



Immigrants arrive at Ellis Island.

2. U.S. Law on Detaining Asylum Seekers: An Overview

Expedited Removal and Mandatory Detention

Under a 1996 immigration law, known as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the “1996 immigration law”), immigration inspectors at U.S. airports and borders were given the power to order the immediate deportation of people who arrive in the United States without proper travel documents. Many refugees arrive without proper travel documents, unable to obtain them from the governments which they flee.⁴ While genuine asylum seekers are not supposed to be deported under this summary process – called “expedited removal” – the process is so hasty and lacking in safeguards that mistakes can and do happen.⁵

The law calls for “mandatory detention” of all asylum seekers who are subject to expedited removal. As a result, asylum seekers who arrive at airports and borders are held in detention facilities and jails around the country. Those who request asylum after entering the United States are not generally detained. In the last two years, at least 16,000 new asylum seekers have been subject to mandatory detention upon their arrival in the United States.⁶

Parole from Detention

The 1996 law requires the detention of asylum seekers during the expedited removal process. Asylum seekers are no longer subject to expedited removal once they have shown a “credible fear of persecution,” and only then can be released on parole. Before release, they must also meet the criteria detailed in INS (now DHS) parole guidelines.⁷ These

guidelines provide that release from detention on parole “is a viable option and should be considered” for asylum seekers “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.”⁸ The practical obstacles to winning parole are overwhelming.

The current parole criteria are set out in “guidelines,” articulated in various INS memoranda, rather than in formal and enforceable regulations.⁹ These guidelines allow for the release on parole of an asylum seeker who demonstrates:

- A credible fear of persecution in an interview with a U.S. asylum officer;
- His or her identity;
- That he or she has family in the U.S. or other community ties; and
- That he or she poses no danger to the community and is not otherwise barred from asylum.

The Department of Homeland Security has the sole authority to parole these asylum seekers. Under the current rules, a decision to deny parole cannot be appealed.