



Security inspection at Harrisburg, Pennsylvania airport.  
AP Photo / Brad C. Bower

## 4. The New “Security” Environment

Since September 11 the situation of detained asylum seekers has become more precarious.<sup>34</sup> The government’s authority to detain immigrants was expanded by regulation by Attorney General Ashcroft shortly after the attacks. In March 2003 this expanded authority was transferred to the new Department of Homeland Security. The Department of Justice and DHS have created nationality-based detention policies targeting Haitian asylum seekers and asylum seekers from 33 nations and two territories – mostly Middle Eastern and other Islamic countries and territories. Attorney General Ashcroft has also initiated dramatic changes to the immigration appeals process. These changes have undermined the fairness of the asylum adjudication system – leaving some asylum seekers detained for long periods of time as they appeal their asylum denials to the federal courts.

A Lawyers Committee survey of *pro bono* attorneys and legal service providers around the country revealed that it has become even more difficult since September 11 for asylum seekers to obtain release from detention on parole. Attorneys who work with asylum seekers in California; Illinois; Minnesota; Michigan; Louisiana; Texas; Washington, DC; New Jersey; and New York report that increasingly, asylum seekers who meet the parole criteria are not released from detention. In some areas, attorneys have been told that a policy of blanket parole denial is in effect, though no such policy has been made public. The fundamental flaws in the asylum detention system – its lack of independent review and codification in regulations – have left it more susceptible than ever to an approach of routinely refusing to release asylum seekers. In many of these cases, immigration officials have declined to conduct meaningful assessments of the need for detention in each individual case.

Today, federal authorities repeatedly invoke national security concerns to justify new policies – policies that call for the detention of even asylum seekers who present no risk to the public by depriving them of the opportunity to demonstrate that they do not present a risk and merit release on parole. This blanket approach is unnecessary, since existing DHS regulations and the DHS parole guidelines already specifically prohibit the parole of anyone who would be barred from asylum or would present a risk to the community.<sup>35</sup> In addition, the asylum system contains numerous and rigorous safeguards designed to exclude those who pose a danger. So, for example, every asylum applicant's fingerprints are taken and sent to the FBI for a security check. The names and birth dates of arrivals and applicants are also checked against various FBI, State Department, and CIA databases.<sup>36</sup> Anyone who presents a risk to U.S. security is barred under the law from obtaining asylum, as are those who have persecuted others and committed serious crimes.<sup>37</sup>

### Expanded Detention Authority

In the wake of the September 11 attacks, the U.S. government took a number of steps to broaden its authority to detain non-citizens. Under the USA-PATRIOT Act, signed into law in October 2001, the government now has unprecedented power to detain non-citizens who are designated as terrorist threats by the Attorney General. These immigration detention powers are, however, subject to some degree of judicial review and Congressional oversight.<sup>38</sup> At the same time, U.S. immigration authorities vested upon themselves expansive detention authority through a series of regulatory changes made by the Attorney General in the fall of 2001.

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### Pregnant Rape Survivor Denied Release

Cecelia, like all women asylum seekers apprehended at the Port of Houston or at the Houston airport, was placed in detention at Newton County Prison, more than three hours from Houston (where her court hearings were held). There are currently no legal resources to assist asylum seekers in Newton County. She was pregnant as a result of rape she endured in Kenya, but was refused parole even though she had family willing to support her in Houston. At seven months, she became agitated about the fate of her child and YMCA International Services in Houston petitioned for her parole. A *pro bono* attorney was told by deportation officials that it "wasn't going to happen," because "the security risks outweighed humanitarian concerns." Cecelia, who was unrepresented, lost her asylum claim, but appealed. She was finally released just a few weeks before labor.<sup>39</sup>

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Now, a DHS trial attorney (the prosecutor in immigration proceedings) is empowered, in effect, to suspend a judge's release order in the case of essentially any type of immigrant. There is no requirement that the individual be suspected of a crime or terrorist activity. This new power, which was used against some of the many Arab and Muslim men detained in the United States in the aftermath of the September 11 attacks, was not initially applied to many asylum seekers since, as noted above, asylum seekers who are detained at U.S. borders and airports don't even have the ability to ask an immigration judge to review their detention. But it highlights the extent to which immigration judges, as part of the Justice Department, lack the independence necessary to ensure oversight of detention decisions.

### **The Department of Homeland Security**

On March 1, 2003, the Immigration and Naturalization Service (INS) was abolished and its functions transferred to the new Department of Homeland Security. The mission of the Department of Homeland Security, which is spelled out in the Homeland Security Act, is to prevent terrorist attacks in the United States., reduce the vulnerability of the United States to terrorism, and minimize the damage from terrorist attacks.

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### **Rape Survivor Denied Release by DHS**

Asata Duckly, a rape survivor from Liberia, was denied parole by the DHS and only released after seven months in U.S. detention when an immigration judge granted her asylum. Duckly fled Liberia after being threatened because of her husband's political connections. She had previously been raped by the forces of then-president Charles Taylor. She arrived at JFK Airport in New York on December 30, 2002, traveling like many refugees on false documents. She was detained at the airport for more than four days, shackled to a bench, and then brought in handcuffs and shackles to the detention facility in Elizabeth, New Jersey. Despite the fact that a close family friend agreed to house and support her if she were released, Duckly was denied parole by the new Department of Homeland Security on March 28, 2003. She remained very depressed during her seven months in detention, and was only released on July 7, 2003 after an immigration judge granted her asylum.<sup>40</sup>

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Although the Department of Homeland Security is now the place where refugee protection decisions are made, the Department's mission statement lacks any mention of ensuring that the United States lives up to its obligations to refugees seeking asylum – obligations contained in U.S. law and international treaty obligations. Immigration enforcement and services functions have been separated into different bureaus within the Department of Homeland Security (DHS). While the legal and operational expertise on asylum rests with U. S. Citizenship and Immigration Services (CIS), the authority over the detention of asylum seekers falls under a separate interior enforcement bureau known as the Bureau of Immigration and Customs Enforcement (ICE), which is part of a separate enforcement directorate (Border and Transportation Security). Yet another enforcement bureau, the Bureau of Customs and Border Protection (CBP), has authority over immigration inspections and expedited removal.

In April 2003, 90 private organizations around the country wrote to DHS Secretary Ridge to raise concerns about having immigration functions relating to asylum seekers divided into three separate DHS bureaus. The letter and accompanying briefing paper, prepared by the Lawyers Committee for Human Rights, recommended that a number of safeguards be put in place within the Department to ensure that the policies and practices of the Department are consistent with U.S. and international law refugee protection obligations.

Those safeguards have not yet been created, and the lack of coordination within DHS on a range of refugee and asylum issues has become increasingly evident, particularly as the Department deals with issues that cut across these bureaus. For instance, individual ICE trial attorneys, who act in effect as prosecutors in immigration court cases, do not report to the asylum legal experts (in CIS) even when taking legal positions on interpretations of asylum law, which they must necessarily do in almost every asylum case. No formal procedures or guidelines have been issued publicly by DHS that establish safeguards to prevent the summary deportation of asylum seekers when DHS enforcement officers exercise the expanded authority to deport sea arrivals (a measure that primarily affects Haitian asylum seekers) through expedited removal. In August 2003, a group of leading Jewish organizations raised concerns about the U.S. practice of prosecuting asylum seekers. These groups received back two different form letters – one from the DHS Secretary's office and the other from an ICE official – but neither letter was responsive to the substantive questions they raised.

Meanwhile, the Department of Homeland Security, through its interior enforcement bureau (ICE), is now exercising the power to detain and deny parole to asylum seekers. In a December 2003 meeting concerning the detention of Haitian asylum seekers, ICE officials made clear that their goal is “homeland security” and that the role of ICE is to “remove all the removable aliens” and “expedite the hearing process.” The ICE officials also stressed that they believe that some sort of a “tether” is needed to ensure that people who are paroled appear for their hearings and do not abscond.<sup>41</sup> While ensuring appearance at immigration hearings is an appropriate goal to pursue through detention policy, several studies discussed later in this report have shown that asylum seekers released from

detention appear at very high rates for their immigration court hearings.<sup>42</sup> The kinds of "tethers" that ICE officials are pursuing include the use of electronic monitoring devices and intensive supervised release programs, which are discussed later in this report.

### Nationality-Based Detention

In the months following September 11, the press began documenting cases in which asylum seekers from Arab or Muslim backgrounds who would previously have been released from detention on parole were denied release. For instance, two Christian women who fled Iraq were denied parole in Miami, even though one of the women had strong community ties – her sister is a U.S. citizen and her mother a U.S. legal permanent resident. A young Iraqi man who had fled forced conscription by the Iraqi regime was denied parole even though he had a U.S. citizen brother and parents who also lived in the United States.<sup>43</sup>

In the wake of the September 11 attacks, over 1,200 non-citizens – primarily men of Arab or Muslim background – were detained by the U.S. government. The Justice Department's Inspector General has extensively documented a range of disturbing abuses, including lengthy detentions without charges, denial of access to counsel, and abusive treatment.<sup>44</sup> While the vast majority of these individuals were not asylum seekers, some refugees were caught up in this wave of detentions.<sup>45</sup>

### Findings of the Inspector General

A 198-page report issued by the Department of Justice's Office of the Inspector General (OIG) in June 2003 makes clear that many of those detained after September 11 on immigration violations did not receive core due process protections, and the decision to detain them was at times "extremely attenuated" from the focus of the September 11 investigation.<sup>46</sup> The OIG found that the "vast majority" of the detainees were accused not of terrorism-related offenses, but of civil violations of federal immigration law.

The September 11 detainees were subject to a set of Justice Department policies that resulted in serious violations of their due process rights. For instance, with the new regulations that expanded immigration detention authority after the attacks in place, many detainees did not receive notice of the charges against them for weeks, and some for more than a month after being arrested.<sup>47</sup> The OIG reported that 192 detainees waited longer than 72 hours to be served with charges; 24 were held between 25-31 days before being served; 24 were held more than 31 days before being served; and five were held an average of 168 days before being served. Also, the lack of timely notice of the charges against them undermined the detainees' ability to obtain legal representation, to request bond, and to understand why they were being detained.<sup>48</sup>

On September 8, 2003, the OIG released a new report analyzing the written responses of the Justice Department and DHS to the recommendations made in its June 2003 report. The OIG made clear that both agencies are taking steps to address many of the concerns. The OIG also made clear that significant work remained before its remaining recommendations would be fully implemented.<sup>49</sup>

With respect to asylum seekers, the Administration has initiated two nationality based detention policies – one aimed at Haitian asylum seekers and the other aimed at asylum seekers from 33 nations and 2 territories, all primarily Arab and Muslim populations. In both cases, asylum seekers were deprived of meaningful assessments of the need for continued detention and in both cases “security” was cited as a justification for the blanket detention measures.

### **The Haitian Detention Policy**

In early December 2001, a boat carrying about 170 Haitian men, women, and children arrived off the coast of Florida. The INS, which had total control over their detention, instituted a blanket policy of denying parole to these and other Haitian asylum seekers. In October 2002, a second boat arrived, with more than 200 Haitian men, women and children swimming ashore near Key Biscayne, Florida. Unlike the first group of Haitians, these asylum seekers – simply because they had set foot on land before being detained – were entitled to seek their release in a bond re-determination hearing before an immigration judge.

*I didn't think the United States would treat people differently just because of the place they were born, I thought everyone was equal here. But we have the same blood. It became clear to us that the only reason we were in jail indefinitely is because we are Haitian.*

– Testimony of Ms. Marie Jocelyn Ocean, granted asylum after five months in a U.S. jail

In response to the arrival of these two boats carrying Haitian asylum seekers, the Administration took a series of steps which had the effect of depriving these and other Haitian asylum seekers of meaningful and individualized assessments of the need for their detention.

- For the initial group of Haitians and any others whose detention was under exclusive INS control, the INS and now DHS continued a detention policy of denying parole to Haitian asylum seekers who came to the U.S. by sea.
- Following the arrival of the October 2002 boat, the INS began invoking its recently expanded detention power by suspending the decisions of immigration judges to release asylum seekers on bond. As discussed earlier in this report, the Attorney General expanded this detention power after the September 11 attacks – a change that was justified in part “to prevent the release of aliens who may pose a threat to national security.”<sup>50</sup>
- In November 2002, the INS issued a notice authorizing expedited removal for Haitian and other migrants who arrive by sea – with the exception of Cubans. The notice contended that a “surge” in illegal migration by sea “threatens national security” by diverting Coast Guard resources. The change ensured that Haitians arriving in the future would not have the right to seek release from detention from an immigration judge.<sup>51</sup>

- In March 2003, the new Department of Homeland Security asked the Attorney General to review the immigration appeal board's decision to release an 18-year-old Haitian asylum seeker on bond, and to direct that release decisions for other Haitians also be stayed.<sup>52</sup>
- On April 17, 2003, the Attorney General issued a sweeping decision which cited national security in concluding that the 18-year-old Haitian was not entitled to an individualized assessment of the need for his detention, and directed immigration judges and the immigration appellate board to consider national security arguments in future detention custody decisions. As detailed below, the Attorney General asserted that "aliens from countries such as Pakistan" were using Haiti as a "staging point for migration to the United States."<sup>53</sup>

## David Joseph

Citing national security and referring to the "current circumstances of a declared National Emergency," Attorney General John Ashcroft issued a sweeping decision on April 17, 2003 preventing an 18-year-old Haitian asylum seeker from being released from detention. In the decision (known as *In re D-J*), the Attorney General concluded that the asylum seeker, whose name is David Joseph, was not entitled to an individualized assessment of the need for his detention.<sup>54</sup> There was no allegation that Joseph himself presented any risk to the public.

Joseph came to the United States with his younger brother and about 200 other Haitian men, women and children on the October 2002 boat. Joseph has now been detained for about 14 months in the United States.



David Joseph, an 18-year-old asylum seeker, has been detained for 14 months.

The Attorney General concluded that if Joseph and others were released, their release "would come to the attention of others in Haiti," which would "encourage future surges in illegal migration by sea," which in turn would "injure national security by diverting valuable Coast Guard and DOD [Department of Defense] resources from counterterrorism and homeland security responsibilities."<sup>55</sup> The Attorney General also asserted that the U.S. government lacked the resources to adequately screen the Haitians prior to release, presenting an additional security risk. This concern, the Attorney General explained, was supported by the State Department's assertion "that it has observed an increase in aliens from countries such as Pakistan using Haiti as a staging point for migration to the United States."<sup>56</sup>

The Attorney General directed immigration judges and the immigration appeals board to consider national security arguments in future cases, stating that: "in all future bond proceedings involving aliens seeking to enter the United States illegally, where the Government offers evidence from sources in the Executive Branch with relevant expertise establishing that significant national security interests are implicated, IJs and the BIA shall consider such interests."<sup>57</sup>

## Operation Liberty Shield

On March 17, 2003, on the eve of war with Iraq, the Department of Homeland Security announced that as part of “Operation Liberty Shield” it would detain for the duration of their asylum proceedings asylum seekers from a group of nations and territories “where al-Qaeda, al-Qaeda sympathizers, and other terrorist groups are known to have operated.”<sup>58</sup> Under “Operation Liberty Shield,” arriving asylum seekers – even those who met the relevant parole criteria and presented no risk to the public – were to be detained for the duration of their asylum proceedings if they were seeking refuge from one of the targeted nations. The effect of Operation Liberty Shield was to deprive asylum seekers from these nations of the opportunity to have the necessity of their detention assessed on an individualized basis.

The justification of this measure was national security though it called for the detention of even those asylum seekers who were not a risk to the public. Secretary Ridge issued a written statement on March 18, 2003, explaining that “these heightened security measures will help deter terrorism and increase protection of America and Americans.”<sup>59</sup> At a press conference he stated that: “We just want to make sure that those who are seeking asylum, number one, are who they say they are and, two, are legitimately seeking refuge in our country because of political repression at home, not because they choose to cause us harm or bring destruction to our shores.”<sup>60</sup> This, however, is exactly what individualized parole decisions were designed to do – the parole criteria specifically require an assessment of identity and prohibit the release of anyone who presents a danger.

The Department of Homeland Security refused to officially disclose the list of affected nationalities, stating that the complete list was “law enforcement sensitive.” From information received by the Lawyers Committee, the list appears to have included Afghanistan, Algeria, Bahrain, Bangladesh, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Thailand, Tajikistan, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Uzbekistan, and Yemen as well as Gaza and the West Bank.

## International Law on Non-discrimination

The principle of non-discrimination is central to both international refugee and human rights law. The Convention Relating to the Status of Refugees requires states to apply its provisions “without discrimination as to race, religion or country of origin.” The UNHCR Detention Guidelines urge that a decision to detain an asylum-seeker “must be exercised in a non-discriminatory manner.” The International Covenant on Civil and Political Rights provides that: “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>61</sup>

Immediately after the policy was announced, numerous civil rights, faith-based, human rights, and refugee advocacy organizations expressed their concern about it.<sup>62</sup> The U.S. Conference of Catholic Bishops' (USCCB) Committee on Migration, in a statement issued by Bishop Thomas G. Wenski, stated that the policy "harms individuals who are fleeing terror, is inappropriately discriminatory, violates accepted norms of international law, and undermines our tradition as a safe haven for the oppressed."<sup>63</sup> The U.N. High Commissioner for Refugees criticized the association of asylum seekers and refugees with terrorism as "a dangerous and erroneous one," since asylum seekers "have themselves escaped acts of persecution and violence, including terrorism, and have proven time and again that they are the victims and not the perpetrators of these attacks."<sup>64</sup>

Operation Liberty Shield was officially terminated at the end of April 2003. According to DHS information, 42 people were detained as a result of the policy. Despite the termination of the policy, attorneys around the country continue to report that asylum seekers from Arab and Muslim countries are being routinely detained for the duration of their asylum proceedings.

### **New Pilot Program: Additional Detention Tested**

In August 2003, the Department of Homeland Security through its interior enforcement arm, ICE, initiated a pilot program in Connecticut to detain a new category of asylum seekers and other immigrants. As noted earlier, while asylum seekers who arrive at airports and borders are subject to mandatory detention, those who come forward and file their asylum claims with U.S. immigration authorities after entering the United States are not generally detained.

Under the pilot program, non-citizens who were denied asylum or other relief by immigration judges in Hartford, Connecticut could be immediately detained by DHS. The pilot program was scheduled to terminate in September 2003. DHS and ICE have not released public information indicating whether they plan to expand this "pilot program." Launched without notification to the public, the existence of the pilot program was only confirmed by DHS after the press began to report on the detentions.<sup>65</sup>

Detaining asylum seekers who had voluntarily come forward to U.S. authorities is counterproductive. Not only does it discourage refugees from seeking protection, but it also penalizes asylum seekers for voluntarily identifying themselves to U.S. immigration authorities.

### **Changes to Appeals Process Affect Detained Asylum Seekers**

On February 6, 2002, Attorney General Ashcroft publicly announced his plans to make dramatic changes to speed up the way that the Board of Immigration Appeals (the "BIA"), the court of last resort for many asylum seekers, considers and decides cases pending before it. The changes were described as necessary to tackle the significant backlog

of cases at the BIA and to promote national security.<sup>66</sup> The Attorney General's changes included: (1) requiring individual members of the BIA to review and decide most cases with one-sentence orders; (2) limiting the BIA's scope of review; and (3) decreasing the time for detainees to obtain legal representation and file appellate briefs.<sup>67</sup> Despite the stated intent of improving efficiency, the number of BIA adjudicators was reduced from 19 to 11.<sup>68</sup>

These changes, which went into effect on September 25, 2002, have dramatically affected the ability of asylum seekers, and particularly detained asylum seekers, to obtain a full and fair hearing on their claims. Prior to the implementation of the streamlining regulations, the BIA typically decided cases by three-judge panels and granted 25 percent of these appeals. Since then, the numbers have changed markedly. A law firm is working with the Lawyers Committee in analyzing approximately 1,400 asylum, withholding of removal, and/or Convention Against Torture cases decided by the BIA during September of 2002.<sup>69</sup> In approximately 80 percent of these cases, a single BIA adjudicator affirmed the decision of the immigration judge in a one-sentence opinion. Moreover, the BIA granted asylum, withholding of removal, and/or Convention Against Torture relief in *less than 5 percent* of these cases.<sup>70</sup>

## Asylum Denial in Forced Abortion Case Affirmed Without Explanation

Among the cases reviewed by the Lawyers Committee through a *pro bono* law firm, is the decision of a single Board member in September 2002 to affirm without explanation an asylum denial to a young Chinese woman. She had testified that she was the victim of a forced abortion. The young woman, who was detained in the United States, filed her appeal *pro se* – meaning without an attorney. The woman had testified that Chinese authorities had forced her to undergo an abortion for marrying and also becoming pregnant when she was too young. The young woman, who introduced a wedding photo as proof of her marriage and a receipt from Chinese population control authorities for a fine relating to her marriage, testified that she suffered from terrible morning sickness at the beginning of her pregnancy.

The immigration judge had said that he did not believe her testimony for three reasons. First, he did not think it possible that the young woman could have vomited “on a near daily basis” during her first trimester of pregnancy. Second, the judge found she lied about the wedding photo because she had testified that no pictures were taken at her wedding banquet, even though she had also testified that the photograph was taken at a nearby photographer's studio. Finally, he found that the receipt she produced as evidence of a fine imposed by Chinese population control authorities reflected a fine for underage marriage rather than underage pregnancy, although the former would not have come to the authorities' attention without the latter. Without issuing an opinion – and therefore without addressing the immigration judge's findings on credibility – a single board member affirmed the immigration court's decision.<sup>71</sup>

The negative impact of the "streamlining" regulations on detainees (who are frequently unable to secure the assistance of counsel) has been devastating. In fact, the Lawyers Committee was first alerted of this dramatic shift in decision making by asylum seekers at a local detention facility. They told our attorneys that they were troubled because detainees at the facility were now receiving only one sentence affirmations of immigration judges' asylum denials. Previously the BIA had corrected at least some of the decisions that the asylum seekers (and *pro bono* attorneys) believed to be incorrect. When asylum seekers at another facility recently went on a hunger strike, one of the concerns they raised was the BIA's new summary decisions. The BIA's new expedited procedures have no doubt lessened detention time for many detainees since their cases move much more quickly (albeit less fairly). But asylum seekers who would have won asylum at the BIA before these changes came into effect now must increasingly turn to federal appeals courts, adding significantly to their time in detention.

### **National Survey: Detention and Parole More Restrictive than Ever**

The United States' policies on releasing asylum seekers on parole, already quite restrictive in some parts of the country, have become much more restrictive since September 11, 2001. This more restrictive parole policy is not the result of any publicly articulated change in parole criteria. Rather it seems to be the result of a widespread yet informal shift in policies and practices.<sup>72</sup>

A survey of *pro bono* attorneys around the country reflects a number of shifts in asylum detention practices over the last two years. These shifts appear to include:

- (1) An increase in the detention of asylum seekers who arrive at airports or borders even though they are traveling on their own valid passports.
- (2) More restrictive release policies in many parts of the country.
- (3) A rise in the continued detention of asylum seekers after their having been granted asylum or other relief by immigration judges, as DHS attorneys pursue appeals.

This does not necessarily mean that there has been a rise in the number of detained asylum seekers. In fact, the number of new asylum seekers is declining.<sup>73</sup> But apparently a higher percentage of detained asylum seekers are being detained for the duration of their asylum proceedings, rather than being released after a preliminary screening period.

#### **(1) Detention of Asylum Seekers with Valid Passports**

In a number of cases, asylum seekers are being detained at U.S. airports and borders even though they arrived in the U.S. with valid passports. In some cases, their visas – although facially valid – were viewed as invalid by INS or DHS immigration inspectors (for instance, if the individual had not departed the U.S. on time during a prior visit). In other cases the visa was viewed as invalid simply because the asylum seeker told U.S.

immigration inspectors that he wanted to apply for asylum – thereby showing an “immigrant intent” and making the “non-immigrant” visa invalid in the eyes of the immigration inspector. The asylum seekers whose cases we examined were detained after they arrived at various airports around the country, including Logan Airport in Boston, Massachusetts, New Jersey’s Newark Airport, JFK Airport in New York, Miami Airport in Florida, and O’Hare Airport in Chicago.

Most of these asylum seekers were initially detained by U.S. immigration authorities and denied parole even though there was no issue whatsoever as to their identities. In one case, the refusal to parole a West African asylum seeker was never explained in writing. He was detained at several county jails in the Midwest after he arrived at a U.S. airport in early 2003 and told an immigration inspector that he wanted to seek asylum.<sup>74</sup>

In this and other cases, immigration officials are penalizing asylum applicants simply because they state honestly that they are seeking asylum. The refusal to parole asylum seekers who arrive in this country traveling on their own valid passports shows just how widely ignored the parole guidelines are since these asylum seekers clearly have their passports to confirm their identities, thereby satisfying the identity element of the official parole guidelines.

## **(2) More Restrictive Release Policies**

In various parts of the country, lawyers have reported that parole practices for asylum seekers have become more restrictive since September 11. For instance:

- The Midwest Immigrant & Human Rights Center, which assists detainees held in Illinois, Wisconsin, and Nebraska, reported that “asylum seekers detained by DHS almost never obtain parole,” and that “[t]he pattern of parole denial appears to be the result of an informal DHS security policy implemented in the wake of September 11.”<sup>75</sup>
- Freedom House in Detroit, Michigan reported that local immigration officials “do not parole asylum seekers period.”<sup>76</sup>
- Minnesota Advocates for Human Rights reported that immediately after September 11, asylum seekers were “virtually never released” and that even now parole “remains difficult to obtain.”<sup>77</sup>
- The Florida Immigrant Advocacy Center (FIAC), which provides free legal services to detainees at the Krome Detention Facility, reported that since September 11, it has become much more difficult for asylum seekers from Arab or Muslim countries, as well as Haitians arriving by sea, to be released from detention on parole or bond. FIAC Executive Director, Cheryl Little, states: “Since 9-11, many asylum seekers in Florida with no ties to terrorism have been subjected to harsh government policies that arbitrarily deny them release and prevent them from effectively presenting their cases.”<sup>78</sup>

- The Lawyers' Committee for Civil Rights of the San Francisco Bay Area reports that parole is generally not granted in the San Francisco Bay Area. While in some cases it may be granted if the asylum seeker meets the parole criteria, in other cases asylum seekers have been denied parole even when they have proof of identity and community ties.<sup>79</sup>
- The Women's Commission for Refugee Women and Children was told, in an August 2003 meeting with DHS (ICE) officials in Los Angeles, California, that since September 11, immigration officers have basically stopped paroling asylum seekers from detention. Non-profit organizations working with asylum seekers in Los Angeles informed Amnesty International in November 2003 that they were not seeing asylum seekers paroled in Los Angeles.<sup>80</sup>
- The Volunteer Lawyers Project in Buffalo, New York, which provides legal information and representation to asylum seekers detained through expedited removal in the Buffalo Federal Detention Facility, reports that parole applications rarely receive any response, resulting in prolonged detention for asylum seekers.<sup>81</sup>
- Lawyers at YMCA International Services in Houston, Texas, report that detained asylum seekers are almost never granted parole. Since September 11, even those who have already been given asylum by an immigration judge are denied parole and must wait in detention while the government pursues appeals to higher courts.<sup>82</sup>

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### Armenian Political Activist Denied Parole

"Peter," an asylum seeker from Armenia, was detained by DHS after arriving with false documents in San Francisco in April 2003. Because of his activism in an opposition political party in Armenia, Peter had been detained under inhumane conditions and severely beaten by the Armenian police. He was detained by DHS at Yuba County Jail, at least three hours away from his lawyer in San Francisco, California. After passing his credible fear screening interview, Peter applied for parole using his own Armenian passport, his birth certificate, and an Armenian identification paper containing a photograph, all of which he had been carrying when he entered the United States. His application for parole was supported by his wife's sisters, one a United States citizen and the other a legal permanent resident. After six weeks without an answer to his parole request, DHS finally wrote that Peter could not be released because he had used a false document to enter the United States. On that very same day, after having spent two months in jail, Peter was granted asylum by an immigration judge and released.<sup>83</sup>

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In New Jersey and New York, where two of the largest detention facilities for asylum seekers are located, asylum seekers were rarely paroled, even before September 11. Since then, it has become even more restrictive. Both districts have failed to parole asylum seekers who had significant proof of their identity and close community ties. In November 2003, the Lawyers Committee, along with the American Friends Service Committee, the Catholic Legal Immigration Network, and the Hebrew Immigrant Aid Society, wrote to DHS officials in New Jersey urging improvements in the fairness of parole practices at the Elizabeth, New Jersey detention facility. In response to a local DHS official's claim that he was not aware of asylum seekers who had been granted asylum but were not previously paroled, the groups informed DHS that over the last few years three organizations alone had represented 78 asylum seekers who had not been granted parole but were released after months in detention only after an immigration judge granted them asylum or other relief from deportation.<sup>84</sup>

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## Hunger Strike at New York Detention Site

In October 2003, detainees at the Wackenhut facility in Queens, New York began a hunger strike. The detainees reported that all the men at the facility began refusing to eat their meals on Wednesday, October 22. While most began eating again during the following week, at least two detainees did not eat until November 2, losing about 20 pounds each. The detainees told the press and the Lawyers Committee that they were protesting a number of problems, including:

- Detention of asylum seekers with no criminal backgrounds.
  - Lack of automatic, timely, independent review of each person's detention.
  - Lack of parole grants even for people who meet all parole criteria and submit requests with full support, including proof of community ties.
  - Refusal to release detainees who are granted withholding of removal relief under the Convention Against Torture or the Refugee Convention.
  - Absence of hope for release while detainees exercise their due process right to appeal their cases, and the one-sentence denials now routinely issued by the Board of Immigration Appeals.
  - Conditions of detention, including jail-like uniforms, inadequate food, exorbitant phone costs, no meaningful access to fresh air, no privacy in dormitories for bathroom and phone use, and no privacy in visiting with family and friends.<sup>85</sup>
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### **(3) Detention After Judge Grants Relief**

Another disturbing trend is the continued detention of individuals who have been granted asylum or other relief from deportation by an immigration judge. In some of these cases, DHS is appealing the judge's decision, and continues detaining the asylum applicant during the appeal process. For instance, after an immigration judge ruled that a Colombian asylum seeker should get asylum, the DHS in Chicago decided to continue to detain him, even though he had already been detained for eight months in a county jail. Two months later, with his mental and physical health deteriorating, DHS finally released him from jail.<sup>86</sup> In the case of Viktor Odnoyyn and Oleksiy Galushka (whose cases are discussed on page 15 of this report), DHS in New York actually re-detained the two men even though they had previously complied with the requirements of their parole.

### **Delays in Security Checks**

For some asylum seekers, detention has been prolonged for months because of delays associated with post-September 11 security checks. These delays affected asylum seekers from at least 25 countries, including Somalia, Pakistan, Saudi Arabia, Iran, and Iraq. These checks, initiated after September 11, have prolonged the detention of children, sick people, and the elderly as well as other asylum seekers.<sup>87</sup>

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### **Iraqi Girl Detained for Five Months**

A 13-year-old Iraqi girl, spent more than five months in detention before being released on a bond of \$1,500, to the care of her older brother, who was a legal resident of the United States. Her release, and that of her other family members, was prolonged because of delays in new U.S. security check procedures. The girl's 62-year-old father, who was in poor health, was finally released in August 2002 – eight months after the family came to the United States to seek asylum.<sup>88</sup>

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