigration and Naturalization Service; and
- Michael Creppy, Chief Judge, the Executive Office for Immigration Review.

*Panel III—Victims Panel.* The personal experiences of several witnesses who can attest to the manner in which they were treated under the current system. The witnesses would highlight severe problems in detention and release decisions, conditions of detention, asylum cases for children, and the inadequacies of the Special Immigrant Juvenile Visa.

SUGGESTED WITNESSES:

- Mark Potter, immigration attorney for the 15-year old Chinese asylum seeker detained for eight months;
- Catherine Brady, Immigrant Legal Resource Center, San Francisco, California;
- Fauziya Kasindja, an asylum seeker from Togo, who as a youth was detained for two years in an adult correctional facility before being granted asylum.

*Panel IV—Experts Panel.* A panel of expert service providers and program specialists who have worked on children's immigration issues. The witnesses would offer concrete solutions to how existing governmental structures, laws, procedures, and practices should be changed to address the problems children have in immigration proceedings.

SUGGESTED WITNESSES:

- Dr. Susan Martin, Georgetown University (former Executive Director of the U.S. Commission on Immigration Reform);
- Elisa Massimino, Lawyers Committee for Human Rights;
- Ralston Deffenbaugh, Lutheran Immigrant and Refugee Services;
- Bishop Nicolas DiMarzio, U.S. Catholic Conference of Bishops; and
- Wendy Young, Women's Commission on Refugee Women and Children.

Senator FEINSTEIN. Mr. Chairman, this first came to my attention when I learned that a young girl had been 7 months in custody without that situation being resolved. And then I looked into it, and I found that in any given year there are 5,000 children that come into our country, do not understand the law, are not represented by counsel, very often end up in detention facilities under some of the harshest circumstances. Nobody knows they are there, and they can stay there year after year after year.

It is, in a sense, a major scandal, and we need to move on it. So I would be hopeful, Mr. Chairman, that we could have a hearing on this bill. There are many examples of this same kind of thing, so I would be hopeful that we might be able to develop this Office of Children's Services and turn around what is a stagnant and terrible system.

Chairman BROWNBACK. Thank you very much. We will have that hearing. I hope you will work with us to get the people here to testify about this.

I am very concerned about all of our asylees, minors and adults: the way we are treating them once they come into this country, and the amount of time we are leaving them in incarceration.

Senator FEINSTEIN. Right.

Chairman BROWNBAC. And there are better ways and there are better systems, and we can do better. So I think this would be a good key feature of that.

Senator FEINSTEIN. Thanks, Mr. Chairman. Senator Kennedy's and Senator Graham's statements are with the clerk. May I ask unanimous consent that they be submitted to the record?

Chairman BROWNBAC. Without objection.

[The prepared statements of Senators Kennedy and Graham follow:]

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

I commend Senator Brownback for convening this important hearing on U.S. asylum policy and welcome all of the witnesses, especially the courageous refugees who are with us today. I understand how difficult it is for you to speak publicly about your asylum claims. All of us greatly appreciate your willingness to do so.

This year marks a significant anniversary for an extremely important part of our immigration policy—the 50<sup>th</sup> anniversary of the United Nations Refugee Convention, which established the right of persons to flee their native land because of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion.” Since the passage of this Convention, United States policy has always been to welcome refugees fleeing persecution. However, in recent years, our government's respect for refugee rights has significantly diminished, even though the need for refugee protection is greater than ever.

Today, more than 14 million people have been forced to leave their home countries in desperation, fearing not only for their own lives, but also for the lives of their loved ones. Some of these refugees arrive in the U.S. seeking asylum. We have a responsibility to see that they are able to request asylum in a fair and efficient manner.

Unfortunately, in 1996, Congress enacted harsh immigration laws, which included an expedited removal process that gives INS inspections officers the authority to summarily remove potential asylum seekers if they arrive in the United States without proper papers, even though oppressive governments do not grant proper papers to those they are persecuting.

The expedited removal process also requires individuals seeking asylum to specifically state their fear of persecution or their intent to apply for asylum immediately upon arriving in the U.S. But asylum seekers are often scared and traumatized. Many are unable to articulate their fears, especially to government officials whom they may view with distrust. Persons who have suffered particularly humiliating persecution, such as rape, may be unable speak to a stranger about their harrowing experience.

The problem is made worse by the fact that many of these individuals speak very little, if any, English, and adequate translators are often not available to assist them in making their claims. Lack of language skills, combined with fear and intimidation, often make it impossible for newly arrived asylum seekers to overcome this significant obstacle. In addition, legal representation is not permitted at the initial and most critical phase of the expedited removal process, and the law contains no opportunity for judicial appeal of a decision on summary removal.

The expedited removal process has caused great hardship for many vulnerable individuals. “Mr. Antoun,” a Coptic Christian who fled Egypt after repeated threats and beatings by Islamic extremists, was nearly deported under expedited removal after arriving at JFK International Airport in September 1999. When he began to explain to INS officials that he feared persecution in Egypt by Muslim extremists, an officer responded by saying: “I'm Muslim. What is your problem with Muslims?” Mr. Antoun immediately became worried about the confidentiality of his statements, and he expressed that concern to the officer. The officer then responded, “We will contact your government.” Terrified and intimidated, Mr. Antoun withdrew his claim for asylum and waited in confinement to be returned to Egypt. Finally, in des-

peration, he wrote a note to another INS officer; this action prevented his deportation.

"Mr. Keita," a member of the democratic opposition in Guinea, fled that country in January 2000 after his brother was arrested and killed by the ruling regime for supporting an opposition candidate. When Mr. Keita arrived at JFK International Airport, INS officials did not provide him with an adequate interpreter or an explanation of the protection available under U.S. law. Understanding only that he would be returned home if his travel documents were invalid, Mr. Keita was afraid to explain his situation, and he was summarily ordered removed. At the door of the plane, Mr. Keita broke into tears and said he would be killed if he went home. Nonetheless, INS officials continued their efforts to deport him. The deportation was halted at the last minute, after Mr. Keita was injured by INS officers, who dropped him several times while carrying him to the plane.

Mr. Antoun and Mr. Keita's stories are shameful examples of the deplorable treatment that individuals have received under the expedited removal process. This treatment is inexcusable, and it is fortunate that their deportations were averted at the last minute. Countless other individuals are not so fortunate. They have been deported, and sent back to situations where they could well be subjected to torture, and even death.

It is time for Congress to act to end these abuses involving the expedited removal program. The Refugee Protection Act, introduced last year by Senator Leahy and Senator Brownback, accomplishes this goal, and I urge this Congress to enact it following its reintroduction.

In addition, asylum seekers who manage to request asylum are all too often subjected to mandatory detention. They are held in INS detention centers or state and county jails, often with criminal inmates, for months or even years. They have little access to legal representation, health care, or even contact with family, friends, or clergy who can assist them with their needs. Detention is extremely traumatizing for those who have already suffered so much.

Consider the case of Adolphine Mwanza from the Democratic Republic of Congo. As a young woman, Adolphine was living in a Catholic convent studying to become a nun. But her family was brutally targeted by the rulers of her country.

Her brother was killed and she was kidnaped, tortured and raped. She went into hiding and was eventually able to escape and reach the United States. Upon arrival, she was placed in detention. Her attorney filed a parole request with the INS, explaining that she would have housing and support if released. But her application was denied. She spent eight months in detention, before she was finally released and granted asylum.

Her case is not an isolated example. Too many asylum applicants spend years in detention, even though they have committed no crimes. The incarceration is a tragedy, especially when fair alternatives are available. Asylum seekers could be released to family, friends, or community groups, including faith-based organizations, who are ready, willing and able to assist them. Such alternatives have been tested at pilot sites. They are cost-effective and successful and should be expanded to other sites.

Also, persons who remain in INS detention must be safe and treated humanely. I commend the INS for issuing detention standards to accomplish this goal. The standards contain guidelines on issues ranging from visitation, to access to legal representation and materials, to a procedure for considering grievances. The implementation of these standards is an important step in the right direction. But the guidelines are not binding. Congress should codify them to make sure that they apply to all facilities of the INS. We should also guarantee effective monitoring and oversight of their implementation.

Another worthwhile and proven program to assist asylum seekers involves legal orientation presentations. These programs accomplish four goals: 1) they identify persons with meritorious claims for relief and refer them to counsel at no cost to the government; 2) they convince those without legitimate claims to accept removal rather than tie up the system; 3) they reduce tension and improve security in detention facilities; and 4) they save the government money by making the judicial process more efficient and by reducing the need for prolonged detention. Congress should fund the expansion of this worthwhile program.

Finally, two other problems affect asylum seekers. In 1996, Congress enacted a one-year filing deadline, requiring such persons to apply for asylum within a year of their arrival in the United States. The only exception to this deadline is if extraordinary circumstances prevent a timely filing. Since the enactment of this arbitrary deadline, more than 10,000 asylum seekers have had their claims rejected by the INS. In fiscal year 2000 alone, over 6,000 claims were rejected, based on failure to meet the filing deadline. Yet many of these individuals did not file their claims

because they were unfamiliar with our legal system and did not know they were required to file a timely application.

Asylum seekers should be able to apply for protection regardless of whether they file their claims before or after this arbitrary deadline. It serves no valid purpose. Instead, it creates yet another obstacle for bona fide refugees, and it should be eliminated.

Immigration law also currently places a cap of 10,000 on the number of persons granted asylum whose status can be adjusted to that of lawful permanent resident in a fiscal year, regardless of the number of persons granted asylum in that year. Because the number of persons granted asylum each year exceeds 10,000, the cap has created a larger backlog. The INS estimates that there is a backlog of 57,000 asylees awaiting adjustment. This delay causes significant hardship to these deserving individuals and their families. No plausible reason exists for maintaining this cap. Congress should take the initiative to lift it.

Again, I welcome the witnesses here today, and I look forward to working with them and with my colleagues on these important issues.

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STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, I appreciate the chance to share my thoughts with the Subcommittee today. I want to discuss an issue I feel particularly strongly about—the fate of unaccompanied alien children in the United States.

Last year 4,675 unaccompanied foreign children arrived here.

These children have left behind their countries, their homes and their families. They arrive in our country without speaking the language or knowing the culture. They are often fleeing severe abuse or exploitation.

They are brought here as “human props” in alien smuggling rings or they wander here in search of a safety net that does not exist in their home country. Instead, of offering a safety net, these children find iron bars.

Our immigration laws often require detention upon arrival. Immigration and Naturalization Service-detention can mean handcuffs, shackles, strip-searches or incarceration in jails with violent juveniles.

This is unacceptable treatment for one of the most vulnerable groups in our society, children. It is also unacceptable for a country like ours that has a long history of valuing and acknowledging the rights of refugees and asylum-seekers.

So far, INS has failed to publish regulations on the treatment of children. There is no minimum standard for the custody of unaccompanied alien children. Indeed, immigration attorneys repeatedly complain about due process problems. I am particularly concerned about the placement of children in medium or high-security criminal facilities. These kids have, at most, limited access to education, physical recreation or health care.

I urge the federal government to take action to treat unaccompanied alien children with respect to their vulnerability and special circumstances. We need to grant them reasonable standards of custody while their cases are pending. I would also like these children to have access to counsel. Our immigration laws are complex. How can we expect any child—let alone one traumatized or without command of the language—to navigate the complexity of our immigration laws? And yet, their claims for seeking asylum are reviewed by the same standards of proof as that of any adult. If they fail, the children will be deported.

Exactly a year ago, the saga of Elian Gonzalez, the Cuban child who arrived in Florida, ended with his removal from the United States. Regardless of where you stood on the Elian case, there are two things we have learned from the incident. First, the current immigration law is too inflexible to take into account the best interest of the child. No legal provision allowed the evaluation of the child’s special circumstances.

To prevent a similar crisis, the INS today tries not to release a child to local relatives without first checking with a parent, even if the parent is overseas. It is only too easy to imagine how long such a procedure can take, especially if the parent is living in a country besieged by civil war or guerrilla activities. Meanwhile, the child is kept in detention.

Second, we learned from the Elian case how rare it is that these children get the attention they deserve. We know about Elian, but who knows about the other 4674 children who were in INS custody last year? Who hears about the 15-year-old Guatemalan boy and the Chinese girl who in March were given half an hour to pack



their personal belongings and no time to contact their lawyers before they were moved from Miami to Chicago?

For all the above mentioned reasons, I urge my colleagues to support legislation Senator Feinstein and I have introduced. Our bill, the "Unaccompanied Alien Child Protection Act of 2001" will meet the special needs of these children. S.121 will create an Office of Children's Services within the Department of Justice to take care of unaccompanied alien children. An Office of Children's Services, with jurisdiction over custody and release decisions and oversight responsibility for juvenile, foster and shelter care, will ensure that the federal government fulfills its obligation to consider the special circumstances of unaccompanied alien children when making decisions regarding their custody and repatriation. The Office of Children's Services will also establish standards for custody and ensure that while in immigration proceedings, children have access to appointed counsel or a guardian ad litem.

Let me also make clear what this law does not do. It does not change the jurisdiction over immigration law. Decisions on immigration status, benefits and enforcement will still be the responsibility of INS, the Executive Office of Immigration Review, and the Department of State. Also, S. 121 will not interfere with the custodial rights of a parent or guardian to make family reunification possible.

Even more important, 5.121 does not seek to create new immigration or asylum claims. Our bill stays within the scope of the current U.S. immigration law.

I look forward to working with all my colleagues to enact legislation that will take into account the special needs and circumstances of unaccompanied children who come to our country.

Chairman BROWNBACK. The Senator from Ohio?

**STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM  
THE STATE OF OHIO**

Senator DEWINE. Very briefly, thank you, Mr. Chairman. Let me just first congratulate you for holding this hearing. I think it is long overdue, and the subject matter of this hearing is very, very important. The whole issue of asylum we, of course, have dealt with several times in Congress since I came here. We have dealt with it. I know my colleague from California and I were very much involved in the debate in 1995 and 1996. We won some, we lost some. But I just again congratulate you, and I look forward to hearing the witnesses. I think the testimony we are going to hear is going to be very compelling, and I think it is going to be very instructive, and I just appreciate the fact that you are moving forward with this hearing.

Chairman BROWNBACK. Thank you very much, Senator.

I will call up our first panel. The first speaker is Karen Musalo, director of an Expedited Removal Study produced in conjunction with Hastings College of Law at the University of California. Our second speaker is Wendy Young, director of Government Relations with the Women's Commission for Refugee Women and Children. Our third speaker is Eleanor Acer, director of the Asylum Representation Program with the Lawyers Committee for Human Rights.

I welcome you all. We look forward to your testimony. Ms. Musalo, let's start with you, if you would present your testimony here today.

**STATEMENT OF KAREN MUSALO, RESIDENT SCHOLAR,  
HASTINGS COLLEGE OF THE LAW, UNIVERSITY OF CALIFORNIA,  
SAN FRANCISCO, CALIFORNIA**

Ms. MUSALO. Thank you very much. Good afternoon. My name is Karen Musalo, and I am a resident scholar at the University of California, Hastings College of the Law. For the past 4 years, I

have served as founding director and principal investigator of the Expedited Removal Study, a nationwide study of expedited removal. During the past 2 years, I have also served as an expert consultant to the Commission on International Religious Freedom on matters involving expedited removal. I would like to thank you, Mr. Chairman, and members of the Subcommittee for the opportunity to testify regarding expedited removal.

As you said, Congress enacted expedited removal as part of the 1996 Immigration and Nationality Act reforms, and the procedures were first implemented in April 1997, and it allows the summary return of persons who are inadmissible for fraud or misrepresentation or for lack of valid or suitable travel documents.

At ports of entry, immigration officers conduct initial examinations of all arriving individuals at primary inspection, and they route persons whose admissibility is in question to secondary inspection, which is a secure, closed area. And during secondary inspection, persons deemed to be inadmissible by the immigration officers may be ordered removed without any further process.

Pursuant to the law, there are two groups of persons subject to expedited removal who are to be provided with additional protections rather than being immediately returned. These are persons who claim a legal right to reside in the United States, either U.S. citizens, permanent legal residents, asylees, or refugees; or persons who express a fear of persecution or an intent to apply for asylum.

Persons who claim lawful status are to have those claims reviewed by an immigration judge before they are summarily removed, and persons who express a fear of persecution or a desire to apply for asylum are to be referred for an interview with an asylum officer, who will determine whether they have a credible fear of persecution such that they will actually be permitted to apply for asylum. This is something very new, to pre-screen people before allowing them to apply. And persons who establish that credible fear then will go on and be permitted to apply, and those who do not may request review by an immigration judge. There is no right to representation or to have a consultant present at that review. There is no further administrative or judicial review. And in both claimed status and credible fear cases, individuals who do not prevail before the immigration judge are summarily removed.

Persons who—and I know my colleagues will address this more. Even those persons who are found to have a credible fear are put into detention, and although they are eligible for parole, there is some question about detention policies and whether they are, in fact, paroled.

Expedited removal represents one of the most fundamental changes in immigration law and policy because it gives unprecedented authority to immigration inspectors to issue unreviewable orders of removal. And as the Chairman said, before its enactment, every person deemed inadmissible had the opportunity to go before an immigration judge and then to have that judge's decision reviewed by the Board of Immigration Appeals and the Federal courts. And, furthermore, persons seeking asylum did not have to pass through a screening process and first show they had a credible fear before they would be permitted a full hearing on their claims.

When Congress was debating expedited removal, the critics of the process contended that it created an unacceptable risk that bona fide refugees would be returned to situations of persecution. It was feared that asylum seekers, of all people, who are often weary and traumatized when they arrive, would be unable to articulate their fears immediately upon arrival, especially if the form of persecution was of a particularly humiliating or personal nature, such as women who suffered rape or other forms of sexual torture. And there was the fear also that the officers might fail to even implement those safeguards that had been put into the process to assure that bona fide refugees would be identified.

Now, as I mentioned when I began, I direct something called the Expedited Removal Study, and it was initiated in response to these and other concerns regarding expedited removal. And it was designed to examine all components of the procedure, and its objective was to determine whether expedited removal met the dual Congressional goals of preventing abuse of the system, while ensuring that bona fide asylum seekers and individuals with lawful status in the U.S. not be denied admission.

Now, we had hoped to work with the cooperation of the Immigration Service and have access to the process and access to the data connected to the process so that we could do a fair evaluation and look into this issue about whether it meets the dual Congressional goals.

At first, the INS was very positive and welcomed the idea of a study that could provide critical information to policymakers and the public. But shortly thereafter, they changed their attitude on this issue and denied the Expedited Removal Study as well as all other researchers who were interested in the process any access to the procedure. And the way in which we proceeded at that point with our study was to use the FOIA process—the Freedom of Information Act process—as well as to seek out attorneys and non-governmental organizations who had contact with people who had been subjected to the process in order to gather information.

Our study has released four reports on the expedited removal process, and, in general, we have identified a number of issues of substantial concern that have arisen both from our analysis of statistical data as well as our investigation of the processing in individual cases.

In my written testimony, I have identified five cases. I would like to just very briefly highlight three of those five cases, which I think are illustrative of some of the problems that have been identified in expedited removal.

Chairman BROWNBACK. Ms. Musalo, if you could, let's summarize those because we may have to take a break here for a news conference on some judicial nominations. So I would like to get through the panelists as fast as possible, and we will take your full written statement in the record.

Ms. MUSALO. Yes. Just in very brief summary, Mr. Chairman, one of the cases involved an Algerian asylum seeker who, although he had been tortured and detained in his home country, when he arrived at the port in San Francisco, he was both taunted and ignored when he expressed fear. He was taunted and told that he would be sent back to his home country. He became so desperate

with his treatment that he grabbed a coffee cup, broke it on a desk, and stabbed himself in the stomach. He was brought to a hospital, and it was only after this act of desperation that he was given a credible fear interview. He not only established a credible fear, but he was granted asylum.

There was another case of some Ecuadoran asylum seekers who were precluded from applying in the United Kingdom because they would have an opportunity to apply in the U.S., but when they came to the U.S. were summarily returned to Ecuador.

And there is another case I will not go into that involves a business traveler with legitimate travel documents who was returned because, although we focus mostly on asylum seekers, we have also looked at other people with a legitimate right to enter the United States.

Just in summary, and really finishing up here, I would like to say that Congress has been aware of these concerns about expedited removal and has twice asked the General Accounting Office to conduct studies to try to ascertain if these kinds of stories that are coming out are simply anomalous and rare, or whether they represent some deeper, more fundamental problems with the process. And it has been our opinion—and we have issued a full report on this—that the General Accounting Office’s two studies have failed to answer any of the key questions about expedited removal. And to the degree that any of their conclusions are reliable, they actually have raised additional concerns about the process.

Let me end with that, and I thank you very much for holding this hearing, and I thank you very much for the opportunity to address you.

[The prepared statement of Ms. Musalo follows:]

STATEMENT OF KAREN MUSALO, RESIDENT SCHOLAR, HASTINGS COLLEGE OF THE LAW UNIVERSITY OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA

#### I. INTRODUCTION

Good afternoon. My name is Karen Musalo. I am resident scholar at the University of California, Hastings College of the Law. For the past four years I served as founding director and principal investigator of The Expedited Removal Study (“Study”) a nationwide scholarly study of expedited removal. During the past two years I have also served on two occasions as an expert consultant to the Commission on International Religious Freedom on matters involving expedited removal. I would like to thank you Mr. Chairman and members of the Subcommittee for the opportunity to testify regarding expedited removal.

#### II. BACKGROUND

Congress enacted the expedited removal law as part of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), and the new procedures were implemented in April 1997. Expedited removal permits the summary return of persons<sup>1</sup> who are inadmissible for fraud or misrepresentation<sup>2</sup> or for lack of a valid or suitable travel document.<sup>3</sup>

At ports of entry, immigration officers conduct initial examinations of all arriving individuals at primary inspection, and route persons whose admissibility is in question to secondary inspection, which is in a secure, closed area. During secondary in-

<sup>1</sup> Expedited removal applies to “arriving aliens.” An “arriving alien” is defined as: an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. 8 C.F.R. § 1.1(q).

<sup>2</sup> INA § 212(a)(6)(C)

<sup>3</sup> INA § 212(a)(7)

spection, persons deemed to be inadmissible for fraud or lack of proper documents may be ordered removed without further process. The removal order becomes final upon a supervisor's approval, and bars reentry to the United States for five years. The statute<sup>4</sup> permits the withdrawal of an application for admission in the discretion of the Attorney General, in which case the applicant may depart without being subject to the five year bar on reentry.

Pursuant to the law, there are two groups of persons subject to expedited removal who are to be provided with additional procedural protections, rather than being immediately returned at secondary inspection: (1) those who claim a legal right to reside in the United States based on citizenship, permanent resident, asylee or refugee status, and (2) those who express a fear of persecution or an intention to apply for asylum.

Persons who claim lawful status are to have such claims reviewed by an immigration judge. Persons who express a fear of return or a desire to apply for asylum are to be referred to an interview with an asylum officer (AO) during which it will be determined if they have a credible fear of persecution. A "credible fear" of persecution is established if "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under Section 208."<sup>5</sup>

In order to assist in the identification of persons who fear return or desire to apply for asylum, immigration officers are required to ask three questions (referred to as the "three fear questions") during secondary inspection: (1) why did you leave your home country or country of last residence?; (2) do you have a fear or concern about being returned to your home country or removed from the U.S.?; and (3) would you be harmed if you were returned to your home country? Interpreters are to be provided if necessary for communication with the individual.<sup>6</sup>

Persons who express a fear of return to their home country or an intent to apply for asylum, in response to these questions or at any time during secondary inspection, are to be referred to a credible fear interview. Among those to be referred are persons who express fear or an intent to apply for asylum through nonverbal acts.

Persons who establish a credible fear of persecution at their interview with an asylum officer are permitted to apply for asylum. Persons found not to have a credible fear may request review by an IJ. There is no right to representation or to have a consultant present at this review.<sup>7</sup> The statute precludes any further administrative or judicial review<sup>8</sup> in claimed status and credible fear cases, and persons who do not prevail before the immigration judge are summarily removed from the United States.

The INA requires mandatory detention, until removal, of all persons subject to expedited removal proceedings.<sup>9</sup> A narrow form of parole is available, in accordance with INA § 212(d)(5), if "the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective."<sup>10</sup> Once a person establishes a credible fear of persecution, he is no longer subject to expedited removal proceedings, but rather to regular removal proceedings under INA § 240, and therefore, may be eligible for parole under normal parole criteria.<sup>11</sup> The INS has stated that persons subject to expedited removal who are determined to have a credible fear of persecution fall under the

<sup>4</sup> INA § 235(a)(3)

<sup>5</sup> INA § 235(b)(1)(B)(v).

<sup>6</sup> 8 C.F.R. § 235.3(b)(2)(i).

<sup>7</sup> An applicant may consult with persons of his or her choice prior to IJ review of the credible fear determination. INA § 235(b)(1)(B)(iv); 7 C.F.R. § 208.30(b). However, immigration judges have the discretion as to whether consultants may be present at this review. If a consultant is allowed to be present, nothing entitles him or her to make an opening statement, call and question witnesses, cross examine, object to written evidence, or make a closing argument. Executive Office for Immigration Review, Interim Operating Policy and Procedure Memorandum 97-3: Procedures for Credible Fear and Claimed Status Reviews, at 4 (Mar. 25, 1997).

<sup>8</sup> INA § 235(b)(9)(c)

<sup>9</sup> INA § (b)(1)(B)(iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii).

<sup>10</sup> 8 C.F.R. §§ 235.3(b)(2)(iii), (b)(4)(ii).

<sup>11</sup> Parole may be granted pursuant for 8 C.F.R. § 212.5 on a case by case basis for urgent humanitarian reasons or significant public benefit, if such persons do not provide a security risk or a risk of absconding. This is a discretionary grant; the INS has instructed as follows:

Parole is a viable option and should be considered for aliens who meet the credible fear standard, can establish identity and community ties, and are not subject to any possible bars to asylum involving violence or misconduct; for example, the applicant is an aggravated felon or a persecutor.

Office of Field Operations, INS, Memorandum on Expedited Removal: Additional Policy Guidance (December 30, 1997).

INS's low priority detention group, and that "it is INS policy to favor release of aliens found to have a credible fear of persecution, provided that they do not pose a risk of flight or danger to the community."<sup>12</sup>

### III. CONCERNS REGARDING EXPEDITED REMOVAL

Expedited removal represents one of the most fundamental changes in immigration law and policy, because it gives unprecedented authority to immigration inspectors to issue unreviewable orders of removal. Before its enactment, every person deemed inadmissible by an immigration officer at a port of entry had the opportunity for a formal hearing before an immigration judge, and the right to appeal the judge's decision to the Board of Immigration Appeals (BIA) and the federal courts. Asylum seekers were not required to establish a credible fear in a screening process in order to be permitted a full hearing on their claims.

At the time when Congress was debating expedited removal, its critics contended that the process created an unacceptable risk that bona fide refugees would be returned to situations of persecution. It was feared that asylum seekers, who are often weary and traumatized, would be unable to articulate their fear immediately upon arrival, especially if such persons had suffered particularly humiliating forms of persecution, such as rape or other forms of sexual torture. There were also concerns that immigration officers might fail to comply with the requisite procedures—such as those requiring interpretation where necessary, or referral upon the verbal or non-verbal expression of fear—all of which could result in the summary removal of a bona fide asylum seeker. Critics also questioned whether the credible fear standard applied by asylum officers would be applied too rigorously, screening out persons with legitimate claims for asylum.

In addition to these concerns focused on asylum seekers, opponents of the process also criticized the fact that expedited removal gave immigration officers the authority to make final decisions on admissibility, which previously had only been made by immigration judges, and which were subject to administrative and federal court review. This was seen as having the potential to prejudice legitimate travelers to the United States, as well as citizens and lawful permanent residents, who are entitled to only one tier of review if denied admission by an immigration officer.

### IV. THE EXPEDITED REMOVAL STUDY

The Expedited Removal Study was initiated in response to these, and other concerns regarding expedited removal, and was designed to examine all components of the procedure. The Study's objective was to determine whether expedited removal met the dual congressional goals of preventing abuse of the system, while ensuring that bona fide asylum seekers, individuals with lawful status in the U.S., and other legitimate visitors (e.g. business visitors or tourists) not be denied admission.

The Study's intended methodology contemplated cooperation with the Immigration and Naturalization Service (INS) so that researchers could have adequate access to observe and properly evaluate expedited removal procedures. Of special interest to the Study was the area of secondary inspection, where immigration officers make decisions regarding referral of asylum seekers to credible fear interviews, admissibility of persons with claimed lawful status, and admissibility of arriving aliens in general.

Unfortunately, the INS, which initially welcomed the idea of a study that could provide critical information to policymakers and the public, refused to provide the requisite access to the process or its related data. Consequently, the Expedited Removal Study was forced to modify its research strategy and concentrate on the collection of data from attorneys and non-governmental organizations (NGOs) that represent persons who have been subject to expedited removal. The Study has also utilized the Freedom of Information Act (FOIA) process to obtain data from the INS and the Executive Office for Immigration Review (EOIR).

The Expedited Removal Study has issued four reports on the expedited removal process; the last of its reports, issued in October 2000, was an evaluation of the General Accounting Office's research on expedited removal. In general, the Expedited Removal Study has identified a number of issues of substantial concern arising both from its analysis of statistical data, as well as its investigation of the processing in individual cases. These issues give rise to the question whether bona fide asylum seekers, individuals with lawful status in the U.S., and other legitimate visitors (e.g. business visitors or tourists) are being improperly denied admission.

<sup>12</sup>Office of Field Operations, INS, Memorandum: Detention Guidelines Effective October 9, 1998, at p. 3.

## SELECT CASE STUDIES FROM THE EXPEDITED REMOVAL STUDY

From April 1997 through October 1999, almost 190,000 had been subject to expedited removal, and if the trend from 1997 to 1999 is any indication, the use of expedited removal may be expected to increase. In this time period, the clear majority of persons removed under expedited removal 99%—were removed at secondary inspection without a referral to a credible fear interview or claimed status review. The high percentage of cases involving a removal at secondary inspection underscores the importance of evaluating that stage of the proceeding.

The Expedited Removal Studies has identified a number of cases which illustrate serious problems at secondary inspection, ranging from the failure of immigration officers to comply with required procedures, to affirmative misconduct on the part of officers. Because the INS has not permitted on-site observation, which would have allowed the Study to engage in a comprehensive analysis of processing at secondary inspection, it is not possible to conclude whether or not these troubling cases are representative of expedited removal cases in general. The following case studies, which are excerpted from the Study's annual reports, provide examples of failures in the expedited removal process.

## ASYLUM SEEKERS

- Mr. A, an Algerian Asylum Seeker

Mr. A, a twenty-six year old citizen of Algeria, was an active member of the Islamic Salvation Front (FIS), a major opposition political party, in 1990–92. FIS was outlawed by the military government in 1992, and elections that FIS was expected to win were canceled. From 1993–94, Mr. A was employed as a gardener for Benjadid Chadli, a former Algerian president. Early in 1994, while visiting his parents, Mr. A was arbitrarily detained and tortured for several days while in police custody. In late 1994, members of the Armed Islamic Group (GIA), a militant anti-government Muslim organization, broke into his family's home, abducted him and sought his cooperation in a plot to assassinate his employer. Mr. A quit his job out of fear and fled to the home of a friend. Months later, Mr. A and his friend encountered a group of GIA members who threatened their lives. After forcing them to a private area, the group beat both men, shot Mr. A's friend dead in front of him, and then again demanded Mr. A's cooperation with the assassination, saying it was his last chance.

Mr. A fled to another city, where he was working in 1996 when his brother was arrested at the airport as he was attempting to leave the country to study abroad. Mr. A obtained a lawyer to help his brother, who was charged with treason, convicted and sentenced to twenty years in prison. Mr. A was arrested and released by police at the courthouse where his brother's hearing was taking place. In 1998, Mr. A's family was again targeted by the GIA when a group of rebels ransacked their home in search of Mr. A, then fled after engaging in a gun battle with police. Later in 1998, Mr. A was again arbitrarily arrested by Algerian security forces, detained and tortured over a fifteen day period.

After this event, in September 1998, Mr. A fled Algeria. He traveled to Bulgaria and then to southeast Asia throughout 1999, eventually arriving in the U.S. at San Francisco International Airport on a flight from Shanghai, China, on January 30, 2000. Mr. A was traveling on a false Spanish passport which he disposed of after exiting the airplane. He approached an INS officer at primary inspection and asked for asylum.

Mr. A was referred to secondary inspection. He explained with his limited English that he had destroyed his passport, which he reported appeared to have upset the INS officers. Although the regulations require interpretation under these circumstances, there was no interpreter at this point. Without interpretation Mr. A had difficulty understanding what the officers said to him, but he believes that one of the officers said, "Algerians go back to Algeria." Mr. A was shackled hand and foot and held in a room together with an Iraqi man who was also shackled. An INS officer came into the room and asked Mr. A if he spoke English. Mr. A indicated that he did not, but a second officer said that Mr. A did speak English but did not want to talk. Mr. A reported that the first INS officer seemed very angry at him.

Mr. A reports that he was taken by the first officer to a room where his handcuffs were removed. There was still no interpreter present. The INS officer told Mr. A to write down his name, and began typing into a computer. With his limited English, Mr. A repeated that he wanted asylum. Pursuant to expedited removal procedures, this should have resulted in a referral to a credible fear interview unless it became apparent from follow-up questions that the reason for his fear was totally unrelated to the refugee definition. Instead of being referred, the officer reportedly told him several times, "[t]onight, you go back to China" (the country he had

transited immediately before his arrival in the United States). When Mr. A said he would be killed if he was returned to Algeria, the INS officer said that he did not care. Mr. A was upset and crying. When the officer briefly left the room, Mr. A grabbed a coffee cup, broke it against the desk, and stabbed himself in the abdomen, causing a deep wound. He then began slamming his head into the table. INS officers came into the room and restrained him. An incident report prepared later that day by an INS supervisor states that the stabbing occurred while the interviewing officer was out of the room to obtain a telephonic interpreter.

Mr. A was taken to a hospital by ambulance, where he received stitches in his stomach. After a few hours at the hospital, Mr. A was brought back to the INS airport office for his secondary inspection interview. Mr. A was exhausted and in pain. At this point an interpreter was brought in, and Mr. A was interviewed by a different INS officer in his native Arabic. At the conclusion of the interview, Mr. A stated that he would be harmed if he was returned to Algeria. His case was referred to the Asylum Office for a credible fear interview. Mr. A was returned to the hospital, where he was seen by psychiatric emergency staff. He spent the night at the airport, and was taken the next morning to the INS office in San Francisco, then to Marin County Jail.

Mr. A's credible fear interview took place February 14, 2000, in San Francisco. The interview, conducted in his native Arabic, lasted two hours and twenty minutes. Mr. A was found to have a credible fear of persecution on account of political opinion. After spending approximately five months in detention he was released from custody, and was granted asylum in the summer of 2000.

- Mr. C, an Egyptian Coptic Christian Asylum Seeker

Mr. C is a twenty-five year old Egyptian citizen who worked in Egypt as an accountant and volunteered in a Coptic Christian church as a bread baker in his spare time. He was active in the church and identifiable as such in the neighborhood because he was in and out of the church on a regular basis. His religion could also be easily determined by his name. Mr. C was harassed and assaulted many times, including one incident involving a serious beating. The State Department has documented discrimination and other serious abuses of Christians in Egypt.

Mr. C first came to the United States in mid-1998 on a tourist visa. During this visit, Mr. C volunteered at a Coptic church as a baker and worked at a restaurant for several months. In late 1998 he applied for and was granted an extension of his authorized stay. When his extension expired in mid-1999, Mr. C returned to Egypt. On his return, a Muslim group sought to extort money from him in the form of an unofficial "tax." Mr. C was told that he either had to pay the tax or convert to Islam. Mr. C reported that the group had identified him as a target because he had traveled to the U.S. and was assumed to have money.

As a result of these threats, Mr. C fled to the U.S. intending to seek asylum, arriving at a New York-area airport in September 1999. Mr. C was carrying his Egyptian passport with a valid tourist visa. He was referred to secondary inspection, where he spent most of the next eight hours shackled to a bench. A search of his belongings turned up a Social Security card, and Mr. C admitted to having previously worked in the U.S. without permission.

During his interview with an INS officer at secondary inspection, Mr. C was asked whether he feared return to Egypt. Mr. C reported that, as he attempted to explain the problems he faced from Muslims, the INS officer interjected: "I am a Muslim. What is your problem with Muslims?" Mr. C was taken aback by the officer's statement. He said that he could explain but was concerned about his government finding out about his claim to asylum. According to Mr. C, the INS officer then told him that the INS would contact the Egyptian government about his case. Both of these statements by the INS officer were highly inappropriate, and made Mr. C extremely anxious, and he proceeded to respond to questions with neutral, careful answers, making sure that he said nothing disparaging of the government or about Islam. Intimidated by the remarks of the INS officer, Mr. C said that he was not seeking asylum. As a result, Mr. C was not referred to the Asylum Office for a credible fear interview and was detained pending his imminent removal from the United States.

While in detention, however, Mr. C telephoned his sister in Egypt, and she informed him that the Muslim group had been looking for him since he left. She urged him not to return, saying that it was not safe for him in Egypt. Mr. C then contacted an INS officer at the detention facility and explained that he was afraid to return to Egypt and wished to seek asylum in the United States. Mr. C was referred for a credible fear interview and was subsequently found to have a credible fear of persecution. In February 2000, after five months in detention, Mr. C was granted asylum by an immigration judge.



- A, Y and W—Ecuadoran Asylum Seekers 23

Mr. A, an Ecuadoran businessman, went into hiding after giving information to the police about a major crime in Ecuador. On July 1, 1995, gold and jewelry worth twenty billion sucres (five million U.S. dollars) was stolen from an office of the Instituto Ecuatoriano de Seguro (IESS), Ecuador's Social Security department. The press dubbed the huge theft "El Robo del Siglo" ("The Theft of the Century"), and a large reward was offered in return for information leading to the discovery of the perpetrators. One of Mr. A's friends, Mr. Z, had some contacts in the town where the theft had taken place, and they obtained information about the perpetrators of the crime. Mr. A, Mr. Z and two other friends (Mr. X and Mr. Y) promptly went to the National Police and the IESS to report what they had learned.

About a month later, the four men began to receive anonymous threats over the phone and by mail. Mr. A received three such phone calls. He was told that he would be killed because he had given information about the theft to the police.

In March 1996, acting on the information provided by Mr. A and his friends, the police arrested a number of suspects and charged them with participation in the theft. The suspects included a police officer and a well-known gang leader (who was later released). Two other police officers were implicated but never indicted. Following the arrests, Mr. X was attacked by unknown assailants, stabbed repeatedly with a machete, and left for dead. He was found and taken to the hospital. Upon Mr. X's recovery, he fled Ecuador and went to Colombia; Mr. A has not heard from him since.

After this incident, Mr. A and his other friends went into hiding. Mr. Z eventually left for Belgium to seek asylum. Mr. A and Mr. Y hid in the home of a relative, Mr. W. They soon began to receive threatening notes and phone calls. They were afraid to report anything to the police because police officers were involved in the theft. After a few months, Mr. A and Mr. Y hid in another home located in a remote area. Members of Mr. W's family were targeted for helping the two men; one woman was attacked by three men while bringing food to the men in hiding. After that attack, Mr. A, Mr. Y and Mr. W sought assistance from the Comision Ecumenica de Derechos Humanos (CEDHU), a human rights organization. They were advised to leave Ecuador. The CEDHU obtained visas for the three men and made arrangements for them to travel to England to seek asylum.

Mr. A and his two friends left Ecuador in mid-1997 with legitimate travel documents and British tourist visas. Although their destination was London, their flight had a stopover in Miami, Florida. Their flight from Quito had been delayed, and they missed the connecting flight. While the three men waited in the lounge for the next plane, Mr. A and Mr. W were summoned over the intercom to an immigration office where they were questioned about their travel plans. Mr. A explained that he and Mr. W were on their way to London to apply for asylum. An immigration officer told Mr. A that he did not believe that Mr. A had an asylum case and accused Mr. A of lying. The officer inspected the two Ecuadorans' documents. While Mr. A and Mr. W were being questioned, their plane departed. Mr. Y, who had not been summoned, left on that flight. He has applied for asylum in the United Kingdom, and his case is under review.

Eventually, Mr. A and Mr. W were told that they would be allowed to continue on to London. There were no other flights scheduled that day, so they slept in chairs at the airport, under surveillance. The next morning they were escorted aboard a flight to London.

In London, Mr. A and Mr. W were met by British immigration officials and they requested asylum. A British immigration officer examined their passports. Both passports had been stamped TWOV (Transit Without Visa) by the INS in the United States. The immigration officer explained that new laws in England prevented Mr. A and Mr. W from applying for asylum because the TWOV stamp indicated that they had made an entry in another country where they should have sought asylum. The two men were told that they would be sent back to the United States where they could apply for asylum. They were each given a document, *Notification to Third Country Authority*, which stated that the bearer had applied for asylum in the United Kingdom and his claim had "been refused without substantive consideration because there is a safe third country" to which he could be sent. They were told to present the document upon arrival and were assured that they would not be deported from the United States.

That same day, Mr. A and Mr. W were escorted onto a flight bound for John F. Kennedy International Airport in New York. When they arrived, they were taken directly to an immigration office at the airport. Mr. A told an immigration officer that he wanted to apply for asylum because he was in danger in Ecuador. He showed the officer the British immigration document regarding their applications for asylum, but he was told: "We have a different policy here." Mr. A was concerned

and upset at the possibility of being returned to Ecuador. He said that he wished to apply for asylum in the United States, as the British officials had told him he would be able to do so, but he was simply ordered to sit down. The two men were not allowed to make a telephone call. An immigration officer informed Mr. A and Mr. W that they were to be returned to Ecuador the next day.

The two men spent the night under guard at a nearby hotel; Mr. A was given no food, was not allowed to bathe and was handcuffed to a table next to the bed for the entire night. The next morning Mr. A and Mr. W were escorted aboard a flight to Ecuador. During a stopover in Miami, Mr. A explained his situation to some Spanish-speakers; they gave him money and he placed a call to CEDHU in Ecuador. That organization was able to make calls on their behalf to UNHCR in the United States, but was unable to prevent their return to Ecuador. Based on what they had been told in New York, the two men did not seek asylum while in Miami because they believed they were not eligible. They were returned to Ecuador. After his return, Mr. A fled once again. According to the latest information received by the Study, Mr. A has pursued a refugee status claim in a European country.

As an interesting postscript to this case, it should be noted that one court in the United Kingdom has addressed the issue of whether the United States is a safe third country, and has decided that it is not. This decision was rendered in the case of another Ecuadoran asylum seeker, Mr. Juan Carlos Paredes Naranjo, who was summarily removed from the United States under similar circumstances to the applicants in the case study described above.

Mr. Paredes Naranjo transited through Miami before he arrived in the U.K. and requested asylum. He was not permitted to apply in the U.K., but pursuant to the safe third country principle was returned to the United States to seek asylum. When he arrived in Miami and expressed his desire to apply for asylum, he was told that he could not do so because he had already applied in the U.K. He was immediately put on a flight to Ecuador. The U.K. court ruled that under these circumstances it did not consider the U.S. to be a safe third country as to Mr. Paredes Naranjo because it had sent "him to another country or territory [i.e. Ecuador] other than in accordance with the [Refugee] Convention.

#### NON-ASYLUM SEEKERS

Although it has not been its main focus, the Expedited Removal Study has also reported on the application of expedited removal to non-asylum seekers, including citizens and those in possession of facially valid non-immigrant visas.

- Sharon McKnight—U.S. Citizen

On June 10, 2000, Sharon McKnight, a United States citizen, arrived at New York's John F. Kennedy Airport on a flight from Jamaica. Ms. McKnight, who had been in Jamaica for months to visit a sick grandfather, was born in New York in 1965. She was referred to secondary inspection because INS officials thought her passport was fake. Ms. McKnight, who is said to have the mental capacity of a five year old, was handcuffed and left overnight in a room at the airport with her legs shackled to a chair.

Ms. McKnight's family members, who were very concerned about her traveling by herself, were at the airport to greet and accompany her. They became concerned when she did not appear for two hours, and learned of her detention after making inquiries. They produced a birth certificate, but INS officials deemed that to be fake as well. Family members stayed at the airport until the next morning, pleading for her release, but Ms. McKnight was returned to Jamaica on a morning flight. Upon her arrival there, she was able to find her way to the home of a relative after baggage porters at the airport donated her bus fare.

The INS asserted that the photograph in Ms. McKnight's passport had been replaced. An INS assistant area port director told a reporter: "Obviously, we would not send a U.S. citizen back under any circumstances." An INS public affairs officer later said that McKnight had told inspectors that she was born in Jamaica, was coming to the U.S. to work and that her passport had come from a relative. "Based on all the evidence they had, the inspectors at Kennedy Airport made the reasonable decision that she was not admissible to the United States," he said.

Ms. McKnight's mother, Eunice Benloss-Harris, said: "They were asking her a lot of questions she cannot answer. She can't even read or write. This is a disgrace."

Ms. McKnight returned to the U.S. on June 18, with the assistance of New York Representative Michael Forbes, after her status as a U.S. citizen was confirmed in a meeting with the U.S. Consul General in Jamaica and reviewed by State Department officials in Washington, D.C. INS officials met McKnight at the airport as she disembarked, and apologized. "We believe the individual is a U.S. citizen," Mark Zorn, an INS spokesman, told a reporter. "We personally regret the circumstance

that led to this situation and any harm this situation unduly caused the individual and the family.” At an airport news conference, McKnight stated: “They treated me like an animal .... I will have nightmares all my life.” *Id.*

- Mr. G.P.—Holder of a Facially Valid Non-Immigrant Visa

Mr. G.P., a Venezuelan national, was a long-term employee of F Corporation, a multinational corporation doing business in the U.S. and several other countries, and served as F’s District Manager of Sales at F’s Miami, Florida offices. Mr. G.P. obtained an L–LA visa, which permits certain non-U.S. citizen employees of multinational corporations to enter and temporarily stay in the United States as intracompany transferees. Between March 1996, and July 1996, Mr. G.P. traveled between Venezuela and Miami on numerous occasions without incident. In July, 1996, Mr. G.P.’s inspection was deferred. The immigration officer conducting the deferred inspection concluded that Mr. G.P.’s documents were proper and that he should be admitted. Thereafter, Mr. G.P. made several entries into the United States without incident.

On June 15, 1997, Mr. G.P. arrived at Miami International airport and presented the same documents he had presented in the past—a valid Venezuelan passport with an unexpired L–1A visa. However, this time, Mr. G.P. was questioned by immigration officials, detained at the airport overnight, and then returned to Venezuela the next morning. He was issued an expedited removal order, as he was deemed to have an immigrant intent. Under the order, Mr. G.P. would be barred from entering the U.S. for five years.

The immigration officer’s denial of admission on the basis of Mr. G.P.’s immigrant intent was clearly erroneous. Although the L–1A visa is a non-immigrant visa, it permits dual intent; i.e., it explicitly allows the individual to qualify for the visa even though he may have immigrant intent. F Corporation filed a complaint against the INS and the Attorney General to the Miami U.S. District Court, alleging, among other things, that the expedited removal order issued by the defendants violated the immigration statute and relevant regulations.

After spending over \$50,000 in attorney fees, F Corporation reached a settlement with INS whereby INS re-issued Mr. G.P. a valid visa and canceled the order of expediting removal against him. In addition, INS agreed that any computer-generated advisories concerning Mr. G.P.’s previous visa cancellations would be removed from its databases.

## 22. THE GENERAL ACCOUNTING OFFICE’S STUDIES OF EXPEDITED REMOVAL

Congress has twice directed the General Accounting Office (GAO) to carry out evaluations of the expedited removal process. Neither of its studies have adequately answered questions or alleviated concerns regarding improper or erroneous decision-making in the expedited removal process.

Congress’ first request for a GAO study was included in IIRAIRA itself, and directed the GAO to determine, among other issues, “the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations.”

The GAO’s March 1998 report, produced in response to the congressional request, principally examined INS management controls over the expedited removal process, reported on a range of INS expedited removal statistics, and compared the expedited removal process to previously existing exclusion procedures. The GAO declined to evaluate the accuracy of credible fear determinations, stating that it did not possess the legal expertise to carry out such an assessment. The GAO also declined to engage in a meaningful amount of on-site observation which would have allowed it to assess INS compliance with controlling laws and policies, as well as to evaluate qualitative aspects of the expedited removal process, such as the availability and quality of translation.

In the fall of 1998 Congress requested a second GAO study; this request was included in the International Religious Freedom Act of 1998 (IRFA), and directed the GAO to answer four specific questions regarding expedited removal:

- whether INS officers improperly encourage asylum seekers to withdraw applications for admission;
- whether INS officers fail to refer asylum seekers to credible fear interviews;
- whether INS officers incorrectly remove asylum seekers to countries where they may be persecuted; and
- whether INS officers improperly detain asylum seekers or detain such persons under inappropriate conditions.

The four questions addressed all phases of the expedited removal process, and demonstrated a concern about possible INS misconduct, as well as the potential for

erroneous decision-making. The first and second questions focused on the implementation of expedited removal at the ports of entry where immigration officers make decisions whether to refer asylum seekers to credible fear interviews, and, as question one itself reflects, where the opportunity exists for the officers to pressure asylum seekers to withdraw their requests for admission, rather than to pursue their claims. The third question constituted an inquiry into all phases of the expedited removal process, from ports of entry, through asylum officer and immigration judge decisionmaking on credible fear, and asked whether the process as an integrated whole is likely to render incorrect decisions which could result in the return of asylum seekers to persecution. The fourth question focused specifically on detention issues, and asked whether asylum seekers who qualify for release nonetheless remain in detention, and whether persons who are detained are held in suitable conditions.

Prior to embarking on its study, GAO apprised the relevant congressional committees it would not attempt to directly answer the questions set forth by Congress in IRFA because it did not have the legal expertise, feasible methodology or resources to do so. In an effort to be what GAO has characterized as “reasonably responsive” to the questions, GAO proposed to the congressional committees an approach which focused primarily on INS management controls over the expedited removal process. The GAO’s proposal also included an analysis of certain statistics on expedited removal and detention, as well as an evaluation of specified aspects of detention.

The GAO released its second report on expedited removal in September 2000. Notwithstanding its intention to be “reasonably responsive” to the questions posed by Congress, its report leaves all four questions largely unanswered. Nonetheless, the GAO did report on a number of specific aspects of expedited removal which heighten existing concerns regarding expedited removal. The GAO’s findings included the following:

- In a random sample of fiscal year 1999 expedited removal files, in 2% of the cases, a fear was expressed but there was no referral to a credible fear interview. If this random sample is representative, as many as 900 persons in fiscal year 1999 may not have been referred despite expressing a fear. A breakdown by port indicates a failure to refer rate at JFK which could be as high as 6%.
- A random sample of withdrawal associated with three specific ports of entry indicated that a significant percentage of persons (as high as 21 %) were not asked the “three fear questions” which are part of required procedure to assist in the identification of asylum seekers.
- A failure to establish nexus between the persecution and one of the five statutory grounds (race, religion, nationality, political opinion or membership in a particular social group) was the basis for denial in 44 of the 45 cases the GAO examined in which there was an adverse credible fear determination. Nexus determinations can involve highly complicated factual and legal issues, and the credible fear interview, which is not intended to be a full asylum hearing, may not be an inappropriate venue for making such complex decisions.
- There is a higher likelihood of a negative credible fear determination at some asylum offices than at others, which raises the question as to whether adjudication standards are applied uniformly.
- District directors do not appear to be consistently applying INS policy and parole criteria, which may result in non-uniform parole decisions in the cases of asylum seekers.
- Conditions varied in the detention facilities, as well as at ports of entry, resulting in asylum seekers receiving widely disparate treatment depending solely on the location of their detention and the degree of a particular facility’s compliance with standards. In violation of INS, American Correctional Association (ACA) and United Nations High Commissioner for Refugees (UNHCR), detained asylum seekers are not segregated from the criminal population.

## VI. CONCLUSION

April 2001 marked four years since the implementation of expedited removal. The number of annual expedited removals may well be approaching 100,000, and if past trends are any indication, 99% of those individuals are removed without any further process. Researchers, refugee advocates, and the media have all reported on a disquieting number of cases involving 21 asylum seekers and non-asylum seekers alike who have not been processed in accordance with the law. In some instances, the reported cases have indicated a failure of protection to asylum seekers even where there has been compliance with the law, which raises questions as to whether the procedures themselves are adequate. Congress has reasons for serious concerns as

to whether its objectives of deterring fraud while protecting bona fide refugees, and other individuals legitimately seeking admission to the U.S. are being met.

Chairman BROWNBACK. I appreciate your study and your information. I look forward to working with you to answer questions about the expedited removal procedure.

Ms. Young?

**STATEMENT OF WENDY A. YOUNG, DIRECTOR OF GOVERNMENT RELATIONS, WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, WASHINGTON, D.C.**

Ms. YOUNG. Good afternoon. On behalf of the Women's Commission for Refugee Women and Children, thank you for the opportunity to testify regarding the detention of asylum seekers. I also wish to submit my full written testimony to the record.

Chairman BROWNBACK. It will be in the record, without objection.

Ms. YOUNG. Thank you.

The Women's Commission has assessed detention conditions in 35 facilities across the country. We have found that asylum seekers often endure arbitrary and prolonged detention in conditions that undermine the U.S. commitment to refugee protection. Such individuals come to the United States expecting refuge. None expect imprisonment.

Immigration detention has become the fastest growing prison program in the United States. The INS detains 20,000 individuals a day, for an annual total of over 200,000. Approximately 5 percent of the detained population are asylum seekers. Women constitute 7 percent and children 3 percent.

Statistics related to detention, however, are difficult to pin down because of the INS' poor data collection. In fact, the INS has failed to comply with a statutory provision which requires annual reports on detention data to Congress.

What has been extensively documented are the harsh and inhumane conditions of detention. All the facilities used by the INS are prisons or the equivalent. Fences, cells, and locked doors define the detainees' living space. In fact, the term "detention" itself is misleading. "Incarceration" better reflects the experiences of asylum seekers.

Moreover, detained asylum seekers have suffered sexual, physical, and verbal abuses, commingling with criminal offenders, handcuffing and shackling, inadequate health care, poor translation services, insufficient outdoor recreation, and a lack of appropriate religious services.

Detention also impedes legal representation, which is critical to the success of an asylum claim. More than twice as many detained asylum seekers lack representation as compared to non-detained asylum seekers in removal proceedings. And represented asylum seekers are 4 to 6 times more likely to win their asylum claims than those who are unrepresented.

Two examples demonstrate some of the problems in detention. First is sexual abuse at the Krome Detention Center in Miami, where women detainees have accused 15 officers of rape, molestation, and harassment. INS officers made false promises of release to women if they cooperated. They threatened them with deporta-

tion, transfer to county jails, or even death if they dared to resist. Instead of placing the women in an appropriate alternative to detention, the INS has responded by transferring them to a county prison, where many new problems have arisen.

The treatment that some religious programs have received in detention centers serves as a second example. In 1999, the INS Newark District canceled an arrangement with Jesuit Refugee Services to provide religious services in the Elizabeth Detention Center. Among the INS' reasons was that a Bible study reading had been based on the gospel of Matthew, which preaches "welcoming the stranger."

The prisons and jails with which the INS contracts and which provide approximately 60 percent of INS detention space presents special problems because they are not designed to meet asylum seekers' legal and social service needs.

It is also critical to address the situation of children in detention, as Senator Feinstein has pointed out. The some 5,000 unaccompanied children in INS custody each year range in age from 18 months to 17 years old. The INS experiences an inherent conflict of interest with children it holds, as it is acting as their caregiver at the same time that it is seeking their deportation.

While the INS does maintain approximately 600 shelter and foster care beds, it holds approximately one-third of children in juvenile jails for periods ranging from a few days to more than a year. Furthermore, less than half of the children in INS custody are represented by counsel. U.S. immigration law also fails to provide for the appointment of guardians ad litem, a regular practice in other court proceedings.

The INS has recently developed standards for conditions of detention, an acknowledgment that detention practices should be consistent and facilities held accountable. However, the standards are fundamentally flawed because they are non-binding, only the INS is monitoring their implementation, and it has only recently begun the process of applying the standards to prisons with which it contracts. They also do not apply to facilities in which children are detained.

The fundamental question, however, is why is the INS detaining asylum seekers in the first place. It has stated that its policy should normally be to release asylum seekers who have established a credible fear of persecution, but many INS districts continue to detain asylum seekers for prolonged periods, sometimes years. The disparity between the national policy and local implementation is due to the tremendous discretion to parole asylum seekers delegated to district directors.

The success of pilot projects that have explored the viability of alternatives to detention underscore the irrationality of current practice. Such pilots have ensured that asylum seekers appear for their hearings and that they are treated humanely in the interim. Alternatives have also proven to be much less costly.

In 1990, the INS implemented a pilot project known as the Asylum Pre-Screening Officer Program. Under APSO, 97 percent of paroled asylum seekers appeared for their hearings. In 1997, the Vera Institute of Justice tested a supervised release program in New York. The program resulted in up to a 93 percent appearance

rate, depending on the level of supervision. It also cost 55 percent less than detention.

In 1999, the INS released 22 Chinese asylum seekers detained in the county prison in rural Illinois to local non-profit shelters. All but one of the participants remained in the program, resulting in a 96 percent appearance rate.

And, finally, New Orleans Catholic Charities has housed more than 34 formally detained asylum seekers in shelters, none of whom have absconded. The shelters cost the INS one-sixth the cost of detaining individuals in prisons.

In conclusion, asylum seekers will remain vulnerable to arbitrary detention unless Congress mandates a rational parole policy, alternatives to detention, and the restoration of due process.

We recommend the enactment of legislation that establishes that U.S. policy is generally not to detain asylum seekers; that delegates the authority to parole asylum seekers or to place them in a detention alternative to asylum officers and immigration judges; that mandates the establishment of alternatives to detention; and that provides government funding to facilitate legal orientation sessions.

In addition, Congress should move quickly to pass S. 121, the Unaccompanied Alien Child Protection Act, which addresses the critical custody, care, and assistance needs of unaccompanied children.

I would like to submit an excellent op-ed by Senator Feinstein from today's Oregonian regarding S. 121 in the record.

Chairman BROWBACK. Without objection, it will be in the record.

Ms. YOUNG. Thank you.

Depriving an individual of her freedom is one of the gravest actions a government can take. We believe that Congress must take the lead in restoring accountability, consistency, and compassion to U.S. detention policy. Thank you for holding this important hearing.

[The prepared statement of Ms. Young follows:]

STATEMENT OF WENDY A. YOUNG, DIRECTOR OF GOVERNMENT RELATIONS AND U.S. PROGRAMS, WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN

#### I. INTRODUCTION

Good afternoon. My name is Wendy Young. I am the Director of Government Relations and U.S. Programs for the Women's Commission for Refugee Women and Children, a nonprofit organization which seeks to improve the lives of refugee women and children around the world by acting as an expert resource and engaging in a vigorous program of public education and advocacy. On behalf of the Women's Commission, I would like to thank you, Mr. Chairman and members of the Subcommittee, for the opportunity to testify regarding the detention practices of the Immigration and Naturalization Service (INS) and their impact on women and children seeking asylum.

In 1996, the Women's Commission launched an assessment of detention conditions in the United States that has included visits to approximately 35 detention centers around the country and interviews with dozens of detained asylum seekers, the organizations providing them with legal and social services, and the INS and local government officials charged with their care. We have issued seven reports documenting widespread problems in the detention system that jeopardize the United States' legal and moral obligation to offer refugee protection.

In general, we have found that asylum seekers often endure arbitrary and prolonged detention in conditions that fail to meet international standards of refugee protection and basic standards of decency and compassion. Some asylum seekers are women who have fled gender-related persecution, including rape, female genital mu-

tilation, sexual slavery, honor killings, forced abortions, and forced marriages. Some are children who have fled recruitment as child soldiers, child marriages, forced prostitution, and child slavery. Some are survivors of torture. Some are victims of religious, ethnic, or political persecution. Virtually all have come to the United States expecting refuge and freedom from persecution. Virtually none expected imprisonment by the world's leading democracy and defender of human rights.

## II. BACKGROUND

Immigration detention has become the fastest growing prison program in the United States today. On any given day, the INS has approximately 20,000 individuals in detention, for an annual total of over 200,000. The agency estimates that approximately five percent of detainees are asylum seekers. Women constitute seven percent of the overall detained population and children three percent.

The INS has reported that the average length of detention for aliens in removal proceedings was 29 days in Fiscal Year 1999. However, asylum seekers are often held for much longer. The Hastings College of Law reported that the average length of stay in the INS New York District, where large numbers of asylum seekers are detained, was 109 days. *The Dallas Morning News* recently reported that of the 851 indefinitely detained individuals in INS custody, defined as those in detention for more than three years, 361 are asylum seekers.<sup>1</sup> The Women's Commission has interviewed many asylum seekers who have endured detention for years; in one case, a Chinese woman had been held in various facilities for almost five years before she was finally granted asylum and released.

Statistics related to detention, however, are very difficult to pin down due to poor data collection. The INS, in fact, has failed to comply with a statutory provision enacted as part of the Fiscal Year 1999 Omnibus Appropriations Act (P.L. 105-277) which requires annual reports to the Judiciary Committees in the House and Senate data pertaining to detained asylum seekers. This data is required to address the number of asylum seekers in detention; countries of origin; gender; ages; location of detention by detention facility; whether criminals are detained in the same facility, and if so, whether they are commingled with the INS detainees; the number and frequency of transfers; the rate of release from detention for each INS district; and a description of the disposition of detainees' asylum cases. The first report under this provision was to be submitted on October 1, 1999, but it is our understanding that the INS has yet to release even this initial report.

The cost that detention represents to U. S. taxpayers is extremely high. In interviews with facility administrators, the Women's Commission found that the INS is paying anywhere from \$41 to \$156 per day per detainee. In the case of local and county prisons, the INS typically pays the facility twice the rate it is paid for the incarceration of criminal inmates, even though such facilities rarely provide services to INS detainees beyond those provided to the criminal inmates.

## III. CONDITIONS OF DETENTION

The Women's Commission has evaluated the following conditions in facilities which it investigated: the physical settings used to detain asylum seekers; the treatment that women receive from INS and prison staff and criminal inmates; the availability of translation services; health care; recreation and access to the outdoors; the availability of spiritual support and religious services; and the availability of legal services.

In recent years, the INS has developed approximately 35 standards that address conditions of detention ranging from attorney access to grievance procedures. These standards represent a critical acknowledgement by the agency that detention facilities should be consistent in their practices and held accountable to certain minimal standards. However, the standards are fundamentally flawed in several key areas. First, they are non-binding and serve only as guidelines. Second, the INS itself is charged with monitoring their implementation. Third, the INS has only recently begun the process of applying the standards to the county and local prisons with which it contracts, meaning that the majority of INS detainees continue to be held in facilities that fall outside the scope of the standards. And finally, the standards are based in large part on the standards used by the American Correctional Association, standards which were developed with a criminal population in mind, and not asylum seekers.

<sup>1</sup>Dan Malone, "More than 800 Detained Indefinitely by INS," *Dallas Morning News* (April 1, 2001).



## TYPES OF FACILITIES USED TO DETAIN ASYLUM SEEKERS

All of the facilities that the INS uses for detention are prisons or the equivalent. Locked doors, cells or institutional dormitories, hi-tech security systems, and concertina wire fences define the detainees' living space. On many levels, the term "detention" itself is misleading; "incarceration" and "imprisonment" better reflect the experience of asylum seekers held in the custody of the INS.

The INS uses four types of facilities to detain asylum seekers. The agency operates nine of its own detention centers, known as "Service Processing Centers." Second, the INS contracts with for-profit correctional companies that have benefited from the national trend to privatize prisons and have also found it lucrative to manage facilities that house only immigration detainees. Such facilities are known as "contract facilities." Third, the INS jointly manages two facilities with the Bureau of Prisons (BOP) and accesses other federal prisons as needed. Finally, the majority of INS detention (approximately sixty percent) is provided by county and local prisons from which the INS rents bed space for detainees as needed.

The prisons and jails with which the INS contracts, of which there are hundreds, present special problems. Such facilities are fundamentally designed to punish criminal offenders and protect the surrounding communities, neither goal of which is compatible with meeting the critical legal and social service needs of asylum seekers.

Staff in such facilities is typically not aware of nor trained in the special needs of asylum seekers. Many local officials interviewed by the Women's Commission expressed surprise upon learning that individuals in their care were seeking refugee protection and had not been convicted of any crimes. This can result in serious misunderstandings. For example, an asylum seeker may exhibit symptoms of Post Traumatic Stress Disorder that the prison staff perceive as behavioral problems meriting discipline rather than psychological support.

Even after learning that asylum seekers lack criminal records, prison officials often are reluctant to differentiate among populations in the facility. The warden of the Turner Guilford Knight Correctional Center in Miami-Dade County recently stated, "I can't treat the INS people differently. I'll have problems, and remember, I have 1,200 inmates in here." The York County prison warden observed, "The worst thing that you can do in a prison is separate a group out for special care."

Moreover, delegating the daily care of asylum seekers to local facilities, create a new level of bureaucracy. This often results in difficulties in addressing complaints about abuses and other problems, as the INS will place responsibility on local officials and vice versa. INS officials at all levels frequently refer to themselves as "guests" of the prisons and declare themselves unable to influence prison policies, completely disregarding the fact that the INS retains custody of the individual, that the prison is under contract with the INS and therefore should be held accountable for meeting certain standards, and that the INS is paying local governments significant amounts of money to detain individuals.

Detainees are frequently commingled with criminal inmates, despite the fact that they have not committed a crime themselves. Women are more likely than men to be commingled with the general prison population. Because they are fewer in number, the INS often cannot afford to rent a separate cell pod for the female detainees. The women report being terrified of the criminal inmates, who often harass the INS detainees.

Many detention centers are overcrowded. In the York County Prison, INS-detained women frequently sleep in the gymnasium, due to a lack of bed space. Overcrowding at the Krome Service Processing Center is a chronic problem which forces detainees to sleep on temporary cots squeezed in between the permanent beds. Attorneys reported that when the facility is overcrowded, systems fail to keep pace, resulting in attorneys waiting hours to see their clients.

## TREATMENT OF DETAINEES BY INS OFFICIALS AND PRISON STAFF

While many INS and prison officers treat detainees in their care with respect, professionalism, and compassion, there are also frequent reports of abuses and harassment. Detainees whom the Women's Commission has interviewed have reported verbal, physical, and sexual abuses; frequent pat, strip, and cavity searches; handcuffing and shackling; and excessive use of solitary confinement for minor infractions of facility rules.

The treatment that women detainees have received in the Miami INS District is perhaps unrivaled in the seriousness of the abuses reported. For years the Krome Service Processing Center in Miami has been plagued with chronic problems and been the target of multiple federal investigations. In May 1999, controversy sur-

rounding the facility again erupted when 20 separate allegations of sexual abuse by at least 15 Krome officers surfaced.

Reported sexual abuses ranged from rape to sexual molestation and harassment. Women who cooperated in sexual activities were made false promises of release from detention. Threats of deportation, transfer to county jails, or even death were leveled at women who dared to resist or complain of abuses. While not all of these activities involved women asylum seekers, it is disturbing to note that such abuses had been reported as far back as 1990, and no follow up action was taken. Furthermore, physical and emotional abuses against women have also been reported, including officers demanding that Muslim women asylum seekers remove their veils before eating and denying the women meals when they refused to unveil.

The Department of Justice has launched an investigation into Krome. One officer has been indicted for rape. It is critical, however, that the investigation not be allowed to drag out or fail to result in either criminal prosecution or disciplinary action against those officers shown to be involved. Unfortunately, that was the result of past investigations; some of the very same officers accused of sexual misconduct in 1990 were allegedly involved in the most recent abuses.

Of grave concern in the meantime is the actions that have been taken by the INS to address the Krome problem. The Women's Commission, the Florida Immigrant Advocacy Center, and other advocates urged the INS to remove women from Krome and to develop an appropriate alternative to detention, such as shelter care in the community. While the INS did remove the women from Krome, it chose to transfer them to the Turner Guilford Knight Correctional Center, a nearby county prison. Conditions in the prison have failed to meet the most basic needs of women asylum seekers.

Male detainees have also been the targets of abuse in some facilities. After a riot broke out in the Esmor Detention Center in Elizabeth, New Jersey due to poor living conditions,<sup>2</sup> male detainees were transferred to the Union County Jail, also in Elizabeth. Officers there then tortured the detainees by forcing them to put their heads in the toilet, pulling their genitals with pliers, and ordering them to engage in sexual acts. Four of the guards were convicted and six others pled guilty to criminal charges of abusing the detainees.<sup>3</sup> In the Jackson County Jail, the Florida Immigrant Advocacy Center reported that male detainees were shocked with stun guns, beaten, cursed, targeted with racial slurs, and placed in solitary confinement for requesting medical care or food.

Women interviewed by the Women's Commission frequently reported callous behavior by prison guards and INS officers. In the Elizabeth Detention Center, a woman asylum seeker from the Democratic Republic of Congo described being dragged across the floor by INS officers when she resisted being taken to the airport for deportation. She told the Women's Commission that the officers laughed at her when her pants began to fall off due to the rough handling. Haitian asylum seekers detained at the Turner Guilford Knight prison began to cry as they described the humiliation of being transported in handcuffs and shackles, and stripped and cavity searched upon their arrival at the prison.

#### TRANSLATION SERVICES

The lack of readily available translation services is a pervasive problem in detention centers. Generally, the INS only provides interpretation during emergencies or medical examinations, and that is typically by telephone. Otherwise, it relies heavily on detainees to translate for each other.

The inability to communicate compounds many of the problems faced by detainees, particularly those individuals who speak uncommon languages. For example, it exacerbates their fears about detention and the status of their asylum cases. It also results in an inability to request medical assistance or to report other problems. It leads to unnecessary disciplinary actions due to detainees' confusion about the facility regulations. Finally, it interferes with detainee's access to the few services available to them, because detainees remain unaware of the existence of such services or are unsure about how to request them.

A Burmese woman asylum seeker in the Turner Guilford Knight Correctional Center was unable to communicate with INS officers and prison guards. The prison guard in charge of her cell pod persistently called her Chinese, unaware even of the woman's nationality. The woman had been there for several weeks with no informa-

<sup>2</sup>Esmor was shut down after the riot and then later reopened under new management. It is now known as the Elizabeth Detention Center.

<sup>3</sup>Ronald Smothers, "3 Prison Guards Guilty of Abuse of Immigrants," *The New York Times* (March 7, 1998), p. A1.

tion about her case. She struggled to communicate with the little Chinese and English that she was able to speak.

The lack of translation services can also interfere with detainees' legal representation. The Elizabeth Detention Center, for example, recently informed attorneys that they could no longer meet with two detainees simultaneously, which in the past had facilitated detainees' ability to translate for each other during interviews or intakes. Furthermore, with the exception of "know-your-rights" presentations and initial screening interviews when portable telephones are made available, no telephones are regularly available in the attorney-client rooms. This makes it impossible at other times for attorneys to obtain telephonic translation, for example during intakes or interviews. The Catholic Legal Immigration Network, Inc. (CLINIC) reported that during a recent intake, it was only able to communicate with three asylum seekers out of the nine interviewed. It was unable, for example, to communicate with nationals from Iraq and Algeria due to language barriers.

Furthermore, there are no translation services available in Elizabeth to assist non-English speaking or illiterate asylum seekers in completing their I-589s, the form required to raise an asylum claim. CLINIC reported that immigration judges posted to the facility have told such detainees that they must either return with a completed form or they will be ordered removed from the United States at their next hearing.

Similar issues were recently raised by an immigration judge posted to the York County Prison in Pennsylvania. Immigration Judge Walt Darling indicated his intent to order the INS to provide an interpreter to assist unrepresented aliens in completing their immigration forms.<sup>4</sup> The INS General Counsel responded by noting, "It is the position of the Service that provision of interpreter services to unrepresented aliens is a conflict of interest for the Service. Furthermore, there is no legal authority for the Government to provide such services. Just as the alien has the right to representation in immigration hearings, but the Government is without authority to provide this representation, so too may the alien obtain interpreter services at his or her own expense."<sup>5</sup>

INS and prison officers alike are often dismissive of the need for translation services. In the Wicomico County Jail in Salisbury, Maryland, an INS officer observed that he

believed that sign language was adequate to communicate with INS detainees. The prison warden in the same facility said, "The language barrier isn't a big problem. The detainees know what's happening."

#### HEALTH CARE

The inability to communicate, combined with the slow or inappropriate response of some facilities to medical complaints, has led to disturbing instances of serious medical problems being ignored or mismanaged by both INS and prison authorities. In other cases, the stress and trauma of prolonged detention have caused individuals to develop physical and mental health problems.

The Public Health Service (PHS) provides medical services in INS Service Processing Centers and contract facilities. In most of the prisons with which it contracts, the INS utilizes the health services provided to the criminal inmates. Often, these services are provided by outside medical contractors. These services typically do not include medical staff trained to care for patients from different cultures. Moreover, there is frequently a lack of female medical staff. This can undermine the treatment of women detainees, many of whom come from cultures in which it is considered inappropriate to reveal sensitive medical information to male strangers.

A Colombian woman asylum seeker detained in the Krome Service Processing Center was diagnosed with a stomach tumor. Despite the severity of her illness, the INS handcuffed and shackled her on the way to the hospital. She was then chained to the hospital bed. When the woman asked the INS officers to remove the chains, she reported that they responded with abusive language. She also reported that when her family tried to visit her at the hospital, the INS denied that she was there. The woman later told a fellow detainee that she would rather die than return to the hospital.

Women at the Turner Guilford Knight Correctional Center complained that after their transfer, the prison medical staff greatly reduced the dosage of psychotropic drugs that had been prescribed to them while they were at Krome. The sudden

<sup>4</sup>Letter from the Honorable Walt Darling to INS Philadelphia District Counsel Kent Frederick (July 17, 2000).

<sup>5</sup>Letter from INS General Counsel Owen B. Cooper to The Honorable Walt Darling (July 25, 2000).

change in medication led to drastic mood changes and the detainees' hospitalization. Other women reported that their drugs were administered erratically and several hours behind schedule.

Many women whom the Women's Commission interviewed complained that they were experiencing physical ailments because of their prolonged detention. This included chronic stomach problems, such as nausea, heartburn, and diarrhea; dizziness; high blood pressure; irregular menstrual cycles; and significant weight changes. In some cases, women had been prescribed drugs to address their conditions but were ignorant of the nature and properties of the drugs.

Asylum seekers who have fled violence and persecution in their homelands frequently are in poor health when they arrive in the United States. In addition, they may be suffering from Post Traumatic Stress Disorder or other mental health problems. It is critical that they be provided prompt, adequate, and culturally appropriate medical care.

#### RECREATION AND ACCESS TO THE OUTDOORS

Detainees universally report boredom and listlessness as a result of the lack of recreational activities and outdoor access in detention centers. They frequently spend their days lying in bed or watching English-language television. Reading materials are also usually only in English.

Access to the outdoors is severely limited in most detention centers, as minimal as one hour per week. Many facilities offer only rooftop exercise areas or walled areas covered by mesh fencing, through which little natural light filters. Many facilities also lack or have a minimal number of windows, adding to detainees' physical malaise and disorientation.

Some detainees have also reported that they do not avail themselves of outdoor exercise even when available. Sometimes this is because they are confused about the rules. Sometimes they fear intermingling with the criminal inmates. In other cases, they are subject to strip or pat searches upon re-entering and prefer not to endure that humiliation.

Experience has shown that activities and outdoor access can make detention more tolerable. Several women, for example, expressed their appreciation at being detained in the minimum security portion of the York County Prison, where a large grassy outdoor area is available to the women throughout the day. They compared it favorably to being housed in the maximum security portion of the prison, where outdoor access is more limited, and to both the Elizabeth and Wackenhut Detention Centers (from which many women are transferred back and forth from York), where the outdoor areas are walled and fenced.

#### AVAILABILITY OF SPIRITUAL SUPPORT AND RELIGIOUS SERVICES

Religious services in the prisons with which the INS contracts are generally made available through a facility's existing chaplain's office. Services for certain denominations are therefore readily available, while services for religious sects that are less common in the United States are unavailable or have to be arranged. Of particular concern is the fact that INS Service Processing Centers and contract facilities as yet fail to provide chaplains, although the INS has expressed interest in developing such programs.

Also troubling is the treatment that some religious programs have received in INS centers. In November 1999, the INS Newark District abruptly cancelled an arrangement with Jesuit Refugee Services (JRS) under which JRS was providing religious services and English classes. The INS's stated rationale for the cancellation was the fact that a Bible study reading had been based on the gospel of Matthew 25, which preaches "welcoming the stranger." The INS believed that this discussion would provoke unrest among detainees. It also criticized the programs for allowing detainees to speak about their concerns about detention, an obvious focus of conversation given the stress caused by detention. Despite repeated requests by JRS to renew the programs, the INS declined to do so and instead arranged for another program to replace JRS. The new religious service providers has signed an agreement that stipulates that it will refrain from discussing detention with detainees and that an INS officer will be present at all religious sessions.

Religious service providers who visited women asylum seekers at the Turner Guilford Knight prison told the women that they would not return after their first visit, because it was so difficult to gain access into the facility. Among the problems they confronted was the lack of space for such services. They were forced to use a small attorney-client visit room. This dual usage also disrupted legal services, since it is the only such room available.

There are also disturbing instances of proselytizing in some prisons. In the Hancock County Justice Facility in Bay St. Louis, Mississippi, three Chinese women asked the Women's Commission delegation to let the American public know that they could be released because they now believed in Jesus Christ. The head chaplain in the York County Prison opposed efforts of local advocates to achieve release of Chinese detainees, arguing that the detainees should first convert to Christianity, then agree to deportation in order to carry Christianity back to China.

Other detention facilities have made a concerted effort to provide a variety of religious services and sources of spiritual support. Detainees often find such support critical to their ability to cope while in detention.

#### VISITOR ACCESS

Detainees frequently report a sense of isolation, confusion, and helplessness while in detention. They are typically cut off from relatives, friends, agencies, and individuals willing to assist them and act as a source of support. Factors which hinder the ability of such parties to visit detainees include the remote locations of many detention centers, limitations on phone calls, frequent transfers of detainees from facility to facility, limited visitation hours, and the slowness of some facilities to locate detainees when visitors request to see them. Other limitations include restrictions on who can visit a detainee. The Wicomico County Jail in Salisbury, Maryland, for example, will not allow minors under age 18 to visit inmates or detainees, even if the requested visit is with a parent.

The recent experience of a Colombian woman transferred from the Turner Guilford Knight Correctional Center in Miami to the York County Prison exemplifies the isolation experienced by detainees. The woman was separated from her husband, who was detained in the Krome Service Processing Center. Three days after her detention began, she was transferred to the York County Prison. INS officers refused to tell her where she was being taken.

The woman's husband, meanwhile, was released from Krome and traveled to Pennsylvania to visit his wife and bring her documents which the INS told her would be required for her parole. His request to visit her was refused. However, he was able to submit the requested documentation. His wife was told that she would be released in two days. Instead, however, the woman was transferred back to Miami. Her husband was waiting to visit her, but the INS refused to allow her to speak with him to inform him of her upcoming transfer. As she was being loaded onto a van for transport to the airport, she saw her husband in the prison parking lot and began to cry. The driver allowed her to speak to him from the van. The woman arrived back at the Turner Guilford Knight Correctional Center at 2:30 am. Her husband is stranded in Pennsylvania because he did not have enough money to return to Miami. He also missed his own court date as a result.

#### DIFFERENT TREATMENT ACCORDED TO WOMEN

Of particular concern to the Women's Commission is the disparity that exists in some facilities between services offered to men and women in detention. While detention of any asylum seeker often results in barriers to services, abuses, and hardship, the Women's Commission has documented several instances in which women were denied services offered to male detainees held by the same INS district.

This discrimination appears to result from several factors. First, there are far fewer women in detention than men. This difference in numbers, for example, often means that INS-detained men are separated from criminal inmates in the prisons the INS utilizes, whereas the INS finds it hard to justify renting a separate cell pod for the handful of women held in the same facility. This was the case in such prisons as the Virginia Beach City Jail; the Kern County Lerdo Detention Center in Bakersfield, California; the York County Prison in York, Pennsylvania; the Berks County Prison in Reading, Pennsylvania; the New Orleans Parish Prison; and the DeKalb County Jail in Atlanta, Georgia. At the time of a Women's Commission visit to Puerto Rico, the INS district had temporarily shut down the female wing of the Aguadilla Service Processing Center, finding it cheaper to move the women to the federal prison in San Juan.

The INS also used the relatively few number of women detained in the Kern County Lerdo Detention Center as a justification to decline bussing the women to meet with their attorneys in San Francisco, a service it offered to male detainees in the same facility when vans were travelling to the city for other reasons. This failure, however, had a detrimental effect on the ability of the women to obtain adequate legal representation. The prison is more than a five-hour drive from San Francisco, a prohibitive commute for lawyers offering *pro bono* services.

Women detainees also often come from cultures in which they are taught not to question authority, and thus INS and prison officers frequently describe INS-detained women as “docile.” This characteristic, however, also means that the needs of women are easily neglected. The male Chinese asylum seekers who arrived on the ship the Golden Venture and were detained at the York County Prison, for example, were provided arts and crafts materials. Chinese women detained in the female wing, however, were not provided any form of recreation to occupy their time.

Moreover, women are more at risk of certain abuses, including sexual attacks. Officers at the Krome Service Processing Center appear to have particularly targeted women detainees for rape and sexual harassment and molestation. This abuse, furthermore, undermined the women’s access to legal representation. While it was critical to remove the women from exposure to the exploitation they were suffering in Krome, the INS chose to transfer the women to the Turner Guilford Knight Correctional Center, which has greatly interfered with the women’s access to legal services. Local legal service providers are now struggling to offer services in both facilities. They have also reported that access to the prison is much more difficult than at Krome. Moreover, the INS has discontinued transporting the women back to Krome for their credible fear interviews before asylum officers posted at Krome, instead relying on telephone interviews with the women. Face-to-face interviews can fundamentally influence the outcome of the interview, as asylum officers are better able to assess body language and non-verbal cues.

#### IV. LEGAL REPRESENTATION OF DETAINED ASYLUM SEEKERS

Legal representation is critical to the ability of asylum seekers to pursue their asylum claims. The immigration bar typically considers asylum cases as among the most complex and time-consuming of the various types of legal problems its members address.

Despite the critical need for assistance, however, the Institute for the Study of International Migration at Georgetown University has reported that more than twice as many detained asylum seekers lack representation as compared to non-detained asylum seekers in removal proceedings. Moreover, its analysis revealed that represented asylum seekers are four to six times more likely to win asylum than those who are unrepresented.<sup>6</sup>

Several problems endemic to detention hamper the ability of asylum seekers to obtain representation. First, asylum seekers are often dependent on pro bono or low-cost legal representation. However, such programs are typically strapped for resources and struggling to meet the needs of the entire detained population, which has soared dramatically in recent years.

Moreover, the lists of *pro bono* and low-cost legal service providers that the Executive Office for Immigration Review (EOIR) makes available to detainees are frequently inaccurate. This, combined with telephone systems that are often inadequate and expensive, makes it difficult for asylum seekers to contact lawyers. In many detention centers, moreover, a legal representative cannot leave messages for his or her clients, forcing the service provider to visit the detention center if he or she needs to communicate with the client. The INS has moved toward programming telephones in Service Processing Centers and contract facilities so that detainees can make toll-free calls to legal services programs, an important step in facilitating the ability of detainees to obtain counsel and remain informed about their cases.

A further barrier to legal representation is the remote location of many detention centers, which deters attorneys from accepting detainees as clients. Many facilities are located in rural areas far from the legal services that are generally available in urban centers with strong immigrant traditions. In addition, attorneys report that they frequently have to wait hours before being allowed to see their clients. The combination of long commutes and time wasted waiting to speak to a client effectively means that attorneys may have to devote an entire day to visit one client.

Furthermore, the INS regularly transfers detainees from detention center to detention center for fiscal and logistical reasons. Detainees therefore often end up in facilities hundreds of miles from their attorneys. The INS typically does not provide prior notification to attorneys before their clients are moved. The Women’s Commission tracked the case of a woman asylum seeker from Cameroon who was transferred from the Wackenhut Detention Center in Queens, New York, where she had been detained for several months, to the York County Prison. Her attorney was not notified of the transfer.

<sup>6</sup>Memo from Andrew Schoenholtz, “Asylum Representation,” Institute for the Study of International Migration, Georgetown University (September 12, 2000).

Service Processing Centers and contract facilities often lack adequate attorney-client visitation rooms, forcing attorneys to wait or to visit with their clients in non-contact visitation booths via telephone. In some centers, visitation rooms are also insufficiently sound-proofed. For example, during a visit to the Krome Service Processing Center, a Women's Commission delegation stood outside the attorney-client visitation rooms. The delegation clearly overheard what should have been a confidential conversation between an attorney and his client, who was revealing sensitive medical information.

Finally, prisons occasionally pose special problems for attorney access. For example, prisons have denied entrance to immigration lawyers because they belong to state bars that do not issue bar cards. A Women's Commission delegate who was a member of the New York State bar, which does not issue bar cards, was delayed from entering the Federal Detention Center in downtown Miami for almost two hours while she argued with prison administrators about her lack of a bar card.

Prisons are also often unfamiliar with the concept of non-attorneys representing detainees, as is the case with representatives accredited by the Board of Immigration Appeals (BIA). The Virginia Beach prison warden told an Amnesty International delegation in which the Women's Commission participated that he would normally deny access to a BIA-accredited representative, because he had never heard of such a program. Prisons also sometimes fail to program telephone systems to provide toll-free access to immigration *pro bono* programs, even when such access is provided to criminal defense *pro bono* programs.

The Women's Commission is also concerned about the increasing use of video teleconferencing to conduct immigration court proceedings. Attorneys participating in such hearings have complained about inadequate technology and the isolation of their clients, who often remain in the detention center while the judge, interpreter, and even the detainee's attorney are located in a different facility miles away. Reliance on such technology may seriously jeopardize due process, as detainees are confused and isolated throughout the conduct of the proceedings, and cannot confer with their counsel.

We are encouraged by the INS's recent efforts to provide *pro bono* and low-cost legal service providers access to Service Processing Centers, contract facilities, and some prisons to offer group "know-your-rights" presentations. Such programs have proven critical to providing detainees with accurate legal information, to identifying those detainees who are most in need of legal services, and in rendering the immigration proceedings more efficient by encouraging individuals with no relief available to them to accept removal.

In Fiscal Year 1998, EOIR funded a pilot project to test the efficacy of "know-yourrights" presentations in three sites. In its final report on the pilot, EOIR observed, "the rights presentation has the potential to save both time and money for the government while also benefiting detainees. During the pilot, cases were completed faster and detainees with potential meritorious claims to relief were more likely to obtain representation." It also suggested that expansion of the project should be explored.

Legal representation can make the difference between an asylum seeker successfully winning her asylum claim or being returned to face further human rights abuses in her homeland. Representation is also perhaps the most vital link that a detainee can have to the outside world. In addition to the critical role that attorneys play in presentation of an asylum claim, they also can act as an intermediary between the INS and the detainee. They also offer hope to a detainee, a not insignificant function since many asylum seekers might otherwise abandon their claims and agree to deportation.

#### V. INS PAROLE POLICY FOR DETAINED ASYLUM SEEKERS

Theoretically, parole from detention is available to asylum seekers. Such parole is allowed under sections 235(b)(1)(B)(iii)(IV) and 212(d)(5)(A) of the Immigration and Nationality Act, which provide for parole of aliens applying for admission to the United States on a case-by-case basis for urgent humanitarian reasons or significant public benefit. INS regulations further stipulate that certain categories of aliens are eligible for parole, including but not limited to pregnant women and juveniles.<sup>7</sup> The INS itself has stated in field directives that its policy should normally be to release asylum seekers who have established a credible fear of persecution, a preliminary

<sup>7</sup> 8 C. F. R § 212.5.

screening standard that asylum seekers must meet under expedited removal before they are allowed to pursue their asylum claims.<sup>8</sup>

However, despite such instructions from INS headquarters to its district offices, many INS districts continue to detain asylum seekers for prolonged periods, in some cases for years. The disparity between the stated national policy and implementation at the local level is attributable to the fact that tremendous discretion to parole asylum seekers has been delegated to individual INS district directors. Belying the soundness of these decisions is the fact that many such asylum seekers are ultimately successful in their asylum claims. Sadly, they may have endured years of unnecessary incarceration in the meantime.

Despite repeated inquiries from advocates and others and the submission of Freedom of Information Act requests by the Lawyers Committee for Human Rights, INS headquarters has failed to provide the national parole rate. Estimates have ranged from 10 to 40 percent.<sup>9</sup> Disturbingly, the INS New York and Newark Districts, which host two of the largest detention centers, and which are dedicated almost exclusively to holding asylum seekers, are among the most restrictive in terms of their parole of asylum seekers. The Hastings College of Law's Expedited Removal Study found that those asylum seekers entering through Kennedy Airport in New York have the highest average length of detention in the country, at 124 days. Those arriving in Newark are held an average of 86 days. Of the major ports of entry surveyed, San Diego came in with the lowest average, at 11 days.<sup>10</sup>

The Women's Commission's interviews with INS officials have revealed tremendous differences in the stated rationale for decisions to detain or parole asylum seekers. Some district officials cite identity or security concerns. Others favor detention because they view it as a legitimate enforcement tool to deter individuals from seeking refuge in the United States. In a recent conversation, for example, a high-level INS official in Miami told the Women's Commission to expect parole rates in the district to drop because the district feared that high parole rates were encouraging Colombians to seek entry to the United States through the Miami International Airport rather than other international ports of entry where parole rates are less generous. Other INS officials have cited "congressional intent" as their reason for denying release to asylum seekers. This appears to be especially common in the INS New York District.

In some cases, the stated rationale for release is equally without a sound basis. In 2000, the former Krome Service Processing Center officer-in-charge admitted to the Women's Commission that his primary reason for regularly paroling asylum seekers was the lack of detention bed space in the district. While the limitations in space was resulting in favorable release rates, he also indicated that he probably would not maintain the existing parole policy if more bed spaces became available.

While the Women's Commission did not focus on the merits of the asylum claims of the women whom we interviewed, it was obvious that many were strong candidates for release. We spoke to women from many countries, the vast majority of which were experiencing armed conflict and human rights abuses. Many women stated that they had fled torture; threats to their lives; and persecution, including various forms of genderrelated persecution. Moreover, many of the women were later granted asylum.

## VI. ALTERNATIVES TO DETENTION

Pilot projects that have explored the use of alternatives to detention for asylum seekers underscore the irrationality of U. S. detention practices. Such pilots have demonstrated considerable success in meeting the dual goals of ensuring that asylum seekers appear for their immigration court hearings and that they are treated humanely pending the outcome of those proceedings. They have also proven to be much less costly than detention.

<sup>8</sup>Memorandum from Office of INS Deputy Commissioner, "Implementation of Expedited Removal" (March 31, 1997) (stating that once an alien has established a credible fear of persecution, release may be considered under normal parole criteria); Memorandum from INS Executive Associate Commissioner for Field Operations, "Expedited Removal: Additional Policy Guidance" (December 30, 1997) (stating that parole is a viable option for aliens who have met the credible fear standard); Memorandum from INS Executive Associate Commissioner for Field Operations, "Detention Guidelines" (October 9, 1998) (stating that it is INS policy to favor release of aliens who have been found to have a credible fear of persecution).

<sup>9</sup>See "Refugees Behind Bars," Lawyers Committee for Human Rights (August 1999), p. 25.

<sup>10</sup>Karen Musalo, Lauren Gibson, Stephen Knight, and J. Edward Taylor, "Report on the First Three Years of Implementation of Expedited Removal," Center for Human Rights and International Justice, University of California, Hastings College of Law (May 2000), pp. 69-71.



Such pilots date as far back as 1990 when INS headquarters implemented a pilot to test what became known as the Asylum Pre-Screening Officer Program (APSO). Under APSO, asylum seekers were eligible for release if they met several criteria, including having a credible asylum claim, evidence of their identity, a place to live, a means of support, and legal representation. After APSO proved successful in terms of both alleviating the harsh consequences of detention on asylum seekers and freeing up INS detention space, the agency attempted to implement the parole policy nationwide through non-binding guidelines.<sup>11</sup> Unfortunately, some INS districts failed to implement the program adequately, and it gradually fell into disuse.

In 1997, the INS contracted with the Vera Institute of Justice to test the viability of a supervised release program for asylum seekers in the INS New York District. This project indicated that supervised release met the INS's goal of tracking the whereabouts of asylum seekers and ensuring their appearance at their asylum proceedings as well as the humanitarian goal of allowing asylum seekers to live as normal a life as possible while their proceedings are pending. The findings of the Vera Institute clearly indicated that supervised release of asylum seekers is a viable option; 84 to 93 percent of the asylum seekers who participated appeared for their hearings, depending on the level of supervision provided. In addition, the pilot found that the cost of supervision of asylum seekers is 55 percent less than detention.<sup>12</sup>

In 1999, the INS transferred a group of Chinese asylum seekers from Guam to a county prison in Ullin, Illinois after they had been determined to have a credible fear of persecution. These asylum seekers had originally been apprehended on the high seas after the Coast Guard intercepted the smugglers who were attempting to bring the Chinese to U.S. territory. After four months in jail in rural Illinois, the INS negotiated with local service providers, under the auspices of the Lutheran Immigration and Refugee Service and members of the Detention Watch Network, to release the asylum seekers to local shelters, the location of which was not revealed to protect the asylum seekers from the smugglers to whom they owed debts. Approximately 22 Chinese were released into the care of the shelters; all but one of them remained in the program.<sup>13</sup>

Finally, INS districts have also tested local alternatives to detention in cooperation with charitable organizations. In New Orleans, for example, Catholic Charities has housed more than 30 formerly detained asylum seekers in non-secure shelter facilities. None of the asylum seekers who have participated in the program have absconded. Moreover, housing asylum seekers in the shelter costs the INS one-sixth the daily average cost of detaining individuals in local prisons. One INS official in New Orleans called it "a great program."<sup>14</sup>

These pilot projects clearly demonstrate that alternatives to detention are both humane and cost-effective. They also meet the INS's concern that asylum seekers appear for their proceedings. Moreover, asylum seekers who are not detained are much more likely to obtain counsel, a service critical to ensuring due process in an adversarial court proceeding.

The INS itself has expressed a commitment to continuing to test alternatives to detention. However, given the tremendous success and consistent results already demonstrated in past pilots, the Women's Commission believes that a national policy that embraces such alternatives should be legislatively mandated and implemented immediately.

## VII. CHILDREN IN INS CUSTODY

In each of the past three fiscal years (1998–2000), the INS has reported approximately 4,600 unaccompanied children in its custody. Many such children are fleeing armed conflict and human rights abuses in their homelands. Such abuses include recruitment as child soldiers, forced prostitution, forced labor, child marriages, female genital mutilation, and slavery. Other children have been abused, abandoned, or neglected by their families, and thus may be eligible for Special Immigrant Juvenile status. They range in age from 18-months-old to 17-years-old, while approxi-

<sup>11</sup>Memorandum from INS Commissioner, "Pilot Project for Aliens Seeking Asylum in Exclusion Proceedings" (April 27, 1990); Memorandum from INS Commissioner, "Parole Project for Asylum Seekers at Ports of Entry and in INS Detention" (April 20, 1992).

<sup>12</sup>"Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program," Vera Institute of Justice (June 7, 2000), pp. iii, 27.

<sup>13</sup>Esther Ebrahimian, "The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention," Detention Watch Network News, Lutheran Immigration and Refugee Service (August/September 2000).

<sup>14</sup>Joan Treadway, "Program Helps Immigrants Find Jobs and Shelter," The Times-Picayune (January 22, 2001).

mately 60 percent of these unaccompanied children eventually reunite with family members, the remaining 40 percent lack relatives in the United States.

Subsequent to a class action settlement agreement known as *Flores v. Reno* (1997), the INS has opened nine shelters in which it houses children in its custody. The majority of these shelters are institutional in nature and offer an environment of soft detention. The children's activities are closely monitored, the doors are frequently locked or alarmed, and children are not allowed off the premises of the facility unless accompanied by facility staff. However, the children are allowed to wear street clothing, are offered educational classes, and are not locked in cells or cell pods. Occasionally, they engage in recreational or educational trips off-site in the company of shelter staff. The INS also has an extremely limited foster care program, generally used for young children, girls, or children with special needs.

Unfortunately, the INS shelter and foster care system, which consists of approximately 600 beds, has failed to keep pace with the number of children in INS custody at any given time. As a result of the lack of bed space in the shelters and sometimes questionable placement decisions made by the INS, approximately one-third of children in INS custody spend time in a juvenile jail, for periods ranging from a few days to more than a year. The majority of these children have not committed a crime of any sort. Despite this, they are housed in highly punitive, restrictive settings; are sometimes commingled with youthful offenders; are subject to handcuffing and shackling; and are forced to wear prison uniforms. Children and their attorneys have reported beatings and other abuses.

Staff in the juvenile jails are often ill-informed about the INS-detained children and remain unaware of their legal, cultural, and mental health needs. Educational programs are typically conducted in English. Due to the remote location of many of the juvenile jails and the general lack of awareness of children in INS detention, immigration attorneys who can assist the children are often unavailable, resulting in the questionable removal of children who might actually be eligible for asylum or other forms of relief.

The INS experiences an inherent conflict of interest with children in its custody the agency is acting as caregiver to children in its custody at the same time that it is seeking their removal from the United States. INS immigration enforcement concerns often result in decisions, including placement decisions in the detention context, that are not in keeping with the best interests of the child. Moreover, the INS lacks the expertise to care for children.

This conflict of interest was recently exacerbated. In 2000, the INS consolidated its children's programs under its Detention and Removal branch. By doing so, it removed oversight of the children's shelters from the Office of International Affairs, which was staffed in part by child welfare professionals. The care of children is now lodged with a branch overwhelmingly staffed by law enforcement officials who specialize in detention and deportation and lack the expertise to identify and address children's unique needs.

Also absent in the current system for children in INS custody are professionals who can shepherd the child through his or her immigration proceedings. Less than half of the children in INS custody are represented by counsel. U. S. law also fails to provide for the appointment of a guardian *ad litem* to unaccompanied children in immigration proceedings, a regular practice in other court proceedings affecting children.

The Women's Commission was pleased and encouraged by the INS's issuance of Guidelines for Children's Asylum Claims in 1998. However, the success of these guidelines in identifying and ensuring protection of refugee children will hinge in large part on the adequacy of the assistance they are provided to navigate U. S. asylum law. Children must be provided the assistance of counsel to identify any relief for which they may be eligible and to advocate for such relief in immigration court. A guardian *ad litem* should be a child welfare professional who can ensure that the child's best interests are addressed by establishing trust with the child; identifying the circumstances that provoked his or her departure from the homeland; developing recommendations about the detention, custody and release of the child; ensuring that the child understands the proceedings in which he or she has been placed; and enabling the child to have his or her own voice heard in the proceedings.

The recent handling of the case of an eight-year-old Nigerian girl, who is currently detained in the Boystown shelter in Miami, Florida, exemplifies the failure of the U. S. system to adequately protect unaccompanied children in INS custody. Despite her young age, the girl has been in detention since May 2000. The INS refused to allow the young girl to go to juvenile court to determine if she has been abused, abandoned, or neglected and is therefore eligible for long-term foster care, a prerequisite requirement before a Special Immigrant Juvenile visa can be pursued. In its denial, the INS claimed that the girl's parents are attempting to commit

immigration fraud, despite the fact that both parents have explicitly stated that they no longer want the child. The girl's attorney, therefore, has decided to file for asylum before the immigration judge.

Despite a prior agreement to the contrary, the INS is challenging the appointment of a guardian *ad litem* to the child. Furthermore, the INS trial attorney argued in immigration court that the child's attorney has no standing to represent the child, since the INS—as the child's custodial “guardian”—has not agreed to such representation and is the only entity with the authority to appoint counsel. During the hearing, the district counsel actually suggested that the Krome officer-in-charge should represent the child. The case was continued for the sixteenth time while the attorney briefs both issues.

Meanwhile, the child continues to suffer in detention, despite an expert opinion from a social worker that her development and mental well-being are deteriorating.

#### VIII. RECOMMENDATIONS

Prolonged detention frequently erodes the physical, mental, and emotional health of asylum seekers. It also is an unnecessary waste of taxpayer dollars and limited detention space. Asylum seekers will remain vulnerable to arbitrary detention decisions by INS district directors unless Congress mandates a rational parole policy, alternatives to detention, and the restoration of due process.

Specifically, the Women's Commission for Refugee Women and Children recommends that Congress expeditiously enact legislation that:

- Establishes that the policy of the United States is generally not to detain asylum seekers who have established a credible fear of persecution, and that the parole of asylum seekers provides a significant public benefit. This will help ensure that parole decisions are not made arbitrarily at the sole discretion of INS district directors.
- Delegates the authority to determine whether to parole asylum seekers or to place them in an appropriate alternative to detention to asylum officers. Such decisions should be made within one week after an asylum seeker submits a parole request. Shifting parole authority away from the INS district offices to asylum officers would introduce greater objectivity into the decision-making process.
- Permits review of a parole denial by an immigration judge within 30 days. If the parole denial is upheld, the immigration judge should provide the reason for such denial in writing to the asylum seeker and his or her legal representative. Establishing a system to review parole denials would introduce accountability into the decision-making process. A written decision would assist asylum seekers and their legal representatives to prepare for renewed parole requests with enhanced documentation and other evidence supporting parole.
- Allows for a renewed request for parole if the asylum seeker has new or additional information supporting the request. The personal circumstances of the asylum seeker may change after parole is denied. For example, a relative or other sponsor may come forward and offer the asylum seeker a place to live.
- Mandates the establishment of alternatives to detention, that at a minimum include unsupervised release from detention; supervised release under the auspices of private nonprofit voluntary agencies with expertise in meeting the legal, spiritual, cultural, and psychological needs of asylum seekers; and nonsecure shelter care or group homes also supervised by such voluntary agencies. The current detention system offers only two options: detention or release. The development of alternatives to detention would better assist the INS in meeting the needs of asylum seekers while ensuring their appearance at their proceedings. Alternatives to detention are cost-effective and have been proven to work.
- Mandates the development of regulations to both establish standards for conditions of detention and create adequate monitoring and oversight of their implementation. The INS has developed standards to address conditions of detention. However, they remain non-binding and are monitored and enforced by the INS itself.
- Provides government funding to facilitate “know-your-rights” presentations and legal representation to indigent asylum seekers. Legal representation renders the asylum system more efficient and ensures fairness in immigration proceedings.
- In addition, Congress should move quickly to pass 5. 121, the Unaccompanied Alien Child Protection Act. We urge the subcommittee to conduct an oversight hearing on the bill as soon as possible. Introduced by Senator Dianne Feinstein, this critical legislation comprehensively addresses the custody, care, and assistance needs of unaccompanied children and closes procedural gaps in the current system that jeopardize their protection. Among other important steps, S. 121

addresses the current conflict of interest experienced by the INS, which is simultaneously charged with caring for the same children it is seeking to deport, by establishing a new Office of Children's Services within the Department of Justice. It also calls for the development of adequate shelter and fostercare. Finally, it calls for the appointment of counsel and guardians ad litem to unaccompanied children to ensure that their eligibility for relief is adequately considered.

#### IX. CONCLUSION

Depriving an individual of his or her freedom is one of the gravest actions a government can take. The degree of neglect and abuse that the Women's Commission has documented in INS detention practices is alarming. We believe that Congress must play an active role in the design, implementation, and monitoring of U. S. detention policy. We urge you to move forward with legislation that restores accountability, consistency, and compassion to detention.

Thank you again for holding this important hearing. The Women's Commission stands ready to work with your offices to assist in this process.

Chairman BROWNBACK. Thank you, Wendy. That was excellent testimony, very thoughtfully put forward. I appreciate the passage that you were talking about in Matthew, I believe it was Matthew 25: where the Son of Man comes in his glory, and he says he is going to judge all the nations and sort them into sheeps and goats and say to the one group, "Come join me," and to the other, "I am not going to bring you here because you didn't take care of me." and they will answer him, saying, "Lord, when did we see you hungry or thirsty or a stranger or naked or sick or in prison and did not minister to you?" And he will answer them saying, "Assuredly, I say to you, inasmuch as you did not do it to one of the least of these, you did not do it unto me."

They may have had quite a bit of wisdom. They were wanting to read that. I might also add that was the passage I heard read at Mother Teresa's funeral: the call to which she dedicated her life.

Ms. Acer?

#### **STATEMENT OF ELEANOR ACER, SENIOR COORDINATOR, ASYLUM PROGRAM, LAWYERS COMMITTEE FOR HUMAN RIGHTS, NEW YORK, NEW YORK**

Ms. ACER. Thank you, Chairman Brownback, Senator DeWine. It is an honor to be here today to offer our views about U.S. asylum policy. You have shown tremendous leadership in protecting the rights of refugees.

My name is Eleanor Acer, and I direct the Asylum Program at the Lawyers Committee for Human Rights. We have many serious concerns about the impact of the 1996 law on the ability of refugees to seek asylum in this country. I am honored today to be joined by a number of refugees, three of whom will be testifying before you shortly, and others who will be identified during my testimony and who will be submitting written statements to the subcommittee.

The expedited removal provisions of the 1996 law empower INS inspectors—whose primary responsibility and training is in border enforcement rather than adjudication—to order the summary deportation of individuals arriving from abroad without proper documents. Although anyone who expresses a fear of persecution should under the law be referred to an asylum officer for a credible fear interview, no outside authority reviews these decisions. Immigration inspectors are, in effect, given the power to act as judges.

While the INS has taken some steps to attempt to reduce the possibility that genuine asylum seekers will not be deported under these expedited procedures, those efforts have not succeeded in preventing mistaken deportations and other abuses. Indeed, mistakes are inevitable given the summary nature of the procedures.

Expedited removal is a system that by its very design is destined to fail. It lacks the procedural safeguards that are necessary to ensure that legitimate asylum seekers are not mistakenly returned to face persecution: access to legal representation, appeal to an independent authority, the provision of notice prior to proceedings, and provision of qualified, independent translators.

A process that lacks crucial safeguards will not be able to avoid mistakes. A Sudanese Christian woman was ordered deported by officers at the Texas border. A Kosovar student was turned away from a California airport, and another Kosovar refugee was deported from Newark Airport.

Even U.S. citizens are not protected from these summary procedures. Just last year, a disabled woman from Long Island was detained at JFK airport, handcuffed, shackled, and deported to Jamaica under expedited removal.

Given the dire consequences of a mistaken decision to send someone back to a place where they might face persecution, the fact that many genuine refugees do not speak English as well, one would think that the airport procedures would require the use of qualified interpreters who are fluent in an individual's language of fluency. Instead, refugees have reported that their requests for translators have been denied and that they did not even understand the process that they were being subjected to.

I would like to ask Mekabou Fofana, a Liberian teenager, to stand. Mekabou arrived at JFK airport 9 days before his 16th birthday. Despite his request, he was not provided with a Mandingo interpreter. When INS officers twisted his arm and attempted to forcibly fingerprint him, he fell to the floor, hitting his head and bleeding so profusely that he had to be taken to the hospital. After a year and a half in detention in adult facilities, he was granted asylum and is now attending high school in New York City.

I would like to request that Mekabou Fofana's written statement and the statements of the other refugees and asylum seekers who I will be identifying shortly be included in the record.

Chairman BROWNBACK. Without objection.

[The prepared statement of Mekabou Fofana follows:]

STATEMENT OF MEKABOU FOFANA, REFUGEE FROM LIBERIA

Chairman Brownback and other Senators, thank you for the opportunity to submit this statement about the experience of refugees who seek asylum in this country. I am a refugee and I have been granted asylum in the U.S.

I fled Liberia with my family as a young child. My family are ethnic Mandingos. We were targeted by the rebel forces of Charles Taylor because my father had supported the former president of Liberia. My father was killed. My mother, younger brothers, and I fled to the Ivory Coast. In 1999, two of my uncles were murdered and I was threatened by men who recognized me as my father's son. I feared that my uncles' murderers were with the former rebel movement of Charles Taylor. I fled to the United States to seek asylum, and because I did not have a passport from Liberia, I traveled on a false passport from the Ivory Coast.

I arrived at JFK International Airport on July 11, 1999, nine days before my 16th birthday. I spoke only a few words of English and could not understand the INS

officers who questioned me. Although I kept repeating “Mandingo, speak Mandingo,” the INS did not call a Mandingo interpreter. Instead, they brought an airline employee who spoke French. I spoke very little French and could not understand the translator. After the interview, I was given papers to sign. I refused to sign the papers because I could not read them and did not know what they were. I was then taken to be fingerprinted. I was frightened and did not understand what was happening to me. One of the INS officers grabbed my hand and tried to fingerprint me by force. I cried out, in Mandingo, “Don’t force me, you are hurting me.” I was crying. The officer returned with four others. They grabbed me, twisted my arm, and tried to fingerprint me. I fell to the floor and slammed my head against the edge of a desk, cutting my head. One of the INS officers stepped on my shoulder. I was bleeding a lot and could not see. I was very scared and couldn’t believe that they could hurt me like this in this country. I was handcuffed and taken to the hospital where I got stitches. I was afraid they would kill me in the hospital. My white shirt was covered in blood. I was taken back to the airport and shackled to a bench overnight. I still have pains in my head from that time. I do not understand the way I was treated at the airport. Is this what America is like?

The next morning I was taken to the Wackenhut detention center in Queens, New York. I was held at the adult facility even though I was a minor, because the INS claimed that they could tell I was over 18 from a dental examination. I was detained at Wackenhut about six months. I was very sad at Wackenhut because I was put with adults and wasn’t supposed to be with them. When I was very sick at Wackenhut and needed help, I had to wait before seeing the doctor. The doctor did not ask me what was wrong with me, but only gave me Ibuprofen. It made me feel that he didn’t care about me. Every night I had nightmares that I was being deported.

I have family in New York. My uncle is a U.S. citizen. My aunt is a legal permanent resident. My cousin was granted asylum. Even though I have family here, I was not released on parole. I asked for parole three times, but the INS denied it each time. While appealing the denial of my claim, I was transferred to Lehigh County Prison, a criminal prison in Pennsylvania—moving me far from my family and my pro bono lawyers. I was detained there with criminals for one week. I felt like I was treated like a criminal. I was the youngest one among them and was very scared that the criminal detainees would hurt me. My cellmate had killed someone and would tell me about the crimes he had done. I was so afraid, I couldn’t sleep at night. After I requested to be moved, they changed me to another cell with INS detainees, where I was for over a month. When I had medical problems at Lehigh, I made many requests to see a doctor, but never had a response. It was not fair for the INS detainees at Lehigh, because we were not treated like human beings.

After my treatment was mentioned in an article in the New York Daily News, I was transferred to York County Prison, another remote detention facility in Pennsylvania. I was detained there about five months. It was worse there than at Lehigh. They gave me a criminal uniform, which was different from the ones for INS detainees, and held me with criminals for one day. As I was transferred to my cell with INS detainees, I was handcuffed, chained, and shackled like a criminal. I was crying. One guard asked me why I was crying. I told him, “I’m not a criminal.” I felt like my life was finished. I was too young to be there. It was very hard to reach my family. I was sad that sometimes me and other Muslims were not allowed to meet with an imam, a religious leader, on Friday, our holy day. I thought that they should respect our religion.

One day, I was told to pack my bags. I thought I was getting paroled, but instead they transferred me to a detention center in Welfare County, Pennsylvania. I was there for two days, and then was transferred to Carbon County Prison. I was detained at Carbon County for about nine months. While I was waiting to be transferred to my cell, I was kept in segregation for one week. It made me feel like I was going crazy, because I was so alone. While I was in segregation, I couldn’t call my lawyer or my family. After I was transferred to my cell, I made many requests to go to English classes. It was only the week before I was released, that I was finally able to go to class. I was just happy to be able to pray every day.

I was finally granted asylum in December 2000, after a year and a half in detention. I couldn’t believe I would be released and was very happy. Even after I was released and was free, I would dream that I was still in detention. I am now living in New York City and am going to a local high school. I like school and am doing well. I like America, because I know that here, my life is protected.

Thank you, Senators, for listening to my story. Please change the law so that refugees are guaranteed hearings in front of a judge and are not detained and not held with criminals.

Ms. ACER. I would like to ask Nusret Curumi, an Albanian asylum seeker, to stand. Mr. Curumi arrived at O'Hare International Airport in Chicago last year and was dragged by his clothing by INS officers after he explained that he wished to apply for asylum. Despite his requests he was not provided with an Albanian interpreter whom he could understand, and INS officers yelled at him when he refused to sign documents in English that he could not understand.

[The prepared statement of Mr. Curumi follows:]

STATEMENT OF NUSRET CURUMI, REFUGEE FROM ALBANIA

In August of 2000 I fled my native Albania seeking safe haven and freedom of expression and political belief in the United States. In Albania I was arrested, threatened with death, beaten and tortured after I criticized the government for refusing to return money I had invested in a government sponsored pyramid scheme. The officers who arrested me, threatened to "cut out my tongue" for speaking against the government.

When I arrived in the United States, I was shocked by what happened to me. My problems began at the O'Hare International Airport in Chicago. When I arrived and went through the immigration line, the INS officer who checked my passport asked me where I was going. I couldn't understand her. She called several other officers over. I immediately told the immigration officers as best I could in the little bit of English that I know that my passport was false and that I wanted asylum. Shortly afterward, four to five INS officers dragged me by my clothes and forced me into a room where they searched me without giving me any explanation of what was happening to me other than to say that I must talk now.

The officers asked me what languages I spoke. I told them that I spoke Albanian and a little Italian. One officer knew some Italian, and asked me what I was doing in the United States. I tried to explain to him that I left Albania because the regime there was communist. The officer told me that "ironically, it's also communist here." When he said that, I was afraid to respond to him and feared that he would beat me. "You're going to sign here," he told me. I did not understand the document he showed me, so I wouldn't sign it. The officers continued to try to force me to sign the document in that room, but it was written in English and there was no Albanian translation, so I could not understand what it said. I was afraid; I didn't know what signing that statement would do. I feared that it could mean that I would be returned to Albania, where I could be jailed, tortured or killed. I kept telling them "no."

After three to four hours of this, the officers finally got a translator on the telephone. However, I couldn't understand the translator well, as he sounded like he was Kosovar and spoke with an entirely different dialect than I speak. Every once in awhile I understood a word that he spoke, but I did not understand him well enough to know what was happening to me. To make matters worse, I could barely hear him, as he was working from his home and the conversation was continually interrupted by children who were yelling and arguing in the background. I tried to tell the translator that I could not understand him. I asked him to come to talk to me in person so that I could see him and ask him to repeat things I didn't understand. He told me that he was too far away and could not do that. I told him that I didn't understand the document they wanted me to sign. The translator told me that the officers were "doing their job" and that I should just sign the statement. "How can I sign it, when I don't know what it says?" I asked him.

When I continued to refuse to sign the statement, the four officers, three uniformed and one in civilian clothes, stood me up and surrounded me. They all yelled at me for approximately one half hour, though I could not understand what they were saying. I said nothing except to try to explain in Italian, why I feared returning to Albania.

When I still refused to sign the statement, one of the officers, without any explanation, took off my shoes and belt and pushed me into a room with two other detainees, four beds and one small window. I couldn't see outside, but thought that the officers might be observing me from the outer room. I was very afraid that I would be sent back to Albania.

After about a half hour, the officers returned and brought me out to a different room, this time they gave me a blank piece of paper and told me just to write my name down. I don't understand whether they were just showing me what they wanted or whether they were trying to get me to sign. It wasn't clear. Either way, I was

afraid that if I signed a blank piece of paper, the officers could write down anything they wanted and claim that I had knowingly signed it. I refused again. They had contacted the same Kosovar translator. I told him that I was exhausted from my trip and needed to sleep.

The officers put me back in the room for about 45 minutes. Just as I started to fall asleep, one of the officers entered the room abruptly and took me back out into the room with the translator to try to get me to sign the document. I then refused to sign the document for the fifth time. 45 minutes later, I was taken to another room.

Before I arrived at the airport, while I was in transit in Italy, I had called my family to tell them that I was on my way to the United States. As soon as he heard, my brother, Fatos, made the trip from Baltimore to Chicago to meet me at the airport. He arrived several hours after my flight landed. When he got to the airport, he looked around for me. Fatos was very concerned and asked a woman at the arriving flights information desk what had happened to me. She thought that I had been taken into INS custody, wrote down the telephone number, called it and gave Fatos the phone. Fatos spoke to the officer, gave his name, explained that he was looking for me and asked if they had any information. The INS officer told Fatos, "Yeah, we've got him." When he learned that I had entered without a valid visa, Fatos asked what he should do, the INS officer told him "Nothing. Go home." and hung up.

Fatos waited a few minutes, went outside the airport and called back. An officer told him, "Your brother has an attitude. He won't sign the papers." Fatos told him this was because I didn't know what I was signing. He offered to look at the papers so he could tell me whether or not to sign them. The officers told him that he couldn't come in because I was in a restricted area. He asked to speak with me. They told him ok, but said that I couldn't speak back to him. Then they told Fatos, "Just tell him to sign." Fatos told the officer that he couldn't do that and again hung up. Finally he called back again and asked the officers to come outside to talk with him. When they came, they just told him to tell me to sign the paper. During all this time, no one mentioned anything about my right to seek asylum. It was Fatos, who came here several years ago as an asylum seeker, and has now won asylum, who told the officers that I should have a lawyer with me and that I had a right to ask for asylum. They said, "Yeah, but he has to sign first." They said that if I didn't sign, they would send me back to Albania.

My brother said that he would tell me to sign the document only if it was translated into Albanian. The officers went to the room where I was being held and left Fatos outside where he called in to speak to me. Fatos told me that if the document was written in Albanian to read it carefully and to sign it. He didn't know that the document was in English. I did not sign it. At that point, my brother left to find a hotel and a lawyer and I remained in INS custody.

I spent that night in a locked room with the two other people who seemed to be in the same situation as I was. The next morning, two officers searched me and put me in a van. No one told me where I was being taken. It was the van driver who told me in Italian that I was going to a detention facility. I was taken to the Broadview detention facility where I spent the next three days, after which I was taken to jail. Still, no one ever told me if I had any rights or that I could ask for asylum. I was constantly very afraid that I would be returned to Albania. I learned what would probably happen next, not from any INS official, but from other Albanian INS detainees in the jail. They told me that I would probably have an interview where I could explain why I was afraid to return to Albania. I was kept in that jail for 10 days before I had that interview with INS. The same translator who I had not understood before was again used at my interview with the asylum officer.

Once I was finally able to explain my situation to an Asylum Officer, I was held in INS custody for another 14 days even though my brother was willing and anxious to support me and take me to my hearings. When Fatos spoke to INS Detention officers about this they told him that the problem with my release was that officers at the airport had written that I had an "attitude" problem and refused to sign the documents they had given me. It was only after numerous phone calls made by my brother Fatos and his girlfriend, who is a U.S. citizen, that I was able to be released. Even when the officer told my brother that I would be released, he said that he couldn't tell him when.

I don't understand why the INS treated me the way they did. I don't believe that it is right that they should try to force me to sign a document without translating it first. I was afraid during the entire ordeal with U.S. immigration that I would be sent back to be tortured and killed in Albania.

Even though I am only an Albanian and a refugee in this country, I hope you will believe me. You may not understand how things are in Albania or what happened



to me when I arrived in the United States. In order to get a valid passport in Albania, I would have had to pay more than \$12,000; money I don't have. This is how corrupt the Albanian government can be. I was desperate. I was afraid for my life. I had to flee. I could not have gotten a passport legally even if I had the money because I would have risked being arrested and beaten by government officials for trying to leave the country. There weren't very many options for someone in my position.

Ms. ACER. Many who seek asylum in this country are survivors of torture. Dr. Allen Keller, the director of the Bellevue NYU Program for Survivors of Torture, has prepared written testimony on behalf of his program, as well as Physicians for Human Rights and the National Consortium of Torture Treatment Programs. In that testimony, he details the difficulties that torture survivors face in speaking about their persecution and the difficulties that they face under expedited removal, as well as under the 1-year filing deadline and detention practices. I would like to request that Dr. Keller's statement be made part of the record as well.

Chairman BROWBACK. Without objection.

[The prepared statement of Dr. Keller follows:]

STATEMENT OF ALLEN S. KELLER, M.D., c/o DIVISION OF PRIMARY CARE MEDICINE,  
NEW YORK UNIVERSITY SCHOOL OF MEDICINE, NEW YORK, N.Y.

On behalf of the Bellevue/NYU Program for Survivors of Torture, the National Consortium of Torture Treatment Programs and Physicians for Human Rights, I am submitting this statement in strong support of the Refugee Protection Act. This legislation is essential in addressing the ill effects of current immigration policy, which fundamentally undermines the rights and safety of refugees and asylum seekers coming to this country seeking protection.

I have more than 15 years experience in working with and caring for refugees and asylum seekers. In 1985, I worked as a medical volunteer with the American Refugee Committee in a refugee camp along the Thai-Cambodian border. I am the founder and director of the Bellevue/NYU Program for Survivors of Torture. This program is jointly sponsored by New York University School of Medicine and Bellevue Hospital, the nation's oldest public hospital. The Bellevue/NYU program provides comprehensive medical, psychological care and social services to victims of torture and refugee trauma. Since the program began in 1995, we have cared for nearly 600 men women and children from over 50 different countries.

I am on the Executive Committee of the National Consortium of Torture Treatment Programs. This consortium consists of 23 treatment centers throughout the United States who provide care to survivors of torture and refugee trauma. The oldest torture treatment center in the United States is the Center for Victims of Torture, which was started in 1985 and is located in Minneapolis, Minnesota.

I am on the international advisory board of Physicians for Human Rights (PHR). PHR has a network of health professionals who voluntarily provide medical and psychological evaluations for survivors of torture and other human rights abuses applying for political asylum in the United States. I have participated in this asylum network since 1992 and have conducted nearly 100 evaluations of asylum seekers. I have also participated in a number of PHR investigations including documenting the medical and social consequences of land mines in Cambodia (1993), a high incidence of torture among Tibetan refugees who fled to Dharamsalla India (1997), and patterns of human rights abuses among Kosovar refugees (1999).

Torture is a worldwide health and human rights concern and is documented to occur in more than 90 countries worldwide. Survivors of torture arriving in this country have been persecuted for daring to question ruling powers, for expressing religious beliefs, or simply because of their race or ethnicity. For example, among the patients I have cared for are monks and nuns from Tibet, student leaders from Africa, and ordinary citizens from Bosnia.

Torture can have devastating physical and psychological consequences. I have seen the scars from shackles, the marks from cigarette burns inflicted during interrogation and the wounds and broken bones from severe beatings. I have listened to stories of shame and humiliation, of haunting nightmares, and memories that will not go away. One patient of mine, for example, who was repeatedly submerged in a vat of water while being interrogated, would feel like he was gasping for air whenever he showered or went out in the rain.

As a physician caring for survivors of torture and refugee trauma, I am very concerned about the current immigration policy of expedited removal, which provides for the immediate deportation of individuals who arrive without valid travel documents. Not surprisingly, torture victims often have to flee their countries without such documents since it is the torturers who control them.

I have come to appreciate the extraordinary difficulty asylum seekers and refugees have in recounting their traumatic experiences, even months or years after the events took place. Individuals may have difficulties remembering all of the specific details of their trauma, either because they are trying to block out these disturbing memories, or because they may have been subjected to extreme conditions such as repeated episodes of torture/abuse, imprisonment under poor conditions (including deprivation of sleep, light, and food), which may make it difficult for them to remember all of the details. Individuals may feel very anxious about not being able to remember everything. Additionally, individuals may have suffered neurological impairments such as cognitive deficits or hearing/visual loss from head trauma, or they may experience significant physical symptoms such as musculo-skeletal pain from prior beatings, which impedes on their ability to effectively communicate.

Describing prior disturbing events under any circumstances can evoke symptoms of anxiety including fear, nervousness, palpitations, and dizziness. In fact, one of the hallmarks of Post-Traumatic Stress Disorder, which is a form of anxiety, is a trying to avoid thinking about the traumatic events. Furthermore, individuals may have strong feelings of shame and humiliation in recounting certain events such as sexual assault. Also individuals may have feelings of guilt from having escaped while friends and family did not. Individuals who recount events subsequently often have difficulty sleeping and recurrent nightmares of the events.

For these reasons, many individuals want to avoid discussing their trauma. An asylum seeker may find recounting events to an immigration officer, immediately upon arrival after a long and difficult trip and in a foreign language, often without assistance, to be particularly stressful. A refugee's inability or extreme reluctance to tell of their experience under such circumstances is understandable. Unfortunately, such reluctance can be mistaken for a lack of credibility, especially by someone who does not have experience evaluating survivors of torture. Under current immigration policy, which allows for expedited removal, I am concerned that survivors of torture and other traumatic events are being turned back by INS inspectors at airports or other points of entry.

The current law requiring individuals to apply for asylum within one year of arriving in this country also poses an unfair burden on asylum seekers. Many of the individuals I have evaluated and cared for are not aware of this policy. Others are not able to testify within one year because of the psychological and emotional consequences of their abuse.

For example, one woman I cared for before the 1996 law went into effect was arrested in her country after participating in a pro-democracy demonstration. During the course of her incarceration, she was repeatedly raped by police, who told her they were "going to teach her a lesson for participating in such activities."

She once told me that she wasn't going to apply for asylum because she couldn't bear to have to tell her story. It was only after a trusting, therapeutic relationship with her was established that she was able to reveal the events of her abuse. It would have been psychologically devastating for her to have to recount these events immediately upon her arrival in this country, or even within a year of arrival. In all likelihood, she would have been unable to meet the one-year filing deadline.

Another area of concern with current immigration policy is imprisoning arriving asylum seekers in INS Detention Facilities, including county jails, pending adjudication of their asylum cases. This can often take months or years. Prior to being transferred to detention facilities, asylum seekers are often held at airports for several hours in hand cuffs and leg shackles. Individuals are subsequently kept in these restraints while being transported to detention facilities and at other times as well, including, in some instances, during their asylum hearings. Imprisonment and treating asylum seekers like criminals is retraumatizing and can have harmful effects on their physical and emotional well being. Many of the INS Detention Centers are windowless warehouses with little or no opportunity for detainees even to see the light of day. Imprisonment and such deprivation can result in exacerbating disturbing memories and nightmares of abuse the asylum seekers had suffered previously. Depression can be caused by detention and feelings of isolation, hopelessness and helplessness.

Asylum seekers may experience worsening of physical symptoms, including musculoskeletal pain, because of their restricted activity. Somatic symptoms, such as headaches, stomach aches and palpitations can also result from detention.

For example, Patrick is a young man from an African country. He witnessed his father beaten and killed for being a member of an opposition political party. Patrick was subsequently imprisoned and repeatedly tortured. He later escaped, and eventually made his way to this country. An INS asylum officer interviewed him. Patrick was tired, scared, and neither spoke English well nor adequately understood the process. The asylum officer wrongly concluded—in an interview conducted without an interpreter that Patrick was not from Congo because he could not speak French. The INS ordered that Patrick be deported. An immigration judge—in a “review” in which Patrick was unaided by counsel or an interpreter—failed to correct the asylum officer’s mistake. Subsequently, Patrick was shackled and placed on a plane back to his country. As he was being dragged onto the plane he was crying and saying, “Please, America is a human rights country. Why do you want to deport me? I don’t want to be killed.” Fortunately for Patrick, the plane’s pilot heard his cries and refused to take off.

Shortly after that incident, I examined Patrick in an INS Detention Facility. He had scars from where the shackles had been applied both in his country as well as ours. Subsequently, he remained in detention for more than 3 years. During that period, Patrick suffered from significant periods of depression and anxiety, for which he was inadequately treated. He frequently experienced extreme difficulty sleeping and nightmares of the abuse he had suffered in his country. He also frequently suffered from muscle aches, headaches and palpitations. I believe these symptoms resulted from his imprisonment here.

After more than three years, Patrick was granted asylum and released. He is now working and making productive contributions to our society, though he still experiences nightmares and disturbing memories both of the abuse he suffered in his native country as well as his imprisonment upon arrival in our country.

Another asylum seeker detained by the INS, whom I recently interviewed, had been brutally beaten by authorities in his native country because of his ethnicity. “I came to America to be free,” he told me. “I came here to find peace and to live in peace. I never expected to be put in jail. They don’t call it jail, they call it detention. But it is jail. Being in this jail reminds me a lot about what happened to me in my country. If I were free, I could be doing normal activities and I wouldn’t think so much about what happened. I’m not saying these things would be eliminated, but I would feel much better because I am a free person.”

While in INS Detention, many asylum seekers are held in county jails, again demonstrating that asylum seekers are treated like criminals. Many asylum seekers have never been in prison before. Furthermore, authorities in detention facilities utilize segregation (solitary confinement) or the threat of segregation as a means of behavior control. This is particularly cruel given that many individuals who were imprisoned and tortured in their own countries may have been placed in solitary confinement as part of their abuse.

One detainee I interviewed described this: “I saw an officer searching the bags of one of the detainees. Another detainee asked the guard not to search the man’s bag without him being there. The officer called another officer and they took the detainee who had objected to the search away. He was in segregation for 3 days. I felt very sorry for that man. They showed him no respect. This is not how to treat another human being, and certainly no reason to put him in segregation. It made me sad and worried for myself. Could something like that happen to me?”

Another detainee I interviewed recounted this event. “One day, a guard was doing a bed count in my bunk. One of the other men in the bunk asked him why they were doing that since they had just counted. That was all he said. The guard came back with several other guards, put my bunkmate in handcuffs and took him away. He was there for four days. There are some people in isolation for a month or a month and a half.” They subsequently had a hearing, and realized he hadn’t done anything wrong and released him. But that was after four days. The guards like to threaten people with segregation. People get very scared of segregation because it is a room where you are by yourself, and it is small and very cold.”

Treating individuals who have suffered horrific human rights abuses like criminals is morally reprehensible and can have harmful effects on their health. Furthermore, while in detention, asylum seekers often have difficulty accessing health services, particularly mental health services, which are essential to their recovery from the traumatic events they have suffered.

Among the individuals being detained in these adult facilities are children, who given their youth, may be even more vulnerable to the ill effects of detention including worsening of symptoms of depression and anxiety. Furthermore, it is troubling that the INS is relying on dental x-rays to make determinations of the age of individuals. Such examinations are subject to variability. Even in the case of the most skilled individual performing age determination, the age range specificity is fairly

wide and may be plus or minus 3 years or more for individuals between 16 and 18 years old.

The Bellevue/NYU Program for Survivors of Torture, in collaboration with Physicians for Human Rights, is currently conducting a study evaluating the health status of asylum seekers held in detention by the INS. The results of this study will be available by the early fall.

Current immigration policy poses an unfair and unhealthy burden on survivors of torture and other victims of human rights abuses who come to the United States seeking safety and political asylum. In our zeal to make our borders secure, we cannot—we must not forget who we are. A country of immigrants. A country of refugees.

Ms. ACER. Given the fact that many asylum seekers have fled from often unspeakable torture and persecution, one would think that they would be treated with courtesy and professionalism. While we understand that the pressures on immigration inspectors are substantial and that the time pressures that they are under may affect their ability to treat people as hospitably as we might wish, there is no justification for the abusive treatment that many asylum seekers encounter.

We have been told by asylum seekers who have arrived at airports across the country that they have been handcuffed, shackled, screamed at, sworn at, laughed at, intimidated, kicked, or pushed.

One woman from Congo, who has since been granted asylum, was called a liar, laughed at, and kicked after she became dizzy and collapsed on the floor. Finally, another INS officer interceded and, realizing she was ill, called an ambulance for her.

I would like to ask Fahim Danusmondi, a refugee from Afghanistan, to stand. Fahim was 19 when he arrived, traumatized by the recent killing of his father and separation from his mother and sister. When he told an INS officer that he did not have a passport, the officer jumped at him, pushed him, grabbed his pants and pulled them down, apparently looking for documents. He was chained to a bench for 25 hours. After 5 months in detention, he was granted asylum.

I would like to ask Amin Al-Torfi, a torture survivor from Iraq, to stand. Amin fled to this country after he and his family were persecuted by Saddam Hussein's regime because of their political and religious beliefs. At the airport, he was told that he would have to wait 3 days to get an Arabic interpreter. He was shackled by the leg to a bench for 8 hours, strip-searched, and led like a criminal, handcuffed to another asylum seeker, through the airport in front of other passengers. After 5 months in detention, Ami was granted asylum.

[The prepared statement of Mr. Al-Torfi follows:]

STATEMENT OF AMIN AL-TORFI, REFUGEE FROM IRAQ

Chairman Brownback and other Senators, thank you for the opportunity to submit this statement about my experience as a refugee who sought asylum in this country. I was granted asylum in the United States on December 20, 2000.

My name is Amin Al-Torfi, and I am from Iraq. I fled to this country after I was persecuted by Saddam Hussein's regime for my political opinion, my religious beliefs, and because of the political activities of my family. We are Shi'a Muslims from the South, and my father was an imam. Since the start of the Hussein regime, Shi'a Muslims have been persecuted as a minority group. In 1991, after the Gulf War, there was a major uprising against Saddam Hussein's regime. People hoped to change the government, and several of my family members were involved in an opposition political party. As a result, my brother, uncle and several cousins disappeared. I later learned that my brother and uncle had been killed. At that same

time, the secret police also arrested my father and another brother, and detained them incommunicado for two years.

In 1996, the secret police arrested me at my high school. I was 17 years old. I was detained for three months, interrogated, accused of political activities against the Hussein regime and tortured.

In 1999, my father preached against Saddam Hussein at the mosque. That year, while I was enrolled at college studying electronics, I joined a student organization which was affiliated with an opposition political party. I hoped to change the government so there would be democracy, religious freedom and respect for human rights. In February 1999, there was a government crackdown against opposition activities. During this time, the secret police arrested my father and brother, and searched for me as well. I was forced to go into hiding for several months, fearing for my life. Thankfully, I was able to flee to the U.S. I had always known that the United States was a country that respected human rights and democracy. That's why I came here, to be safe from torture.

I arrived in the U.S. in July 2000. Because it was impossible to obtain valid travel documents from the government that was persecuting me, I had no other choice but to use a false passport to attempt to enter the United States. At JFK airport, I requested asylum. I was sent to the secondary inspection area where I was interviewed in the open in front of 25 to 30 other passengers. At that time, I spoke little English. I requested an Arabic interpreter, but was told that there was none available, and that if I wanted to continue with the interview in Arabic, I would have to wait as long as three days at the airport until an interpreter was available. I was uncomfortable explaining my situation in English because I was afraid the officer would not understand what I was saying, and that I would be sent back to Iraq. It was also very difficult to explain my story in front of many other people. (When I later reviewed the transcript from my airport interview, it was listed that the officer asked me if I preferred to continue with the interview in private, though he had not asked me this question).

After the interview, I was handcuffed by INS officers, and the handcuffs were attached to a chain around my waist. I thought that there was a mistake, that the INS officers did not understand that I was an asylum seeker. I asked why I was being handcuffed, and tried to explain that I was not a criminal. But the officer told me that it was the law. I was taken to another room, where I was shackled by the leg to a bench for eight hours. During this time, I was strip-searched by two guards. Afterwards, I was taken to the Wackenhut Detention Facility in Jamaica, NY. I was lead, handcuffed to another asylum seeker, through the airport where other passengers could see me.

I was detained at the Wackenhut Detention Facility for about five months. Before I arrived, I expected it would be like a refugee camp where I would be free to come and go while applying for asylum. Instead, it was a prison. I couldn't believe it. I thought my eyes were seeing wrong. No one explained to me why I was there, or how long I was going to be there.

When I arrived the officers took all my clothes and gave me orange prison clothing. They also took all of my personal belongings. I was fingerprinted and photographed. Then they sent me to my dorm.

My dorm held up to forty other asylum seekers. There were five showers and four toilets, all of which were out in the open, and close to our beds. There was no privacy. There was a television, four phones, and eight tables where we ate all of our meals. There were no windows. We remained in this room for twenty-three hours a day. We were allowed out for one hour each day to go to "indoor recreation," a windowless room where we could play basketball or use an exercise machine. There was nothing to do, and many of us suffered from boredom and depression. I spent my time thinking about my future, how long I was going to be in detention, how I could be released. I felt at that time, my life had stopped, that I was living like a plant: I couldn't move. It was very sad, and silent, and hopeless. I felt very isolated. My only break from this routine came from 11 p.m. to 2 a.m. five days per week when, for \$1.00 per day, I and other detainees performed sanitation duty in certain areas of the facility.

Most days, the food was served in small portions, so that I was often hungry. Over the course of my detention, I lost ten pounds.

The asylum seekers at Wackenhut were treated like criminals. Our beds were searched three times each week, and guards patted us down every time we exited or entered the dorm for visits with our attorneys, to see the facility doctor or for our hour of recreation.

Luckily, the Lawyers Committee for Human rights took my case, and found pro bono attorneys for me from the firm of Strook & Strook & Lavan. Because of their efforts, I was granted asylum in December 2000, after about five months in deten-

tion. I now live in New York City and work to help other refugees at the Hebrew Immigrant Aid Society. I would like to continue my studies in electronics and to work side by side with other Americans for U.S. improvement.

I want to thank all of the Senators for giving me the opportunity to share my experience as a refugee in the United States. When I was detained by INS, I felt sadness and pain. Asylum seekers who flee torture and death in their countries should not be treated as I was. I hope that my testimony helps you to improve the system so that future refugees are not detained and are treated fairly.

Ms. ACER. Also with us today is a man who we will call "Michael Antoun" in order to protect his family members at home. Mr. Antoun is a Coptic Christian who fled religious persecution in Egypt. He was so intimidated by his treatment at the airport that he was afraid to request asylum and was actually scheduled to be deported to his country of persecution, until he luckily spoke with his sister, who reminded him of the dangers he would face. After 5 months in detention, he was granted asylum. Please note that Mr. Antoun's name has been supplied in confidence to the subcommittee, and we would like to request that Mr. Antoun's statement, as well as those of the others mentioned, be submitted into the record.

Chairman BROWNBACK. Without objection.

[The prepared statement of Mr. Antoun was not available at the time of printing.]

Ms. ACER. Even the next stage of the expedited removal process, the so-called credible fear process, which does offer some additional protections, lacks essential procedural safeguards. The only oversight of these determinations is a highly expedited review by an immigration judge, which must take place within 7 days, leaving little time for a refugee to find a lawyer or to gather additional evidence, and no other avenue of appeal. Patrick Mkhizi will testify later today about the INS' attempt to deport him after a mistaken determination that he did not meet that standard.

I would now like to ask a woman whom we will call "Aracelis Gonzalez," in order to protect her identity and that of her children, to stand. She fled here after suffering brutal abuse and domestic violence, but she was ordered deported under expedited removal last year because the INS officers who interviewed her and the judge who conducted a very expedited review believed that she would not be able to make a case for asylum. She was spared deportation following the extraordinary efforts of Senator Leahy and several Members of Congress who wrote to the INS Commissioner expressing concern about the decision to deport her.

[The prepared statement of Ms. "Gonzalez" follows:]

STATEMENT OF "ARACELIS GONZALEZ", ASYLUM SEEKER FROM THE DOMINICAN  
REPUBLIC

Chairman Brownback and other Senators, thank you for the opportunity to submit this statement about the experience of refugees who seek asylum in this country. I am a refugee and an applicant for asylum in the U.S.

I appreciate your cooperation in keeping my identity confidential, to protect my privacy and the safety of my children and my mother back home.

I fled to the United States in last summer to escape from brutal domestic violence. For years, the man I lived with as my husband beat me, raped me, and threatened me with death. I could find no protection against him in my country. When I arrived in New York, I was sent to the Wackenhut Detention Center in Queens. Difficult and strange as detention was, at least I knew that I was safe. For the first time in years, I could sleep through the night in peace.

But when I got the results of my credible fear interview, I found I had been ordered deported under expedited removal. The asylum officers who interviewed me said they found me credible and said that the harm I had suffered rose to the level of persecution. But they did not think I could claim asylum as a victim of domestic violence. A "review" was held within a few days, and the immigration judge did not change the INS decision. I was told I was being sent back to the Dominican Republic. I was terrified that my husband would kill me if I were sent back.

I was saved thanks to the intervention of Senator Leahy and several members of Congress, who wrote to the INS and expressed concern about the decision to deport me without giving me a full hearing. After several months in detention, I was paroled in December 2000. I am now living with family while I wait for a hearing on my asylum case.

I would like to thank those who helped save me from expedited deportation and to thank all of you, Senators, for giving me the opportunity to tell you about my experience. I hope you will improve the system so that other refugees who come here in fear for their lives are not sent back without a full hearing before an immigration judge.

Ms. ACER. Although we should all be deeply disturbed by the manner in which asylum seekers are being treated under these provisions of law, we should not be surprised. Expedited removal is a system designed to fail, and to fail those we most want to protect. In 1996, when it was considered whether to adopt this system, the Senate rejected it as unfair, unnecessary, and a betrayal of American values. We agree.

So, too, do others. The bipartisan Commission on Immigration Reform and the Advisory Committee on Religious Freedom Abroad to the Secretary of State have both recommended that expedited removal be repealed. The decision to deport an asylum seeker should only be made by a trained immigration judge in a fair proceeding that affords the person fundamental due process protections. Expedited removal should be used, if at all, only in extraordinary migration situations, and additional safeguards should be included in those situations where it is authorized.

Under expedited removal, asylum seekers are subject to mandatory detention, and although they are eligible for parole once they successfully pass through that credible fear screening process, the parole decision is entrusted to the unreviewable discretion of local INS officials, who often administer this power in an arbitrary manner. There is no appeal of their decisions to an independent authority, not even to an immigration judge. Deserving refugees are denied parole even when they are deemed credible and have verifiable community ties.

We will hear in a minute from a woman from Afghanistan who will explain how she was denied parole even though she has a U.S. citizen sister. Another client of the Lawyers Committee, a rape survivor who had been studying to become a nun in Congo, was denied parole even though a Catholic convent in New Jersey had agreed to house and support her.

I would like next to ask Jean-Pierre to stand. The 7-month detention of this refugee, who had lost part of his leg as a result of the torture he had suffered, underscores the cruelty of our detention system. Jean-Pierre was a student activist in his home country and was arrested and repeatedly tortured there. When he fled for his life to the U.S., he was greeted with handcuffs at the airport. When he asked if it was a crime to ask for asylum, the INS officers told him "this is the law." He was—

Chairman BROWBACK. What is his home country?

Ms. ACER. Cameroon. He was just granted asylum last week and was finally released after 7 months in detention, and he is here with us today. I would like to request that his statement as well be introduced into the record.

Chairman BROWNBACK. Without objection.

[The prepared statement of Mr. Kandem follows:]

STATEMENT OF JEAN-PIERRE KANDEM, REFUGEE FROM CAMEROON

Chairman Brownback and other Senators, thank you for the opportunity to submit this statement about the experience of refugees who seek asylum in this country. I am a refugee and have been granted asylum in the U.S.

I was an activist for students' rights in Cameroon and was arrested, jailed, and tortured for criticizing my government. As a result of my torture I lost one of my legs. I fled the country after I narrowly escaped being arrested again for my political activities.

When I arrived at J.F.K. Airport I explained my situation to the INS inspectors and explained that I was seeking asylum. After they took my statement, they put me in handcuffs. I was very surprised by this. I remember asking one of the officers whether it was a crime to ask for asylum. He replied: "This is the law." After that they brought me to a detention center in New Jersey. I was even more surprised to be taken to a place where they took away my clothes and gave me the uniform of a prisoner.

The concept of "detention" was new to me, because in Cameroon I had only experienced prison. I was not sure what to make of my status as an INS detainee. But then one day as I was watching television in the detention center, I saw a report on the news about a crime that had been committed. The criminal appeared on television, and he was wearing a uniform just like mine.

I saw little difference between the deprivation of liberty we experienced in INS detention and prison. Of course it was very different from the experience of prison in my country. In Cameroon, prison means torture and terrible conditions that affect one so much physically that one does not have time to consider one's psychological suffering. There were problems with the conditions of detention in the U.S. as well—the routines were demeaning, I was unable to get exercise adapted to my condition, I suffered from insomnia and constant headaches under the harsh electric lighting, and there were basically no educational opportunities and few distractions from the stress and uncertainty of our condition. But the moral torment was the worst aspect of the experience. During my seven months in detention I wondered often about the long-term consequences of existing under that level of stress for such a length of time. I worry about this still. My help and consolation in detention was my religious life, and the support I received from a Catholic priest who visited me and other detainees regularly.

I think that if I had in fact committed a crime, I would have found detention easier to bear. But I knew that asking for asylum was a right under international law. In my country, when I used to think about international law and human rights, the United States was the first country I associated with those ideals. What I experienced when I arrived here did not correspond to the vision that those outside of the United States have of this country.

Two weeks ago I was granted asylum and released from detention. Now that I am free I feel full of hope. I am looking forward to beginning a new life in this country and resuming my interrupted education.

I would like to thank you, Senators, for giving me the opportunity to describe my experience. I hope you will improve the system so that other refugees who arrive in this country seeking asylum in the future do not have to experience detention.

Ms. ACER. Decisions to detain asylum seekers should not be entrusted to the discretion of local INS officials. Detention and parole decisions should be made pursuant to legally binding regulations, and they should be automatically and promptly referred for review to judicial or other competent and independent authority. In addition, the use of alternatives to detention should be maximized.

I am going to talk for a few minutes very briefly about the asylum filing deadline. Since that deadline took effect, more than 10,000 asylum seekers have had their claims rejected by the INS. The Lawyers Committee has heard of many bona fide asylum seek-



ers whose claims have been rejected since that deadline became effective.

For instance, the asylum claim of a torture survivor and student activist from Burma was denied by an immigration court in California based on the deadline, even though the judge believed he was credible and otherwise eligible. He did not apply for asylum earlier because he hoped that the situation in his country would improve so that he could return to his family.

Earlier this week, a Virginia immigration judge denied asylum to a woman from Afghanistan based on the asylum filing deadline, even though he concluded that her fear of being subject to an honor killing in Afghanistan was credible.

I would like to ask Anna Smirnova, a refugee from Russia, to stand. The INS is currently contesting her grant of asylum on the ground that her claim is barred by the filing deadline. As she describes in her written statement, she missed the 1-year deadline due to the burdens of pregnancy, a physical condition that should certainly have satisfied one of the exceptions to the deadline, and the results of the burden of caring for a new infant as a single mother. And, like many refugees, she was unaware of the deadline.

[The prepared statement of Ms. Smirnova was not available at the time of printing.]

Ms. ACER. Even refugees who do not file within 1 year have had their cases rejected by the INS because it claims asylum seekers do not have enough evidence to prove they have complied. For instance, the claim of Makani Jalloh, a torture survivor and mother from Sierra Leone, who applied shortly after her arrival in this country, was rejected, placing her and her two children into deportation proceedings. With the help of pro bono lawyers, Makani and her children eventually won asylum.

[The prepared statement of Ms. Jalloh follows:]

STATEMENT OF MAKANI JALLOH, REFUGEE FROM SIERRA LEONE

Chairman Brownback and other Senators, thank you for the opportunity to submit this statement about the experience of refugees who seek asylum in this country. I am a refugee and I have been granted asylum in the U.S.

My husband and eldest son were murdered by the rebel forces of the Armed Forces Revolutionary Council and the Revolutionary United Front during an attack in December of 1998. After brutally attacking and beating me and making further threats towards the rest of the family, the rebels left our home. After the rebels murdered my husband and my son, I fled with my three children. Fearing for my safety and the safety of my children because of the rebels' attacks, I decided the only way that I could guarantee my family's security was to flee the country.

I arrived in New York in July 1999. After I explained my past terror, a friend suggested that I should apply for asylum and he helped me draft my initial asylum application that I submitted in August 1999, nearly one month after my arrival. It is my understanding that my initial asylum request was denied because the government does not believe that I applied for asylum within one year of arriving. However, this is not true. I applied for asylum within six weeks of arriving in the United States.

The INS placed me and my two children into deportation proceedings. I then learned about the Lawyers Committee for Human Rights, which found pro bono attorneys to take on my case. With the help of my pro bono lawyers, I and my children eventually won asylum before an immigration judge.

Thank you, Senators, for giving me the chance to tell you what has happened to me. I hope that you can change the law so that refugees do not have a one year filing deadline when they apply for asylum.

Ms. ACER. While a 1-year filing deadline may not seem unreasonable at first, a closer examination of the reality that faces many refugees when they arrive in this country makes clear that a deadline is indeed very difficult for many deserving refugees to meet. They may arrive here unable to speak English, unfamiliar with our legal system, unable to afford food and housing, let alone legal counsel, and often suffering from the effects of torture and persecution. The asylum filing deadline should be repealed so the deserving refugees should not be denied access to the system.

I want to talk for just 3 minutes on the cap on asylee adjustments. When refugees are granted asylum, they are entitled under our law to apply for legal permanent resident status 1 year after their grant of asylum. But the annual cap on the number of asylees who may adjust means that refugees now have to wait several years to receive their legal permanent resident status. The law firm of Akin, Gump, Strauss, Hauer and Feld has prepared an excellent background memorandum on this issue, and I would ask that the paper be submitted into the record.

Chairman BROWNBACK. Without objection.  
[The memorandum follows:]

STATEMENT OF AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P., ATTORNEYS AT LAW,  
A REGISTERED LIMITED LIABILITY PARTNERSHIP, INCLUDING PROFESSIONAL COR-  
PORATIONS

#### MEMORANDUM

**TO:** Members of the United States Senate Subcommittee on Immigration

**FROM:** Reed L. Russell

**DATE:** April 25, 2001

**RE:** Elimination of the Cap on Adjustment of Status for Asylees Under Section 209(b) of the Immigration and Nationality Act

This memorandum advocates changing an arbitrary and ill-considered immigration statute, section 209(b) of the Immigration and Nationality Act ("INA"). Because of this statute, over 50,000 *aliens lawfully admitted to the United States* under grants of asylum are currently waiting to have their applications for lawful permanent residence status processed and, therefore, effectively being denied the opportunity to become active and productive members of our society.

Under section 209(a) of the INA, an individual lawfully admitted to the United States as a refugee or through a grant of asylum must remain in the country for one year before he or she may apply to adjust his or her status to that of a lawful permanent resident. 8 U.S.C. § 1159(a). However, there is an additional cap under section 209(b) that limits to 10,000 the number of asylees that may adjust status each year to become permanent residents, *regardless of the number granted asylum*. 8 U.S.C. § 1159(b).

The cap had no practical impact before 1995, because the number of asylees never reached 10,000.<sup>1</sup> However, in 1995, the INS imposed significant reforms in the asylum process to counteract rampant fraud in applications and to streamline procedures. *See* United States DOJ, INS, Asylum Reform: Five Years Later (Feb. 1, 2000) ("Asylum Reform"). As a result, significantly fewer applications are filed each year but the number of grants now exceeds 10,000 annually. *See id.* Because that number exceeds the cap imposed by section 209(b), the statute has created a significant backlog in the processing of applications for permanent residence. Estimates from the INS as of March 31, 2001 place the backlog at 57,680 persons. Thus, given the 10,000 person per year cap, someone granted asylum today will not be able to adjust his or her status to that of a permanent resident for at least *six years*.

<sup>1</sup>The cap was raised from 5,000 to 10,000 in 1990. *See* Pub. L. 101-649, § 104(a)(1) (1990).

These individuals already have passed through a rigorous process that allows for grants of asylum only to those persons who come from countries with truly intolerable human rights conditions and who pass a criminal background investigation. See 8 C.F.R. § 213. However, because of the delay in obtaining permanent residency, these lawfully admitted aliens often face significant difficulty obtaining employment. Moreover, they suffer the continued anxiety of not knowing whether they will be allowed to remain in the United States based on their asylum status.<sup>2</sup> Finally, this delay also postpones these individuals' integration into society as citizens, because they cannot apply for citizenship until five years after obtaining lawful permanent residency status.

This statute is irrational and unsupportable for at least three reasons. First, although it properly allows the processing of refugees based on the rational criteria of the number admitted each year, the statute inexplicably denies the same common-sense treatment to asylees by imposition of the 10,000-person cap. This is so even though the basic standard for admission is the same for refugees and asylees: an inability or unwillingness to return to the home country due to "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42). Thus, the system for admitting refugees encourages their integration by allowing a refugee to obtain permanent residency within two years of arrival,<sup>3</sup> while it delays that process for six years for individuals who receive grants of asylum, even though the basis for granting them admission to the United States could very well be identical. This situation is nonsensical at best and punitive at worst and it should be eliminated.

The second reason the cap should be eliminated is that it creates an unnecessary administrative backlog and delays the orderly processing of applications for permanent residence. Individuals granted asylum have already been screened through a rigorous process where they must submit testimonial and/or documentary evidence supporting their claims and respond to questions by a trained asylum officer in an interview that often lasts at least one hour and in some cases two or more hours. Indeed, in some cases asylees must prove the *bona fides* of their claims in immigration court. Moreover, applicants must submit to a criminal background investigation. As evidence of the rigorous standards applied, a February 2000 report shows that even after reforming the system to eliminate most fraudulent claims, the INS still grants less than 40 percent of applications for asylum. See *Asylum Reform*, *supra*. Finally, the arbitrary cap creates an unnecessary strain on INS's scarce resources, which could be applied to enforcement or other immigration needs. Instead, these resources are allocated to manage a backlog of thousands of asylees that otherwise would be moving through the system in an orderly fashion. Individuals granted asylum already have established themselves as credible and free of a criminal background. Forcing them to wait beyond the statutory one-year probationary period to adjust status serves no apparent purpose and, in fact, creates an unnecessary strain on public resources. Moreover, we are not the first to reach this conclusion.

In 1997, the United States Commission on Immigration Reform, a bipartisan commission of policy makers and immigration experts, issued a comprehensive report on recommended changes in the immigration law. See *United States Commission on Immigration Reform, U.S. Refugee Policy: Taking Leadership* (June 1997) ("Taking Leadership").<sup>4</sup> Among those recommendations was an elimination of the 10,000-person cap imposed by section 209(b). See *id.* at 35. Indeed, the Commission also advocated elimination of the statutory one-year waiting period in favor of granting per-

<sup>2</sup> Asylum status can be terminated in some circumstances even after it has been formally granted. See 8 U.S.C. § 1158(c)(2)(A).

<sup>3</sup> The asylee must wait one year before applying for the application and then the application process takes approximately one year once it begins.

<sup>4</sup> The Commission was formed in 1990 under the Immigration Act of 1990. Its members have included the following: Archbishop of Boston Bernard Cardinal Law (first Chairman); Barbara Jordan (second Chairwoman); Shirley Mount Husfstedler (third Chairwoman), former Ninth Circuit Judge and Secretary of Department of Education; Professor Lawrence Fuchs, former Executive Director of the Select Commission; Michael Teitelbaum of the Alfred P. Sloan Foundation, Richard Estrada, columnist for the Dallas Morning News; Harold Ezell, former INS Regional Commissioner; Robert Hill, immigration attorney; Warren Leiden, Executive Director of the American Immigration Lawyers Association; Nelson Merced, Massachusetts State Legislator, and Bruce Morrison, former Chairman of the House Subcommittee on Immigration, Refugees, and International Law.

manent resident status to all individuals when they received a grant of asylum. *See id.* at 34.<sup>5</sup>

With respect to the elimination of the 10,000-person cap, the Commission provided two bases for its recommendation: (i) the inevitable backlog that would occur because of the excess of asylum grants over 10,000 per year and (ii) the rigorous asylum process. *See id.* at 35.

The Commission is seriously concerned that under the current system [the excess of asylum grants over 10,000] will result in an unnecessary backlog of adjustment applications. We strongly reiterate our belief, stressed in our 1995 report on legal immigration, that the federal government should not manage immigration policy by backlogs and waiting lists. Given the recent reforms in the asylum system and the rigorous standard applied in granting asylum, numerical ceilings on adjustment are neither necessary nor good public policy.

*Id.*

The third reason for eliminating the cap, one that is related to the second, is that the statute is adverse to a basic common-sense principle: that the United States government should seek to integrate lawfully admitted aliens into the society as soon as possible so that they may participate and contribute to their full potential. As the Commission stated in advocating removal of both waiting periods: "Elimination of the delay in adjustment would greatly reduce continued uncertainty and instability in the lives of asylees even after their initial approval and would enable asylees and their families to integrate into the U.S. in a timely fashion." Taking Leadership at 35.

Individuals granted asylum receive a work authorization card allowing them to obtain employment. However, the INS requires that the work-authorization card be renewed annually until the asylees become lawful permanent residents.<sup>6</sup> As a result, many employers are reluctant to hire these individuals because of the uncertainty surrounding their residency status. Thus, the combination of the one-year statutory waiting period and the multi-year administrative backlog makes it more difficult for asylees to gain long-term employment and become productive members of society. This result is counter to the common-sense principle that the United States government should be trying to make it easier, not more difficult, for willing and able individuals to be fully employed.

Furthermore, the delay operates in contravention to the well-settled policy of integrating new immigrants into society as productive citizens. A lawful permanent resident has to wait five years before becoming eligible to apply for United States citizenship. This five-year period cannot begin for an asylee until he or she obtains lawful permanent residency status. Thus, by delaying the time for asylees to become lawful permanent residents, the statute also delays the time for them to become naturalized citizens and, thus, prevents them from fully integrating into American society.

Adding to the dilemma, many asylees arrive with families to support. Yet, because of the waiting period, these individuals are forced to support their families through transient and most likely menial jobs for several years. The effect is to impose an unnecessary hardship on individuals and families who are in the United States only because they have suffered from gross injustices in their home country.

In short, section 209(b) (i) irrationally and inexplicably treats one class of lawfully admitted aliens worse than others similarly situated, (ii) causes unnecessary administrative delays, and (iii) is counterproductive and contrary to the interests of the United States. We propose several options to remedy this glaring inequity:

- 1) Adopt the recommendation of the United States Commission on Immigration Reform and grant permanent resident status to asylees, eliminating both the one year statutory waiting period for refugees and asylees as well as the 10,000 person cap for asylees; or
- 2) Amend section 209 to delete section 209(b), thus eliminating only the 10,000-person cap on asylees; or
- 3) Enact special legislation providing for an elimination of the waiting period for all those individuals who have received grants of asylum and been present in the United States for at least one year as of the date the legislation.

Granting more timely permanent resident status to asylees would not increase the number of lawful immigrants in the United States or impose additional burdens on

<sup>5</sup> One commission member advocated a two-year conditional permanent resident status. Taking Leadership at 34n.\* However, no one attempted to defend the current system.

<sup>6</sup> Although the regulation provides for a work-authorization card, we are aware of no language in the regulation or the statute providing a basis for the INS's requirement that the card be renewed annually. See 8 C.F.R. § 208.7 (work authorization).

scarce public resources. Asylees already are lawfully in the country and eligible to remain for an indefinite period of time. Rather, granting asylees permanent resident status would have the salutary effect of allowing them to seek long-term employment and assimilate into their communities more quickly, thereby hastening their integration into society as full participating and contributing members. We hope that you will see the obvious logic of our position and lend your support to remedy this situation.

Ms. ACER. The impact of this delay on refugees can be significant. It can undermine their ability to integrate into our society, to seek employment and advancement, to apply for citizenship, to travel to visit family members securely, and in some cases to be united with family members. One client of the Lawyers Committee, a refugee from Ethiopia, married after she was granted asylum. The delay of several years in receiving her adjustment needlessly delayed her ability to petition for her husband to come to the U.S. and join her. Because of the marriage, the U.S. has refused to issue the husband a visa to come to visit his wife and now young child. The couple has been separated for 4 years. Their son, now 3 years old, sees his father once a year during a brief visit. My client, who spent her childhood separated from her family because of the cruelty of the Mengistu regime, is very patient. But no policy interest is served by this unnecessary delay.

Thank you very much. We really appreciate your hearing us today.

[The prepared statement of Ms. Acer follows:]

STATEMENT OF ELEANOR ACER, SENIOR COORDINATOR, ASYLUM PROGRAM, LAWYERS COMMITTEE FOR HUMAN RIGHTS

#### EXECUTIVE SUMMARY

Since the refugee Pilgrims first landed almost 400 years ago, the United States has served as a refuge for those fleeing persecution and oppression. After World War II, when America and so many other nations failed to protect many refugees from Nazi persecution, the United States led the effort to establish universally recognized human rights, including "the right to seek and enjoy in other countries asylum from persecution."

Several provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 have severely undermined the ability of genuine refugees to seek asylum here and have unduly restricted their access to protection. These provisions include expedited removal and the one-year filing deadline on asylum claims. The mandatory detention provision that accompanies expedited removal has reinforced the practice of detaining asylum seekers, resulting in the jailing of thousands of genuine asylum seekers and survivors of torture.

Under the 1996 law's "expedited removal" system, a uniformed enforcement officer of the Immigration and Naturalization Service (INS)—as opposed to a specially trained immigration judge—can turn a refugee back at the airport or border crossing without due process and without meaningful review. The proceedings are conducted so swiftly that mistakes are inevitable, and those who are removed are barred from re-entering the United States for five years. Furthermore, secondary inspection—the stage of the process during which erroneous decisions are most likely to be made—is conducted behind closed doors, with virtually no meaningful scrutiny by independent observers.

While the INS has taken some steps to attempt to reduce the possibility that genuine asylum seekers will not be deported under expedited removal, those efforts have not succeeded in preventing the mistaken deportations and other abuses that have been documented by academics, the press and non-governmental organizations.

Expedited removal is a system that is, by its very design, destined to fail. It lacks the very procedural safeguards that are necessary to ensure that legitimate asylum seekers are not mistakenly returned to face persecution. We respectfully urge that steps be taken to ensure that the decision to deport an asylum seeker or other individual who arrives without proper documents will be made only by a trained immigration judge in a fair proceeding that affords the person fundamental due process

protections: prior notice of the consequences of the proceedings; when the person is not fluent in English, a qualified translator who is fluent in the person's language of fluency and is bound to maintain confidentiality; the right to be represented by legal counsel; and the opportunity to have decisions reviewed on appeal.

The use of expedited removal should be restricted to extraordinary migration situations. Additional safeguards should be included in those situations where expedited removal is authorized. These safeguards, which should include immigration judge review of all removal orders, will reduce the risk of mistaken deportations.

We also urge that decisions to detain asylum seekers should no longer be entrusted to the discretion of local INS officials. Initial detention and parole decision should be made pursuant to legally binding regulations, and should be automatically and promptly referred for review to a judicial or other competent and independent authority. In those cases in which some form of detention or supervision is deemed necessary, and where there is no risk to the community, the use of alternatives to detention should be maximized, including for instance supervised release programs or release to community, religious or nongovernmental organizations trained in refugee resettlement.

Congress should eliminate the one-year filing deadline. At the very least the filing deadline should be eliminated in affirmative asylum applications, and the fact that an application has been filed over one year after arrival should be considered a negative discretionary factor, subject to a good-cause exception, for asylum applications filed defensively before immigration judges. To the extent any filing deadline is retained, federal court review of filing deadline denials should be restored. If the deadline is eliminated or limited, those whose cases have been rejected based on the prior filing deadline provision should be allowed to reopen their cases.

Finally, the cap on asylee adjustments should be lifted. Those who are granted asylum are entitled, under our law, to apply for permanent residency one year after their grant of asylum. These are deserving individuals, many of whom have suffered unspeakable harms. Their welcome into our society should not be delayed for years by the limit on the number on asylees that can become legal permanent residents.

#### INTRODUCTION

Chairman Brownback, Senator Leahy, and members of the Subcommittee, it is an honor to be here today to offer our views about U.S. asylum policy. You and other distinguished members of this Subcommittee have shown tremendous leadership in protecting the rights of asylum seekers. We appreciate your focusing attention today on these important issues.

My name is Eleanor Acer, and I direct the Asylum Program at the Lawyers Committee for Human Rights. The Lawyers Committee is a non-profit, non-governmental organization that has worked since 1978 to protect and promote fundamental human rights and to ensure protection of the rights of refugees. We ground our refugee protection work in the international standards of the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees and other international human rights instruments, and advocate adherence to these standards in U.S. law and policy.

The Lawyers Committee vigorously opposed certain provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996—among them the expedited removal provisions and the asylum filing deadline—because we believed those provisions would severely impede the right of refugees to seek and enjoy asylum and would result in the denial of protection to victims of torture and persecution. We have documented the impact of expedited removal on asylum seekers in two reports—*Slamming The Golden Door: A Year of Expedited Removal, issued in March 1998* and *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, issued in October 2000.

The Lawyers Committee has also long-advocated for the rights of detained asylum seekers. We have urged effective and consistent implementation of parole guidelines for asylum seekers. We have issued several reports addressing the implementation by the INS of its parole guidelines for asylum seekers, including our 1999 report, *REFUGEES BEHIND BARS; THE IMPRISONMENT OF ASYLUM SEEKERS IN THE WAKE OF THE 1996 IMMIGRATION ACT*, and have formally petitioned the INS to codify those guidelines in regulations. We have also advocated for alternatives to detention and the imposition of a check on the INS's authority to detain asylum seekers.

In addition to our work on asylum policy, the Lawyers Committee operates one of the largest and most successful *pro bono* asylum representation programs in the country. With the assistance of volunteer attorneys, the Lawyers Committee provides legal representation, without charge, to hundreds of indigent refugees each year. Our program's clients include numerous—asylum seekers who have been sub-

ject to the expedited removal procedures, who have been detained at various detention facilities and county jails, and who have been affected by the asylum filing deadline. Some of those clients are here today and will be testifying or submitting testimony to you.

#### I. U.S. LEADERSHIP IN PROTECTING REFUGEES AND INTERNATIONAL STANDARDS.

From the earliest days of the Republic, the United States has provided safe haven for people fleeing persecution. The principle of asylum is a deeply rooted American value, powerfully expressed since the founding of the Republic. In fact, it was President George Washington who set the precedent that the United States would not return people to persecution. This nation has long recognized its special responsibility to the persecuted. And the immortal words of Emma Lazarus, enshrined beneath the Statue of Liberty, reaffirm this nation's commitment to welcome those who flee to our shores "yearning to breathe free."

The U.S. commitment to the protection of refugees was reinforced by the lessons of World War II. Modern refugee protection principles were incorporated into international treaties following the Nazi persecution of Jews and other groups during World War II. The U.S. led the effort to establish the United Nations and to articulate universally recognized human rights. In 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights, which affirmed that "[e]veryone has the right to seek and enjoy in other countries asylum from persecution."

Current U.S. asylum law derives from two treaties, the 1951 United Nations Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees. The nonrefoulement provision of the Convention—binding on the U.S. as a result of its 1968 ratification of the 1967 Protocol—prohibits a signatory state from returning a refugee to any country in which the refugee's "life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion." Article 34 of the Convention requires that signatory states "shall as far as possible facilitate the assimilation and naturalization of refugees." The asylum and non-refoulement obligations were made U.S. law by the Refugee Act of 1980. The international community and the United States have promised that never again will those who face persecution be denied refuge.

#### II. EXPEDITED REMOVAL

The expedited removal provisions of the 1996 law empower INS inspectors—whose primary responsibility and training is in border enforcement rather than adjudication—to order the summary deportation of individuals arriving from abroad without valid documents. Although individuals who fear return to their home countries are not supposed to be deported, mistakes have been made. Indeed, mistakes are inevitable given the summary nature of the procedures.

At the first stage of the expedited procedure, called "secondary inspection," an individual can be ordered deported by an immigration inspector, without any review by a judge or independent authority. Although anyone who expresses a fear of persecution, or an intention to apply for asylum, should, under law, be referred to an asylum officer for a "credible fear" interview, no outside authority reviews these decisions. Immigration inspectors are, in effect, given the power to act as judges.

Expedited removal is a system that is, by its very design, destined to fail because it lacks essential safeguards: there is no notice prior to secondary inspection of the consequences of the process (i.e., immediate deportation); there is no guarantee of a qualified interpreter to explain the process to an alien who is not fluent in English; there is no right to be represented by legal counsel; decisions are made not by independent adjudicators but by border enforcement personnel; and there is no right to have these decisions reviewed on appeal. Compounding these deficiencies is the speed of the process; expedited removal moves so quickly that mistakes are inevitable.

A process that lacks crucial safeguards will not be able to avoid mistakes. For instance, Rita Joy Martins-Beckely, a Sudanese Christian woman who fled from religious and political persecution in Sudan was ordered deported under expedited removal by officers at the Texas border even though she told the officers that she was afraid to return to Sudan. A Kosovar student was turned away from a California airport in January 1999, and another Kosovar was deported from Newark Airport in 1998 even though he indicated that he was worried about being returned to his home country.

Even U.S. citizens are not protected from these summary procedures. Just last year, Sharon McKnight, a disabled woman from Long Island, was detained at JFK airport, handcuffed and shackled overnight, and then deported to Jamaica under ex-

pedited removal—even though her mother gave immigration officials proof of Sharon's birth in the U.S.

The danger of mistaken determinations, inherent in any system without checks, is compounded by the lack of due process and improprieties that plague the secondary inspection stage of expedited removal. The notorious practices of the INS at the Portland, Oregon airport, including the strip-searching and jailing of a Chinese businesswoman, earned the city the nickname of "Deportland."

Given the dire consequences of a mistaken decision to send someone back to a place where they would face persecution, and the fact that many genuine refugees do not speak English, one would think that the procedures would require the use of qualified interpreters who are fluent in an individual's language of fluency and who are obligated to maintain confidentiality. Instead, refugees have reported that their requests for translators have been denied and that they did not understand that nature of the process they were subject to. For instance:

Mekabou Fofana, a Liberian refugee who is here with us today, arrived at JFK airport on July 11, 1999, nine days before his 16<sup>th</sup> birthday. He could not understand what the officers were saying to him, and although he said "speak Mandingo," they did not provide him with a Mandingo interpreter. When the officers directed him to sign the papers they put before him, he refused because he did not know what the papers said. The officers twisted his arm and attempted to forcibly fingerprint him. Mekabou fell to the floor, hit his head, and bled so profusely that he was taken to the hospital for stitches. After a year and a half in detention, Mekabou was granted asylum and is now attending high school in New York City.

Nusret Curumi, who is here with us today, fled from Albania after he was arrested and detained for making statements critical of his government. He arrived at O'Hare International Airport in Chicago in August 2000. After he told an INS officer that the passport he was traveling on was not his, he was dragged by his clothing to another room where he was searched and questioned. He was not provided with an Albanian interpreter, and was directed to sign documents even though he could not understand what they said. He was not told about his right to have a credible fear interview.

Given the fact that many asylum seekers have fled from unspeakable torture and persecution, one would think that they would be treated with courtesy and professionalism. While we understand that the pressures on immigration inspectors are substantial, and that the time pressures they are under may affect their ability to treat people as hospitably as we might ideally wish, there is no justification for the abusive treatment many asylum seekers encounter when they arrive here. Asylum seekers at airports across the country are often handcuffed and shackled like criminals. We have spoken to asylum seekers who have been screamed at, sworn at, laughed at by INS officers charged to ensure their protection. Some have been intimidated, kicked and pushed.

Let me tell you the story of one refugee woman who fled to the U.S. from the Democratic Republic of Congo (the former Zaire) and arrived at JFK airport in November. When she arrived, she had not eaten in days and was suffering from a severe tooth infection. Despite her need for an interpreter, the INS officers did not provide an interpreter that she could understand. When she started to cry, several officers accused her of lying. When she became dizzy and collapsed on to the floor, an INS officer kicked her, ordering her to get up. Later, another officer kicked her and accused her of being a liar, while other officers laughed at her. Finally, another INS officer interceded—realizing that she was ill, he called an ambulance for her. After six months in detention, she was finally granted asylum.

Mr. Curumi was forcefully dragged through O'Hare airport in Chicago. An Algerian refugee who arrived at San Francisco international airport last year was shackled and told he was being deported; when he told an INS officer that he would be killed if returned to Algeria, the officer said he did not care. "Mina Burhani" will tell us later how she was strip-searched, shackled to a bench, and then transported in handcuffs and shackles.

Amin Al-Torfi, a torture survivor from Iraq who is here with us today, fled to this country after he and his family were persecuted by Saddam Hussein's regime because of their political opinions and religious beliefs. When he requested an Arabic interpreter upon his arrival at JFK airport last year, he was told that an Arabic interpreter was not available and that he would have to wait three days at the airport to get one. He was shackled by the leg to a bench for eight hours, strip-searched, and led like a criminal, handcuffed to another asylum seeker, through the airport in front of other passengers. After 5 months in detention, he was granted asylum.



A refugee from Afghanistan was pushed by an INS officer who grabbed his pants to search for documents. He was shackled to a bench over night, and all day the next day. After 5 months in detention, he was granted asylum.

One refugee who is here with us today was so intimidated by his treatment at the airport that he initially did not request asylum and was scheduled to be returned to his country of persecution. "Micheal Antoun," is a Coptic Christian who fled Egypt because he had been repeatedly threatened and beaten by Islamic extremists. (As he fears retaliation against family members at home, his real name will be supplied to the Subcommittee confidentially.) Mr. Antoun, while being held in solitary confinement at a detention facility awaiting deportation back to Egypt, spoke by phone to his sister who begged him not to return to Egypt because of the danger he would face. Luckily, he was able to contact someone who averted his deportation. After 5 months in detention, he was granted asylum.

Even the next stage of the expedited removal process—the so-called "credible fear" process—which offers some additional protections, lacks essential procedural safeguards. The only oversight of these determinations is a highly expedited "review" by an immigration judge, which must take place within seven days, leaving no time for a refugee to find a lawyer or gather additional evidence, and no other avenue of appeal. With us today is Patrick Mkhizi who will testify later about the INS's attempt to deport him after a mistaken determination that he did not meet the credible fear standard. Also here with us today is a woman who we will call "Aracelis Gonzalez" in order to protect her identity. She fled here after suffering brutal abuse and domestic violence in the Dominican Republic. But she was ordered deported under expedited removal last summer apparently because the INS officers who interviewed her, and the Immigration Judge who conducted the expedited review, believed that she would not be able to make a case for asylum based on gender-related persecution. She was spared from deportation following the extraordinary efforts of Senator Leahy and several Congress Members who wrote to the INS Commissioner expressing deep concern about the INS's decision to deport her under expedited removal.

Although we should all be deeply disturbed by the manner in which asylum seekers are being treated under these provisions of the law, we should not be surprised. Expedited removal is a system designed to fail those we most want to protect. In 1996, when it considered whether to adopt this system, the Senate rejected it as unfair, unnecessary, and a betrayal of American values. We agree.

So do others. Among the many voices calling for repeal of expedited removal are two major bodies established by Congress and by the president: the bipartisan Commission on Immigration Reform and the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States.<sup>1</sup> The Commission on Immigration Reform, referring to expedited removal, urged "immediate correction of certain provisions [in the 1996 law] that can harm bona fide asylum seekers and undermine the efficiency of the asylum system."<sup>2</sup> The Advisory Committee on Religious Freedom, created after the implementation of expedited removal, called for its repeal in its final report to the secretary of state in May 1999.

[W]e must eliminate processes such as "expedited removal" that can make victims of those fleeing religious persecution rather than providing access to protection. . . . Repeal of "expedited removal" should be a high priority for the Administration.

We respectfully urge that steps be taken to ensure that the decision to deport an asylum seeker or other individual who arrives without proper documents will be made only by a trained immigration judge in a fair proceeding that affords the person fundamental due process protections: prior notice of the consequences of the proceedings; when the person is not fluent in English, a qualified translator who is fluent in the person's language of fluency and is bound to maintain confidentiality; the right to be represented by legal counsel; and the opportunity to have decisions reviewed on appeal.

Because of the demonstrated risk to refugees, expedited removal should only be used in extraordinary migration situations. Additional safeguards should be included in those situations where expedited removal is authorized. These safeguards, which should include immigration judge review of all removal orders, will reduce the risk of mistaken deportations.

<sup>1</sup>U.S. Commission on Immigration Reform, *U.S. Refugee Policy: Taking Leadership*, June 1997, at 38; *Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States*, May 17, 1999, at 45.

## III. DETENTION OF ASYLUM SEEKERS

The detention of arriving asylum seekers, a practice that expanded in the 1980s, was reinforced by the restrictive provisions of the 1996 immigration law. Under expedited removal, asylum seekers are subject to “mandatory detention” and although they are eligible for parole once they successfully pass through the credible fear screening process, the parole decision is entrusted to the unreviewable discretion of local INS officials who administer this power in varying manners. There is no appeal of their decisions to an independent authority—not even to an immigration judge. And the INS has so far failed to issue enforceable regulations spelling out the parole criteria for asylum seekers.

As a result, those who arrive in this country seeking protection are routinely imprisoned for months, and sometimes for years while their asylum cases are pending. Deserving refugees are denied parole even when they have been deemed credible and have verifiable community ties. Some of these refugees are here with us today.

We will hear in a minute from a woman from Afghanistan who will explain how she was denied parole even though her U.S. citizen sister was willing to house and support her. Another client of the Lawyers Committee, a rape survivor who had been studying to become a nun in Congo, was denied parole even though a Catholic convent in New Jersey had agreed to house and support her. Mekabou, who stood up before us a few minutes ago, was denied parole despite his young age and even though he had a U.S. citizen uncle and other family members in this country. Patrick Mkhizi who we will hear from shortly was detained for 3 and ½ years and denied parole.

The seven month detention of Jean-Pierre Kamdem, a survivor of severe torture, who lost part of his leg as a result of his torture, underscores the cruelty of our detention system. Mr. Kamdem, who is here with us today, was a student activist in Cameroon and was arrested and repeatedly tortured in his home country, leading to the loss of part of his leg. Last year, he narrowly escaped arrest again, and fled to the U.S. He was greeted with handcuffs at the airport. When he asked if it was a crime to ask for asylum, the INS officers told him “this is the law.” He was detained at the Elizabeth, New Jersey detention facility for seven months. He was just granted asylum last week and was finally released from detention.

Our current system of detaining asylum seekers, a system which provides no meaningful access to parole for so many and no independent review of detention decisions, flies in the face of our obligations under international refugee protection treaties. Indeed, the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), of which the United States is a member, has concluded that detention of asylum seekers “should normally be avoided.” UNHCR’s 1999 detention guidelines clearly call for procedural safeguards—including automatic review of detention decisions before an independent judicial or administrative body in those cases when asylum seekers are detained, and urge the maximum use of alternatives to detention.

Our current detention system is also inconsistent with American traditions of due process and humanity, and places an unnecessary burden on U.S. taxpayers. The devastating impact of detention on individual torture survivors and other refugees which we see first-hand in our every day work, is documented in the testimony of Dr. Allen Keller, the Director of the Bellevue/NYU Program for Survivors of Torture, which is submitted in writing to the Subcommittee today. The impact is also clear in the lives of the refugees who have come here today to give us their firsthand testimony.

We urge that decisions to detain asylum seekers should no longer be entrusted to the discretion of local INS officials. Initial detention and parole decision should be made pursuant to legally binding regulations, and should be automatically and promptly referred for review to a judicial or other competent and independent authority. In those cases in which some form of detention or supervision is deemed necessary, and where there is no risk to the community, the use of alternatives to detention should be maximized, including for instance supervised release programs or release to community, religious or non-governmental organizations trained in refugee resettlement.

## IV. THE ASYLUM FILING DEADLINE

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 imposed, for the first time, a one-year-from-arrival filing deadline on asylum claims filed with the U.S. government. The only exceptions to that filing deadline are for “changed circumstances” that materially affect an asylum seeker’s eligibility for asylum or “extraordinary circumstances” relating to the delay in filing the asylum ap-

plication. The 1996 law also purports to preclude federal court review of determinations to bar asylum claims under the deadline.

Since the filing deadline took effect, more than 10,000 asylum seekers have had their claims rejected by the INS. In fiscal year 2000 alone, more than 6000 asylum claims were rejected based on the filing deadline.

The Lawyers Committee has learned of many *bona fide* asylum seekers whose claims have been rejected because of the filing deadline, including asylum seekers represented through our *pro bono* representation program. Even asylum seekers whose circumstances squarely fit the statutory exceptions, and the regulations detailing those exceptions, have had their asylum claims rejected. For instance, the asylum claim of a torture survivor and student activist from Burma was denied by an immigration court in California based on the asylum filing deadline, even though the judge believed he was credible and otherwise eligible. The Burmese refugee had been repeatedly arrested and tortured by the Burmese military regime because of his peaceful political activities. He did not initially apply for asylum because he hoped that the situation in Burma would improve so that he could return to his family.

Makani Jalloh, a refugee and mother from Sierra Leone, fled to the U.S. after her husband and son were killed, and she herself was brutally attacked. She arrived in the U.S. in July 1999. She did not read or write English, and had no money to support herself or to pay for a lawyer. With the help some fellow Sierra Leonians, she filed for asylum—within one year of her arrival. Makani was not able to afford to pay for a lawyer to accompany her to her asylum office interview, and the INS rejected her asylum case, claiming that she could not prove that she had been in the U.S. for less than one year. The INS placed Makani and her two children into deportation proceedings. Makani then learned about the Lawyers Committee for Human Rights, which found *pro bono* attorneys to take on her case. With the help of her *pro bono* lawyers, Makani and her children eventually won asylum before an immigration judge.

Here today is Anna Smirnova, a national of Russia. The INS is currently contesting her grant of asylum on the ground that her claim is barred by the deadline. Anna fled from Russia fearing persecution based on her mixed nationality. She is part Jewish, and also part Arab and part African-American—her great-great grandfather was a prominent American civil rights leader. Anna arrived in the United States on April 17, 1998. She gave birth later that year, and began caring for the new infant. She missed the one-year filing deadline due to the burdens of being pregnant—a physical condition that should certainly have satisfied one of the exceptions to the filing deadline—and the resulting burden of caring for a new infant as a single mother. And, like many refugees, she was unaware of the deadline. However, once she became aware of the one-year requirement she immediately filed her claim, which was received by the INS on April 22, 1999. Yet despite extensive documentation of her fears of persecution and of her pregnancy, the INS rejected Anna's asylum claim based solely on the asylum filing deadline. Although an immigration judge eventually granted her claim, the INS is still seeking to deport her based in part on her failure to file within the one-year filing deadline. While her attorneys at the Hebrew Immigrant Aid Society are opposing the appeal, the INS is still maintaining that her claim is barred by the filing deadline.

Ironically, the filing deadline has actually led to inefficiency and waste in the asylum system. Some deserving asylum claims—claims which would likely have been granted on the merits but for the asylum filing deadline—have been “rejected” procedurally by the INS based on the filing deadline. As a result, these cases have been referred to immigration court meaning that the system must bear the additional expense of a hearing in immigration court before the asylum seeker is granted asylum. Without the filing deadline, some of these cases would have been granted asylum by the INS without the additional expense of an immigration court hearing.

It is now widely recognized within the U.S. government that the INS's 1995 asylum regulatory changes (known as “asylum reform”) were a tremendous success: new asylum claims are now processed on a timely basis (generally within 180 days); the large backlog of asylum claims has been reduced; the number of asylum claims has declined dramatically from 123,884 in FY 1994 to 41,659 in FY 2000 (the FY 1999 numbers were even lower); and the asylum grant rate has increased, which appears to reflect that a higher percentage of meritorious asylum claims are being filed. Thus, many of the problems that led some to favor an asylum filing deadline have been remedied by the asylum reforms initiated in 1995.

While a one-year filing deadline may initially sound reasonable to some, a closer examination of the reality that faces many refugees when they arrive in this country makes clear that the filing deadline is indeed difficult for many deserving refugees to meet. Many genuine refugees arrive in this country unable to speak English, un-

familiar with our legal system, unable to afford food and housing, let alone legal counsel, and often suffering from the effects of the torture or persecution they have faced. Amchok Gyamtso Thubten will describe for us today the difficulties that many Tibetan refugees face in meeting the asylum filing deadline. Some who have been victims of ethnic or religious persecution, may not even realize they are eligible for what is often referred to as “political” asylum.

Prior to the enactment of the filing deadline, the Lawyers Committee conducted a study of its own pro bono cases. This study revealed that only 38% of the Lawyers Committee’s cases (cases that the Lawyers Committee had judged to be bona fide) were filed within one year of the refugees’ arrival. This is understandable. As Dr. Allen Keller, the Director of the Bellevue/NYU Program for Survivors of Torture has explained: “Generally, the most deserving asylum applicants are unable to speak about their persecution immediately after they arrive in the United States. Victims of torture, and others who suffer from Post-Traumatic Stress Disorder (PTSD), have great difficulty relating their stories both to their representatives and to U.S. authorities until they have had time to recover from their trauma.” Dr. Keller has submitted written testimony to this Subcommittee today documenting this impact.

We believe that the asylum filing deadline should be repealed. It is inefficient and is causing needless hardship to refugees who clearly deserve protection. Short of outright appeal, the filing deadline should at least be eliminated in affirmative asylum applications, and the fact that an application has been filed more than one year after arrival could be considered a negative discretionary factor, subject to a good-cause exception, in connection with asylum applications filed defensively before immigration judges. To the extent any filing deadline is retained, federal court review of filing deadline denials should be restored. If the deadline is eliminated or limited, those whose cases have been rejected based on the prior filing deadline provision should be allowed to reopen their cases.

#### V. THE CAP ON ASYLEE ADJUSTMENTS

When refugees are granted asylum, they are entitled under our law to apply for legal permanent residence status one year after their grant of asylum. But as there is an annual cap on the number of asylees who may adjustment and a backlog of applications, refugees now have to wait several years to receive their legal permanent residence status. Amchok Gyamtso Thubten, a Tibetan refugee who will be testifying before you shortly, applied for legal permanent residence status in 1999. He has still not received his “green card.” It has been estimated that someone granted asylum today will not be able to adjust his or her status for 6 six years. The impact of this delay on refugees is significant—it undermines their ability to integrate into our society, to seek employment and advancement, to apply for citizenship, to travel to visit family securely and in some cases to be united with family members.

One client of the Lawyers Committee, a refugee from Ethiopia, married after she was granted asylum. Her husband, a long-time family friend who lived in exile in Europe, was not eligible to be brought to the U.S. as an asylee because the marriage occurred after our client was granted asylum. The delay of several years in receiving her green card needlessly delayed her ability to petition for him to come to the United States and join her. While she visits him several times a year, the couple has been separated by an ocean for their four-year marriage. Because of the marriage, the U.S. has refused to issue the husband a visa to come to visit his wife and child. Their son, now 3 years old, sees his father for brief visits once a year. They hope that after she becomes a citizen, they will finally be able to live together as a family. My client, who spent her childhood separated from her family because of the cruelty of the Mengistu regime, is patient. But no reasonable policy interest is served by this unnecessary delay.

The cap on asylee adjustments should be lifted. Those who are granted asylum are entitled, under our law, to apply for permanent residency one year after their grant of asylum. These are deserving individuals, many of whom have suffered terribly under governments who abuse the basic rights we in this country take for granted. Their welcome into our society should not be delayed for years by an arbitrary limit on the number on asylees that can become legal permanent residents.

Chairman BROWNBACK. Thank you, Eleanor. That was powerful testimony. I also want to thank all of you who came here today to present your statements in front of us.

Could all of you stand again, please? Those of you that are here today with your asylum story, I thank you. I want to personally thank you for coming here and giving your time so that we could

put a face on a very difficult situation. And I applaud you. I think it is wonderful what you have done and what you have fought on through. I hope you will continue to work with us to make the system better and forgive us for any deficiencies we have had in it. Thank you.

Eleanor, thank you for presenting, and for all the arrangements that you made in getting people here. I want to ask just a couple quick questions. We have two more panels in a short afternoon.

The most powerful statement I heard here regards the betrayal of American values. I do not know if it was you or Ms. Young, who made the statement, but it seems to me that this is what is going on here. We allow people, we encourage people to come to America and seek asylum; we say we do not want to see you persecuted in your homeland, and yet we treat them so poorly here.

Has it always been this way in the United States, or prior to 1996 was it different, Ms. Acer?

Ms. ACER. Yes, the procedures that existed prior to 1996 were much superior. When asylum seekers arrived here in this country, they had a right to come in front of an immigration judge. They could not be summarily returned from the airport. That part of the process was much better.

The detention problems existed before. They have been reinforced by the 1996 law. Those are longstanding problems that really need a fix, and it is wonderful that you are looking into those issues now and that hopefully can lead to a permanent improvement there as well.

Chairman BROWNBACK. I think these are both areas we really need to look at.

Ms. Young?

Ms. YOUNG. In the detention context, certainly the INS had the authority to detain asylum seekers prior to the 1996 Act. But I think what we saw in 1996 was an increased emphasis on detention and also a provision that said that asylum seekers must be mandatorily detained until they prove credible fear. And, again, theoretically, parole is available once credible fear is established. However, what we see are INS districts implementing detention policies of their own. In fact, we have 33 different detention policies across the United States, and some INS districts are more generous than others.

Unfortunately, for example, the New York and Newark districts, where large numbers of asylum seekers are detained, have some of the tightest parole policies in the country.

Chairman BROWNBACK. Thank you.

Senator DeWine?

Senator DEWINE. Mr. Chairman, let me again thank you for holding this hearing and thank our witnesses. I come at this not as an unbiased and impartial observer. I spoke out against this provision in 1995 and 1996. Candidly, the bill was much more draconian than it ended up when it started. And we were successful in some areas, but in other areas we were not.

Let me, if I could, just read briefly what I said at the time in the floor debate, and I think that your testimony today has tragically confirmed what I feared 5 years ago when we were debating this. "The most worthy cases for asylum would be excluded if we

impose this new summary exclusion procedure. Among those excluded would be cases of victims of politically motivated torture and rape, the very people who are most likely to use false documents to flee. The few times in our history when we have turned our back on people who are persecuted—and there are examples of this, the Nazi Germany situations, for example, and those few times we have lived to regret it.”

So I think that your testimony confirms, frankly, what I feared a few years ago when we were debating this bill, and I think frankly it is up to this Congress to try to take the lessons that we have learned and the testimony that we take from you and the other panel members today and maybe try to do something with that.

Let me ask any member of the panel who can answer the question: We talk about the individuals who seek asylum who are detained, and do we have statistics that would indicate what the average time of detention is and what the range of time for detention is? Are those statistics available?

Ms. YOUNG. As I mentioned in my testimony, the INS has been notoriously poor at collecting detention statistics. However, having said that, what we do know is in terms of overall detention, which includes asylum seekers but also other populations, they reported in 1999 that the average length of detention I think was 29 days, if I recall correctly.

However, we have seen that asylum seekers are held for much, much longer periods of time. Just to give one example, I interviewed a Chinese woman who was held in Bakersfield, California, who had been in detention for almost 5 years and eventually won asylum.

Also, the length of detention, again, in districts such as New York and Newark, where large numbers of asylum seekers are held, tends to be much higher than that average that I just cited. I believe in New York it is around 124 days. Karen Musalo may know—

Senator DEWINE. So there is a great discrepancy, and you already testified to this. There is a great discrepancy in what area of the country—between the different areas.

Ms. YOUNG. Absolutely, and, again, that is, I think, because of the discretion that is granted to the INS districts in terms of what decisions they make in terms of parole or—

Senator DEWINE. And I am not sure I understand that. How does that play out? How is it that Congress has created a law that gives that much discretion? How does that work? Explain to me how that works.

Ms. YOUNG. To a certain extent, I think it is not unique in the detention context. The INS districts tend to exercise tremendous authority over a lot of decisionmaking. The INS is a very decentralized agency.

But the problem is you have basically got the fox watching the henhouse because the districts are also charged with deporting people. So they tend to err on the side of law enforcement concerns as opposed to humanitarian or even fiscal concerns.

Senator DEWINE. Anybody else?

Ms. ACER. I was just going to add that there is no appeal. For example, when parole is denied, you cannot go see a judge or any-

one outside, an independent of the INS. And that is inconsistent even with the UNHCR's guidelines.

Also, the Dallas Morning News recently, after having FOIA'd some statistics, I think discovered about, I think, 361 asylum seekers who had been detained over a year, I believe, if that is the correct number.

Senator DEWINE. Thank you, Mr. Chairman.

Chairman BROWNBAC. Thank you very much.

I thank the panelists for bringing such compelling, excellent, well thought through, and well presented testimony, and I look forward to working with you.

Our second panel will be three asylee witnesses and their presentation of their experiences. I apologize in advance for not getting these names accurate when I pronounce them, so please just bear with me. Patrick Mkhizi is an asylee from the Democratic Republic of the Congo. Our second speaker is Mina—that is not her actual name, but a name given to protect her identity—who is an asylee from Afghanistan. And our third speaker is Amchok Gyamtso Thubten, an asylee from Tibet. We are grateful for your testimony here today. I apologize again for not getting your names right. You can call me “Sam,” if you would like. That may help explain why I have difficulty with some names.

Patrick, would you please present us your testimony first? And if you could, get close to the microphone so we can clearly hear your testimony.

**STATEMENT OF PATRICK MKHIZI, REFUGEE FROM THE  
DEMOCRATIC REPUBLIC OF CONGO**

Mr. MKHIZI. Thank you.

Chairman BROWNBAC. Patrick, you are going to need to pull that microphone right up to you. It is kind of a “get close and personal” microphone.

Mr. MKHIZI. Chairman Brownback and other Senators, thank you so much for asking me to come here today to talk about my own experience when I came to this country. I am a refugee and I have been granted asylum in the U.S.

Chairman BROWNBAC. Patrick, please, again, pull that microphone up closer to you, would you, please? The technology is not the best.

Mr. MKHIZI. It seems almost a miracle that I am sitting here today. You see, when I first arrived in the United States, I was very nearly deported and then was detained for three and a half years. I came to the U.S. to escape from persecution in my country, which was Zaire. My father was a member of pro-democracy party, which opposed the Mobutu regime. One terrible day, security forces raided our home and discovered opposition materials. They beat and tortured me, and they beat my father to death before my eyes. My mother and two sisters ran away from the house, and I have not seen them since. I knew I had to run away, too. I made my way by boat to the United States. I arrived in Philadelphia in May 1997, just after the expedited removal procedures began.

The INS put me in chains and took me to the detention facility in Elizabeth, New Jersey. An INS asylum officer sat with me and asked me a lot of questions. I did not understand what was hap-

pening because there was no interpreter, no lawyer to explain things to me, and I did not even know what asylum meant at the time. I was so afraid. I did not know what was going to happen to me, and I thought they might send me back to Zaire. The INS officer decided I did not have a credible fear and ordered me deported. I then had an immigration judge "review," but there was no lawyer or interpreter to help me understand. It was very confusing. The judge asked me questions in English which I could not understand. I was too terrified to answer because I was afraid of being sent back to Zaire to die.

My fears came true. They brought me in chains to the airport to send me back. I was shaking with fear. At the airport, I cried out, "This is a country of human rights! Why are you trying to deport me to my country, where I will be killed?" I lay on the ground and refused to go. Three detention guards picked me up, handcuffed me tightly, and carried me onto the plane. I was absolutely terrified. I cried on the plane and pleaded with them not to deport me. The airline employees asked the guards to take me off the plane.

I was returned to the detention facility and contacted the UNHCR. The INS finally changed its decision and decided that I really was afraid to go back and that I could apply for asylum.

I was detained at Elizabeth for more than 2 years. Detention was very difficult experience for me. I had lost my family and had been tortured in my home country. I felt depressed and scared. My one comfort during this period was through the English classes and Bible classes offered by Jesuit Refugee Services, which were later stopped by INS. Through JRS, I met Charlie and Gerri Mulligan, who visited me and sponsored me for parole. I made a parole request, but the INS denied it.

Then the INS transferred me to Sussex County Jail, where I was put in a cell with convicted criminals for 1 year. I lived in constant fear of being harmed by other inmates. After that jail, the INS transferred me to York Prison in Pennsylvania, where I was held for about a month.

After living like a criminal in jail for three and a half years, I was finally granted asylum in November 2000. I could not believe at first that I was being released from detention. I was so happy to have my freedom. Now I am trying to build a new life. I am taking English classes and studying to become an auto technician. I am working as an auto technician. I am proud to say that recently I was employee of the month and student of the month. For me, this is the meaning of freedom. It is a way of showing my appreciation for getting my freedom back.

I want to thank you, Senators, for giving me this opportunity to tell you about my difficulties. I came to this country seeking freedom and safety. But I was so close to being deported and then in jail for so long. The law is very harsh. I hope that you will make the system safer and more humane for refugees like me.

Thank you.

[The prepared statement of Mr. Mkhizi follows:]



## STATEMENT OF PATRICK MKHIZI, REFUGEE FROM THE DEMOCRATIC REPUBLIC OF CONGO

Chairman Brownback and other Senators, thank you so much for asking me to come here today to talk about my own experience when I came to this country. I am a refugee and I have been granted asylum in the U.S.

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Thank you.

Chairman BROWNBACK. That was powerful. God bless you for being here.

Mina?

**STATEMENT OF MINA BURHANI, REFUGEE FROM  
AFGHANISTAN**

Ms. BURHANI. Chairman Brownback and other Senators, I am grateful for the chance to talk today about my own experience as a refugee seeking asylum here.

I appreciate your cooperation in keeping my identity confidential as I fear that my family in Afghanistan might be further endangered if it was known that I have fled to the U.S. and spoken out about my treatment in Afghanistan.

I was a medical student in Afghanistan before I was forced to leave school when the Taliban ordered women out of the schools. The Taliban took a particular interest in me because my sisters had converted to Christianity and because I ran a school to teach young girls. Though I tried to keep the school secret, the Taliban discovered what we were doing. They raided the school and closed it down. They beat me and threatened to kill me. They said that they knew I was a Christian probably because they knew that my sisters were Christian. They said that my punishment would be a lesson to others. I am sure that you know, Senators, that the Taliban treat those who disobey their orders very harshly. I was very frightened and knew that I had to flee from Afghanistan. When I left, I took only one extra set of clothes and some money. I did not bring identification with me because I knew that if the Taliban stopped me, it would be dangerous if they learned my identity, because my family is so despised by them.

I fled to the U.S. and arrived at JFK airport in October 1998. After the INS interviewed me, an officer ordered me to take my clothes off to search me. When I hesitated, she ordered me to do what she said. I was confused and humiliated. Then they shackled me to a bench. I thought that they were going to send me back to Afghanistan. I was so scared that I fainted in the airport. As they took me to the hospital, I was still scared and told them, "Do not send me back. Please kill me here, but do not send me back to Afghanistan."

I was eventually brought to Wackenhut, which is a kind of jail for asylum seekers like me. I was brought there in handcuffs and shackled to another person. At the Wackenhut facility, they took away my clothes and gave me an orange prison uniform. I was treated like a criminal. I was kept in a room with 11 other women for 23 hours a day. There was no privacy. The toilets and shower were in the same room behind only a low wall so that you could see somebody's upper body as they sat on the toilet. We were only taken out of the room for an hour a day. The outdoor recreation area was really like a cage—an internal courtyard with a fence for a roof. We could not see the trees or anything other than a small patch of sky through the fencing.

My lawyers tried to get me out of that terrible place. They applied for parole for me. I have one sister in this country that is a citizen of America. My sister signed an affidavit promising to house and support me if the INS would release me. But they refused. We could not appeal to a judge or anyone outside the INS. It was very difficult for me to be detained. When my sister came to visit me on Christmas Eve, she was so upset, she begged an INS official to release me. Meanwhile, the Lawyers Committee told Members of

the U.S. Congress about what was happening to me, and one of them raised my case with the INS. It was only because someone so powerful and respected had compassion for me and intervened that I was not detained for a long time. I was detained like a criminal for 3 months and 14 days, but many of the refugee women I met there were detained for even longer. One woman I knew who had fled from Uganda was detained for about 2 years before she was finally granted asylum.

I am now attending the University of Baltimore and received a scholarship for my studies.

I am happy to learn that there are U.S. Senators who are concerned about the treatment of asylum seekers in this country. I believe that this country is a wonderful country, and I thank you for your efforts to improve its treatment of refugees. Thank you.

[The prepared statement of Ms. Burhani follows:]

STATEMENT OF MINA BURHANI, REFUGEE FROM AFGHANISTAN

Chairman Brownback and other Senators, I am grateful for the chance to talk today about my own experience as a refugee seeking asylum here.

I appreciate your cooperation in keeping my identity confidential as I fear that my family in Afghanistan might be further endangered if it was known that I have fled to the U.S. and spoken out about my treatment in Afghanistan.

I was a medical student in Afghanistan before I was forced to leave school when the Taliban ordered women out of the schools. The Taliban took a particular interest in me because my sisters had converted to Christianity and because, together with one sister, I ran a school to teach young girls. Though I tried to keep the school secret, the Taliban discovered what we were doing. They raided the school and closed it down. They beat me and threatened to kill me. They said that they knew I was a Christian probably because they knew that my sisters are Christian. They said that my punishment would be a lesson to others. I am sure that you know, Senators, that the Taliban treats those who disobey its orders very harshly. I was very frightened and knew that I had to flee from Afghanistan. When I left, I took only one extra set of clothes and some money. I did not bring identification with me because I knew that if the Taliban stopped me, it would be dangerous if they learned my identity, because my family is so despised by them.

I fled to the U.S. and arrived at JFK airport in October 1998. After the INS interviewed me, an officer ordered me to take my clothes off. When I hesitated, she ordered me to do what she said. I was confused and humiliated. Then they shackled me to a bench. I thought that they were going to send me back to Afghanistan. I was so scared that I fainted. As they took me to the hospital, I was still scared and told them "Don't send me back. Please kill me here, but don't send me back."

I was eventually brought to Wackenhut, which is a kind of jail for asylum seekers like me. I was brought there in handcuffs and shackled to another person I did not know who was also seeking asylum. At the Wackenhut facility, they took away my clothes and gave me an orange prison uniform. I was treated like a criminal. I was kept in a room with 12 other women for 23 hours a day. There was no privacy. The toilets and shower were in the same room behind only a low wall—so that you could see someone's upper body as they sat on the toilet. We were only taken out of the room for one hour a day; the outdoor recreation area was really like a cage—an internal courtyard with a fence for a roof. We could not see the trees or anything other than a small patch of sky through the fencing. Every day, guards woke us up at 6am and told to stand in a line to be counted. They searched us several times a week.

My pro bono lawyers tried to get me out of this terrible place. They applied for parole for me. I have one sister in this country and she is an American citizen. My sister signed an affidavit promising to house and support me if the INS would let me out. But they refused. We could not appeal to a judge or anyone outside the INS. It was very difficult for me to be detained. When my sister came to visit me on Christmas Eve, she was so upset, she begged an INS official to release me. Meanwhile, the Lawyers Committee told some Members of the United States Congress about what was happening to me, and one of them raised my case with the INS. It was only because someone so powerful and respected had compassion for me and intervened that I wasn't detained for even longer. I was detained like a criminal

for over three months, but many of the refugee women I met there were detained for even longer. One woman I knew who had fled from Uganda was detained for about 2 years before she was finally granted asylum.

I am now attending the University of Baltimore and received a scholarship for my studies.

I am happy to learn that there are U.S. Senators who are concerned about the treatment of asylum seekers in this country. I believe that this country is a wonderful country and thank you for your efforts to improve its treatment of refugees.

Chairman BROWNBACk. Thank you, and I wish the best to you in your studies. I hope they go marvelously for you. You certainly deserve it.

Ms. BURHANI. Thank you.

Chairman BROWNBACk. Amchok?

**STATEMENT OF AMCHOK THUBTEN GYAMTso, REFUGEE  
FROM TIBET**

Mr. GYAMTso. Chairman Brownback, other Senators, it is an honor to speak before you today about the problems facing refugees who seek asylum in the U.S. My name is Amchok Thubten Gyamtso. I am a refugee from Tibet, and I have been granted asylum in this country.

In Tibet, my family opposed the Chinese occupation of Tibet, and for that we suffered harsh persecution for many years. My father had been a Tibetan Government minister and was executed for opposing Chinese rule and resisting the Chinese invasion. My family was labeled an enemy of the communist regime, and I was expelled from school when I was 10 years old. I entered a Buddhist monastery when I was 14 years old. As a Buddhist monk, I distributed literature about the Dalai Lama and peacefully advocated for Tibetan independence. I had hoped to bring about more freedom for Tibetans who, like myself, were denied the same rights as Chinese citizens. Because of my activities, the Chinese Government held me in prison for 3 years and 4 months. During those years, I was tortured.

Fortunately, I managed to escape to this country. I arrived in November 1995, before there was such a thing as expedited removal and the filing deadline. With the help of the Lawyers Committee for Human Rights, I won asylum in 1997. Last year, lawyers at Latham and Watkins helped me to found Song Tsen Tibetan Community Outreach, a Tibetan community organization based in New York City. As the president of Song Tsen, I work to inform the Tibetan refugee community about the 1996 immigration law's asylum filing deadline. In a survey that Song Tsen conducted with 600 Tibetan refugees in New York City, we found that more than half did not know about the 1-year filing deadline. I have worked with many Tibetan refugees who missed the filing deadline or did not know that it exists.

Just recently, I worked as an interpreter with pro bono attorneys representing one Tibetan refugee who, like me, was detained and tortured by the Chinese authorities because of his peaceful activities on behalf of Tibetan independence. After arriving in the United States, he did not apply for asylum immediately because he could not understand English. He did not know about the 1-year filing deadline. He was also suffering from the effects of torture and had difficulty talking about what had happened to him. As a result, he

missed the filing deadline. In March of this year, his asylum claim was rejected by the INS based on the filing deadline. I also know of other Tibetan refugees whose asylum claims have been rejected on the same basis.

Through my work, I have also heard of Tibetan refugees who have come to the United States to seek asylum but were turned away after being stopped by the INS at JFK International Airport. For instance, I have heard of two Tibetan monks and a nun who were not permitted to apply for asylum and deported after arriving at the JFK airport. I do not know what has become of them.

I have also recently visited a Tibetan refugee who is currently detained at the Elizabeth Detention Center in Elizabeth, New Jersey. He is a farmer who had peacefully protested when the Chinese removed the Dalai Lama's picture from a local monastery. As a result, he was wanted by the Chinese authorities. Fearing arrest and torture, he fled to the United States. He arrived at the JFK airport on New Year's Eve 2000. No interpreter was provided for his interview with INS, and since he speaks almost no English, he had difficulty communicating with INS officers. Right now, he is the only Tibetan in detention, and it is hard for him to communicate with other detainees because he does not speak English. He has told me that he feels isolated and extremely lonely.

Detention, expedited removal, filing deadlines—I am very grateful that these laws were not in place when I fled to this country. But you should also know, Senators, that even those fortunate refugees who overcome the many hurdles and are granted asylum must wait a long time before they can get legal permanent residence. For example, although I applied in 1998, I still have not been granted my permanent residence status.

Thank you, Senators, for this opportunity to share my experiences and the difficulties of Tibetan refugees affected by the 1996 immigration law. I hope you can change U.S. immigration law for refugees in the near future.

Thank you.

[The prepared statement of Mr. Gyamtso follows:]

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In Tibet, my family opposed the Chinese occupation of Tibet, and for that we suffered harsh persecution for many years. My father had been a Tibetan government minister and was executed for opposing Chinese rule and resisting the Chinese invasion. My family was labeled an enemy of the communist regime, and I was expelled from school when I was ten years old. I entered a Buddhist monastery when I was fourteen years old. As a Buddhist monk, I distributed literature about the Dalai Lama, and peacefully advocated for Tibetan independence. I had hoped to bring about more freedom for Tibetans, who like myself, were denied the same rights as Chinese citizens. Because of my activities, the Chinese government held me in prison for three years and four months. During those years, they tortured me.

Fortunately, I managed to escape to this country, and arrived in November 1995, before there was such a thing as expedited removal and the filing deadline. With the help of the Lawyers Committee for Human Rights, I won asylum in 1997. Last year, lawyers at Latham & Watkins helped me to found Song Tsen Tibetan Community Outreach, a Tibetan community organization based in New York City. As President of Song Tsen, I work to inform the Tibetan refugee community about the 1996 immigration law's asylum filing deadline. In a survey that Song Tsen conducted

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Through my work, I have also heard of Tibetan refugees who have come to the United States to seek asylum but were turned away after being stopped by the INS at J.F.K. International Airport. For instance, I have heard of two Tibetan monks and a Tibetan nun who were not permitted to apply for asylum and deported after arriving at JFK airport. I don't know what has become of them.

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Thank you, Senators, for this opportunity to share my experiences, and the difficulties of Tibetan refugees affected by the 1996 immigration law. I hope you can change U.S. immigration law for refugees in the near future.

Chairman BROWNBACK. Thank you, Amchok. A year ago in January, I was in Katmandu, Nepal, and personally interviewed around 15 Tibetans who had fled over the Himalayas in the winter to get away from the Chinese oppression in Tibet—there were children and the aged. It was an incredible situation that they fled and all they had gone through just to get to that point. It is such a shame that upon reaching our shores more problems would be added to them. Each of them had individual stories of being locked up, of being beaten, of family members being persecuted. And it was just incredible the hardship they went through to walk over some of the regions in the wintertime. The human spirit present was just indomitable. It was compelling to see.

I want to ask each of you about documentation when you reached America. Patrick, if I could ask you first, when you reached America, what sort of documentation did you have with you? I am presuming none was available since you were fleeing the regime in Zaire.

Mr. MKHIZI. Yes, I had no documents. Since I came and arrived in Philadelphia, the INS inspectors, they interviewed me, but it was difficult to communicate with them. And it was my understanding that there was United Nations for Refugees, so I ask, I want to see them, and they say we are going to provide for you. But, otherwise, I did not have any documents.

Chairman BROWNBACK. And it would have been impossible for you to have had any documents.

Mr. MKHIZI. Yes, because the day the soldiers came to my house, they just like attacked the house and came inside the room and found the pamphlets from my father, which is active in the political party against Mobutu. And so the same day they tried to—they beat me, they beat my father, and my mother and two sisters, they were outside, they escaped the same day. So I cannot get the documents. There is no time to get the documents.

Chairman BROWNBACk. Mina, your family has had a lot of education, and you have stated in your testimony that you feared traveling in Afghanistan with any documentation for fear of being captured and determining who you are. So you could not have brought any with you to verify to the INS what you have been through. Is that correct?

Ms. BURHANI. That is why I did not have any documents with me, because I did not want to be recognized by the Taliban.

Chairman BROWNBACk. And I take it that this is a fairly typical situation for most people fleeing persecution and seeking asylum. They are trying to get away from people who seek to do them harm or to kill them.

Ms. BURHANI. Yes.

Chairman BROWNBACk. Amchok, was that the case with you as well regarding any sort of documentation that you had when you left Tibet?

Mr. GYAMTSO. Yes, with my experience under the Chinese law as a Tibetan, we generally did not receive any passport or like that. But since I am personally involved in political issues and since the Chinese Government wanted at that point, it is very hard to get legitimate documents. And as you said right now, I fled to Nepal, eventually to India, and from there seeking asylum, and the Indian Government denied my application for asylum. From there, the only option I have is to use a fake document in order to come to United States.

Chairman BROWNBACk. Let me ask if any of you have suggestions from your experiences. Also, I apologize for the nature of what you have experienced once you arrived here. What would you change? How would you change the system, based on what you experienced once you reached the United States?

Mr. MKHIZI. I think they should change to provide first in the airport, provide someone who is fluent in translation, like if it is French or any language of the world, provide a translator and privacy and give him the time, the refugee, to express his fear and all the confidential, because it is difficult. Our country, if the government is against you, it is difficult to come up here and to say anything against your government. For example, if I was in my country, I would be killed. So if you give me time, I can explain more, and you provide a lawyer and provide a translator so they can help. Another thing is to improve the system of detention. You should not detain. For safety and security reasons, it should not be even about a week. If somebody has a family outside, let them go to the family. You have the address. The security I believe is good. So that is how the system can be improved.

Chairman BROWNBACk. You will learn that in the United States you can freely speak out against the Government. Many people do this very well.

Mina, do you have any suggestions?

Ms. BURHANI. I agree with him, what he said. I am not a legal expert. I do not know, but I think it should be at least fair to the asylum seekers. I do not think they are fair with them. That is all I can say.

Chairman BROWNBACk. Amchok?

Mr. GYAMTSO. I think my experience, if someone is seeking asylum, I think they should not be detained, and they should provide legal assistance and interpreter. And one with my experience as a Tibetan community leader, as I mentioned in my statement, we have a very difficult problem with the expedited removal, the filing deadline. For instance, in this past year, I have several friends who missed the filing deadline. One in particular was the monk from Tibet who came with a group of monks to the United States, and the group of monks were going to visit in nearly 30 States doing—created some Buddhist lectures, and after that project finished, he is 1 year and 1 month, and he applied late last year, and early this year INS rejected his asylum application because—based on the filing deadline, which makes it very difficult for the refugees because while it takes nearly 2 or 3 years and during this period of time you are not eligible to legally work, and, for instance, if you have wife or child, you will be separated from your family members for nearly 6 or 7 years. Like my own, I came in 1995, and at that time the filing deadline was not yet placed. But I did apply in 1996 and still I did not receive that legal status, the permanent residence, which means I cannot travel, I cannot visit my mom, you know, which is a very difficult and devastating situation. So that monk, he is very devastated. He may be deported back to China because the case is much more difficult. And while nearly 2 years you have to wait, with no legal permission, you cannot work, and financially it is very difficult to this individual.

I think there is a way probably to provide some kind of a short—and definitely I think people should not be detained.

Chairman BROWNBACk. Those are excellent suggestions on your part, and we will look to see if we can incorporate them.

I want to thank the panelists for being here; you provide tremendous stories. I look forward to hearing from each of you twenty years from now and to knowing what your American journey becomes like. It has been a rough start for you, I realize, but many times in this country, the rough start causes you to sink your roots deeper and grow taller in the end. Thanks for being here.

Mr. GYAMTSO. Thank you.

Chairman BROWNBACk. The final panel, I would like to have them come forward. Dr. Donald Hammond is a senior vice president for World Relief, which is a humanitarian distribution arm for the National Association of Evangelicals. Leonard Glickman is president of the Hebrew Immigrant Aid Society, one of the oldest refugee advocates and resettlement organizations in America. And Dan Stein is the executive director of the Federation for American Immigration Reform. I look forward to the witnesses' testifying.

Dr. Hammond, thank you for joining us, and I look forward to your testimony.



**STATEMENT OF DONALD HAMMOND, SENIOR VICE  
PRESIDENT, WORLD RELIEF, WASHINGTON, D.C.**

Mr. HAMMOND. Thank you, Senator Brownback. I would like to have my full testimony, the written testimony, submitted for the record.

Chairman BROWNBACK. Without objection, and all of you can summarize. Your full testimony will be included in the record.

Mr. HAMMOND. Thank you. I especially thank you for the opportunity to address you today. In the brief time of your leadership of the subcommittee, you have been bringing up many issues that are important to asylum seekers and people that we have seen and heard from today.

My voice will not be as powerful as theirs. Those are the ones that we need to listen to carefully, and we need to respond very carefully to what they are saying to us. Our country is a great country, and we cannot allow this to keep going on. We believe that there are critical changes that need to be made, and we have heard about them today very articulately.

We are here today, I am here today to represent a segment of the U.S. constituency that has bipartisan roots, one that is concerned with justice, human dignity, and freedom. The issues that we are here to discuss have both common, shared concerns among those who want U.S. policy to reflect the great history that this country has been built on—a history of democracy, of liberty, and safety from oppression.

World Relief is the relief, development, and refugee assistance arm of the National Association of Evangelicals. We are owned by 49,000 evangelical churches that represent various ethnic backgrounds within over 50 denominations in the United States. World Relief's historically conservative constituency is one that has modeled the evolution of immigration and refugee concerns.

In 1994, an evangelical was one of the primary authors of Proposition 187 in California that barred undocumented immigrants from critical public services. But the categories and definitions of liberals and conservatives are fading away. This past year, the National Association of Evangelicals surveyed its members and found that almost 70 percent thought that immigrants are beneficial to our society—a stark change from writing a law that denies services to undocumented people in our society.

Just weeks ago, at their annual convention, the NAE passed a resolution supporting asylum and refugee issues, such as the Refugee Protection Act, and in November of 2001, this fall, the World Evangelical Fellowship, the umbrella of evangelical associations worldwide, is holding its first ever evangelical consultations on refugees in Turkey. So this is an issue that our constituency is concerned about, and it has been raised to a level that, in my 20 years of working on these issues, has not been there before.

Of great concern to our constituency are the thousands of people of faith who are forced to flee their homes due to religious persecution. The INS has not provided statistics on how many expedited removal cases are claiming religious persecution, but the link between asylum seekers and religious persecution cannot be denied. It is very clear.

When we hear of rape and torture and death due to religious persecution, are we to point our finger back at those persecuted and say, as we so sometimes in expedited removal, "Yes, we know you are persecuted, but stay there in your country and things will work out"? No, I think there is a better thing for us to do.

A Chinese pastor that was defended by the Rutherford Institute was recently granted asylum. Speaking of the repression he faced at the hands of the government for his evangelical Christian beliefs, he stated, "that despite the Chinese Government's release of high-profile dissidents, the Chinese Government has become more strict with regard to individuals involved with religious activities and that religious individuals are feared more than political demonstrators."

This pastor was fortunate to be processed before the new expedited removal was implemented in 1997. Had he gone through the process a year later, even 6 months later, he might have been summarily removed and sent back.

Karen Musalo's report on the implementation of expedited removal lists more than 100 nationalities with the highest numbers of people being sent back to their countries of origin. Of those countries, almost 40 percent appear on this year's Open Doors World Watch List of countries that severely restrict religious freedom.

Without more information from the INS, we cannot draw the correlation directly, but the link between asylum and religious persecution cannot be dismissed.

Mr. Chairman, in 1997, this body heard similar information of the link between asylum and religious persecution during the consideration of the International Religious Freedom Act. At that time, an effective coalition of conservative and liberal actors rose up to highlight these issues. It brought together those on the left and those on the right, faith-based and non-sectarian communities, and those concerned with freedom and democratic principles, and set out in cooperation to demand reforms. Through the bipartisan efforts of many faithful and passionate people, the International Religious Freedom Act passed successfully through Congress. However, unfortunately, at that time the Senate declined to take action on asylum. Now is the time to resurrect that discussion on asylum and deal with the unfinished business.

It is time for the U.S. to take a hard look at the drastic changes it made in the 1996 immigration policy and make sure that the lasting legacy is not one that causes death and further persecution and the mishandling that we heard of of people here on our shores and the further persecution of those that risk their lives for freedom. It is time for the pendulum to swing to the middle and for the U.S. to limit the tremendous authority given to the INS in 1996. It is time to limited expedited removal and restore due process to refugees.

Mr. Chairman, I have heard some say, "Why don't we only spare those who are fleeing from religious persecution and send back everyone else?" To that I say if our law needs to be changed, then they must be changed for all—all who are truly persecuted, whether it is for reasons of race, religion, nationality, membership in a social group, or political opinion, and who have risked their life and

limb to come to our shores to find safety. Those are the ones that we need to change the law for.

Consider the story of Dominic, a political refugee, the son of an outspoken Liberian statesman. He fled the regime that murdered his parents and sisters as they lay sleeping in their beds during the Liberian civil war. After 7 years of living undercover in Monrovia and fleeing to the Ivory Coast, Dominic stowed away on a ship without even knowing its destination. When the ship docked in New York, he was taken to the INS Wackenhut Detention Center in Jamaica, Queens, and incarcerated for almost 2 years. Members of a local evangelical church, the Redeemer Presbyterian Church in Manhattan, befriended him and provided him modest support and arranged for lawyers from Yale and other places to give him pro bono advocacy. His applications for asylum were lost several times and delayed, and he came close, despairingly close, to being released. As a story that we heard, he was put on a plane and was taken off at the very last second before he was sent back to the Ivory Coast, where he would have very easily been repatriated forcibly back to death in Liberia.

He now awaits—it took phone calls from several of us and other people, and faxes, to Commissioner Meissner at INS to reverse him being sent back that very day. And he was removed from the plane after our interventions. He now awaits his asylum hearing.

This is only one story, and the story goes on and on and on with many examples that we could give you, but time is pressing.

Mr. Chairman, in most faith traditions, caring for the stranger plays a central role in the living out of one's faith. My Muslim colleagues have told me many times that in Islamic tradition, anyone who dies a refugee holds a special position in heaven because of the hardship he or she experiences in life. The Jewish tradition speaks very highly of the strangers and how they are to be treated in Leviticus and Deuteronomy, as the law is laid out to them. We have heard about the Matthew 25 passage, and it is in my testimony, and several people that have talked about it.

For Christians, Jesus is very clear about how we are to live our faith out. There is no question about what we are to do. We are to care for those who are hungry, someone who needs a drink, to provide food and to care for the strangers and aliens in our midst. And when we do that, we are doing it as unto him. That call is so strong in our lives that we cannot let it pass.

I am passionate about that in my life. I have spent 20 years dedicated to that. I want to see our country reverse these rules that keep our country from doing that as well. We must as Christians cry out to our country to change these laws. And we will be there to help you and advocate on behalf of the changes that need to be made.

If we seek justice, then we must seek justice for all. We should be in the business of protecting all those who are persecuted. If we save the Chinese pastor who fled abuse because of his religion, we are compelled to save Dominic, who was persecuted for his family's political involvement.

Mr. Chairman, only with political will can we change our laws to protect the persecuted. It was done in 1997 for victims of reli-

gious persecution, it was done last year for victims of sex trafficking, and now it must be done for refugees.

I was told a story by a friend—and I will close with this—from Britain who told me a story of how he is convinced that the United States is the only entity that hold international leadership on issues of refugees, that people of other countries around the world look to us to what they should do. They follow our example. We need to take leadership, sir, and we will be here to help you and to work with you in that regard.

[The prepared statement of Mr. Hammond follows:]

STATEMENT OF DONALD HAMMOND, SENIOR VICE PRESIDENT, WORLD RELIEF

INTRODUCTION: THE REFUGEE CRISIS

Mr. Chairman, thank you for the great work you have done during the short time you have been in leadership with the Immigration Subcommittee. You have called attention to so many issues, including refugee resettlement and protection. We believe this is the year to make critical changes; as assistance to and protection for refugees falls to a critical low, the needs of those escaping from persecution and conflict continues to increase.

The first reason we need to act now is the deteriorating conditions in refugee camps and other places around the world. Refugee needs are consistently underfunded and paid scant attention. Without resources from developed countries and other donors, obligations to the displaced are unmet. Such neglect can be seen in the increasing level of violence and insecurity in many refugee camps. Humanitarian groups cannot be expected to guarantee the safety of refugees when their own staff are being targeted by hostile armed groups. These working environments ultimately result in detrimental consequences for those who most need assistance and protection.

As a timely example—and one of which I am sure you are aware—is the condition of Sierra Leonean refugees in Guinea which worsens with each passing day. Those who fled for their lives from the civil conflict in Sierra Leone and crossed into Guinea are now clamoring to return home, despite the fact that the war being waged by the Revolutionary United Front (RUF) rebels is still continuing. For refugees to want to go back to a place from which they escaped is telling of the conditions they are facing in the host country. Such circumstances are unacceptable in light of the resources available from donors around the world.

In the Congo, war is also taking its toll on the civilian population. Just at the point when security in and access to more remote areas in the country seem to be improving, the U.S. government has pulled back on funding new initiatives. The Office of Foreign Disaster Assistance has almost reached its \$15 million cap for the Congo, and Administration officials have indicated there are no plans to increase assistance to the area. We must do a better job at protecting refugees and displaced persons. We cannot continue to under-fund assistance in explosive areas.

The second reason we need to act now is because actual refugee admissions numbers have fallen dramatically. Over the eight years of the Clinton administration, refugee admissions fell over 40 percent from their historically high levels of the 1980s. For FY2001, the admissions ceiling was set at just 80,000. Inefficiencies in the refugee pipeline have resulted in even fewer refugees arriving annually than are allowed for under the admissions ceiling.

Thirdly, we must act now to change U.S. refugee policy, as asylum and refugee protection laws are reflecting a harsher and more restrictive approach to immigration and asylum proceedings.

The immigration laws enacted in 1996 put in place mechanisms that barred many people from pleading their cases before immigration judges. Individuals and families seeking asylum in the U.S. can now be turned away from our borders by low-level INS officers at ports of entry. Legitimate refugees have been forced to return to the conditions from which they were escaping.

We believe these challenges must be overcome, and we welcome your efforts to consider what changes are needed, and to put in place those actions which will result in the increased protection and assistance for refugees seeking peace and stability within our shores.

## THE BIPARTISAN NATURE OF REFUGEE ISSUES

Thank you also for the chance to present our experience and knowledge of the asylum process. We are here today to represent a segment of the U.S. constituency that has bipartisan roots, one that is concerned with justice, human dignity, and freedom. The issues that we are here to discuss have become common, shared concerns among those who want U.S. policy to reflect the great history that this country was built on—a history of democracy, liberty, and safety from oppression.

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## THE LINK TO RELIGIOUS PERSECUTION

Of great concern to our constituency are the thousands of people of faith who are forced to flee their homes due to religious persecution. The INS cannot provide statistics on how many expedited removal cases were claiming religious persecution, but the link between asylum seekers and religious persecution cannot be denied. When we hear of rape, torture, and death due to religious persecution, are we to point the finger back at those persecuted to say, "Yes, we know you are persecuted, but stay there and endure it in your country.?" A Chinese pastor, defended by the Rutherford Institute, was recently granted asylum. He faced repression from the government of the People's Republic of China for his evangelical Christian beliefs and states, "that despite the Chinese government's release of high-profile dissidents, the Chinese government has become more strict with regard to individuals involved with religious activities and that religious individuals are feared more than political demonstrators."

Mr. Chairman, in 1997 this body heard similar arguments during consideration of the International Religious Freedom Act. At that time, an effective coalition of conservative and liberal actors rose up to highlight these and other issues. It brought together those on the left and the right, the faith-based and non-sectarian communities, and those concerned with freedom and democratic principles, and set out in cooperation to demand reforms. Through the bipartisan efforts of many faithful and passionate people, the International Religious Freedom Act passed successfully through Congress. However, at the time the Senate declined to take action on asylum.

Last year, many of the same actors came together in another successful coalition effort coalesced around the sex trafficking legislation. The shared conviction that the sale and bondage of women and children is morally unacceptable and repudiates universally recognized human rights brought feminist organizations together with religious congregations and academic institutions, to call for an end to the practice of present-day slavery. Women and children who fled to our shores found that their lack of legal documentation put them in the category of "criminal" rather than victim. The successful passage of the sex trafficking legislation gave them status and has made our laws treat them with the care that they deserve.

Now is the time to recommit ourselves to the passage of the Refugee Protection Act and deal with the business left unfinished from years past. Some of the same groups that fought for religious liberty and against human trafficking are now working together to secure the same safety and refuge for those fleeing from a "well-founded fear of persecution," be it political, religious, or any other reason. It is time for the U.S. take a hard look at the drastic changes in made in 1996 immigration policy and ensure that the lasting legacy is not one that causes death and further persecution to those who risk their lives for freedom. It is time for the pendulum to swing to the middle and for the U.S. to limit the tremendous authority give to the INS in 1996. It is time to limit expedited removal and restore due process for refugees. Karen Musalo's report on the implementation of expedited removal conducted by the University of California lists the 101 nationalities with the highest

numbers of people being sent back to their countries of origin. Of those 101 countries, almost 40% also appear on this year's Open Doors World Watch List of countries that severely restrict religious freedom. In other words, over a third of those who were subject to expedited removal from the U.S. were being sent back to countries which are known to persecute Christians. And these numbers do not even reflect those who are subject to persecution for other beliefs or faith traditions.

In Laos, for example, there has been a significant and marked increase in the degree of persecution over the past year. These dramatic changes have resulted in Laos becoming the country with the second highest rate of religious persecution in the world, compared to its ranking of 19<sup>th</sup> in 1999, according to Open Doors. The situation in Indonesia also showcases the increased religious tension in many parts of the world. Although inhabitants of Maluku province have lived together peacefully for years, recent deadly campaigns by fundamentalist Muslim warriors have caused tensions to rise on the island. In China, the efforts of Falungong members to exercise their right to "worship" have elicited a strong response from the government, which has embarked on a campaign against "evil cults." Indeed, religious disturbances seem to unsettle Chinese leaders more now than political demonstrations for democracy. And in Sudan, one of the countries the U.S. Commission for International Religious Freedom deems the world's most egregious abusers of religious freedom, Christians and animists—as well as Muslims who do not support the National Islamic Front regime—are systematically persecuted, to the extent that humanitarian relief agencies providing assistance to southern civilians are routinely targeted by government bombs.

The above examples indicate the extent to which the expedited removal process has undermined the United States' historical commitment to protect and assist those who are fleeing from their countries of origin. As a nation founded by those who were escaping religious persecution, it is only fitting that our doors remain open to others who are in search of safety from oppression. Let us not turn our backs on those who need our help the most. Let us live up to the ideals and promises upon which this nation was established and institute changes which will restore hope and healing for refugees and asylum-seekers in this country.

#### TREATMENT FOR REFUGEES FLEEING ALL FORMS OF PERSECUTION

Mr. Chairman, I have heard some say, "Why don't we only spare those who are fleeing from religious persecution." To that I say, if our laws need to be changed, then they must be changed for all—all who are truly persecuted and who have risked life and limb to come to our shores to find safety must be protected.

Consider the story of Dominic, the son of an outspoken Liberian statesman, who fled the regime that murdered his parents and sisters as they lay sleeping in their beds during the bloody Liberian civil war of 1990. After seven years of an undercover, hand-to-mouth existence in Monrovia and Ivory Coast, Dominic stowed away on a ship without even knowing its destination. When the ship docked in New York, he was taken to the INS Wakenhut Detention Center in Jamaica, Queens and incarcerated for almost 2 years, one of the longest incarcerations on record. Members of Redeemer Presbyterian Church in Manhattan befriended him and provided modest support. Human rights lawyers and Yale Law students became his legal advocates, pro bono. His applications for asylum were lost and delayed, and he came close to despairing of ever being released. Then in May 1999, with just a half hour's notice, he was released on to the streets of New York City. Though Dominic was granted withholding status to protect him from deportation to Liberia and given work authorization for 12 months, the immigration judge left open the possibility of a forced return to Ivory Coast. That became reality in April 2000, when he received notice to appear at INS for deportation to Ivory Coast, a country where he had no family or support networks, and where he would be in danger of being forcibly transported to Liberia, a fate that would mean certain death. Denied contact with his lawyer, he was sneaked onto a plane at JFK airport bound for Ghana without being given any travel documents by INS. Fortunately for Dominic, his friends and advocates were able to get him off the plane and released from detention. He awaits a final asylum hearing.

In most faith traditions, caring for the stranger plays a central role in the living out of one's faith. My Muslim colleagues have told me that the spine of Islam is to care for refugees. It is said that anyone who dies a refugee holds a special position because of the hardship he/she experience in life. In the New Testament, Jesus tells us in Matthew 25, "I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in." In the Old Testament we are told of the Jewish tradition of a special consideration for sojourners.

## CLOSING COMMENTS

If we seek justice, then we must care for all who are persecuted. We cannot save the Chinese pastor who fled abuse because of his religion, but send Dominic to certain death. Mr. Chairman, only with political will can we change our laws to protect the persecuted. It was done in 1997 with victims of religious persecution, it was done last year for the victims of sex trafficking, and now, it must be done for refugees who seek freedom and safety from persecution on our shores.

Chairman BROWNBACk. Thank you, Dr. Hammond, and that was excellent testimony. Thank you for your hard work, too. It is great work that you are doing.

Mr. Glickman?

**STATEMENT OF LEONARD GLICKMAN, PRESIDENT AND CHIEF OPERATING OFFICER, HEBREW IMMIGRANT AID SOCIETY, NEW YORK, NEW YORK**

Mr. GLICKMAN. Thank you, Mr. Chairman. My name is Leonard Glickman. I am president and CEO of the Hebrew Immigrant Aid Society. Today I am also testifying on behalf of the American Jewish Committee, the Anti-Defamation League, B'nai B'rith International, the Jewish Council for Public Affairs, the Union of American Hebrew Congregations, and United Jewish Communities. These are all sister agencies within the Jewish community who are deeply involved with the community's efforts to protect refugees.

Chairman BROWNBACk. Mr. Glickman, pull that microphone up more to you. I am sorry. It is very directional.

Mr. GLICKMAN. I am told my voice carries.

Chairman BROWNBACk. It does, but only to me and nobody in the back can hear you.

Mr. GLICKMAN. As HIAS celebrates its 120th anniversary, we would like to thank you, Chairman Brownback, for your leadership in the area of refugee protection and for convening this vitally important hearing and for giving us the opportunity to share a Jewish perspective on the U.S. asylum system.

The Jewish community is greatly concerned about the major changes that were instituted in the U.S. asylum system in 1996, changes that we believe threaten to undermine refugee protection and U.S. global leadership in this area. This testimony presents a very brief overview of several problem areas in U.S. asylum law, highlights the issues from cases represented by HIAS attorneys and other advocates, and it reflects on the Jewish community's historical experience and this history's impact on our refugee protection concerns.

As has already been reviewed in detail, the changes to asylum law in 1996 that created expedited removal, mandatory detention of asylum seekers, and the 1-year filing deadline have caused grave harm to individuals fleeing persecution. As an agency that assists asylum applicants and other immigrants, HIAS is also concerned that the provision permitted only 10,000 asylees per year to adjust their status to that of lawful permanent resident stands as just one more unjust hurdle for victims of persecution. This cap should be eliminated. It serves no real purpose, and that asylees can now begin the process of integrating into our country. Furthermore, while U.S. policy on asylum is critically important in the lives of thousands of asylum seekers who are looking for safe haven in our country, our actions do have, as Don mentioned, a global impact of

a magnitude that overshadows even these crucial domestic concerns.

As the United States argues that nations around the world should open their doors and create camps for thousands of new refugees and that countries of first asylum should integrate these refugees into their societies, it will require a consistent policy of refugee protection on our part to successfully press for greater contributions from others. Similarly, if other countries can show that the United States is retreating from maintaining the highest standards of treatment for asylum seekers, they will have an excellent excuse to ignore our criticism of their own policies in this area.

HIAS' perspective on these central issues in U.S. asylum law is based in large measure on our century-old experience providing representation to asylum seekers and other immigrants. Our staff of lawyers and other advocates provides assistance to applicants who are affirmatively applying for asylum before the INS, as well as in the courts when necessary. In recent years, our staff has assisted or represented hundreds of asylum seekers being held in detention under the expedited removal system.

We have already heard about Anna Smirnova who is a victim of the 1-year filing deadline, a former HIAS client. Today with us are Denis and Tatiana Boulankine, and I would like to ask Denis and Tatiana to stand.

Chairman BROWNBACK. Welcome.

Mr. GLICKMAN. Denis and Tatiana are a married couple from southern Russia near Chechnya. Denis is a lawyer. He opposed the violence and the human rights abuses in the Russian war in Chechnya. Because of his activism, the military authorities harassed his entire family and threatened to send him either to the front lines of the war or to a filtration camp.

On October 9th of 2000, Denis and Tatiana fled Russia using fake Hungarian passports with the intent of going to Canada, where they planned to apply for asylum. While transiting through Newark Airport, INS stopped them and detained them at the Elizabeth Detention Center. Notwithstanding having a U.S. citizen uncle living in New York City, Denis and Tatiana were kept in detention until their asylum case was granted, a total of over 5 months. During this time, despite being married, they were denied all contact visits except for two joint meetings with their HIAS legal representatives.

Two other HIAS clients could not be here with us for this hearing. They are 16-year-old Mohamed Boukrage from Algeria and 15-year-old Congolese girl we call L.K. Both of these children are asylum seekers who are currently incarcerated in New Jersey and New York adult detention facilities.

This past Monday, an ecumenical delegation of over 20 religious leaders toured the Wackenhut Detention Center in Queens, New York, to see firsthand the devastating impact of these policies. HIAS was pleased to join with colleagues from the Lutheran Immigration and Refugee Service and with the Lawyers Committee in organizing this event. I would like to ask that a copy of the religious leaders' joint statement and LIRS paper on alternatives to detention as well as the statements of Tatiana and Denis be included in the record.



Chairman BROWNBACK. Without objection.  
Mr. GLICKMAN. Thank you.  
[The statements follow:]

STATEMENT OF RALSTON H. DEFFENBAUGH, JR., PRESIDENT, LUTHERAN IMMIGRATION  
AND REFUGEE SERVICE

I thank Senator Brownback and the other Members of the Subcommittee on Immigration for this opportunity to present testimony on our nation's treatment of asylum seekers. As a religious refugee service agency, Lutheran Immigration and Refugee Service (LIRS) is deeply concerned about the prolonged detention of asylum seekers who are forced to flee their homelands without proper travel documents. I take this opportunity to present the response of a group of religious leaders who have witnessed these detention practices just three days ago and put forth two proposals for humane and cost-effective alternatives to present practices.

On April 30 LIRS, in cooperation with Hebrew Immigrant Aid Society and other faithbased service agencies, coordinated a tour for religious leaders of the Wackenhut Detention Center in Queens, New York, near John F. Kennedy Airport. These leaders, coming from Christian, Jewish, Muslim, Buddhist and Hindu faiths, were shocked that the United States would subject people seeking asylum who have no criminal convictions to months and sometimes years of such harsh conditions. In the attached joint statement following the tour, they call upon Congress and the Administration to correct these practices.

Under current law, asylum seekers can be released on parole after passing a "credible fear" screening shortly after their arrival. Yet, thousands of asylum seekers are being unnecessarily detained, sometimes for long periods, in detention centers and jails across the United States. This costs taxpayers millions of dollars, and prolongs and exacerbates the suffering of asylum seekers who have come here seeking freedom. LIRS's attached proposal describes a humane and cost-effective alternative that would enable INS to release 2,500 asylum seekers to private nonprofit agencies. The model is based upon very effective programs tested in several communities across the country, all of which have appearance rates for all hearings of 93% or better. If Congress appropriates \$7.3 million for this program, we project that the government will save a net \$11.6 million through reduced detention costs.

Lastly, I include LIRS's proposal for NGO legal orientation presentations for immigration detainees. This is another "tested and proven" program that helps to identify persons with meritorious claims for relief, convinces those without legitimate cases to accept removal, reduces tension and improves security in detention facilities and saves the government money by making the judicial process more efficient and reducing the need for prolonged detention. An appropriation of just \$2.8 million would allow this program to expand to 10 sites and save the government \$10 million.

I urge Congress to correct the policies and practices that lead to the prolonged detention of asylum seekers and, in particular, urge the Members of this Subcommittee to ask your colleagues on the Subcommittee for Commerce, Justice and State Department Appropriations to fund these two worthwhile programs.

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STATEMENT FROM FAITH REPRESENTATIVES FOLLOWING APRIL 30 TOUR OF THE  
WACKENHUT DETENTION CENTER

As representatives of diverse faith traditions that lift up hospitality to the stranger as a fundamental principle, we are deeply troubled by the way our country is treating people who come to our shores fleeing persecution in their homelands. Today, we call upon Congress and the Administration to end policies and practices enacted in 1996, which seriously undermine our nation's commitment to refugee protection. We are particularly concerned about the impact of expedited removal and detention on adults and children seeking asylum here.

Historically, our nation has been a beacon of hope and freedom for the oppressed. Many of our ancestors fled religious and other persecution and were welcomed here. Yet today, low-level officials have the power to turn asylum seekers away at our borders through on the spot, unmonitored interviews. Thousands of asylum seekers, including children, are also imprisoned in INS detention centers and county jails while they await decisions on their claims. Women, men and children who have suffered torture and imprisonment, witnessed the murder of their families and destruction of their homes, and endured long and dangerous journeys to reach freedom find

themselves behind bars. Some remain there for months or even years, with little access to legal, social, and spiritual care.

As a just and generous country that has traditionally stood for the protection of human rights around the world, we can and must do better. We urge Congress and the Administration to take immediate steps to correct the policies enacted into law in 1996 that are causing such severe human suffering.

Signed

*The Rev. Dr. Stephen P. Bouman*, Bishop of the Metropolitan New York Synod of the Evangelical Lutheran Church in America; Member of LIRS Board of Directors

*Mr. Ralston H. Deffenbaugh, Jr.*, President, Lutheran Immigration and Refugee Service—LIRS, Baltimore, Maryland

*Imam Salihou Djabi*, Timbuktu Interfaith Center, New York

*The Rev. Dr. Bob Edgar*, General Secretary of the National Council of Churches, New York

*Mr. Leonard Glickman*, President, Hebrew Immigrant Aid Society—HIAS, New York

*Ms. Mala Kadar*, Ilankai Tamil Sangam, an association of American Tamils Tri-State Area

*The Venerable Michael S. Kendall*, Archdeacon for Mission Episcopal Diocese of New York

*The Bishop Ernest S. Lyght*, Resident Bishop, New York Area, The United Methodist Church

*The Rev. John McCullough*, Executive Director, Church World Service, New York

*Mr. C. Richard Parkins*, Director, Episcopal Migration Ministries, New York

*Rabbi Dan Polish*, Director of the Joint Commission on Social Action of Reform Judaism, New York

*Carol J. Fouke-Mpoyo*, Chair, Riverside Church Sojourners Ministry With Detained Immigrants, New York

*Rabbi Arthur Schneier*, Park East Synagogue, New York; President, Appeal of Conscience Foundation; Member of HIAS Board of Directors

*The Msgr. Kevin Sullivan*, Chief Operating Officer, Catholic Charities, Archdiocese of New York

*The Right Rev. Orris G. Walker Jr.*, Bishop of the Episcopal Archdiocese of Long Island, New York

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## ALTERNATIVES TO DETENTION

### OVERVIEW

The 1996 immigration laws drastically increased the number of immigrants subject to mandatory detention. INS' daily detention capacity has expanded from 8,279 beds in 1996 to approximately 20,000 today, and over 60% of those beds are in county jails. INS's detention and removal budget is now over \$1 billion. However, INS is still detaining thousands of people who by law could be released. Two such groups are asylum seekers without sponsors or family to care for them and people whose removal orders are over 90 days old and who pose no danger to the community.

Alternatives to detention are arrangements between INS and private, nonprofit agencies to supervise and refer people to community services rather than detain them at public expense. To establish an alternatives program, INS contracts with nonprofit agencies that have strong community ties and significant expertise in dealing with refugees and immigrants. The private agency screens potential participants, finds housing, coordinates the necessary services for participants outside of detention, and facilitates compliance with INS and court proceedings. INS retains authority over the program to decide whom to release to the program, to set reasonable reporting and other requirements for program participants, and to re-detain those who do not comply with those conditions or are ordered removed.

If Congress appropriates \$7.3 million for alternatives to detention, some 2,500 people eligible for release could be placed in such programs which have demonstrated 93% and higher appearance rates at all hearings. *The federal government would save a net \$11.6 million.*

### BACKGROUND

The U.S. Commission on Immigration Reform expressly recommended that "Alternatives to detention should be developed so that detention space is used efficiently and effectively." In particular, the Commission noted that "detaining individuals

who have met an initial threshold demonstrating their likelihood of obtaining asylum is not a good use of scarce detention resources.<sup>1</sup>

Asylum seekers are legally eligible for release on parole but some have no one to sponsor them upon release, and remain imprisoned even though they have committed no crime. In detention, they will have difficulty finding legal assistance and may suffer additional trauma. According to the Vera Institute of Justice, which tested supervised release for asylum seekers under contract with INS over three years, "Detention of asylum seekers is particularly unnecessary and unfair since they are so willing to attend their hearings and since so many of them win their cases."<sup>2</sup>

Other detainees have been ordered removed due to relatively minor convictions in the distant past but cannot actually be sent back. Although many no longer pose any danger to the community, they face indefinite detention and prolonged separation from their families for whom they may be the primary breadwinners. Alternatives to detention can humanely achieve INS' goal of ensuring community reintegration for this population.

*Alternatives tested in several locations have all achieved 93% or better appearance rates.* INS funded the Vera Institute of Justice, a New York-based nonprofit agency, to test supervised release as an alternative to detention. The 3-year pilot program showed that 93 percent of asylum seekers released to supervision appeared for all court hearings, and saved the federal government almost \$4,000 per person.<sup>3</sup> Other nonprofit agencies have tested alternatives with equal success. In New Orleans, INS releases asylum seekers and people with over 90-day-old removal orders to a program run by Catholic Charities with a 96% appearance rate.<sup>4</sup> In another program coordinated by Lutheran Immigration and Refugee Service, INS released 25 Chinese asylum seekers from detention in Ullin, Illinois to shelters in several communities. This program also achieved a 96% appearance rate.<sup>5</sup> INS officials have praised both programs.<sup>6</sup>

#### KEY ELEMENTS OF SUCCESSFUL ALTERNATIVES

Following is an outline of how alternatives to detention work, how responsibilities are divided between INS and the nonprofit and why these elements are important to achieving successful appearance rates in immigration proceedings. Attached is documentation with more detailed descriptions of the Vera Institute's Appearance Assistance Program (AAP), Catholic Charities' alternative in New Orleans and the release of Chinese asylum seekers from Ullin, Illinois.

*STEP ONE: Group screening in detention by nonprofit agencies.* In a few detention facilities, private nonprofit agencies have worked with INS and the courts to ensure that group legal orientation presentations are conducted for everyone in detention. These presentations ensure that detainees have information about the proceedings and whether or not they may be eligible for relief from removal or for release from detention. This first contact between the nonprofit agency staff and people in detention is a good time to gather initial information about potential candidates for an alternative. In the case of the Chinese asylum seekers detained in Ullin, Illinois, INS paid the expenses for nonprofit legal representatives to conduct legal orientations for all 88 detained Chinese. The information gathered proved critical to organizing effective services and evaluating release options.<sup>7</sup>

*STEP TWO: Individual screening before release to an alternative* INS has the authority to decide whom to release to an alternative to detention. However, an in-depth interview by a nonprofit representative can improve the Service's ability to make this decision. The nonprofit agency interviews each potential participant to ensure that the person meets the program's criteria and understands the responsibilities of participants in the program. Through this interview, the nonprofit may discover important information that affects the release decision. For example, the person may have family, in which case INS can consider releasing the person to his

<sup>1</sup>U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*, September 1997, pp. 139, 140.

<sup>2</sup>Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program*, June 7, 2000, Volume I, p. 32.

<sup>3</sup>Vera Institute of Justice, Volume I, p. 66.

<sup>4</sup>Joan Treadway, "Detainees get chance to change their lives," *New Orleans Times Picayune*, Jan. 22, 2001, p. B-3.

<sup>5</sup>Esther Ebrahimian, "The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention," *Detention Watch Network News*, August/September 2000, p. 8.

<sup>6</sup>Joan Treadway, *New Orleans Times Picayune*, p. B-3 (quoting INS New Orleans District Director Christine Davis); Esther Ebrahimian, *Detention Watch Network News*, p. 8 (citing INS Field Operations chief Michael Pearson).

<sup>7</sup>Esther Ebrahimian, *Detention Watch Network News*, p. 2.

or her family instead of to an alternative. Such screening interviews were found to be critical to the success of Vera's Appearance Assistance Program.<sup>8</sup>

*STEP THREE: Provision of services to individuals released to the alternative* Access to assistance upon release—such as legal, social, medical, mental health and job placement services—can help ensure compliance with immigration proceedings.<sup>9</sup> The nonprofit agency makes use of its community links to find available services. It also helps integrate each individual into the community (for example, by helping participants make contacts in their ethnic and/or religious communities). The nonprofit's ability to access these services depends on longestablished links with other agencies in the community. The services needed will vary depending on the population being served and on the individual. For example, asylum seekers are newcomers to the country. Help learning how to live in the United States and find legal assistance can be a critical factor in their making their court appearances.<sup>10</sup> Long-term detainees usually already have experience living in this country, but may need intensive support to help them re-start their lives and integrate into the community.<sup>11</sup>

INS must grant work authorization to all those released, including asylum seekers, so that they can support themselves instead of relying on government or community sources to cover housing and living expenses. It also helps them use their time productively, contributing to the community instead of remaining idle. INS is granting work authorization in New Orleans to everyone released to Catholic Charities, and this is critical to the success of the program.<sup>12</sup> The nonprofit agency running the alternative organizes temporary housing for those released, and assists them in finding a job and locating a place to live more permanently, all with the goal of helping the released person become self-sufficient.

*STEP FOUR: On-going assistance, monitoring and informati* Providing information about how the legal system works, detailing the requirements for compliance and describing how to meet them, explaining the consequences of not attending a court hearing, helping locate legal assistance and building a relationship of trust all help to ensure compliance.<sup>13</sup> Immigration proceedings can be very confusing even for people who have lived in this country, let alone newly arrived asylum seekers. The opportunity to talk with a neutral party experienced in working with refugees and accessing services they need, greatly helps keep an asylum seeker engaged throughout the legal process. In New Orleans, program participants voluntarily contact Catholic Charities to ask questions, discuss problems and receive advice and assistance. In the Ullin project, community shelters reminded participants of their hearings and scheduled check-ins with INS, organized transportation and accompanied them to these appointments.<sup>14</sup>

*STEP FIVE: Enforcing final orders of deportation*

People released to alternatives to detention are more likely to be able to stay legally in the country at the conclusion of their proceedings. This is due to effective screening and increased access to legal representation outside of detention with the help of nonprofit agencies. More than half of the asylum seekers in the Appearance Assistance Program (AAP) won their cases.<sup>15</sup>

It is inevitable, however, that some people in alternatives to detention will lose their cases and be ordered removed. It remains the responsibility of INS, not the nonprofit agency, to enforce such orders. In order to achieve this, INS may re-detain at any time a person who does not comply with the conditions of an alternatives program. Conditions may include participants reporting to INS in person on a regular basis, showing up at all court hearings, and keeping INS informed of their actual address of residence. INS may also re-detain a participant upon issuance of the removal order. Participants in the AAP still appeared for their hearings 93% of the time even though they were informed that they would be re-detained if ordered re-

<sup>8</sup>Vera Institute of Justice, Volume I, p. 6.

<sup>9</sup>Vera Institute of Justice, Volume I, p. 73.

<sup>10</sup>Vera Institute of Justice, Volume I, p. 31.

<sup>11</sup>Sue Weishar, "NGOs and INS Establish Successful Alternative in New Orleans," *Detention Watch Network News*, August/September 2000, p. 4 and Joan Treadway, *New Orleans Times Picayune*, p. B3.

<sup>12</sup>Sue Weishar, *Detention Watch Network News*, p. 8.

<sup>13</sup>Vera Institute of Justice, Volume I, p. 7.

<sup>14</sup>In addition to the documentation attached, LIRS gathered information about the operation of these alternatives via telephone interviews with Catholic Charities and the shelters housing the Chinese released from Ullin.

<sup>15</sup>Oren Root, "The Appearance Assistance Program: An Alternative to Detention," *Detention Watch Network News*, August/September 2000, p. 3.

moved in court.comparison group that did not face the possibility of such re-detention had substantially poorer appearance rates.<sup>16</sup>

For asylum seekers who lose their cases in court and are ordered removed, Vera Institute suggests that INS could re-detain the person at the hearing, but release them again to a more intensive level of supervision if they decide to appeal.<sup>17</sup> At earlier stages of proceedings, the Vera Institute's experience shows that asylum seekers need very minimal supervision, if any, in order to ensure good compliance rates. Vera Institute explains, "When they are placed in proceedings, they understand that they must seek ...protection through the U.S. justice system and attend immigration court hearings."<sup>18</sup> Vera Institute does not recommend that asylum seekers be detained throughout the appeals process.

#### PARTNERSHIP WITH NONPROFIT AGENCIES

The Vera Institute recommends that the INS "release to alternatives (such as community supervision) as many people as it can, as quickly as it can, while they complete their immigration court hearings"<sup>19</sup> and favors contracting with non-governmental entities.<sup>20</sup> We agree.

**Immigrants inside and outside detention are more likely to trust representatives who do not work for the government, and will therefore be more likely to cooperate with them.** Trust and confidentiality are important benefits of having non-governmental entities involved in alternatives.<sup>21</sup> Once immigrants have the trust of a nonprofit representative, they may reveal information that they would not have readily given to INS or to a prison official. The information they receive from the nonprofit is also more trusted. In the process of release of Chinese asylum seekers detained in Ullin, nongovernmental representatives interviewed the entire group of 88 in detention, a step that was critical to the eventual release of some 33 of them.<sup>22</sup>

**Nonprofit agencies have the necessary information and expertise to help people access needed services, leading to greater compliance.** It takes a good deal of work to find out what legal, social and pastoral services a person needs, and to help them access them. This has been critical to success of all three programs to date.<sup>23</sup> Merely giving released individuals a list of available services is not sufficient. Certain nonprofit agencies, such as refugee resettlement agencies, have multi-lingual, multi-cultural staff with legal and social work backgrounds, as well as strong, established links in the community that facilitate service provision and job placement. These agencies also have solid ties to immigrant and faith communities, both of which can be important in avoiding isolation.

**Help in understanding the legal process, and the consequences of not showing up at INS check-ins and court hearings, is crucial to ensuring that people comply.** Such help has been shown to be most effective when it comes from a non-governmental representative who has gained the trust of the released individual.<sup>24</sup> The nongovernmental agencies involved in these projects have spent a good deal of time working with participants to explain proceedings to them, remind them of meetings with INS and the courts, and even transport them to those meetings and hearings. They are also able to answer questions on an on-going basis once someone is released, helping the participant to overcome fears and misinformation that otherwise might have caused him or her to stop complying.

**Facilitating access to legal representation is a critical role of a non-governmental agency implementing an alternative to detention.** While INS cannot fund legal representation, adequate legal assistance can help reduce delays in proceedings (for example, due to a lack of information on the part of the immigrant), help ensure compliance, and lead to a fairer process. For vulnerable populations such as asylum seekers, legal representation is particularly crucial,

<sup>16</sup> Vera Institute of Justice, Volume I, p. 3.

<sup>17</sup> Vera Institute of Justice, Volume I, p. 32.

<sup>18</sup> Vera Institute of Justice, Volume I, p. 29-30.

<sup>19</sup> Vera Institute of Justice, Volume I, p. 72.

<sup>20</sup> Vera Institute of Justice, Volume I, p. 74.

<sup>21</sup> Vera Institute of Justice, Volume I, p. 72.

<sup>22</sup> Esther Ebrahimian, Detention Watch Network News, p. 2.

<sup>23</sup> Oren Root, Detention Watch Network News, p. 9.

<sup>24</sup> Vera Institute of Justice, Volume I, p. 73.

- and it is hard to find in detention. Attorneys who do represent people in detention encounter much greater difficulties preparing these cases.<sup>25</sup>
- In the case of the Chinese asylum seekers released from Ullin, nonprofit agencies found pro bono attorneys for all of those released to community shelters. Locating quality representation was a time-consuming process, and was only possible because of the longestablished relationships that the nonprofit agencies had with bar associations, law firms, and the pro bono legal community. Even after representation was secured, the nonprofit agencies played a critical role answering the questions of attorneys and helping ensure good communication between the attorneys and the immigrants. For example, the local legal service agencies assisting those released from Ullin helped find volunteer interpreters for attorneys to interview their clients—critical assistance to busy attorneys working on pro bono cases. Good communication between an attorney and his or her client also helps make sure the immigrant is engaged in the process, increasing the likelihood of compliance.
- A good working relationship between INS officials, the nonprofit agency carrying out the alternatives program, and other key community members is essential. An alternative to detention requires significant cooperation between INS and the nonprofit to structure the program, work out logistics and respective responsibilities, and work out creative ways to address situations as they arise. Success in doing so depends critically upon these good relationships. In New Orleans, INS, Catholic Charities and community leaders met on a quarterly basis for a number of months, establishing communication, trust and cooperation, before the alternative program was even conceived.<sup>26</sup>

#### JUSTIFICATION OF COSTS/DEMONSTRATION OF SAVINGS

##### COSTS

The Vera Institute of Justice, which conducted the AAP pilot from 1997-2000 in the New York metropolitan area, carefully documented the costs involved in running an alternative to detention. Our costs and savings estimates are based on this documentation with one notable exception. The Vera model included a labor-intensive reporting requirement which was found not to contribute to the appearance rate of asylum seekers. According to Vera, “the most consistent factors [in hearing compliance] are having community and family ties in the United States, and being represented by counsel . . . Participant asylum seekers achieved a higher appearance rate than those released on parole because the program more effectively screened for community ties.”<sup>27</sup> Screening for community ties and facilitating access to counsel are two aspects that will be notably enhanced with the participation of NGOs with substantial refugee resettlement experience, community involvement and legal referral networks. Indeed, the even higher appearance rates obtained by the Ullin and Catholic Charities examples confirm this. In the AAP program about half of the staff time was devoted to the extraneous reporting requirement.<sup>28</sup> Accordingly, at least the variable costs of Vera’s projected program could be halved by eliminating that function, amounting to an average cost of \$710,000 per site.<sup>29</sup> At that rate, it would cost about \$7.1 million to serve a total of 2,500 persons who otherwise would have to be detained. A national coordinating center to conduct training and maintain consistent quality control would cost an additional \$200,000 bringing the total annual cost of the program to \$7.3 million.

##### SAVINGS

The average cost of detaining an asylum seeker through his or her hearing is \$7,259.<sup>30</sup> The cost of using an alternative is \$2626 per case heard (including the costs of detention prior to screening and re-detention later, if necessary).<sup>31</sup> Thus, the government can save the difference, or \$4,633 for each asylum seeker released to

<sup>25</sup> Esther Ebrahimian, Detention Watch Network News, p. 8.

<sup>26</sup> Sue Weishar, Detention Watch Network News, p. 8.

<sup>27</sup> Vera Institute of Justice, Volume I, p. 7.

<sup>28</sup> Telephone conversation with Oren Root, Senior Associate, Vera Institute, April 24, 2001.

<sup>29</sup> Vera projected \$1.1 million for a site serving 250 persons. Vera Institute of Justice, Volume II, Appendix V, p. 3. This includes \$320,000 in fixed costs and \$780,000 in variable costs, conservatively estimated. Halving the latter and adding it to the former yields \$710,000.

<sup>30</sup> Vera Institute of Justice, Volume I, p. 66.

<sup>31</sup> Vera Institute of Justice, Volume II, Appendix V, p. 5. The AAP’s \$12 per day cost is adjusted to \$8, reflecting the fact that the streamlined model proposed costs 66% of the projected AAP, similarly expanded, i.e., \$7.3/11 million.

the alternative program. If 2,500 asylum seekers are released to alternatives, these savings would amount to more than \$11.6 million.

Another group that could be released to the program is those who have already been ordered removed but whose removal cannot be carried out because INS cannot obtain travel documents from the home country. They are eligible for release beginning 90 days after their removal orders. Catholic Charities in New Orleans already successfully serves this group, along with asylum seekers, without the reporting requirements used by the AAP. (Savings from releasing people in this group are likely to be even higher than for asylum seekers, because many might remain in detention indefinitely without these programs. Because firm figures are not available for savings for this population, however, we conservatively base our figures on asylum seekers.)

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#### LEGAL ORIENTATION FOR IMMIGRATION DETAINEES PROGRAM IMPLEMENTATION PLAN

PREPARED BY:

FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT

LUTHERAN IMMIGRATION AND REFUGEE SERVICE

This document lays out a plan for implementing legal orientation presentations to be conducted by private sector nonprofit agencies in immigration detention centers. Legal orientations reduce government costs and increase efficiency in immigration proceedings. They also help secure the due process rights of persons detained during immigration proceedings and ensure that those with meritorious claims for asylum or other relief from removal can adequately present them.

A 1998 U.S. Department of Justice pilot project found that legal orientation presentations successfully reduce detention time, speed up immigration court proceedings, increase their efficiency and improve security in detention centers. The U.S. Senate and the U.S. Commission on Immigration Reform have recommended that such programs be funded and implemented nationwide.

With an appropriation of \$2.8 million, private sector nonprofit agencies can implement legal orientations at ten major detention sites, generating net projected savings of \$10 million.

#### BACKGROUND OF THE PROBLEM

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Congress greatly expanded the number of people the Immigration and Naturalization Service (INS) must detain. From 1996 to 2000, INS increased its detained population from 8,279 to over 20,000 immigrants and asylum seekers on any given day; annually, the figure is over 200,000.

The detention and removal process is enormously expensive with a budget over \$1 billion annually, including an average detention cost of \$65.61 per bed-day. Reducing the length of immigration removal proceedings saves money by significantly lowering the number of bed-days that individuals spend in detention.

The efficiency of the system suffers when unrepresented individuals seek repeated continuances to find counsel, when extra time is required to identify and narrow the relevant legal issues and when hearing times are extended because of unfamiliarity with the court procedures. Under these circumstances, judges are often hesitant to proceed in the absence of representation. Facilitating access to legal advice and representation can improve the efficiency of removal proceedings while strengthening the courts' commitment to due process.

An estimated 90 percent of immigration detainees go unrepresented due to poverty and the remote locations of detention sites.<sup>1</sup> These individuals, often with limited education and proficiency in English, alone must navigate the labyrinths of U.S. immigration law, which has been compared to the U.S. tax code in its complexity. Many are confused about their rights, options and prospects. Some unnecessarily delay their cases even though they are not eligible for relief, while others with meritorious claims erroneously waive their rights and are wrongly deported.

<sup>1</sup>Margaret H. Taylor, Promoting Legal Representation for Detained Aliens: Litigation and Administrative Reform, 29 *Corn. L. Rev.*, 1647, 1663 n.60 (1997) (citing FY 96 EOIR statistics entitled "Immigration Judge Decisions in FY 96 by Custody and Representation Status").

## LEGAL ORIENTATION PRESENTATIONS

The Florence Immigrant and Refugee Rights Project, Inc. in 1989 created the model legal orientation process at the Florence (AZ) INS Service Processing Center. The program consists of a live presentation for all detainees before or at the time of their initial hearing with follow up screening and case assessment for those without private counsel. Additional legal assistance, referral or representation is provided when available.<sup>2</sup>

The Florence Project's legal orientations benefited the INS and the Court by increasing the efficiency of the process.<sup>3</sup> The U.S. Senate and U.S. Commission on Immigration Reform have recognized the value of such programs.<sup>4</sup>

During fiscal year 1998 the U.S. Department of Justice funded a pilot project through EOIR to document the benefits of legal orientations. The project was implemented at three detention sites by three private sector nonprofit agencies<sup>5</sup> over a three-month period. Based on case data from the pilot period, the evaluators from EOIR found that legal orientations save both time and money for the government while also benefiting detainees. They determined that legal orientations reduced overall bed days in detention by 4.2 days per detainee and found that "[d]uring the pilot, cases were completed faster and detainees, with potential meritorious claims to relief, were more likely to obtain representation." In addition, they found that such programs were useful management tools that "strengthen the capability of INS to operate safer detention facilities." In conclusion, the evaluators recommended that the government should expand legal orientations to all INS detention facilities.<sup>6</sup>

## RATIONALE FOR PUBLIC-PRIVATE PARTNERSHIP IN LEGAL ORIENTATIONS

Private sector nonprofits with demonstrated legal expertise in immigration matters, experience in working with detained immigrants and ability to refer cases to pro bono counsel are best suited to provide independent professional advice to detained individuals and have spearheaded limited efforts to assist immigrants in removal proceedings. They do not, however, have the resources to sustain funding of this type of systemic initiative on their own nor are there sufficient alternative private sector resources.<sup>7</sup> The government is statutorily barred from funding legal representation in immigration proceedings.<sup>8</sup> The scope of the statute, however, does not prohibit funding items and programs that facilitate immigrants obtaining representation such as legal orientations.<sup>9</sup>

## OBJECTIVES

- To implement legal orientation programs at 10 detention facilities so that all at those sites receive legal information, evaluation and counseling as well as referral for representation when available
- To measurably increase the efficiency of immigration court proceedings, decrease the duration of detention and reduce tension and behavioral problems in the facilities
- To measurably increase detainees' ability to make a timely decision about their cases through early and accurate legal information and orientation

<sup>2</sup> Christopher Nugent, *Strengthening Access to Justice: Prehearing Rights Presentations For Detained Respondents*, Interpreter Releases, Vol. 76, No. 27, July 19, 1999.

<sup>3</sup> Immigration Control: Immigration Policies Affect INS Detention Efforts, United States General Accounting Office Report, GAO/GGD-92-85, June 1992.

<sup>4</sup> Senate Resolution 284, 1034 Congress 2d Session, 1994 (enacted); Letter from U.S. Senators Dennis DeConcini, Orrin Hatch, Edward M. Kennedy, Paul Simon, and Alan K. Simpson to Attorney General Janet Reno, November 14, 1994; U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*, September 1997, pp. 135-37.

<sup>5</sup> The agencies and detention sites included the Florence Project at the Florence INS SPC in Florence, AZ, Catholic Legal Immigration Network (CLINIC) at the San Pedro Detention Center near Los Angeles, CA, and South Texas Pro Bono Asylum Representation Project (ProBAR), a project of the American Bar Association, at Port Isabel Detention Center in Harlingen, Texas.

<sup>6</sup> U. S. Department of Justice, Executive Office for Immigration Review, "Evaluation of the Rights Presentation," 1998.

<sup>7</sup> Letters from officers of the Open Society Institute, the Ford Foundation, the Fund for Immigrants and Refugees, the Lawyers Trust Fund of Illinois and the New York Community Trust, August-September 2000.

<sup>8</sup> Immigration and Nationality Act §240(b)(4)(A); 8 U.S.C. 1229a.

<sup>9</sup> David A. Martin, INS General Counsel, Memo, "Funding of a Pilot Project for the Representation of Aliens in Immigration Proceedings," December 21, 1995.



- To provide information, training, technical assistance and ongoing advice through a National Support and Training Center to private nonprofit agencies conducting legal orientations at designated sites
- To evaluate and quantify the costs, savings, benefits, and other effects of the legal orientations and evaluate the merits of expansion to other sites
- Through an interagency national working group, to develop system-wide procedural recommendations for the INS, EOIR, and private nonprofit agencies to improve justice and efficiency through legal orientation programs

#### PROGRAM IMPLEMENTATION

##### A. National Implementation

*EOIR will administer* the program at the national level using the standard government “Request for Proposal” (RFP) process. The agency will select the appropriate organizations and be accountable for ensuring that all proposed activities are carried out.

*An interagency working group* should be established at the national level, bringing together the INS, EOIR, and the designated agencies share information and ensure consistent implementation of the program. Such a group has met several times in past years to discuss the feasibility of such program and would be ready to build on those relations and that practical experience. This working group will also address the movement of detainees, access to facilities and court procedures, and will provide oversight and guidance to the local sites of the project.

The establishment of a *National Legal Orientation Support and Training Center* will also help ensure quality, consistent implementation of legal orientations nationwide. The Center will offer the nonprofit agencies training and consultation in program development and substantive legal issues, will coordinate evaluations and will assist EOIR and the interagency working group to develop standards for the programs. The original model for legal orientations has been developed and refined over a ten-year period at the Florence INS Service Processing Center in Florence, AZ. The D.O.J. pilot project found that this model was effectively used at all three pilot sites and recommended its replication at other sites to standardize the provision of information and evaluation. The agency chosen to carry out the training should have significant expertise in implementing this model.

##### B. Local Implementation at Each Detention Site

At each detention site, the nonprofit agency will be in charge of implementing the program and will be primarily responsible for the screening, assessment and referral functions. These tasks will include:

- To review the charging documents filed with the court of those attending the orientation
- To give a presentation to all detainees before or at the time of their initial court appearance, integrating questions and answers throughout
- To briefly screen each respondent at the end of the orientation to determine whether he or she wants to accept removal, seek voluntary departure or have an individual interview with the nonprofit’s staff
- To conduct individual interviews when requested to assess potential relief from removal and release eligibility
- To distribute additional written orientation materials at the conclusion of the interview
- To orient *pro se* respondents before each additional court hearing
- To provide further legal assistance, referral or representation when available and at no expense to the government

A basic formula for core staffing includes at least one attorney and paralegal per courtroom in addition to one full-time clerical support person and part-time supervisory support. For example, in a detention facility with 500 beds and two courtrooms, at least 5.5 staff members are required (including attorneys, paralegals, clerical and part-time supervisory support). The lead agency will supervise and educate the core staff. Legal staff would maintain time records to ensure that government funding is not used for direct representation.

##### C. Keys To Success

Previous assessments of successful legal orientations have identified several key elements that are necessary to make the project a success. These include:

*Cooperation:* Effective implementation of legal orientations requires cooperation between all parties at both the local and national levels. Adjustments to sometimes long-standing operating procedures are a necessary element of the model, particularly information-sharing and access to detainees. Accordingly, each site will form

a local working group, bringing together the Officer-in-Charge of the detention facility, the EOIR court administrator, the INS trial attorneys and the nonprofit agency as well as INS District level staff when necessary. This working group will set initial site-specific base-line conditions, program goals and cooperative operating procedures will continue to meet over the course of the program to address concerns or problems that arise.

*Access and Collaboration:* In preparation for implementation, the local working groups will review the facility operating procedures and access rules to ensure that they meet the guidelines set forth in the INS Detention Standards. The program will respect the distinct roles and obligations of the stakeholders. It will be the responsibility of the nonprofit agency at each site to make postorientation decisions regarding service, representation or referral. No federal government entity will make such determinations.

*Securi:* The program will respect the security and custodial obligations of the INS and EOIR within the guidelines set forth in the INS Detention Standards.

*Lead Agency:* A single "lead agency" will be identified at each detention site to provide the continuous presence of a core staff to implement the legal orientations, centralize key functions, provide continuity in the court and a central, accountable clearinghouse for problem solving. Each of the local sites will have a single agency as the point of contact with primary oversight for the screening, assessment and referral functions, representing the interests of all local nonprofit agencies. A core staff from the lead agency will be present at all master calendar hearings.

#### MEASURING SUCCESS

The local working groups at the ten detention sites, in consultation with the national working group, will measure the effect of legal orientations upon the following:

- The efficiency of the immigration courts
- The provision of legal screening/advice and an appropriate level of legal services to all immigration detainees in the selected sites
- The efficiency of deportation of individuals with no legal recourse
- Number of detention days
- Number of security incidents
- Qualitative assessment of improvements in detainee access to justice and due process rights

At the end of the twelve-month period, the national interagency working group, in coordination with the local groups, would report to EOIR on their findings. In addition, the agencies will produce a written report of their activities at each site.

#### EXPANSION TO ADDITIONAL DETENTION SITES

The plan proposes implementation of legal orientation programs to ten detention sites during a oneyear period. This is based on a realistic assessment of how many legal orientation programs could be implemented in one year. However, expansion to additional detention sites in future years will take advantage of the efficiencies, savings, and protection of due process rights afforded by legal orientations. The year-end reports conducted by the private sector nonprofit agencies and the national interagency working group will assist in evaluating the merits of expansion to other sites. The reports will also provide guidance to the various governmental and non-governmental agencies in their efforts to continue to improve justice and efficiency through the continued expansion of legal orientations.

#### JUSTIFICATION OF COSTS/DEMONSTRATION OF SAVINGS

##### OVERVIEW

With \$2.8 million appropriated for legal orientation presentation programs at ten major detention facilities, the government will save \$12.8 million in detention costs for a net savings of \$10 million.

\$2.2 million covers the costs of legal orientation presentations at \$200,000 per site, and includes an additional \$200,000 for the training center. INS and EOIR expenses at the sites are estimated at \$600,000 yielding a total cost of \$2.8 million. Using EOIR's FY 2000 immigration court processing figures at ten major facilities, the per person cost of the presentations is \$63, about the average cost of one night in detention. According to EOIR's evaluation, those who attend such presentations spend an average of 4.2 fewer days in detention. Consequently, the program can yield net savings of over \$200 per person, or about \$10 million if implemented at 10 detention centers.

## PROGRAM COSTS

*Grants to NGOs*

It will cost an estimated \$200,000 for a non-governmental organization to carry out legal orientations at a detention facility for a year. This is based on a site with two courtrooms. Personnel costs are estimated at \$133,000, and include a project director at .5 FTE (\$25,000), two attorneys at .5 FTE each (\$40,000), two paralegals at .5 FTE each (\$25,000) and administrative support staff at .5 FTE (\$10,000), and benefits estimated at 33% of salary. Non-personnel costs include 50% of yearly operating costs, and are estimated at \$67,000. This includes office rental, telephone, purchase of two laptop computers, a photocopier and a fax machine and other basic office expenses.<sup>10</sup>

Costs of the national training center are estimated at \$200,000 annually. Personnel costs of \$80,000 include a training coordinator at 1.0 FTE (\$50,000, including benefits) and an administrative assistant at 1.0 FTE (\$30,000, including benefits). Office operations are estimated at \$50,000 a year. Costs of organizing and hosting trainings for NGO staff at all sites and travel for site visits are an estimated \$70,000.

*Cost to INS and EOIR*

EOIR reports in its evaluation of the 90-day pilot project that at one site, INS incurred a cost of \$20,000 over the 3 months to pay for guards to bring detainees to court the evening before their hearing for the presentation. These costs were not reported at the other two sites, but two court administrators reported that hosting the presentations required some time for court support staff.<sup>11</sup>

We doubled the one site's cost figure to cover unreported costs and to allow for the possibility that more than one-third of the facilities would incur such costs and estimate, therefore, that combined costs amount to \$40,000 over three months at three sites, for an average of \$54,000 per site per year. For ten sites, this adds up to \$540,000. For administration of the program at the national level, EOIR will require a small percentage of program costs, estimated at 3% of \$2.2 million or \$66,000. Thus, the total cost to the government is estimated at \$606,000, rounded to \$600,000.

## SAVINGS RESULTING FROM THE PROGRAM

EOIR's evaluation estimates a savings of approximately \$8 million were the program to be expanded to 16 detention sites, based on the pilot's average savings of 4.2 detention bed-days for every detainee who attends a rights presentation, an average cost of \$65.61 per bed-day, and a total of 29,131 detainees appearing in court at 16 detention facilities in FY 1999.<sup>12</sup>

To estimate savings for legal orientations at ten sites, we choose ten courts at detention facilities for which the Yearbook provides figures of "immigration matters received." These are all facilities at which INS detention standards are now in force (they are all INS-operated or contracted facilities, not county or local jails). These standards require the facilities to allow legal orientation presentations by non-profit organizations. The total number of immigration matters received at these ten courts in FY 2000 was 46,392.<sup>13</sup>

If legal orientations save an average of 4.2 bed-days per detainee at \$65.61 per bed-day, and 46,392 people attend presentations, INS' gross savings amount to \$12.8 million. If, as described above, it costs a total of \$2.8 million to carry out legal

<sup>10</sup>The EOIR pilot project grants were approximately \$20,000 each to cover 3 months of presentations, implying an annual cost of \$80,000 per site. However, this figure cannot be extrapolated to a larger, nationwide program. The three agencies in the pilot had existing programs and were supplemented by privately-raised funds. This is not sustainable and would not ensure consistent legal orientation for all detainees at a facility. Agencies will still need to raise their own funds to cover other activities that cannot be government-funded, such as legal representation for people in immigration proceedings.

<sup>11</sup>"Evaluation of the Rights Presentation," Executive Office of Immigration Review, 1999, p. 14.

<sup>12</sup>"Evaluation of the Rights Presentation," Executive Office of Immigration Review, 1999, p. 12.

<sup>13</sup>Statistical Yearbook, Executive Office of Immigration Review, January 9, 2001, Table 1, p. B3. Detention facilities included are: Batavia SPC, Eloy Bureau of Prisons Facility, Florence SPC, Houston SPC, Krome North SPC, New York Varick SPC, Oakdale Federal Detention Center, Otay Mesa, Port Isabel SPC, and San Pedro SPC. This total is larger than the FY 1999 figure EOIR used in the rights presentation evaluation for 16 facilities. The 2000 Statistical Yearbook documents an overall increase of immigration matters received at all courts of 10% over FY 1999 figures (p. B2).

orientation presentations at ten sites for a year, the net savings to the federal government is an estimated \$10 million.

As legal orientations cost about \$63 per person, and, as EOIR's evaluation demonstrates, save an average of 4.2 days in detention, the net savings per person is about \$212.

Based on the statistics from the EOIR evaluation, however, it is likely that on average, legal orientations save more than 4.2 bed-days. The report arrived at this figure by comparing how long it took at the three sites to complete a case before the pilot period, with how long it took during the pilot period. The average difference between the number of completed cases before and during the pilot for all three sites was 4.2 bed-days.<sup>14</sup> However, legal orientation presentations were occurring in the same manner at Florence before and during the pilot. Therefore, at Florence there is not much difference between the number of completed cases before and during the pilot. Therefore, including Florence in the calculation brings the average down.<sup>15</sup>

#### SUPPORT FOR LEGAL ORIENTATION FOR IMMIGRATION DETAINEES

"We urge you to actively pursue such a pilot program and to seriously consider the Florence Service Processing Center Project as a model. It is our understanding that the project at the processing center in Florence has not only cut the time and costs associated with the deportation of aliens, but at the same time has ensured that aliens are apprised of their rights in deportation proceedings."

—Senators Dennis DeConcini, Orin Hatch, Edward Kennedy, Paul Simon and Alan Simpson, Letter to Attorney General Janet Reno, November 14, 1994

"In our view. . . INS is not prohibited from expending appropriated funds for things that will facilitate aliens' obtaining representation."

—INS General Counsel David Martin, December 21, 1995 Memorandum

"The system suffers further because many aliens are unrepresented and thus do not receive advice on whether to go forward because they have a chance of being granted relief. . . the removal process works much more efficiently when aliens receive advice of counsel. Those with weak cases generally do not pursue relief through proceedings if they understand from counsel that they will be wasting their time."

—The U.S. Commission on Immigration Reform, *Becoming a Citizen: Immigration and Immigrant Policy*, September 1997

"The Executive Branch should be authorized to develop, provide, and fund programs and services to educate aliens about their legal rights and immigration proceedings. Such programs should also encourage and facilitate legal representation where to do so would be beneficial to the system and the administration of justice. . . the alien would not have a right to appointed counsel but the government could fund services to address some of the barriers to representation."

—The U.S. Commission on Immigration Reform, *Becoming a Citizen: Immigration and Immigrant Policy*, September 1997

"I strongly support the work of the Florence Project and the need for similar efforts in INS detention facilities around the country. . . I can tell you with certainty that the detainee population here suffers from less anxiety and stress, which are major causes of unrest, than detainees at other SPCs. . . . As the Officer in Charge it is extremely helpful in managing the facility to have the Project staff on hand to work with those who need special attention."

—Donald B. Looney, Officer in Charge, Florence INS SPC, 27-year veteran of INS, Letter of May 5, 1998

<sup>14</sup>"Evaluation of the Rights Presentation," Executive Office of Immigration Review, 1999, pp. 11–12.

<sup>15</sup>While the EOIR evaluation does not provide a breakdown of these figures by site, it does provide a breakdown of another set of figures that supports the assertion that the average number of bed days per person would be the same before and during the pilot. On page 8, statistics are presented per site regarding the length of time it took to process unrepresented detainees who did not apply for relief from removal. This is not the same as the figures used to calculate the 4.2 average—those figures include all cases, represented and unrepresented and including those who applied for relief. For unrepresented detainees not applying for relief, at both San Pedro and Port Isabel (where presentations had not taken place before) it took on average 9 days less during the pilot project to process these cases. At Florence, it only took 23 days less, which is not a substantial difference. As the report itself states, this is because Florence was conducting rights presentations before as well as during the pilot.

“Based on case data from the pilot period, the rights presentation has the potential to save both time and money for the government while also benefiting detainees. During the pilot, cases were completed faster and detainees, with potential meritorious claims to relief, were more likely to obtain representation. Moreover, the rights presentation is a useful management tool for controlling a detained population. As a result, the rights presentation may strengthen the capability of INS to operate safer detention facilities.”

—Evaluation of the Rights Presentation, U.S. Department of Justice, Executive Office for Immigration Review

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STATEMENT OF DENIS AND TATIANA BOULANKINE

My name is Denis Boulankine. My wife, Tatiana, and I are from southern Russia, near Chechnya. I have relatives in Chechnya, and support the Chechen people's right to self-determination. I was involved in protests against the war in Chechnya, and was persecuted by the Russian military who threatened to send me to a filtration camp, from which I would likely never return.

In many ways, I had a promising future in Russia. I recently graduated from law school and got married. However, my life was in danger due to my political views, and my wife and I made the difficult decision to leave Russia. Due to the fact that military officers were looking for me, there was no way we could legally leave the country. My in-laws paid a smuggler for fake passports. When we reached Newark airport on October 12, 2000, we were stopped by an immigration officer and requested political asylum. It was a surprise when we were taken to an immigration detention center, where we lived like prisoners. It was especially painful to be separated from my wife Tatiana. At the time we arrived, we had only been married for five months. While in detention, we were only allowed to visit with a plexiglass wall between us, speaking over a telephone. The only time we were allowed to be in the same room together was when our legal representative from the Hebrew Immigrant Aid Society (HIAS) was preparing us for our hearing in court. My attorney filed a parole request for us. My uncle Boris, who is a US citizen, would have been happy to support us if we were released. However, the INS denied the request. We remained in detention for five and a half months, until the immigration judge granted us political asylum in the United States on March 30, 2001. We are grateful to have asylum, but hope that other people will not have to endure the pain of separation and prolonged detention.

Mr. GLICKMAN. HIAS, its sister Jewish community organizations, and other faith-based organizations approach the issues of asylum and refugee protection based on our commitment to biblical imperatives to “defend the stranger” and to “redeem the captives.” The lessons of Jewish history, rife with persecution and wanderings, impress upon us the importance of preserving an open door for individuals seeking protection and refuge. American immigration policy has at times allowed the Jewish community to find a home and the chance to live freely, to practice our faith and to build a strong community. However, at other times, the Jewish community has had to watch as fellow Jews perished overseas without the hope of safe haven in this country. We cherish the opportunities that we have here, and we have learned the painful lessons taught by periods in our history when the doors were closed.

HIAS and much of our community trace our involvement with refugee protection to efforts to help Russian Jews during the final years of Czar Alexander II's reign from 1870 to 1881. It was in 1881 that HIAS was born, in part for this reason. In a letter to American Jews, the Russian Jewish pleaded for help, writing: “We ask you, we pray, we implore, we beseech you to come to our rescue, to take us out of our bondage, out of our misery; to give us a chance in your great and glorious land of liberty, whose broad and trackless acres offer an asylum and a place for weary hearts

and courageous souls willing to toil and by the sweat of the brow earn their daily breads..."

The values that these refugees expressed—a longing for liberty, safety, and an opportunity to work—are at the heart of the movement of immigrants to the United States in the late 19th, early 20th centuries. This wave of immigration brought the ancestors of many in today's Jewish community, as well as countless other Americans, to this country.

As President Bush recently noted at the U.S. Holocaust Memorial Museum, "History records many atrocities before and after the 1930's and 1940's. But it was the Holocaust that forced us to find a new term for horrors on such a scale—a crime against humanity. Human evil has never been so ambitious in scope, so systematic in execution, and so deliberate in its destruction...In places like this, the evidence has been kept. Without it, we might forget the past, and we might neglect the future..."

President Bush's call to memory is one that the Jewish community takes as a solemn mission.

Our colleague, Abe Foxman, a survivor of the Holocaust and national director of the Anti-Defamation League and a former HIAS client, superbly expressed the connection between the lessons of the Holocaust and contemporary refugee policy in a Miami Herald op-ed. He wrote about the plight of the more than 900 Jews on the ship that you mentioned, Mr. Chairman, earlier in your opening remarks, the St. Louis, which in 1939, while fleeing Nazi persecution, came within view of our coast, but were ultimately sent back to Europe where most of them perished. In discussing current expedited removal, Foxman wrote:

"It was a dark moment, when fear of foreigners led us to betray one of our most cherished traditions: providing safe haven for the persecuted. In the years since the end of World War II, one principle has been at the core of America's policy toward refugees; never another St. Louis..." He later concluded, "We can't go back and change the fact that the St. Louis was turned away. But we should learn from the sad history of America's indifference to refugees from Nazism. We can stop its modern sequel."

Tragically, the modern sequel to the St. Louis continues every day at the expedited removal system is implemented and asylum seekers are denied a fair process.

As we reflect on these and other lessons and their relevance to contemporary asylum policy, there is a cruel irony in the fact that Congress honors Holocaust hero Raoul Wallenberg with a statue in the Capitol building while at the same time maintaining such a harsh expedited removal process at our own borders.

At the heart of the story of Swedish diplomat Raoul Wallenberg were his efforts to provide Swedish protective passports to Jews. These documents were essential in helping these refugees to escape from Nazi-controlled Hungary. These false papers meant the difference between life and death for thousands. Wallenberg, whose courage and cunning saved so many lives, disappeared at the end of World War II. In 1981, the U.S. conferred honorary U.S. citizenship on him, an honor only Winston Churchill shares. Wallenberg was also honored in 1986 by the renaming of a portion of a street

in Washington as “Raoul Wallenberg Place,” and in 1995 with the dedication of a Wallenberg statue in the Capitol.

The lesson of this story—that desperate times for refugees require desperate measures such as falsification of documents—sadly has not been learned. Expedited removal is triggered by the absence of documents or the suspicion that the documents being used are fraudulent. And yet refugees who have opposed their government’s actions or fled persecution and violence may not be able to obtain valid documents before they seek this entrance to the United States. Thus, refugees begin the process in America facing a system that utterly fails to respond to their basic need for protection.

Just as the Russian Jews of the 1880’s called upon the American Jewish community and the U.S. Government to free them from their bondage and offer them a chance for a new life, refugees continue to call out to us to provide safety and a hope for a future. To respond to this call, the Jewish community strongly recommends that refugee protection—refugee protection—be placed at the core of U.S. immigration policy.

Chairman Brownback, I once again would like to express our great appreciation for your work defending refugees and asylum seekers and to acknowledge Senator DeWine’s efforts as well. Your efforts with the Subcommittee will go a long way in building a seamless web of protection for those fleeing persecution and violence.

Thank you.

[The prepared statement of Mr. Glickman follows:]

STATEMENT OF LEONARD GLICKMAN, PRESIDENT AND CEO, HEBREW IMMIGRANT AID SOCIETY

Mr. Chairman and Distinguished Members of the Subcommittee:

My name is Leonard S. Glickman, President and CEO of the Hebrew Immigrant Aid Society (HIAS). Today I am also testifying on behalf of the American Jewish Committee, Anti-Defamation League, B’nai B’rith International, Jewish Council for Public Affairs, Union of American Hebrew Congregations and United Jewish Communities—sister agencies within the Jewish community who are deeply involved with the community’s efforts to protect refugees.

As the oldest international migration and refugee resettlement agency in the U.S., HIAS, the migration arm of the organized American Jewish community, played a major role in the rescue and relocation of Jewish survivors of the Holocaust and of Jews from Morocco, Ethiopia, Egypt and the communist countries of Eastern Europe. More recently, since the mid-70s, HIAS has helped more than 300,000 Jewish refugees from the former Soviet Union and its successor states, as well as many thousand non-Jews seeking refuge in the United States, to escape persecution and rebuild their lives in this country. This life-saving resettlement work is undertaken in partnership with local Jewish communities throughout our country. The most recent example of this effort is the Tucson Jewish Family and Children’s Services resettlement of Sudanese youth who, after years of wandering and living in terrible conditions in refugee camps are now making new lives for themselves in America.

As HIAS celebrates its 120<sup>th</sup> anniversary, I would like to thank you—Chairman Brownback—for your leadership in the area of refugee protection, for convening this vitally important hearing, and for giving us the opportunity to share a Jewish perspective on the US asylum system. We also greatly appreciate Senator Kennedy and other members of this subcommittee who have also made crucial contributions to defending refugees both at home and abroad. As this year progresses, you and your colleagues on this subcommittee will play a critical role in shaping the United States’ response to the international refugee crisis—both through refugee resettlement and assistance, and through our domestic policy towards asylum seekers.

The Jewish community is greatly concerned about the major changes that were instituted in the U.S. asylum system in 1996, changes that we believe threaten to

undermine refugee protection and US global leadership in this area. This testimony presents a very brief overview of four problem areas in U.S. law, the human side of the issue based on cases represented by HIAS attorneys and other advocates, and reflections on the Jewish community's historical experience and this history's impact on our refugee protection concerns.

#### SELECTED PROBLEMS IN THE U.S. ASYLUM SYSTEM

Three crucial changes to the United States' asylum law that were enacted in 1996, as well as the continued use of an older provision relating to the adjustment of status of asylees, stand in direct opposition to America's historic role as a refuge for the persecuted. How these policies are addressed will have a tremendous impact not only on individuals seeking protection in this country, but also on the international refugee protection system as a whole.

#### EXPEDITED REMOVAL

Under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, individuals fleeing persecution and oppression are no longer afforded one of the fundamentals of due process—the right to present their case before a judge. Unlike today, previous law permitted asylum seekers time to prepare their cases, find legal counsel and appropriate translators, and adjust to the difficult process of reliving and retelling past trauma and current fear.

Under the new expedited removal system, INS inspectors are placed in a position to make life or death decisions with only the most cursory review from a supervisor. Any person who arrives in the United States without valid travel documents, or even with facially valid travel documents that the inspector merely suspects are fraudulent, may be immediately removed. If the person, who may have been kept for many hours in shackles and other extremely difficult conditions, asks for asylum or expresses fear he or she is supposed to receive an interview with an asylum officer. However, if the person cannot communicate adequately in English, or fails to articulate fear, he or she could be immediately returned to a country of persecution. Thus, many refugees may not be able to make their claim because of trauma suffered in their home country, or because of cultural barriers on speaking freely with uniformed officials.

The cruel reality of this system is that refugees fleeing persecution often rely on false papers and may well be too afraid to speak when confronted by an INS official at a port of entry. Since expedited removal nearly always occurs without any independent monitoring, we cannot say conclusively how many bona fide refugees have been removed through this process. However, cases of immigrants who were removed and later returned and were granted asylum have been identified. When dealing with the life and death issues confronting many refugees, the price of making a mistake is too high to justify an expedited process when a full and fair examination of the facts is required to guarantee protection.

#### DETENTION OF ASYLUM SEEKERS

Also under the 1996 IIRIRA law, asylum seekers who are subject to expedited removal face mandatory detention while waiting for a credible fear interview with an asylum adjudicator. While those who pass this interview may be paroled and allowed to join close family and friends who will assist them as they pursue a full asylum hearing, the INS often keeps asylum seekers locked up in detention despite findings that they do not pose a threat to society and are not a flight risk.

Asylum seekers who are denied parole have no avenue to appeal this decision of an INS district director to an immigration judge and are held for months or even years in a variety of prison facilities—including local jails. In these facilities, asylum seekers who have not committed crimes are often housed with criminal inmates. While in detention, asylum seekers face harsh conditions, inadequate health services, and severe restrictions on their ability to fully pursue their claims. Many, including those who have obtained legal assistance, may be moved to facilities in other states because of overcrowding at INS facilities, taking them far away from their lawyers who are thus hampered in providing representation.

INS has not pursued a broad policy of alternatives to detention. The vast majority of asylum seekers, individuals who are not criminals, would be much better and more cheaply served through a non-prison oriented sheltering system. A system that detains so many asylum seekers in prisons and prison-like environments is inappropriate for people who are seeking to avail themselves of the United States' protection.



## THE ONE-YEAR ASYLUM FILING DEADLINE

While not part of the expedited removal system, the one-year filing deadline for asylum applications, also enacted in 1996, is a similarly draconian rule when dealing with victims of persecution. This arbitrary deadline, with only extremely limited exceptions, threatens refugees with removal to their country of persecution for purely bureaucratic reasons despite the many legitimate reasons for missing the deadline. Already thousands of claims have been rejected based on this provision.

Among the reasons why an asylum seeker might miss this one-year deadline are, lack of familiarity with the US immigration system, including what type of applicant might qualify for political asylum, or even understand the basics of the English language itself. Additionally, arriving immigrants must find work to support themselves, and then try to find legal assistance to help them prepare their applications, a difficult undertaking due to the shortage of representation for poor applicants. Some may also miss the deadline because they hope conditions in their homelands will change, or because their families would be at risk if they made their claims public. Most importantly, many asylum applicants who suffered torture, rape or other forms of extreme persecution may need more time to prepare themselves emotionally for the trauma of reliving these horrors. Besides the humanitarian arguments for permitting victims of persecution to present their claims, the one-year deadline is a poor use of resources since it focuses on investigating the timeliness of an application rather than reviewing the persecution claim to determine if it warrants a grant of asylum.

## ASYLEE ADJUSTMENT CAP

A fourth area of U.S. asylum law that warrants review is the use of a numerical cap on the adjustment of status to lawful permanent resident (LPR) for asylum seekers. The Immigration and Nationality Act establishes a limit of 10,000 asylees each fiscal year whose status may be adjusted to that of an LPR. This has resulted in a current backlog of over 50,000 pending asylee adjustment applications. Unlike the much more rational process that permits refugees who were adjudicated abroad to apply for LPR status with no cap after one year of residence in the United States, asylees may apply after one year but are subject to this arbitrary cap.

The use of the cap has no impact on the number of applicants who are granted asylum and are offered protection in the United States—these asylees are part of our country and will ultimately become citizens. The question is whether these deserving individuals should be permitted to begin the process of integrating into American life or if they will be required to wait in limbo for years before their dreams of citizenship can even begin. Sadly, the backlog in asylee adjustment ends up being another hurdle placed in the path of asylees who have already survived persecution and the difficult process of obtaining protection in the United States.

## THE WORLDWIDE IMPACT OF U.S. ASYLUM POLICY

US policy on asylum is critically important in the lives of the thousands of asylum seekers who are looking for safe haven in this country. But decisions made in the United States have a global impact of a magnitude that overshadows even these grave domestic concerns.

As the United States argues that nations around the world should open their doors and create camps for thousands of new refugees, and that countries of first asylum should integrate these refugees into their societies, it will require a consistent policy of refugee protection on our part to successfully press for greater contributions from others. Similarly, if other countries can show that the United States is retreating from maintaining the highest standards of treatment for asylum seekers, they will have an excellent excuse to ignore our criticism of their own policies in this area.

## THE HUMANITARIAN IMPERATIVE FOR REFORM

HIAS' perspective on these central issues in U.S. asylum law is based in large measure on our nearly century old experience providing representation to asylum seekers and other immigrants. Our staff of lawyers and other advocates provides assistance to applicants who are affirmatively applying for asylum before the INS, as well as in the courts when necessary. In recent years, our staff has assisted or represented hundreds of asylum seekers being held in detention under the expedited removal system.

A sampling of recent HIAS clients—some of whom are here with us today—who after suffering persecution in their homelands suffered again at the hands of the U.S. asylum system are attached to this testimony as Appendix A. These cases high-

light several key injustices of the current U.S. asylum system including: use of expedited removal for individuals who enter using false documents despite this being the only way many refugees can escape persecution (Boulankine and “Mussa ”); separation of families, including married couples, for extensive periods of time (Boulankine); extremely long periods of detention (Abass); detention of children (Boukrage and LK); harsh, threatening and degrading conditions while being processed under expedited removal (Mussa); hostile conditions while in detention (Boukrage); inadequate translation resources and medical care in detention (LK); transferring of asylum applicants to distant facilities thereby hampering preparation of their asylum claim (Abass); INS opposition to legitimate asylum claims based solely on failure to comply with the one year filing deadline (Smirnova); denial of parole requests of non-dangerous applicants with no opportunity to appeal to an Immigration Judge (Boulankine, Abass, Boukrage, and LK); and limbo in the asylee adjustment backlog (Boulankine and Abass).

#### THE JEWISH COMMUNITY, SUPPORT FOR REFUGEE PROTECTION AND THE LEGACY OF THE HOLOCAUST

##### AMERICAN JEWS AND REFUGEE PROTECTION

HIAS and its sister Jewish community organizations approach the issues of asylum and refugee protection based on its commitment to biblical imperatives to “defend the stranger” and to “redeem the captives.” The lessons of Jewish history, rife with persecution and wanderings, impress upon us the importance of preserving an open door for individuals seeking protection and refuge. American immigration policy has at times allowed the Jewish community to find a home and the chance to live freely, to practice our faith and to build a strong community. While at other times the Jewish community has had to watch as fellow Jews have perished overseas without the hope of safe haven in this country. We cherish the opportunities we have here, and have learned the painful lessons taught by periods in our history when the doors were closed.

HIAS, and much of the American Jewish community, trace our involvement with refugee protection to efforts to help Russian Jews during the final years of Czar Alexander II’s reign (1870 to 1881). In a letter to American Jews, the Russian Jews pleaded for help, writing: “We ask you, we pray, we implore, we beseech you to come to our rescue, to take us out of our bondage, out of our misery; to give us a chance in your great and glorious land of liberty, whose broad and trackless acres offer an asylum and a place for weary hearts and courageous souls willing to toil and by the sweat of the brow earn their daily bread. . . .”

The values these Jews expressed—a longing for liberty, safety and an opportunity to work—are at the heart of the movement of immigrants to the United States in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. This wave of immigration brought the ancestors of many in today’s Jewish community, as well as countless other Americans, to this country.

##### CLOSING THE GATES AND THE HOLOCAUST

Today, just a few weeks after Holocaust Remembrance Day, the Jewish community is very aware of the tragic consequences of the United States’ decision in the early 1920s to close the doors to large-scale immigration. When Europe’s Jews needed a place of refuge, America had shut its gates.

A few excerpts from HIAS’ annual reports from that period offer a contemporaneous chronicle of the catastrophic effects of U.S. immigration policy of that time.

“Due to an outcry against immigrants, the after-effects of the war, and the consequence of a general hysteria of fear that the country would be overrun by hordes of aliens, the immigration restrictionists succeeded in having passed by Congress, what is known as the Three Percent Immigration Law. We, who believed that no danger was threatening the United States from an avalanche of immigrants; we, who knew by the infallible test of history that immigrants benefited America, just as America has benefited them, opposed the Bill. We saw in its passage the great hardship which will be inflicted upon the immigrants, we foresaw the impossibility of setting up an administrative machinery which would function justly and righteously . . .”—1922

“It is totally fallacious to contend that closing of the gates tends to solve the economic problems from which a country is suffering. Economists of the highest caliber are already sounding a note of warning of the baneful effects of the continuance of a policy of restriction . . .”—1932

“Under the impact of 1938 events, European Jewry is, with small exceptions, a vale of fears and tears. The paramount hope of scores of thousands in the German

and Austrian concentration camps or even of those who are, so to speak, at liberty, is linked with their chance to emigrate . . . Rescue through emigration is not a mere phrase which has been coined to dramatize the situation. These words spell the very last hope upon which the physical existence of hundreds of thousands of men, women and children . . . hinges.”—1938

“At this time our eyes are focused on some 200,000 displaced Jews in Europe who are still languishing in camps. Wondering what the free world expects to do with them . . . The number of refugees fleeing persecution in Poland trebled; the long-awaited solution to the Palestine question failed to materialize; President Truman’s directive to permit the entrance of 39,000 refugees to the United States fell far short of its goal, and governments, in general, moved sluggishly and apathetically in migration matters.”—1946

This story of closed doors and the failure to protect refugees is chillingly and succinctly depicted in a graph of the numbers of immigrants over the history of the United States. In the early 1940s—when the need was so great—the absolute level of immigrant admission was lower than at any point in U.S. history, except for the mid 1830s. Knowing how many lives were at risk during those years makes this valley on the graph even more poignant. [a copy of the graph is attached]

#### LESSONS OF THE HOLOCAUST

As President Bush recently noted at the United States Holocaust Memorial Museum: “History records many atrocities before and after the 1930s and 1940s. But it was the Holocaust that forced us to find a new term for horrors on such a scale—a crime against humanity. Human evil has never been so ambitious in scope, so systematic in execution, and so deliberate in its destruction. . . In places like this, the evidence has been kept. Without it, we might forget the past, and we might neglect the future. . .”

President Bush’s call to memory is one that the Jewish community takes as a solemn calling.

Our colleague, Abraham Foxman, a survivor of the Holocaust, National Director of Anti Defamation League and a former HIAS client, superbly expressed the connection between the lessons of the Holocaust and contemporary refugee policy in a 1999 Miami Herald Op Ed. He wrote about the plight of the more than 900 Jews on the ship the St. Louis who in 1939, while fleeing Nazi persecution, came within view of the Florida coast, but were ultimately sent back to Europe where most perished. In discussing current expedited removal, Foxman wrote:

“It was a dark moment, when fear of foreigners led us to betray one of our most cherished traditions: providing safe haven for the persecuted. In the years since the end of World War II, one principle has been at the core of America’s policy towards refugees: never another St. Louis. . .” Foxman later concluded, “We can’t go back and change the fact that the St. Louis was turned away. But we should learn from the sad history of America’s indifference to refugees from Nazism. We can stop its modern sequel.”

Tragically, the modern sequel to the St. Louis is continuing daily as the expedited removal system is implemented and asylum seekers are denied a fair process.

As we reflect on the lessons of the Holocaust and their relevance to contemporary asylum policy, there is a cruel irony in the fact that Congress honors Holocaust hero Raoul Wallenberg with a statue in the United States Capitol building while at the same time maintaining a harsh expedited removal process at United States’ borders.

At the heart of the story of Swedish diplomat Raoul Wallenberg were his efforts to provide Swedish protective passports to Jews. These documents were essential in helping these Jews to escape from the Nazis controlled Hungary. These false papers meant the difference between life and death for thousands of Jews. Wallenberg, whose courage and cunning saved so many lives, disappeared at the end of World War II and is believed to have died in Soviet custody. In 1981 the United States conferred honorary US citizenship on Wallenberg, only the second person in history after Winston Churchill to receive this honor. Wallenberg was also honored in 1986 by the renaming of a portion of a street in Washington as “Raoul Wallenberg Place,” and in 1995 with the dedication of a Wallenberg statue in the U.S. Capitol.

The lesson of the Wallenberg story—that desperate times for refugees require desperate measures such as falsification of documents—sadly has not been learned. Expedited removal is triggered by the absence of documents or the suspicion that the documents being used are fraudulent. And yet, refugees who have opposed their government’s actions or have fled persecution and violence may not be able to obtain valid documents before they seek entrance to the United States. Thus refugees begin the process in America facing a system that utterly fails to respond to their basic need for protection.

While we are grateful to the United States Congress for marking Raoul Wallenberg's brave contribution to Jewish, American, and world history, I believe that the highest honor we could bestow would be for our refugee and asylum policy to honor his memory by providing the greatest degree of protection to those who seek safety in our country.

#### CONCLUSION AND RECOMMENDATIONS

Just as the Russian Jews in the 1880s called upon the American Jewish community and United States government to free them from bondage and offer them a chance for a new life, refugees continue to call out to us to provide safety and a hope for a future. Whether they are contemporary Russian Jewish refugees, Sudanese boys seeking resettlement in locations like Tucson, Colombians fleeing guerrilla and paramilitary violence, or asylum seekers appearing at our border looking for protection, the Jewish community supports efforts to place refugee protection at the core of U.S. immigration policy.

We therefore recommend the following:

1. Expedited removal should be repealed. At a minimum, the use of expedited removal procedures should be limited only to immigration emergencies as declared by the Attorney General. Even in emergency situations, expedited removal should not be used in connection with individuals fleeing from countries with poor human rights records. Non-governmental organizations and independent researchers should be afforded reasonable access to monitor and evaluate the secondary inspection process.

2. Immigration Detention should be overhauled, specifically by:

- Mandating a parole policy for asylum seekers to ensure that compassion is applied toward individuals forced to flee their homelands to escape war and human rights abuses, and bringing U.S. detention policy into compliance with international principles of refugee protection and basic notions of decency and compassion;
- Mandating the development and consistent implementation of alternatives to detention of asylum seekers, including by parole under the asylum parole criteria, supervised release, and the creation of shelters operated by appropriate non-governmental organizations;
- Providing for independent review by an immigration judge of a decision to detain;
- Encouraging the Department of Justice, after appropriate review, to issue regulations facilitating the parole of asylum seekers, specifying the criteria for their release, providing for immigration judge review, and ensuring the release of individuals granted "withholding of removal" who present no danger to the community; and
- Creating an Office of Detention Oversight within the Department of Justice to monitor detention facilities and enforce detention standards.

3. The filing deadline for asylum applications should be repealed.

4. The annual cap on the adjustment of status of asylees should be eliminated.

For future consideration, we also commend to the subcommittee's attention the difficult circumstances that asylum seekers face while waiting for their cases to be decided, frequently struggling without work authorization for extended periods of time.

Chairman Brownback, I once again would like to express our great appreciation for your work defending refugees and asylum seekers. Your efforts with the subcommittee will go a long way in building a seamless web of protection for those fleeing persecution and violence.

Thank you again for the opportunity to testify today on this crucial issue.

#### APPENDIX A

##### ASYLUM SEEKERS—CASE SUMMARIES

###### *Denis & Tatiana Boulankine from Russia*

Denis and Tatiana Boulankine are a married couple from southern Russia near Chechnya. Denis, a lawyer, took part in student protests against the war, and spoke at several rallies. He was then called to the local military office, detained for a day and roughed up. The military threatened to send him to the front of the war, or to a filtration camp (these are concentration camps, and a major site of human rights abuses). He toned down his activities a bit (still going to protests, but not speaking), but was again threatened by the military. This time, they illegally changed his military rank and draft status to insure that he would go to Chechnya. Military officers came to his parents' house looking for him, and harassed them.

Based on their opposition to the war and the human rights abuses being carried out by the Russian military, the Boulankines, with the help of Tatiana's parents, hired a smuggler who got them fake Hungarian passports with the intent of going to Canada, where they planned to apply for asylum.

They were transiting through Newark Airport, when INS stopped them on October 12, 2000. They asked for asylum and were detained at the Elizabeth, NJ detention center. On November 15, 2000, they had credible fear interviews, and on December 5, 2000 were found to have credible fear. HIAS made a parole request on December 21, 2000, with an affidavit of support from their U.S. citizen uncle, a New York City resident. The INS was in possession of a very large number of their original documents and had found at the credible fear interview that their identity was determined. Nonetheless, the Boulankines received a form-letter rejection of the parole request on Jan 31, 2001 with this item checked off: "Based on the particular facts of their cases, including manner of entry, INS cannot be assured that they will appear for immigration hearings or other matters as required." The couple then was kept in detention until their asylum case was granted on March 30th—a total of over five months—where, despite being married, they were denied all contact visits except for one joint meeting with their HIAS representative.

*"Mr. Mussa" from Sierra Leone*

"Mr. Mussa," a national of Sierra Leone, was a school teacher and active member of the local teacher's union. Rebel forces captured him in 1997, shortly after the coup against President Kabbah. He was held as a suspected government sympathizer for about six months. After managing to escape, he was captured by Komojors, a pro-government militia, and held as a rebel sympathizer, since he had come from rebel territory, for nearly a year. He then escaped from the Komojors and eventually made his way to Mali, and from there to the U.S. Upon arrival at JFK, he was found to be holding a fraudulent passport and detained. He was held from Saturday morning, November 13, 1999, and was transferred to the Elizabeth Detention Center in the early morning hours of Monday, November 15. He was kept chained to a bench most of this time, except for brief bathroom breaks and to speak to INS officers. He was only fed once each day. He did not receive a full INS interview until Sunday morning and was repeatedly threatened that he would be sent back immediately. "Mr. Mussa" was detained until January 19 2000, over two months total time, and was then paroled to his brother, who is a lawful permanent resident and a New York City high school teacher.

*Mohammed Abass*

Mohammed Abass was born in Iraq in 1974. He was arrested for connections to antigovernment demonstrations in Iraq, interrogated and beaten. He had serious health problems for some time as a result of this beating. He also had further problems with security forces—harassment, pressure to join the Ba'ath Party, etc. While he was in hiding, his father was arrested and interrogated about his whereabouts. Through the help of his cousin, he was able to leave Iraq in late 1999, traveling via Jordan, Turkey, Cuba and Ecuador—arriving in NY on Dec 2, 1999. Upon requesting asylum, he was detained at the Wackenhut Detention Facility in Queens, New York.

The Immigration Judge denied Mr Abass asylum on April 21, 2000. As Mr Abass had difficulties with his initial private attorney, HIAS took over the case and wrote the appeal brief. While his appeal was pending, Mr Abass was transferred to a county jail in York, Pennsylvania, far away from his attorney and friends. Despite the fact that he had a U.S. citizen friend willing to sponsor him, he was unable to obtain parole. Mr. Abass' transfer to York made it much more difficult for his attorneys to prepare the case and to monitor the conditions of detention for their client. Ultimately, the Board of Immigration Appeals remanded the case to the Immigration Judge who granted Mr Abass' request for asylum on March 21, 2001. When finally released, Mr. Abass had spent over a year in detention.

*Mohamed Boukraize from Algeria*

Sixteen-year-old Mohamed Boukraize came to the United States on October 23, 2000 aboard a ship and was placed in INS custody. Mr. Boukraize left his home village at the age of ten after a bomb killed his parents and younger sister. Mr. Boukraize fled Algeria because his father was viewed as a French sympathizer. Mr. Boukraize had told the interviewing officer his birthday was June 25, 1984. When Mr. Boukraize arrived at Newark airport his teeth were checked by a doctor who claimed that the test determined that he was over 18 years old. Because of this, he was transferred to Elizabeth Detention Center in Elizabeth, New Jersey. Mr. Boukraize has been in detention ever since.

Mr. Boukrage has had a very difficult time in this adult detention facility. As the smallest and the youngest person in the detention center, Mr. Boukrage has been attacked and threatened by other inmates. Due to this harassment, Mr. Boukrage has spent a significant amount of time in solitary confinement where he is not permitted to participate in any activities with other detainees. As an orphaned youth, Covenant House in Newark, New Jersey has offered to care for Mr. Boukrage. After surviving a considerable amount of trauma in his young life, Mr. Boukrage has been forced to endure detention instead of receiving protection in a safe environment while his asylum case is heard.

*L.K. from the Democratic Republic of Congo*

Fifteen-year-old L.K. arrived in the United States via Abidjan, Cote D'Ivoire on January 20, 2001 at the JFK International Airport. Ms. K fled the Congo because one day her entire family was taken away by government troops for being supporters of the deposed President Mobutu. When her family was arrested she fled to Brazzaville, Republic of Congo, and waited for a plane ticket and passport from her mother who is in Canada. She arrived in the United States alone, but expected to continue on to Toronto to meet her mother. However, she was stopped at JFK Airport and questioned by US INS officials. After a brief dental examination, the INS asserted that Ms. K was over eighteen years of age and transferred her to the Wackenhut Detention center in Queens, New York—an adult facility. Concerning Ms. K's age, notes in her medical records declared first that she was 23 years old, on the next day that she was 22 years old, and three weeks later that she was approximately 17 years old—once again a minor—all the while keeping her in the Wackenhut Detention center.

Ms. K's stay in detention has not been easy because of her health and age. When Ms. K arrived in the United States she was diagnosed with malaria, and had to undergo medical treatment at the detention center medical facility. Ms. K complained several times that she did not understand the type of treatment that she was getting. She also called her attorney on two occasions complaining that she did not understand why she had to take certain medications because the medical procedure was not explained to her (Ms. K. is French-speaking with no English language ability). Ms. K still does not understand why she is detained at Wackenhut, and does not even fully understand the concept of political asylum. She knows, however, that her life will be threatened if she returns to the Congo.

*Anna Smirnova from Russia*

Anna Smirnova, a national of Russia, fled from Russia fearing persecution based on her mixed nationality. She is part Jewish, and also part Arab and part African-American (her great-great grandfather had been a prominent American civil rights leader). Anna arrived in the United States on April 17, 1998. She gave birth later that year, and began caring for the new infant. She missed the one-year filing deadline due to the burdens of being pregnant (a physical condition that should have satisfied one of the exceptions to the filing deadline), and the resulting burden of caring for a new infant as a single mother. And, like many refugees, she was unaware of the deadline. However, once she became aware of the one-year requirement she immediately filed her claim, which was received by the INS on April 22, 1999. Despite extensive documentation of her fears of persecution and of her pregnancy, the INS rejected Anna's asylum claim based solely on the asylum filing deadline. Although an immigration judge eventually granted her claim, the INS has appealed that decision based in part on her failure to file within the one-year filing deadline. While her attorneys at HIAS are opposing the appeal, the INS still maintains that her claim is barred by the filing deadline.

## APPENDIX B

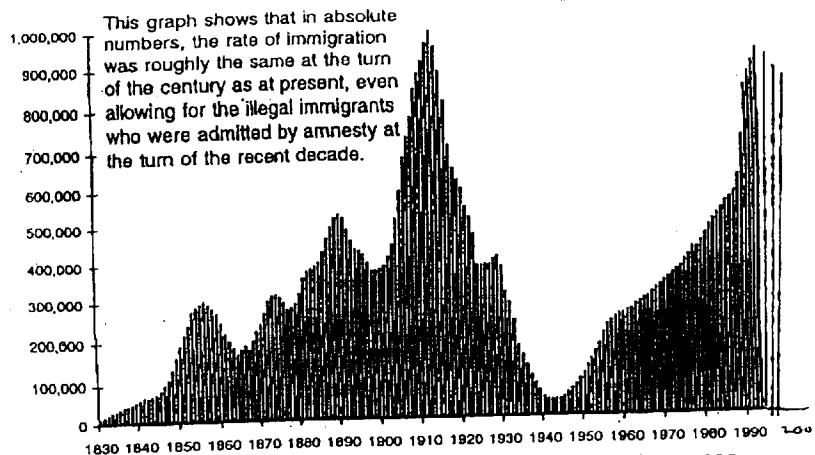


Figure 1 Ten-year moving average number of immigrants, 1830–1993  
 Source: US Department of Commerce, *Statistical Yearbook of the INS* (Washington, DC: Government Printing Office, 1993), p. 25

Chairman BROWNBACK. Thank you, Mr. Glickman. I appreciate your testimony. I also want to say thank you to your organization: for over 100 years it has stood for those who did not know the system, did not understand the system, could not advocate for themselves; yet you stood there with them, regardless of their background, other than that they wanted to be free and to be in the U.S. Thanks for doing that.

Mr. GLICKMAN. Thank you, Mr. Chairman.

Chairman BROWNBACK. Mr. Stein, thank you for joining us in the committee.

**STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM, WASHINGTON, D.C.**

Mr. STEIN. Mr. Chairman, thank you very much for the opportunity to be here today. My name is Dan Stein. I am executive director of FAIR, the Federation for American Immigration Reform, the Nation's leading organization working for what we feel are improved immigration laws, improved immigration enforcement, overall reductions in overall immigration levels, consistent with U.S. population stabilization, and an end to illegal immigration.

Mr. Chairman, I appreciate your willingness to hear our point of view in these hearings, and I am hopeful that we are able to find some areas of common ground as the years progress. I do believe that our position, while at some variance with the testimony we have heard today, is nevertheless, I hope, a legitimate point of view that deserves some credence and is broadly reflective of what we feel is not only the views of our 70,000 members all across the country but the broad sense of the American people in general that

immigration laws have to serve the needs of this country, first and foremost, and other priorities be established second.

That said, numbers do matter, both in immigration and refugee policy. The Census Bureau is now projecting that with today's high immigration levels, our population is likely to exceed 400 million by 2050, an additional 130 or 140 million people today, and, frankly, given the findings of the 2000 census, those numbers are likely to be low in terms of projections. As far as we can tell, the country has not made any adequate provision for the infrastructure, schools, roads, transportation, housing, and other assorted things that would be required for all those additional people have not been planned out, and we see the effects of that gap between the immigration policies of the country and their residual impacts on highways and schools and other things all across the country even today.

Numbers do matter, but legitimate and merit-based refugee and asylum admissions deserve our highest priority and attention as a Nation. They are the ultimate fulfillment of the purpose of immigration in a country like ours. Arguably, they should take priority over virtually every other migration policy decision that we make as a Nation.

Nevertheless, because of today's high levels of immigration, legal and illegal, we have to consider asylum and refugee policy within the framework of any effort to regulate the overall admission of people, and we do believe that our asylum policy can continue to be implemented with rationality and discipline, and still fall within generally accepted international norms for asylum policy.

Matthew talked a good deal about the stranger. Matthew did not talk a lot about temporary protected status, deferred departure, parole, expedited removal, and all the other immigration bits of alphabet soup that people try to deal with.

The asylum system of this country is something that ultimately reflects the broad balance that has to be made between the huge numbers of people who have an enormous incentive to come to this country through fraudulent means while exercising our obligation to try to provide protection for people who truly need it.

Now, Mr. Chairman and Senator DeWine, we got into this situation today as a result of the immigration policy, the asylum policy having basically broken down as a result of a series of decisions beginning in 1980 and taking us up to 1993, which, when Senator Kennedy commented in the Washington Post, he said, "The asylum system has broken down, and it's up to Congress and the administration to fix it." According to former INS Commissioner Doris Meissner, "The problem we have faced in recent years"—this is March 1994—"is that people with no legitimate claim to asylum are applying in record numbers, some brought by smugglers, some using fake documents, and some overstaying the visas granted to them as visitors."

Before expedited removal was passed and the credible fear reforms were made and additional improvements made administratively by INS, the no-show rate for asylum seekers who were paroled was over 50 percent, with virtually no sanction for their failure to appear.



Now, Mr. Chairman, it would be great if we could give O.J. Simpson's procedural process to every alien who shows up on our jurisdiction asking for political asylum. But ultimately there have to be some practical limitations in what the taxpayer can provide in the way of resources. Freedom House estimates now that there are well over 3 billion people living under conditions that we would consider not free. And so ultimately our asylum policies have to be integrated within our refugee policies and other policies which also provide humanitarian admissions. Let's recognize that asylum policy also operates coincident with policies like the Cuban Adjustment Act that provide a virtually on-demand parole for people who come here from Cuba, for example. The refugee admissions, which are the result of a more orderly consultation process which operates through the State Department, and these broad temporary protected status grants or class-based release grants that are ultimately then transformed into some kind of rolling amnesty or relief provision—we have had a number of these in the last 5 or 6 years—that while we do not get credit internationally or from the U.N. High Commission on Refugees, still represent part of our humanitarian commitment as a Nation in admitting people. So we basically believe that asylum policy should adhere to these basic principles.

Asylum policy is designed to provide temporary protection here for persons to work for positive political change back home. The goal is to strike a balance between providing protection for those who need it while encouraging people, where possible, to stay home to work for positive political change.

Now, suppose Thomas Jefferson, great Founding Father that he was, had said, Well, the United States is great, but, you know, the war started and I do not really know who is going to win, so maybe I will take my chances and stay in France. Well, ultimately we want people who are dissatisfied and discontented with conditions in their home country to stay and bloom where they are planted and improve conditions where they are. So ultimately you are trying to strike a balance between providing protection for people who need it while not draining off all the political opposition to a regime that actually might be there to try to stay and improve conditions. And I think we see that policy operating quite strongly to effect in Cuba, where anyone who might have disagreed with Castro has been encouraged to move to the United States by our very broad admissions policies with that particular country.

Asylum policy should be integrated with refugee policy to provide a single unitary statutory scheme. Asylum standards should not create incentives for persons to get within U.S. jurisdiction first with the expectation of preferred treatment over similarly situated persons applying as refugees overseas for the obvious reason that it would then create an incentive for people to come here to apply for asylum because of the enormous procedural or legal advantages that come with getting onto U.S. jurisdiction first.

Because asylum allows an alien to line-jump in front of millions of other people who are waiting in line for their visas, and, theoretically, hundreds of millions of people who would like to live here as well, the grant must be made with care, consistent with the statutory scheme. The management of asylum policy must take

into account the enormous worldwide backlogs for visas on waiting lists and the incentives to gain residency through false claims.

I wish it were a perfect world, Mr. Chairman. I wish that every person who makes self-serving and uncorroborated declarations without any documentary evidence, who has destroyed transit documents en route, not between the home country and this country but between the last safe country they left and this country, could be believed as telling the truth. But the bottom line is the asylum claim often turns on the credibility of the asylum claimant, without any independent documentary evidence of veracity for the claim. Someone wiser than I once speculated if only refugees are admitted, then everyone will be a refugee.

Other than for countries of first asylum, which were generally Mexico and Canada—there are a few others by boat—temporary asylum should be restored to its original purpose: to provide temporary protection for persons who are here legally who, as a result of unforeseeable changed circumstances can no longer return home. Certain evidentiary presumptions are appropriate in certain cases where a claimant is from a particular religious group or social group and we possess very little home-country information that would allow verification of claims.

Asylum is to be a temporary status for people to work here for positive political change back home. Matthew talks about welcoming the stranger. What I think the Lord is telling us is that we have an obligation to minister to the stranger, to help the stranger, to provide food, take him into our house as a guest, to provide temporary protection and shelter where needed, and then do what we can to help restore the status quo. Taking everybody in need into your own home is not a fit solution and ultimately not a realistic way of helping people. Most people this country has to help has to do it through helping them where they are, improve their conditions where they are and encourage repatriation as soon as possible. So asylum is not to be viewed as a regular alternative to regular immigration. It is great to hear these wonderful human interest stories about how well people are doing, but ultimately asylum is not about people coming here and going to college. It is about providing people temporary protection generally for reasons they could not have foreseen when they originally entered to try to bring about positive political change back home. Ultimately resettlement here over time is appropriate if there is no possibility of repatriation, but let's not view asylum as a back-door immigration program.

Asylum seekers should not be subject to preferred procedural or legal standards that give an advantage to the would-be asylum seeker to get to the U.S. to make the claim. The credible fear pre-screening standard for summary return must remain in the law and be actually used by the government. Frankly, Mr. Chairman, the data are so weak in terms of what is going on in asylum procedures, and the exercise of detention standards and the nature of the asylum claims being granted and under what kinds of claims, that it is almost impossible to make a judgment about how these programs are working, but ultimately the summary exclusion provision seems to be operating, barely used, if at all—how much time do I have? I will move it along here.

Chairman BROWNBACK. Yes, if you could wrap it up, that would be good, Mr. Stein, particularly if you have any specific policy recommendations or changes.

Mr. STEIN. All right. Well, asylum seekers should be expected to make a claim for protection at the first available opportunity in the country of refuge. Asylum claimants should not forum-shop or otherwise be allowed to pick and choose where they make their claim, passing through several safe-haven countries before making their claim when they get to the U.S. The legal standard for asylum should be consistent with international obligations.

We recommend that one legislative change is that state action must be at the core of the claim of persecution. The newly evolving standards that allows claims to be made on behalf of an alleged absence of state protection for entire classes of social groups is fraught with peril, is unmanageable, and an invitation to fraud. We believe also that the category “membership in a social group” is now being defined beyond what is realistically administered in an asylum procedure, involving classes, wholesale classes of people who are subject to disparate treatment in their home society under cultural norms and rules that may have prevailed for thousands of years. This is not the original purpose of political asylum.

As a practical matter, under our current system, adjudicating claims often involves allegations of abuse that took place tens of thousands of miles away. Objective evidence that may be entirely lacking in the entire claim may rest on the subjective judgment of an asylum officer. Where the procedural, legal, or evidentiary standards become unworkable, it is up to Congress to intervene and reassert proper standards to ensure a manageable program.

Ultimately a lot of our asylum problems are going to have to be dealt with on a multilateral basis. All the countries that are targets of asylum claims—and they tend to fall within the same nine or ten countries—have to work together to try to ensure that the handling of fraudulent claims through things like expedited removal discourage forum shopping and minimize fraud.

I have some examples in my testimony, some really glaring examples of fraud, of people posing as other people, claiming very specific allegations of membership in particular tribes that it turned out they were actually impostors, which actually were marquis cases brought to try to advance new asylum standards, all the way up through the appellate process, and the fraud was not even detected. When people show up without documents, Mr. Chairman, we do not know who they are. We have no idea who they are. We have not done a positive ID check. The Government has an obligation to detain these people until they can figure out who they are talking about. And as we see from many of these high-profile claims, we do not know, even after they have gotten asylum and been here for years, we have not even figured out who they are.

Chairman BROWNBACK. Mr. Stein, if we could go ahead and get the policy recommendations, I think my colleague here needs to—

Mr. STEIN. All right. Those are all included by reference. I think I pretty much have mentioned them all. We would like to see—

Chairman BROWNBACK. My colleague needs to get going here.

Mr. STEIN. Asylum needs to be decoupled from permanent residence, and deportation needs to be enforced if, you know, the asy-

lum decision is ultimately decided against the claimant. There are others, but I will leave it at that.

Thank you very much, Mr. Chairman. I appreciate the opportunity to testify and hope this will be an ongoing dialog.

[The prepared statement of Mr. Stein follows:]

STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN  
IMMIGRATION REFORM

INTRODUCTION

Thank you, Mr. Chairman for the opportunity to present the views of the Federation for American Immigration Reform (FAIR) on the important issue of asylum policy and problems with regard to implementation of the law as it exists today. I am Dan Stein, FAIR's executive director.

FAIR is a national, non-profit organization of 70,000 concerned citizens nationwide promoting better immigration controls and a return to a moderate level of legal immigration to insure that today's policies serve the current and future best interests of the American people. FAIR does not receive any federal grants, contracts or subcontracts.

FAIR STANDS BY THESE PRINCIPLES:

Illegal immigration can and must be substantially reduced by humane measures that are consistent with our democratic ideals;

immigration should not be permitted to undermine opportunities for America's poor and disadvantaged to improve their wages and working conditions;

our immigration laws must be fairly and effectively enforced; there should be no favoritism toward or discrimination against a person on the basis of race, religion or ethnicity;

all immigration should come within a single, stable ceiling which is periodically reviewed on the basis of reasoned, explicit population goals for the U.S.

three criteria should guide the selection of immigrants: our fair share of refugees for resettlement, our national manpower policy and concerns for the maintenance of intact nuclear families;

the United States should not contribute to a brain drain that entices away the skilled and talented who are desperately needed in their homelands; we should meet our need for skilled professionals by training and retraining our own;

the United States should make greater efforts to encourage population size stability, economic development and alleviation of poverty worldwide and especially in countries of great out migration;

the era of mass international migration as a solution to national problems has come to an end; problems of poverty and overpopulation must be vigorously confronted where people live, rather than *Postponing* their solution by either the exportation or importation of masses of people;

we should determine our own immigration and population policy broadly and democratically, as a sovereign right and responsibility of our nation.

Mr. Chairman, the American people are extremely hospitable to immigrants and refugees, and our nation's record of generosity and compassion to people in need of special protection from war, anarchy, or natural disaster is exemplary. We have maintained a very munificent refugee resettlement pattern over the years, even though many of the people we have taken in are not considered true refugees by the United Nations High Commissioner for Refugees. The problem comes when the policies established become unrealistically broad or unintended avenues for abuse.

MR. CHAIRMAN, FAIR SUGGESTS THESE PRINCIPLES IN ASYLUM POLICY:

1) Asylum policy should work to provide temporary protection here for persons to work for positive change back home. The goal is to strike a balance between providing protection for those who need it while encouraging people to—where possible—stay home to work for positive change.

2) Asylum policy should be integrated with refugee policy to create a single, unitary statutory scheme. Asylum standards should not create incentives for persons to "get within U.S. jurisdiction first" with the expectation of preferred treatment over similarly situated persons overseas.

3) Because asylum grants allow an alien to line jump in front of millions of other people, the grant must be made with care, consistent with the statutory scheme. The management of asylum policy must take into account the enormous worldwide

migration pressure, the long waiting lists and backlogs, and the incentives that exist to gain residency through false claims. Someone wiser than I speculated "if only refugees are admitted then everyone will become a refugee."

4) Other than for countries of first asylum, the grant should be restored to its original purpose: to provide temporary protection for persons here legally who, as a result of unforeseeable, changed circumstances can no longer return home. Certain evidentiary presumptions are appropriate in certain cases where a claimant is from a particular religious or social group and we possess very little home country information that would allow verification of claims. Asylum is to be a temporary status; it is to allow persons to work here for positive political change back home.

5) Asylees should not be viewed as an alternative to regular immigration.

6) Asylees should not be subject to preferred procedural and legal standards that give an advantage to the would-be asylum-seeker to get to the U.S. in order to make the claim. The "credible fear" pre-screening standard for summary return should remain in the law and be actually used by the government.

7) Asylum seekers should be expected to make a claim for protection at the first available opportunity in the first country of refuge. Asylum claimants should not forum shop or otherwise be allowed to pick and choose where they make their claim-passing through several safe-haven nations before getting to the U.S.

8) The legal standards for asylum must be consistent with our international obligations. There should be some "State Action" at the core of the claim of persecution. The newly evolving standard that allows claims to be made on the basis of an alleged absence of state protection for entire classes of "social groups" is fraught with peril as unmanageable and an invitation to fraud.

9) The definition of "membership in a social group" must be defined narrowly enough that it retains some standard beyond the subjective parameters of an imaginative immigration bar.

10) As a practical matter, under our current system, adjudicating asylum claims often involves allegations of abuse that took place tens of thousands of miles away; objective evidence may be entirely lacking and the entire claim may rest on a subjective judgment of the Asylum Officer. Where the procedural, legal or evidentiary standards become unworkable or an invitation to fraud, it is up to Congress to intervene to re-assert the proper standards to insure a manageable program.

#### BACKGROUND OF THE MID-1990S ASYLUM REFORM

Our generosity and compassion must be reserved for those who are truly deserving of it. That is the reason that there was widespread resentment at the revelations in the middle of the 1990's that the nation's asylum policy had become a major loophole for gaining illegal residence in the United States. So many foreign travelers were arriving in New York and other airports without entry documents and requesting asylum, that the INS had largely shut down efforts to decide the legitimacy of the asylum claims and was waiving the asylum claimants into the country, issuing them work permits and filing away their asylum applications to gather dust. So notorious was the practice that awareness of the loophole spread beyond the alien smuggling rings, and the backlog of pending asylum cases rose into the hundreds of thousands. It appeared to be so easy to get a green card by filing an asylum application that the practice even spread to "green-card" fixers in the United States who began enticing Mexicans who were here illegally to begin filing asylum applications.

As Sen. Kennedy commented in the June 13, 1993 *Washington Post*, "The asylum system has broken down, and it's up to Congress and the administration to fix it." According to former INS Commissioner Doris Meissner, "The problem we have faced in recent years (she told the March 30, 1994 *Washington Post*) is that people with no legitimate claim to asylum are applying in record numbers, some brought by smugglers, some using fake documents, and some overstaying the visas granted to them as visitors."

Against this background of fraudulent use of the asylum system, abusing the generosity and compassion of the American people, the Clinton Administration and the Republican-led Congress finally acted in 1995 to reestablish the integrity of the asylum process and reassure the American public that only people who truly feared persecution were able to gain the nation's protection. The Administration acted first, trying to forestall a change in the law. Those changes in the screening system included a enlarged Asylum Corps, halting the automatic issuance of a work permit to new asylum applicants, and an accelerated processing of asylum applications. On July 9, 1995, Commissioner Meissner told the *Post*, "After years in which fraudulent asylum claims were routinely used as a backdoor way to enter the United States, the Immigration and Naturalization Service finally has sufficient staff and resources

to stop the abuse and ensure that legitimate asylum-seekers no longer pay the price for those who seek to misuse the system.”

These measures were supplemented by Congress in 1996 to add new expedited removal procedures, but the protection against removing someone who feared persecution if returned to his homeland was protected by requiring a screening of all asylum claims by a member of the Asylum Corps. A recent example of the operation of this procedure was demonstrated when a surge of Colombians began arriving in the United States on transit visas—meaning that they were not documented to enter the United States—began requesting asylum in an effort to bypass consular screening of Colombian travelers to determine if they were intending immigrants. While it is certainly true that life is difficult in Colombia because of drug-related violence and a breakdown in the government’s ability to assure order, most of the arriving Colombians were not targets for persecution. The Embassy in Bogota was able to suspend the issuance of transit visas for the U.S., this kind of thing demonstrates abuse potential. We hope that the Asylum Corps was able to meet this surge in frivolous asylum claims and, as a result, discourage recourse to this attempt to circumvent the U.S. immigration law. But the evidence is clear: if you create the opportunity for a loophole, it will be exploited.

Earlier, in a similar fashion the Asylum Corps was pressed into service screening Cuban and Haitian “rafters” seeking to enter the United States. If the United States had continued to accept anyone who sought an opportunity for a better life, the stream of Cubans and Haitians setting sail for our country would have become enormous, and they would likely have been joined by nationals of countless other countries in the area.

Other provisions adopted in 1996 reduce the ability of immigration lawyers to continue to seek sequential reviews of removal orders until they find a sympathetic judge and to use an asylum claim as a defense against removal if the alien has been living illegally in the United States for more than a year without initiating an asylum claim. These changes were adopted to redress the imbalance in favor of the asylum applicant at the expense of the American public.

#### ASYLUM REFORM JUDGED LARGELY SUCCESSFUL

The asylum reform effort of the mid-1990s has been largely successful. The number of frivolous asylum claims have dropped off sharply. From a total of 127,000 claims in FY93, the level in FY99 was about 32,000. However, there are still problems. Even with careful prescreening of asylum applicants by trained asylum officers, a large majority of asylum claimants who present a convincing enough claim to get referred to an Immigration Judge are still found meritless. The disapproval rate in FY99 for claims before Immigration Judges was 62 percent. There is no guarantee that people who get asylum are in fact *bona fide* asylees.

The asylum process is still being used as a backdoor route for gaining illegal residence in the United States is the fact that the number of asylum applications is on the upswing again. From the 32,000 in FY99, the number jumped by about 28 percent in FY00 to nearly 41,000.

In addition, the INS has no system in place to assure that the denied asylum applicants ever leave the United States. There is every reason to believe that these persons who have been trying to take advantage to the generosity of the American people stay on in the country illegally and hope to gain legal residence by enactment of another amnesty for illegal aliens. We should remember the warning of Barbara Jordan, former member of the House Judiciary Committee and Chairman of the Commission on Immigration Reform. She said in testimony in the House on February 24, 1995 “. . .for the system to be credible, people actually have to be deported at the end of the process.”

Mr. Chairman, I recognize that immigration lawyers are unhappy with the current state of the asylum screening process, because some asylum applicants at ports of entry may be sent back home without ever gaining access to the services of a U.S. immigration lawyer. If the purpose of the asylum provisions of the immigration law were intended to maximize the number of persons gaining permanent residence in the United States, that concern might have some logic. However, that is not the purpose of the asylum provision. The reason that asylum was created was to deal with people who would qualify for refugee status if they were abroad, but who were temporarily located in this country. It is clear today that most of the persons being accorded asylum in the United States would not be granted refugee status to the United States if they were outside of this country. Because asylum has proven to be a backdoor route to residence in the United States, policymakers have a responsibility to the American people to minimize the possibility that it is abused.

## THE SHIFT IN LEGAL STANDARDS: WHO QUALIFIES?

Mr. Chairman, last December the nation learned from an INS leak that Adelaide Abankwah, a Poster child for granting asylum to prevent female circumcision (or genital mutilation), was an imPoster. (See *Abankwah v. INS*, 185 F.3d 22 (2d Cir. 1999). In fact, she had assumed the identity of another woman, had invented a story that her mother was the queen of a tribe in Ghana and she was due to succeed to that position—which would lead to the genital cutting ceremony. She succeeded in posing as an entirely different person throughout the entirety of the case—all the way through appellate review.

What this case highlighted (in addition to a judicial willingness to second guess matters committed firmly by law to agency discretion) is that asylum procedure allows people to destroy identity documents during the trip over and fabricate stories out of whole cloth. Although the credible fear procedure was supposed to prevent this, the current asylum system does not insure that the INS even gets a “positive ID” on the alien. It does not allow us to take into account behavior by the alien before arrival—in committing calculated fraud and forum shopping—when determining the credibility of a claim. Limitations of resources prevent the State Department in the home country from individually investigating the claims of individual asylum claimants in the U.S.

The invitation for false claims is compounded by the now unmanageably broad definitions of who is an asylee. The problems presented by broader and broader definitions of who can get asylum is sending this country into new and uncharted waters, especially over the question of who qualifies for a claim based upon membership in a particular social group. The asylum standard codified in U.S. immigration law in 1980 was based on the internationally accepted refugee definition. Whether a person had been persecuted or had a well-founded fear of persecution if repatriated could be evaluated reasonably objectively when the criteria turned on the persons’ race, religion, nationality or political opinion. Congress judged in 1980 on the basis of past experience that the maximum number of asylum claimants in a year would not reach 5,000, so they set that as a ceiling. However, experience has taught us what we should already have known: “if you build a new avenue for admission, they will come.” By 1990, more than 15,000 approved asylum applicants were waiting in a backlog, and Congress doubled the annual ceiling.

Today, we are facing a replay of the 1990 situation. Again there is a backlog of approved asylum claims in excess of the quota for three years. Legislation has been introduced in the House to again increase the ceiling (H.R.1560). Why has the number of asylum applicants been increasing? Is it because persecution is becoming more widespread? I don’t think that is the explanation. In our view, it is more likely because of a systemic problem and because of the stretching in practice of the scope of eligibility for asylum coverage.

Part of the explanation for the increasing number of asylum claimants is due to a prevailing culture in the INS that creates a much greater onus on an asylum officer or an immigration judge who denies an asylum application than if the application is approved. That appears to explain approval of the fraudulent Abankwah case. The INS said all along that it had doubts about the *bona fides* of her asylum claim, but extensive interest by the press and politicians in the case apparently overcame the INS professionals’ good judgment.

Another part of the explanation involves legislative and judicial expansion of asylum coverage. The congressional action occurred with the addition to the asylum definition of China’s family planning policy as a form of political persecution by Sec. 601 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA).

FAIR expressed its concern that this change in the law would be another loophole phenomenon, i.e., that it would lead to an increase in fraudulent Chinese asylum applicants. We have been proven correct. In FY’96 there were 1,509 Chinese asylum applications. In FY’2000 there were 5,541 Chinese applications. There would have been even more except the United States began intercepting Chinese smuggling ships and diverting them to ports in neighboring countries where the smuggled Chinese could not gain entry making asylum based on claims of fear of family planning persecution. In these cases, the neighboring countries brought in representatives from the UN High Commissioner for Refugees and the International Organization for Migration to screen the Chinese for possibly valid asylum claims and found only a miniscule number of possibly valid claimants. If the same Chinese had succeeded in arriving in the United States, the 1996 provision in our law would likely have led to large numbers receiving asylum and few if any removals. That has been the experience with a surge of asylum claims from Chinese illegal entrants as coached by the Chinese snakehead smuggling rings. So called “one child per family” claims

were also asserted after the fact on behalf of the still detained smuggled Chinese from the *Golden Venture*.

Increasingly over the past several years, asylum has been granted to people claiming to fear generalized social customs or conditions, such as female circumcision, and even social ostracism based on sexual orientation, disease or disability. While these practices are at best inconsistent with Western notions of decency and at worst reprehensible, they hardly fit the intended definition of political persecution as contemplated by the Geneva Convention or our other international obligations. The expansive nature of asylum grants over the past several years have moved us from the murky area of rendering judgments about the actions of foreign governments to the even murkier area of judging social and cultural practices that are at odds with our own. Asylum law has deviated from cases where there is direct State Action in perpetrating persecution to the hazy area of a government's alleged generalized failure to provide certain protections for marginalized groups.

If the United States has sometimes been viewed as the world's policeman, these recent expansions of political asylum are moving us toward the role of trying to be the international nanny—of a nation trying to insure that no person encounters the vexations of life's misfortunes. How can the United States monitor what is taking place in every village square and in every bedroom around the world?

Virtually everyone who is subjected to any injustice, whether perpetrated by a government, social group, or even a father or an aunt, can seek asylum protection by the United States—even if there is no plausible reason to explain why this particular alien is here making the claim in this particular country at this particular time. And, the most troubling aspect of this trend is that increasingly there are no objective criteria to assist the asylum officers and immigration judges in evaluating these claims in order to be able to limit asylum grants to truly meritorious cases. Despite the lessons learned in the early 1990's, there is still very little "discipline in the system" to insure that claims without merit are not approved. If advocates are concerned about claims with merit being denied (and there's little evidence of that fact), what about the problem of merit-less claims being granted? Isn't that a problem, too?

As if this were not already a difficult enough situation, and one that has already fueled more asylum claims than were ever contemplated when the asylum law was adopted, a last 'gasp' effort of the preceding administration bequeathed us a new avenue for asylum claims. Under this parting proposal, women around the world who are battered by their spouses may become eligible to receive residence in this country—and asylum generally now seems to mean *de facto* permanent residence.<sup>1</sup> We have asked the Bush Administration to withdraw these proposed w rules. Already, the asylum provision, intended to protect people from persecution by their governments, has been broadened to include a whole range of people who might be subjected to objectionable cultural and social practices.

It is unfair to the American people to ask them to embrace a policy that attempts to right every wrong and rectify every misfortune, wherever it occurs, no matter who is responsible by bringing the victims into the United States for permanent residence and giving them instant access to welfare programs, housing assistance, and other taxpayer-supported public assistance programs that are available only to the neediest Americans.

Moreover, unlike political persecution, which can be assessed objectively, rendering judgments about cultural and social practices is highly subjective. It forces the United States into a position of passing judgment on social practices and cultural mores in every society on earth. If ostracism due to sexual orientation is grounds for asylum, how is a line to be drawn to exclude asylum claims from women who in Islamic societies are required to wear veils, or denied the right to drive a car or work outside the home? At that point asylum ceases to be a mechanism to protect the persecuted, and becomes a process of imposing our values on others or using the asylum law to obtain "legitimacy" for some international cause.

In a world of 6 billion people, most of whom live under political systems and cultures that leave a lot to be desired, real world conditions mean we must be selective in granting asylum protection. Political asylum must not become social asylum, or it will destroy our ability to help anyone. One test: try to apply the asylum standard contemplated to international refugee resettlement screening. If the standard produces refugee eligibility for tens or hundreds of millions of people, then the standards is probably not tenable.

<sup>1</sup> See also, *Aguirre-Cervantes v. INS*, No. 99-70861, 2001 WL 274698 (9<sup>th</sup> Cir. Mar. 21, 2001). In this case, the Mexican Government was held to be unable or unwilling to provide adequate civil remedies and protective facilities for battered spouses, and that the family was the social group involved—where one member (the father) was abusing another member (the daughter).



## FAIR'S RECOMMENDATIONS

Mr. Chairman, as I have outlined above, the gains in control over asylum abuse adopted beginning in 1995 are again beginning to weaken as a deterrent to fraudulent claims. Part of this, as I noted, is a culture in the INS bureaucracy that makes it more difficult to deny an asylum claim than to approve it. Another part of the problem is the process over the past few years of expanding the scope of eligibility for asylum. That not only complicates the asylum adjudication process, it attracts additional claimants.

Now we are faced once again with a backlog of approved asylum claims as in 1990. The so-called "ABC" backlog has been dealt with—even though most of those claimants were never able to perfect asylum claims.<sup>2</sup> The question is what is an appropriate policy response. Another increase in the asylum admissions ceiling is not the solution. FAIR opposes that approach and believes that the American people would be ill served by that measure. The solution to the mounting immigration pressure cannot always be to raise numbers.

The objective we should be striving to achieve is continued assured protection for asylum applicants who fear persecution from governments or from organized non-governmental elements that are oppressing people with the tacit backing of their government, while discouraging the abuse of the American people's hospitality and compassion. We believe that three reforms would serve that purpose.

The first of the reforms would decouple the grant of asylum from permanent residence. International practice demonstrates that there is no standard requiring us to grant permanent residence to asylees. There is no reason that a *bona fide* asylum applicant can not be admitted as a nonimmigrant with the right to work in the United States. That status should not be adjusted to permanent residence until after a minimum of five years. There is no reason that a person who has shown the resourcefulness to get to the U.S. to ask for asylum should be accorded welfare benefits and other public assistance that should be reserved to our most needy citizens. As international circumstances change, the asylum status should be periodically reviewed to determine whether the original circumstances that led to the asylum grant have been reversed. In that case, when the fear of persecution is no longer valid, the asylees should be required to return home. Similarly, an asylum grantee should face a presumption that a fear of persecution no longer exists if he or she travels back to the home country.

The advantage of the adoption of this reform is that it would discourage the still sizable number of asylum applicants who see asylum as a way to permanent residence in the United States, even if their main objective is not the public assistance that comes with a grant of asylum.

The second reform proposal is an amendment to the refugee and asylee definition to delete the reference to "membership in a particular social group." This change would preserve the scope of asylum protection for the traditional range of persecution, i.e., for race, religion, nationality and political opinion, while ending the expansion of asylum claims into areas of social policy never intended by the framers of the law. Asylum claimants should be judged by the same standards as persons screened as refugees overseas.

The third proposed reform is to put an end to the quasi-asylum status of Cubans who arrive illegally in this country. The Cuban Adjustment Act is an anachronism of the Cold War that treats all Cubans as if they were fleeing persecution. In our current practice, we recognize that is not the case any longer. Those Cubans who are intercepted attempting to enter the United States illegally are given the opportunity to request asylum and are given a hearing if they present a convincing case that they have been persecuted or will be persecuted if they are returned to Cuba. However, most of the intercepted Cubans fail this test and are returned to Cuba, where follow-up programs have convincingly demonstrated they are not subjected to persecution. If the Cuban Adjustment Act is abolished, Cubans will be put on an equal footing with Haitians and all others who arrive illegally in the United States and seek to stay. They will have to present an asylum claim, and if they are not entitled to that protection, they will be removed.

Even if this reform were not inherently logical in its own right—which it clearly is—it is essential to restoring the even-handedness and fairness of our asylum policy. It will assure persons from other countries who today are denied the opportunity to stay in the United States accorded only to the Cubans—that our policy is not discriminatory against them.

<sup>2</sup>The ABC backlog illustrates the need for speed in asylum adjudications. Backlogs among claimants inside the U.S. will soon obtain the equities to insist that their right to remain be determined on factors other than the merits of the asylum claim itself.

## CONCLUSION

The context in which we make these recommendations is the overall rise in immigration to a level never contemplated by the legislators who created the current system of immigration in 1965. From moderate levels of immigration between a quarter of a million to a third of a million admissions per year during most of the past century, immigration today is averaging closer to one million admissions per year, and it is well above that level when illegal residents are included. That massive influx is clear from the 2000 Census numbers. The net increase of over ten million immigrants during the 1990's demonstrates a trend that also drives the rapid increase in the overall population of the country. FAIR, like the U.S. Commission on Immigration Reform, is concerned that the preservation of a welcoming climate for new immigrants will be difficult unless the level of immigration is scaled back to a more moderate level.

Legitimate, merits-based refugee and asylee admissions deserve our highest priority and attention. They should get first priority in admissions. However, as long as there is no real definable national interest or objective governing our immigration policy, we will continue to be unable to make trade-offs in order to reallocate priorities. Therefore, asylum policy, too, must be looked at critically as part of any effort to scale back the level of immigration. As I noted above, FAIR thinks that asylum claims can be reduced without any jeopardy to the policy of protecting persons who fall within generally accepted international norms for asylum. We urge on behalf of our members and the American public in general that the pressure from advocates for improper widening the admissions criteria for asylum applicants be resisted, and further reform of the asylum process be adopted in order to assure continued public understanding and support of this program which, when it is properly administered, is a necessary humanitarian program.

Chairman BROWNBAC. And we will be happy to receive your entire testimony into the record.

Mr. DeWine, I want to turn to you for questions first because I have had the chance to question the other panel earlier.

Senator DEWINE. Mr. Chairman, I do not have any questions. I missed Mr. Hammond's and I will read his testimony. I appreciate it very much. I just want to say that I found Mr. Glickman's testimony extremely compelling, and we appreciate that very much.

Chairman BROWNBAC. Thanks.

I have a couple questions, if I could, for the panelists. Mr. Hammond, Dr. Hammond, I believe you identified 40 countries in your testimony, substantial religious persecution was occurring. I wonder if you could help us in identifying those. What was your source for those?

Mr. HAMMOND. It is the Open Doors World Watch List. They do a yearly report on religious freedom around the world, and it is published every year. It is used within the context of the State Department religious freedom initiative. So that is available, and I could get that for you.

Chairman BROWNBAC. If you would, I would appreciate having that. One of the other roles I have is chairing the Subcommittee on the Near East and South Asia, and there is a great deal of religious persecution that occurs within that region. I constantly get comments from individuals on religious persecution; I think it would be good for us to have the documentation here to show that.

Mr. Glickman, we heard earlier testimony that detention varies from place to place across this country. Apparently this is because of the decentralization within the INS Service, so that there is a lot of local decisionmaking. We have also heard a number of compelling cases, extraordinary cases of people being detained that should not have been, and did not need to be detained, and also programs that are in the alternative.

Is there a way that this can be addressed without legislation so that action can take place more quickly? Can there be more standardization or a local option of working with non-governmental organizations to take care of asylum seekers?

Mr. GLICKMAN. Mr. Chairman, I think the centralization—

Chairman BROWNBACk. Pull that microphone closer.

Mr. GLICKMAN. I think the centralization versus decentralization of the INS is woven within the whole fabric of the INS structure and the need to reorganize the entire agency. I think the prior Commissioner did try to take this on a little bit in trying to rein in, as it is known, some of the district directors. She was not successful in that effort, and I do think it is going to take some guidance from Congress to apply uniform standards within all of the districts.

I think the treatment of asylum seekers is a national issue and demand national standards. And I think if—

Chairman BROWNBACk. Well, I agree with you there. It is just that Congress takes time to act, and in the mean time there are a lot of people sitting in detention that are seeking asylum. The only reason they are there is because it is being interpreted, at least locally that they should be there rather than trusted out with a non-governmental organization.

Mr. GLICKMAN. We heard examples earlier of some pilot projects where NGO's were used to care for asylum seekers and they were released into the community, and we heard some really fantastic statistics about the positive effect that had been.

Now, obviously, from where I sit, I would strongly advocate increasing use of NGO's to deal with this problem. I think it should be an issue for the new Commissioner, and I would encourage, as the confirmation process goes through on the new Commissioner, that this issue be put before him or her.

Chairman BROWNBACk. I think that is a good point.

Mr. GLICKMAN. And now it is official, right?

Chairman BROWNBACk. What is that?

Mr. GLICKMAN. It is official now. It is a him.

Chairman BROWNBACk. Yes. I think it is official it is a him.

Mr. HAMMOND. Mr. Chairman, I would invite you also to look at the report that Mr. Glickman asked to be put in from the Lutheran Immigration Refugee Services. That has some good ideas that are not in my head right now of how regulations could be shifted, different categories people could be put out into once they have gone through a certain process. There is also some stuff on kids, on children, in their report. That would be very helpful.

What it takes is someone in the administration to say this is something that we want to happen. These are regs that need to be put into the Federal record to see if we can get them through.

The NGO's have stood very firm behind their interest in helping and being accountable to what happens in the process. We did it with Cubans when they came in and were incarcerated. Some of us helped with that process, and we are very open to providing help for them. Churches stepped up to the plate in many instances. So the NGO community, the private sector, is prepared. It just needs to be some changes in regulations and some careful looks at what

groups could or should be let out into the public with work documentation.

Mr. GLICKMAN. I think Don is right. I think all of us in the NGO community are not only prepared to help in this regard, but we are prepared on accountability standards and to be accountable for our actions.

Chairman BROWNBACk. Good. Mr. Stein, you have often talked about leaving people in their countries to help change the political system, and I understand that point of view. Do you deem that if people are being persecuted for their faith in their home country, they should be encouraged to stay in that home country when they are being persecuted for their religious faith?

Mr. STEIN. That is a good question. Ultimately, it breaks down into the whole question of what is persecution as a factual matter. We are talking about—

Chairman BROWNBACk. Being killed, family members being killed.

Mr. STEIN. Well, obviously, a person who is working for positive political change who is under life-threatening circumstances who finds themselves needing refugee or asylum protection needs that protection.

Chairman BROWNBACk. You would agree then with asylum for that.

Mr. STEIN. Sure. I mean, I think FAIR has tried to make this point, that our asylum and refugee laws which need to be integrated are also a high priority for bona fide refugees. But an individual who dislikes generalized social conditions of hostility to a particular faith and does not want to live their any longer because the government has a bias, that kind of class-based asylum claim, it is not practical to provide asylum for that kind of a factual claim.

Chairman BROWNBACk. You have heard mention here of some 40 countries of persecution for faith, various types of faith. You have heard statements from a Tibetan refugee. I personally have interviewed Tibetans there, some jailed, who could not get work, and who fled for those reasons. They also wanted to be able to worship in freedom. Do you believe they should be entitled to refugee status?

Mr. STEIN. Not everybody who disagrees with the government policy or does not live under freedom as we understand it is going to be able to come here and get asylum as a practical matter. The numbers matter in terms of the manageability of the claim. All the Baha'i in Iran could not come here and claim asylum, and it does not serve their purposes or ours, ultimately, to try to—

Chairman BROWNBACk. If they could get here, would they be deserving of asylum?

Mr. STEIN. All of them?

Chairman BROWNBACk. If they could get, here would they be deserving of asylum?

Mr. STEIN. All the Baha'i in Iran? Probably—

Chairman BROWNBACk. If whoever could get here, is the question. If you will hear the question, if who could get here and they have been persecuted for their faith and members have been jailed, some who are on death row, would they be entitled to asylum status in the United States?

Mr. STEIN. People who would be entitled to—I mean, I dislike by definition handling hypotheticals. People who are politically active trying to work for positive change, who are being targeted by the government for persecution, need that protection. Everybody else does not.

Chairman BROWNBACk. So you would say that unless they are personally targeted by the government, even though they cannot practice the faith the way they choose to—

Mr. STEIN. Our asylum laws cannot deliver everyone from the vexations and misfortunes of human conflict as a practical matter. No nation can, no community can. That is the great balance we have to achieve in determining asylum policy. How do you—

Chairman BROWNBACk. What if there was—

Mr. STEIN. You are doing hypotheticals again.

Chairman BROWNBACk. Well, let's do close to a hypothetical, because I think here lies the rub: It is the great American tradition to be a refuge for those seeking it. This country was founded by those who were seeking simply to be able to practice their own faith as they saw fit. While we did not have borders or laws then, they came here. God bless them that they did. So now, what if we had 800 Baha'i in a boat from Iran, 200 of whom had been targeted by the government, and they somehow got to our shores: should they be granted asylum?

Mr. STEIN. The appropriate thing is to provide, if they are coming as a country of first asylum, a screening process to determine if they have got a basis for state-action-targeted persecution, those people—

Chairman BROWNBACk. I think the Baha'i in Iran would.

Mr. STEIN. But can you give asylum to everyone who says they would be better off living here versus living elsewhere? That is the great charge of the statesmen and the policymakers to figure out where the balance lies.

I mean, the St. Louis is an interesting case in point. We have mythologized it. But even under U.S. asylum laws and standards, the Jewish children on that boat would not necessarily have qualified for asylum if they had the ability to return to another safe country. And the countries that they were returned to were not at that time under Nazi occupation. Our asylum laws are not able to divine the future and have all-knowing omnipotence about future events. The best we can make is sound judgments based on a balancing pattern while discouraging fraudulent claims or the preferential treatment someone might get if they go to a refugee—if they go to a U.S. embassy overseas and apply for refugee status and the claim is not valid under the State Department determination, that is the end of the discussion, or if they go to the UN-sponsored screening agency near an area of conflict. The U.S. ability to help the most people for the most amount of money, rationally, is to try to help people where they are, near the site of a conflict, with expectation of ultimate repatriation. We have not solved the problem in Cuba with an unduly broad migration policy between here and Cuba. What we have done is prolong Fidel Castro's occupation there.

Chairman BROWNBACk. On the St. Louis case, I do not think anybody can rationally say that, in looking back on that, we should have rejected that ship. And I think—

Mr. STEIN. I did not say that.

Chairman BROWNBACk. Those chapters, though—but you will not categorically say we should have absolutely accepted them.

Mr. STEIN. Who?

Chairman BROWNBACk. The people on the St. Louis.

Mr. STEIN. Knowing what happened to them?

Chairman BROWNBACk. What is that?

Mr. STEIN. Knowing what happened to them?

Chairman BROWNBACk. Yes.

Mr. STEIN. Of course we would accept them.

Chairman BROWNBACk. We should—but we are turning back now a number of people, and we know they are going back into tough conditions. But I hope—

Mr. STEIN. Mr. Chairman, we are not aware of anyone who has been sent back under summary exclusion who then suffered any direct political persecution. We are aware of an awful lot of people who have gotten asylum who probably did not deserve it. And where you balance those interests is, I guess, a subjective judgment in the end. We care about both these issues.

Chairman BROWNBACk. We have a vote on the floor. I thank you all for being here, and I appreciate it. The hearing record will remain open for the requisite number of days. Thank you very much.

The hearing is adjourned.

[Whereupon, at 4:13 p.m., the Subcommittee was adjourned.]

