

Immigration, Detention and Asylum

US Immigration officials have been overwhelmed in recent years by a surge of asylum seekers along the U.S.-Mexico border. Over the last five years, the number of people detained at the border who claim they cannot return home because they fear for their safety has increased sevenfold, from fewer than 5,000 to more than 36,000.

Border Patrol records indicate that a total of 63,000 women and children have been apprehended along the Southwest border, mainly in South Texas. U.S. Department of Homeland Security contracts with prison companies to operate detention centers that house those seeking asylum until they can be interviewed and given permission to apply for asylum. Thousands of immigrants seeking protection in the United States often spend months in detention centers waiting for the government to determine whether they may have legitimate cases.

Government regulations say that within 10 days, claimants must receive a determination of whether they can proceed to have their case heard by a judge. The backlog of asylum seekers, along with language barriers, and the lack of legal representation all contribute to the large numbers of asylum seekers being incarcerated in detention centers. In the wake of the heavy influx of women and children during the past year, only about 300 Central American women and children have been deported from family detention centers in Artesia, New Mexico and Karnes City, Texas yet both facilities average 1000 detainees waiting to be interviewed and processed. Escalating gang violence, poverty, and rumors of immigration relief are the most frequent reasons given for the influx of Central American families seeking asylum in the U.S.

Each immigrant detainee is granted what is known as a "credible fear" interview with an asylum officer who determines whether the immigrant is eligible to stay in the country and have a full asylum hearing or be sent home. The majority of claims are found to be credible, according to federal figures, although only a small number of immigrants will go on to win asylum. The Obama administration has put a priority on expelling repeat immigration offenders, who are ineligible for hearings before an immigration judge because of the outcome of their prior cases. But those who claim they have a fear of persecution or torture if they return to their home countries are guaranteed a hearing with an asylum officer.

Internal U.S. Citizenship and Immigration Services documents released by an advocacy group called the *National Immigrant Youth Alliance Asylum* indicate officers were urged to be stricter in their rulings. In a memo from John Lafferty, the chief of the Asylum Division at USCIS, officers are instructed to approve only those cases that demonstrate a "significant possibility" of winning asylum from a judge. Lafferty issued the memo in light of concerns that officers had been approving cases that had "only a minimal or mere possibility of success."

In March 2003, the U.S. Department of Homeland Security (DHS) assumed responsibility for asylum and immigration matters when the former INS (Immigration and Naturalization Service) was abolished. With this transfer, DHS was entrusted with the duty to ensure that the United States lives up to its commitments to those who seek asylum from persecution. These commitments stem from both U.S. law and international treaties with which the United States has pledged to abide. Yet, those who seek asylum—a form of protection extended to victims of political, religious and other forms of persecution—have been swept up in a wave of increased immigration detention, which has left many asylum seekers in jails and jail-like facilities for months or even years.

Six years after DHS and its interior immigration enforcement component, U.S. Immigration and Customs Enforcement (known as "ICE") took over responsibility for immigration detention, the U.S. system for

detaining asylum seekers is more challenged than ever. The influx of asylum seekers has led to the opening of at least six new mega-detention facilities holding more than 1,000 asylum seekers each (WA, LA, GA, TX (2), NM), for a total of nearly 10,000 beds.

Between 2003 and 2009, DHS and ICE oversaw an increase of at least 62 percent in the use of prison-like detention for asylum seekers and other immigrants—from 20,662 beds in 2002 to 33,400 beds in jails and jail-like facilities in 2009.

Asylum seekers are often treated like prisoners in these jails and jail-like facilities. They are often handcuffed and sometimes shackled when transported, required to wear prisonlike uniforms—even when they appear in immigration court in front of a judge—and only allowed to visit with family and friends through a glass partition. In the Don T. Hutto Center in Taylor, TX—a “family” detention facility housed in a former medium-security prison to detain 500 asylum seekers—immigrants, including families with children, were all required to wear prison uniforms, until a lawsuit settlement in August 2007 changed this.

The cost of detaining asylum seekers over the past six years has exceeded \$300 million. During that time, ICE parole policies have become more restrictive, and parole rates for asylum seekers dropped from 41.3 percent in 2004 to 4.2 percent in 2007. In 2010 ICE finally provided Congressionally-mandated statistics detailing the number of asylum seekers detained, the length of their detention, and the rates of their release. The U.S. detention system for asylum seekers, which lacks crucial safeguards, is inconsistent with international refugee protection and human rights standards.

The issue of detaining asylum seekers has recently risen on the U.S. political agenda. Terrorism-related security measures increasingly appear to infringe on the right of refugee claimants to pursue their asylum claims. Members of Congress have introduced legislation both to limit grounds for asylum, arguing that terrorists use the asylum system to gain a foothold in the United States, and to expand detention of aliens, including asylum seekers. In 2004, Congress passed the Intelligence Reform and Terrorist Prevention Act, which included authorization for the construction of up to 40,000 additional immigration detention bed spaces over the next five years.

Human rights advocates are particularly concerned about the expansion of detention for asylum seekers for two principal reasons. First, detention often has the effect of infringing on asylum seekers' ability to exercise their right to seek asylum, particularly since asylum seekers in the United States do not have the right to government-funded legal representation, and detention facilities are often located in remote areas where relatively few pro bono attorneys are available. Second, many asylum seekers are highly traumatized people who have survived torture and other severe abuses for whom detention, particularly prolonged detention in jails, is particularly harmful to health (104 deaths occurred in 5 years). ICE's primary justification for detaining asylum seekers is that they may escape into the U.S., joining the ranks of the undocumented. Human rights advocates counter that the number of asylum seekers who actually do not report for their hearings is quite low. It is important to recognize that asylum seekers have historically been differentiated from illegal immigrants and that asylum seekers cannot apply for asylum when they are outside of this country. Our nation's current policy of dealing with this large influx of asylum seekers is complicated by political opinions about how to maintain U.S. border security, how to deal with illegal immigrants looking for work, and the most appropriate options for determining the legitimacy of asylum seekers. Many object to incarcerating asylum seekers in prison-like detention facilities run by private prison companies who are making considerable profits from the detention policy.