

Endnotes

¹ Statement of Rwandan asylum seeker, written in December 2001, on file with the Lawyers Committee. This asylum seeker, who was represented *pro bono* by volunteer lawyers through the Lawyers Committee, was later granted asylum.

² A popular account of the incident and recent research to establish the fate of the 937 passengers appears in Lyric Wallwork Winik, "The Hunt for Survivors of a Doomed Ship," *Parade Magazine*, December 7, 2003.

³ Statement of detained Iraqi asylum seeker, dated December 13, 2001, provided by her representatives at the Florida Immigrant Advocacy Center.

⁴ There are various reasons that some refugees resort to false documents. They may be stripped of their travel documents by their persecutors, and those who seek asylum are routinely denied visas. See INA § 235; Daniel Williams, "Macedonia Slows Flow of Incoming Refugees," *The Washington Post*, March 31, 1999 ("Many refugees have reported that Yugoslav authorities are stripping them of their passports and other personal documents...."). Even asylum seekers who arrive on valid passports have been subject to expedited removal when immigration inspectors decided that their visas are invalid – although facially valid – for instance if the individual had not departed the U.S. on time during a prior visit or if the asylum seeker told 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.

⁵ Eric Schmitt, "When Asylum Requests are Overlooked," *The New York Times*, August 15, 2001, at A6; John Moreno Gonzalez, "Amityville Woman Seeks \$8 Million in JFK Mix-Up," *Newsday*, July 12, 2000.

⁶ In fiscal year 2002, 10,000 asylum seekers were referred for credible fear interviews, and in fiscal year 2003, 6,000 asylum seekers were referred for credible fear interviews meaning that at least this many asylum seekers were subject to expedited removal and the mandatory detention provisions. Meeting with Joseph Langlois, Director, Asylum Division, United States Citizenship and Immigration Services, on November 12, 2003, copy of minutes on file with LCHR.

⁷ Immigration and Nationality Act (INA) § 235(b)(1)(B)(v); INA § 235(b)(1)(B)(iii)(IV); INA § 212(d)(5)(A) (providing for parole "on a case-by-case basis for urgent humanitarian reasons or significant public benefit" for an alien applying for admission); 8 Code of Federal Regulations (CFR) § 235.3(c); 8 CFR § 212.5(a); Memorandum from Office of INS Deputy Commissioner, "Implementation of Expedited Removal," March 31, 1997, reprinted in 74 *Interpreter Releases* (April 21, 1997) ("[o]nce an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria"); guidelines cited in Note 8, *infra*.

⁸ Memorandum from Michael A. Pearson, Immigration and Naturalization Service (INS) Executive Associate Commissioner for Field Operations, to Regional Directors, District Directors, and Asylum Office Directors, "Expedited Removal: Additional Policy Guidelines," December 30, 1997. In October 1998, the INS again explained in written guidance that "[a]lthough parole is discretionary in all cases where it is available, it is INS policy to favor release of aliens found to have credible fear of persecution, provided that they do not pose a risk of flight or danger to the community" (emphasis added).

Memorandum from Michael A. Pearson, INS Executive Associate Commissioner, Office of Field Operations, to Regional Directors, "Detention Guidelines Effective October 9, 1998," October 7, 1998.

⁹ See December 1997 and October 1998 INS Guidelines, Note 8, *supra*.

¹⁰ 8 CFR. § 1003.19 (h)(2)(i)(B).

¹¹ While asylum seekers have tried to file federal court habeas petitions, it often takes months or longer for federal courts to decide a petition, making the effort pointless for many asylum seekers. Federal courts have in some cases refused to review INS parole determinations in the wake of the

1996 law, and in other cases have deferred to INS parole determinations as long as the INS cites a reason for its parole denial. *See Veerikathy v INS*, 98 Civ. 2591, 1998 U.S. Dist. LEXIS 19360 (E.D.N.Y. Oct. 9, 1998); *see also Bertrand v. Sava* 684 F.2d 204 (2d Cir. 1982); *Zhang v. Slattery*, 840 F. Supp. 292 (S.D.N.Y. 1994).

¹² *See* Lawyers Committee for Human Rights, *Review of States' Procedures and Practices Relating to Detention of Asylum Seekers*, September 2002, available at http://www.lchr.org/refugees/reports/cntry_rev_02/country_reps.htm. (LCHR Detention Survey 2002) Prepared with the *pro bono* assistance of the law firm Debevoise & Plimpton. In some countries, independent review may be provided for in legislation though it is not likely to occur in practice.

¹³ Unless otherwise noted, all information is taken from LCHR Detention Survey 2002, note 18, *supra*.

¹⁴ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, Article 9(4) (entered into force March 23, 1976). (ICCPR)

¹⁵ *Torres v. Finland*, U.N. Human Rights Committee, Communication No. 291/1988, 2 April 1990 (concluding that asylum seeker's detention during period in which he was unable to appeal detention order to court violated ICCPR Article 9(4)).

¹⁶ United Nations High Commissioner for Refugees (UNHCR), *Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers*, 1999; *see also* UNHCR, Executive Committee, *Conclusion 44* (1986) ("detention measures taken in respect of refugees or asylum seekers should be subject to judicial or administrative review.").

¹⁷ United States Committee for Refugees, *World Refugee Survey 2003: Lithuania*, available at <http://www.refugees.org/world/countryindex/lithuania.cfm>.

¹⁸ *See* Refugee Council of Australia, *Facts*, available at <http://www.refugeecouncil.org.au/>.

¹⁹ For confidentiality reasons, the Pastor's name is not provided. He is represented by attorneys at the law firm Lowenstein Sandler SPC through the *pro bono* representation program of the Lawyers Committee for Human Rights.

²⁰ Lawyers Committee for Human Rights, *Refugees Behind Bars*, 1999, available at <http://www.lchr.org/pubs/descriptions/behindbars.htm>; Petition to the INS Seeking a Rule on Procedures for Parole of Detained Asylum Seekers, submitted to the INS and DOJ by the Lawyers Committee for Human Rights, January 1996 (Petition Seeking Rule on Parole); Frederick N. Tulskey, "Uncertain Refuge: Asylum Seekers Face Tougher U.S. Laws, Attitudes," *San Jose Mercury News*, December 10, 2000; Mirta Ohito, "Inconsistency at INS," *The New York Times*, June 22, 1998; Toby Beach & Peter Yost "INS Jailing Many Asylum Seekers," *The Boston Globe*, November 17, 1998, at A27.

²¹ *Id.*; *see also* Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States* (September 1998); Women's Commission for Refugee Women and Children, *Forgotten Prisoners: A Follow-Up Report on Refugee Women Incarcerated in York County*, July 1998.

²² *See* Ronald Smothers, "Asylum Seekers Testify on Abuse of Jail Guards," *The New York Times*, February 6, 1998; Elizabeth Llorente, "Asylum-Seekers Live in Jail-Like Conditions," *The Bergen County Record*, April 11, 1999 (Esmor "fueled a debate about the very idea of locking up asylum seekers..."); "The Lessons of Esmor," *The New York Times*, June 21, 1995, at A18; Ashley Dunn, "Jail Official Blames Revolt on Agency: Length of Stay is Cited in Immigrants Uprising," *The New York Times*, June 21, 1995, at B1.

²³ INS headquarters Detention and Deportation Division, *The Elizabeth, New Jersey Contract Detention Facility Operated by ESMOR Inc.: Interim Report*, at 54-55 (July 20, 1995). The report noted that a stronger APSO parole program would have served the goals of making appropriate use of detention space, while protecting the rights of credible asylum seekers.

²⁴ *See* Lawyers Committee for Human Rights, *Interim Report on the Pilot Parole Project of the Immigration and Naturalization Service*, November 1990; Lawyers Committee for Human Rights, *Problems in Implementation of the Asylum Pre-Screening Officer Program*, September 1994; LCHR *Refugees Behind Bars*, 1999; Lawyers Committee for Human Rights, *Refugee Women at Risk*, September 2002.

Lawyers Committee for Human Rights publications are available at <http://www.lchr.org>. See Petition Seeking Rule on Parole, Note 21 *supra*.

²⁵ 65 Fed. Reg. 82254-82256, "Clarification of Parole Authority," INS No. 2004-9965 (28 Dec. 2000) (The change was needed because "[s]ome have interpreted Sec. 212.5 [the relevant parole regulation] to mean that the authority to grant parole is limited to the DD [district director] and the CPA [chief patrol agent.]").

²⁶ For confidentiality reasons, the names of these refugees are not revealed here. The family was represented by the law firm of McCarter & English, LLP through the pro bono representation program of the Lawyers Committee for Human Rights.

²⁷ See 8 U.S.C. 1377 §§ 903 (b) and (c).

²⁸ 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 48.

²⁹ LCHR *Refugees Behind Bars*, 1999 (Somali asylum seeker detained for 4 years before being granted asylum); Michael Clancy, "Nigerian Finally Wins Asylum After Long Fight," *The Herald News*, July 20, 2001 (Nigerian refugee granted asylum after 3 years and 4 months in detention); Dan Malone, "Man locked up for four years but convicted of nothing," *The Dallas Morning News*, April 1, 2001 (Sri Lankan Asylum seeker detained for four years); Chris Hedges, Immigrant Detained for 3 and 1/2 years Emerges from Labyrinth," *The New York Times*, November 6, 2000 (Congolese refugee granted asylum after 3 and 1/2 years in jails and detention facilities); Brent Walth, "Asylum Seekers Greeted With Jail," *The Oregonian*, December 10-15, 2001 (Liberian asylum seeker detained for 6 years, Chinese asylum seeker detained over 2 years, Sri Lankan asylum seeker detained for 4 years).

³⁰ Dan Mallone, "851 Detained for Years in INS Centers - Many are Pursuing Asylum," *The Dallas Morning News*, April 1, 2001.

³¹ *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 249 (2001). "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the reasonably foreseeable future conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

³² 66 Fed. Reg. 56967 - 56982, "Continued Detention of Aliens Subject to Final Orders of Removal," Nov. 14, 2001 (excluding arriving aliens from regulations issued pursuant to *Zadvydas* decision).

³³ Viktor Odonvyun and Oleksiy Galushka are represented by volunteer attorneys through the *pro bono* representation program of the Lawyers Committee for Human Rights.

³⁴ Immediately after the September 11 attacks the refugee resettlement program was suspended for four months. In fiscal year 2002, the maximum number of refugees who could be resettled to the United States was dropped to 70,000. Even this lowered limit was not reached: "Refugee arrivals into the United States decreased from almost 69,000 in fiscal year 2001 to 27,000 in fiscal year 2002." Department of Homeland Security, *2002 Yearbook of Immigration Statistics: Refugees*, October 2003.

³⁵ 8 CFR § 212.5(a) (prohibiting parole of anyone who is a security risk). The 1997 INS Guidelines, note 8, *supra*, specify that parole is only a viable option for asylum seekers who meet certain criteria and "are not subject to any possible bars to asylum involving violence or misconduct." The 1997 INS Guidelines detail procedures to be followed if some concern arises that an individual may be a security risk, may be subject to a terrorist bar or may otherwise be a danger to the community. These procedures include an investigation and inquiries to the FBI and other appropriate agencies. The 1998 INS Guidelines, note 9, *supra*, provide 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*" (emphasis added).

³⁶ INA § 208(d)(5)(A)(i).

³⁷ INA § 208(b)(2) (amended by the US PATRIOT Act of 2001, Pub. L. No. 107-56 sec. 411 (b)).

³⁸ See INA § 236A (b); Lawyers Committee for Human Rights, *A Year of Loss: Reexamining Civil Liberties since September 11*, September 2002, at 17, available at http://www.lchr.org/pubs/descriptions/loss_report.pdf.

³⁹ This information was provided by the *pro bono* attorney at YMCA International Services in Houston, Texas, who represented her in connection with her parole application.

⁴⁰ Ms. Duckly was represented *pro bono* by the Hebrew Immigrant Aid Society.

⁴¹ Several studies (see note 44 below) have demonstrated that asylum seekers who are paroled appear for hearings at very high rates. A report of the General Accounting Office (GAO) issued in September 2001 concluded that the information that they examined indicated a 42 % rate of failure to appear. But several reviews of the GAO's conclusion have shown that the GAO's analysis was flawed. The Department of Justice's Executive Office for Immigration Review, noting that the GAO's study period of only one year and a half does not take into account the appearance rates of the many asylum seekers whose hearing dates are set further in the future, estimated that the actual non-appearance rate would be about 25%, while an academic study that analyzed the GAO's findings concluded that the failure to appear rate was actually 19%, and would drop further to 15% if it excluded individuals who had likely proceeded on to Canada, their original destination. General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process* (Letter Report GAO/GGD-00-176), September 1, 2001, at 62 and 68; Center for Human Rights and International Justice University of California, Hastings College of the Law, *Evaluation of the General Accounting Office's Second Report on Expedited Removal: The Expedited Removal Study*, October 2000, available at <http://www.uchastings.edu/ers/>; see Lawyers Committee for Human Rights *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, Lawyers Committee for Human Rights, October 2000, available at <http://www.lchr.org>.

⁴² An August 2000 Report issued by the Vera Institute of Justice noted a 91% appearance rate for asylum seekers released into a supervised program coordinated by Lutheran Immigration and Refugee Services, and a 1990 study conducted by the Lawyers Committee for Human Rights of the APSO pilot parole project indicated a compliance rate for scheduled appearances of 97% for asylum seekers paroled in New York through a "community process." Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program*, Volume 1, August 2000, at ii; Lawyers Committee for Human Rights, *Interim Report on the Pilot Parole Project of the INS*, November 1990, at 21-22.

⁴³ Richard A. Serrano, "Ashcroft Denies Wide Detainee Abuse," *Los Angeles Times*, October 17, 2001; Richard A. Serrano, "Judge Denies Young Iraqi's Bid to Join Family," *Los Angeles Times*, January 14, 2002; Andres Viglucci and Alfonso Chardy, "Iraqi Christians get caught up in Security Web," *Miami Herald*, December 26, 2001; Jody Benjamin, "Mideast Detainees Await Freedom," *The South Florida Sun-Sentinel*, Dec. 8, 2001.

⁴⁴ Amnesty International, *Amnesty International's Concerns Regarding post September 11 detentions in the USA*, March 2002 (AI Index: AMR 51/044/2002); Jim Edwards, "Attorneys Face Hidden Hurdles," *New Jersey Law Journal*, Dec. 3, 2001.

⁴⁵ Jody A. Benjamin, "Iraqi Refugees Cleared by FBI Could Still Face Deportation," *South Florida Sun-Sentinel*, December 12, 2001.

⁴⁶ Office of the Inspector General, U.S. Department of Justice, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, June 2003, p. 69, available at <http://www.usdoj.gov/oig/special/03-06/index.htm>.

⁴⁷ *Id.*, p. 35.

⁴⁸ *Id.*, p. 158.

⁴⁹ Office of Inspector General, U.S. Department of Justice, *Analysis of Responses by the Department of Justice and Department of Homeland Security to Recommendations in the OIG's June 2003 Report on the*

Treatment of September 11 Detainees, September 5, 2003, p. 2, available at <http://www.usdoj.gov/oig/special/03-06/analysis.htm>.

⁵⁰ Review of Custody Determinations, 66 Fed. Reg. 54909 54909-54912 (2001).

⁵¹ Department of Justice, "Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act," (Order No. 2243-02), November 13, 2002, available at <http://www.immigration.gov/graphics/lawsregs/fr111302.pdf> (accessed March 7, 2003).

⁵² DHS Under Secretary for Border & Transportation Security Asa Hutchinson, Referral of Decision to the Attorney General, March 20, 2003.

⁵³ *In re D-J*, 23 I & N Dec. 572 (A.G. 2003), at 579.

⁵⁴ *Id.*

⁵⁵ *Id.* at 579.

⁵⁶ *Id.* at 580.

⁵⁷ *Id.* at 581. David Joseph was represented in his bond proceedings by the Florida Immigrant Advocacy Center.

⁵⁸ The DHS Press Kit on Operation Liberty Shield is available at <http://www.dhs.gov/dhspublic/display?content=520>.

⁵⁹ The press statement issued by Secretary Ridge on March 18, 2003 is available at <http://www.dhs.gov/dhspublic/display?content=519>.

⁶⁰ The press briefing made by Secretary Ridge on March 18, 2003 is available at <http://www.dhs.gov/dhspublic/display?content=525>.

⁶¹ Convention Relating to the Status of Refugees, Introductory Note; UNHCR *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers*, February 1999, Paragraph 5; International Covenant on Civil and Political Rights, Article 26.

⁶² The policy has been criticized by Amnesty International USA, Catholic Legal Immigration Network, the Episcopal Migration Ministries, the Ethiopian Community Development Council, the Hebrew Immigrant Aid Society, Human Rights Watch, the Lawyers Committee for Human Rights, the Lutheran Immigration and Refugee Service, the National Asian Pacific American Legal Consortium, the US Committee for Refugees, the US Conference of Catholic Bishops, and the Women's Commission for Refugee Women and Children.

⁶³ Statement of Bishop Thomas G. Wenski, Auxiliary Bishop of Miami, Chairman, USCCB Committee on Migration, on Operation Liberty Shield, March 20, 2003.

⁶⁴ "UNHCR Appeals for Protection of Asylum-Seekers in the United States," March 20, 2003.

⁶⁵ See Stacey Stowe, "Holding Those Who Face Deportation," *New York Times*, September 17, 2003; Matt Apuzzo, "Illegal immigrants in Connecticut arrested before appeals as part of Homeland Security pilot program," *Associated Press*, September 16, 2003. See also Lawyers Committee for Human Rights, "Asylum Protection News 19: New DHS Initiatives Impact Asylum Seekers and Detention; Lawyers Committee Releases Report on US Law and Security," available at http://www.lchr.org/asylum/torchlight/newsletter/newslet_19.htm.

⁶⁶ "[O]ur nation's security demands that our immigration laws be enforced efficiently, fairly and without delay. In the wake of the September 11th occurrences of last year, such concerns rise to a new level of importance. Today's announced reorganization of the Board of Immigration Appeals will meet these objectives while protecting due process." Attorney General Transcript, "News Conference - Administrative Change to Board of Immigration Appeals," Department of Justice Conference Center, February 6, 2002, available at

<http://www.usdoj.gov/ag/speeches/2002/020602transcriptadministrativechangetobia.htm>.

⁶⁷ See 8 CFR §1003.1 (2003); see also Department of Justice Press Release, "Attorney General Issues Final Rule Reforming Board of Immigration Appeals Procedures," August 23, 2002, available at http://www.usdoj.gov/opa/pr/2002/August/02_eoir_489.htm.

⁶⁸ *Id.*

⁶⁹ These decisions, along with other information obtained by the law firm pursuant to a FOIA request, will be the subject of a forthcoming report about the due process effects of the streamlining regulations on asylum seekers in the United States.

⁷⁰ See American Bar Association Commission on Immigration Policy, Practice & Pro Bono, "Seeking Meaningful Review: Findings and Recommendations in Response to Dorsey & Whitney Study of Board of Immigration Appeals Procedural Reforms," available at <http://www.abanet.org/immigration/bia.pdf>.

⁷¹ Information received from the Executive Office for Immigration Review in the summer of 2003 through a Freedom of Information Act request filed by the law firm Jones Day on December 19, 2002. For confidentiality reasons, the name of the asylum seeker was not provided.

⁷² A November 2001 INS memorandum concerning several matters including parole stated that "[d]uring the nation's heightened security alert and until further notice, District Director (or other specified) approval is required in order to parole aliens or take certain other actions." The memorandum states that: "discretion should be applied only in cases where inadmissibility is technical in nature (i.e., documentary or paperwork deficiencies), or where the national interest, law enforcement interests, or compelling humanitarian circumstances require the subject's entry in the United States...." However, the memorandum also explicitly states that the guidance does not change existing statutory and regulatory standards for parole. Memorandum from INS Executive Associate Commissioner Michael D. Cronin, "Deferred Inspection, Parole and Waivers of Documentary Requirements," November 14, 2001, reprinted in *Interpreter Releases*, no. 79, vol. 49, January 7, 2002.

⁷³ For instance, the number of asylum seekers referred for credible fear interviews during fiscal year 2003 is only 6,000 as opposed to 10,000 the year before. The number of affirmative (non-detained) asylum seekers has declined to 43,339 in fiscal year 2003 from 58,439 during the prior fiscal year. See note 7, *supra*; Department of Homeland Security, "Asylum Applications Filed with the US Citizenship and Immigration Services, FY 2003," November 10, 2003, on file with the Lawyers Committee for Human Rights. (Note that the statistics provided regarding affirmative asylum applications include people arriving from Mexico.)

⁷⁴ This information was provided to the Lawyers Committee by Heartland Alliance's Midwest Immigrant & Human Rights Center, which assisted the asylum seeker.

⁷⁵ Correspondence and Memorandum from Heartland Alliance's Midwest Immigrant & Human Rights Center to Lawyers Committee for Human Rights, November 2003.

⁷⁶ Correspondence from Freedom House to Lawyers Committee for Human Rights, October 29, 2003, and September 24, 2003.

⁷⁷ Correspondence from Minnesota Advocates for Human Rights to Lawyers Committee for Human Rights, October 7, 2003.

⁷⁸ Correspondence from Florida Immigrant Advocacy Center to Lawyers Committee for Human Rights, November and December, 2003.

⁷⁹ Correspondence from Lawyers Committee for Civil Rights to Lawyers Committee for Human Rights, December 3, 2003.

⁸⁰ Correspondence and discussions with Women's Commission for Refugee Women and Children and Lawyers Committee for Human Rights, December 2003.

⁸¹ Interview with Volunteer Lawyers Project by Lawyers Committee for Human Rights, December 17, 2003.

⁸² Correspondence between YMCA International Services, Houston, Texas, and Lawyers Committee for Human Rights, June 23, 2003; updated by conversation with lawyer at the Immigration Clinic of the University of Houston Law Center, December 17, 2003.

⁸³ For confidentiality reasons, "Peter" is not the real name of this asylee. He is represented by Jeffrey Martins through the Lawyers Committee for Civil Rights of the San Francisco Bay Area's *pro bono* representation program.

⁸⁴ Letter from Catholic Legal Immigration Network, American Friends Service Committee, Hebrew Immigrant Aid Society, and Lawyers Committee for Human Rights to John Carbone, Field Office Director of DHS/ICE for New Jersey, dated December 4, 2003.

⁸⁵ See Lawyers Committee for Human Rights, "Asylum Protection News 20: Asylum Seekers Protest Detention with Hunger-Strike: Complaints Included Length of Detention, Unfair DHS Parole Policies, and Jail-like Conditions," available at

http://www.lchr.org/asylum/torchlight/newsletter/newslet_20.htm; Elizabeth Cady Brown, "Detainees Hold Hunger Strike," *Newsday*, October 25, 2003; Elizabeth Cady Brown, "Hunger Strike in Second Week," *Newsday*, October 29, 2003.

⁸⁶ Correspondence and Memorandum from Heartland Alliance's Midwest Immigrant & Human Rights Center, Chicago, Illinois, to Lawyers Committee for Human Rights, November 2003.

⁸⁷ Marisa Taylor, "Background Check for asylum seekers," *San Diego Union-Tribune*, Aug. 15, 2002

⁸⁸ *Id.*

⁸⁹ Department of Homeland Security, *2002 Yearbook of Immigration Statistics: Enforcement*, 2003, available at <http://uscis.gov/graphics/shared/aboutus/statistics/ENF2002.pdf>.

⁹⁰ 8 U.S.C. 1377 §§ 903-904; *Frederick N. Tulsky, Asylum Seekers Face Tougher U.S. Laws, Attitudes* (INS lacks precise data on detained asylum seekers; regarding failure to comply with statute requiring that INS report data: "An INS spokesman said that complying with the law would drain resources from other mandated responsibilities.").

⁹¹ See note 6, *supra*.

⁹² Michele R. Pistone and Philip G. Schrag, "The New Asylum Rule: Improved but Still Unfair," 16 *Georgetown Immigration Law Journal* 1 (Fall 2001): 49, n. 272 & n. 273 (citing numerous medical reports, including, Neal R. Holtan, *Survivors of Torture*, 114 *Pub. Health Rep.* 489 (1999); Derrick Silove, et al., *Anxiety, Depression and PTSD in Asylum-Seekers: Associations With Pre-Migration Trauma and Post-Migration Stressors*, 170 *British J. Psychiatry* 351, 351-57 (1997); Hans Thulesium and Anders Hakansson, *Brief Report: Screening for Post-Traumatic Stress Disorder Symptoms Among Bosnian Refugees*, 12 *J. Traumatic Stress* 167, 171-73 (1999)).

⁹³ Elizabeth Llorente, "Dreams Turn to Despair," *The Bergen County Record*, May 24, 1999 (quoting Dr. Beverly Pincus, director of Cross-Cultural Counseling Center at the International Institute of New Jersey).

⁹⁴ Physicians for Human Rights and the NYU/Bellevue Center for Survivors of Torture, "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers," June 2002.

⁹⁵ Department of Homeland Security, "Detention Operations Manual," 2001, available at <http://uscis.gov/graphics/lawsregs/guidance.htm>.

⁹⁶ Letter to Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs Carl Levin from Governmental Affairs Office Director Carl Levin dated November 13, 2001, available at <http://www.abanet.org/poladv/letters/107th/immigration111301.html>.

⁹⁷ Jean Pierre Kamwa was represented by the asylum law clinic of New York University Law School through the pro bono representation program of the Lawyers Committee for Human Rights. This information was provided to Lawyers Committee for Human Rights by Mr. Kamwa.

⁹⁸ See note 84, *supra*.

⁹⁹ Physicians for Human Rights and the NYU/Bellevue Center for Survivors of Torture, "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers," June 2002.

¹⁰⁰ Women's Commission for Refugee Women and Children, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center*, October 2000, at 1.

¹⁰¹ Alfonso Chady, "Activists Accused the INS of Mistreating Female Refugees at the TGK Center," *The Miami Herald*, February 8, 2001; Women's Commission for Refugee Women and Children, *Innocents in Jail: INS Moves Refugee Women from Krome to Turner Guilford Knight Correction Center*, June 2001, at 2.

¹⁰² Statement taken from interview of Ugandan Pastor detained at Elizabeth Detention Center in New Jersey on December 16, 2003. The Pastor is represented by the law firm Paul Weiss Rifkind Wharton & Garrison LLP through the pro bono representation program of the Lawyers Committee for Human Rights.

¹⁰³ Lawyers Committee for Human Rights, *Refugee Women at Risk*, September 2002.

¹⁰⁴ Brian Donohue, "Immigration Guard Held in Sex Attack," *Star Ledger*, August 21, 2003.

¹⁰⁵ See note 105, *supra*.

¹⁰⁶ Alan Elsner, "Congressmen Protest INS Treatment of Retarded Boy," *Reuters*, March 27, 2002.

¹⁰⁷ See Amnesty International, "Why am I Here?: Children In Detention," June 2003, at p. 1, on file with Lawyers Committee for Human Rights, citing to U.S. Department of Justice and Naturalization Service, INS Office of Juvenile Affairs Fact Sheet, August 1, 2001.

¹⁰⁸ Alan Elsner, "New York Dentists Can Settle Fate of Migrants," *Reuters*, Jan 11, 2002; Chris Hedges, "Crucial INS Gatekeeper: The Airport Dentist," *The New York Times*, July 22, 2001.

¹⁰⁹ *Ibid* p. 21 n. 86.

¹¹⁰ *Ibid*.

¹¹¹ Jarno has been represented *pro bono* by Latham & Watkins LLP, Holland & Knight LLP, and Jones Day, which have donated thousands of hours in his complex case. Information provided by his *pro bono* attorneys. For more information on children in detention see Amnesty International, "Why am I Here?": *Children In Detention*, June 2003 at p. 7, available at http://www.amnestyusa.org/refugee/children_detention.html.

¹¹² See Christopher Nugent and Steven Schulman, *Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children*, 78 No. 39 Interpreter Releases 1569 (2001); Jacqueline Bhabha and Wendy A. Young, *Through A Child's Eyes: Protecting the Most Vulnerable Asylum Seekers*, 75 No. 21 Interpreter Releases 757 (1998); Remarks of Robert E. Hirshon, President of the American Bar Association made at the Immigration Judges Conference, San Juan, Puerto Rico, June 6, 2002 available at <http://www.hrw.org/reports98/ins2/index.htm#TopOfPage>.

¹¹³ See Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1996). (Flores)

¹¹⁴ See Eliza Amon, "Access Denied, Children in INS Custody Have no Right to a Lawyer," *The National Law Journal*, April 12, 2001; Nalton F. Ferraro, Public Comment on Proposed Rule at 64 FR 39759 (INS No. 1906-98), sent to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service March 12, 2002); Physicians for Human Rights and the NYU/Bellevue Center for Survivors of Torture, "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers," June 2002, at Appendix A; C.F.A. Moores, E.A. Fanning, E.E. Hunt, Jr., *Age Variation of Formation Stages for Ten Permanent Teeth*, 42:6 Journal of Dental Research (November - December 1963), at 1490 (explaining the distinction between "dental age" and "chronological age").

¹¹⁵ See State Dept. Cable No. 98-State-096341 (May 29, 1998) reprinted in *Interpreter Releases* June 29, 1998 at 883)

¹¹⁶ Homeland Security Act of 2002, Pub. L. 107-296 (H.R. 5005), signed into law by President George W. Bush on November 25, 2002.

¹¹⁷ See http://www.bice.immigration.gov/graphics/about/contact/con_dro.htm#office, last accessed November 22, 2003.

¹¹⁸ Office of the Federal Detention Trustee. See <http://www.usdoj.gov/ofdt/statistics.htm>

¹¹⁹ Brent Walth, *Asylum Seekers Greeted with Jail*, THE OREGONIAN, Dec.10-15, 2001; Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* 66 (Vol I, August 2000).

¹²⁰ Asylum Representation, Summary Statistics, prepared by Dr. Andrew I. Schoenholtz, Director of Law and Policy Studies, Institute for the Study of International Migration, Georgetown University, May 2000.

¹²¹ See, e.g., Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States*, note 26, *supra*, at 63-68.

¹²² See “Brief of Amicus Curiae the Lawyers Committee for Human Rights in Support of Petitioners-Appellants and Reversal of the District Court’s Decision,” available at http://www.lchr.org/asylum/amicus/haitian_am_brief.pdf; see also Letter from UNHCR Regional Representative, to Senator Spencer Abraham, Senate Sub-Committee on Immigration, dated September 15, 1998.

¹²³ *Mulanga v. Ashcroft*, 349 F.3d 123, 136 (3rd Cir. 2003). (“It seems all the more unreasonable to require corroboration given that Mulanga had been away from her home for a four-year period before her hearing and she had been in INS detention since her arrival in New York in July 2001.”)

¹²⁴ Michele Pistone, “Justice Delayed is Justice Denied: A Proposal for Ending the Unnecessary Detention of Asylum Seekers,” *Harvard Human Rights Journal*, Vol. 12, Spring 1999, at 218. (“Being in detention frustrates asylum seekers’ ability to work efficiently with their representatives. Detained asylum seekers are not able to locate witnesses, gather evidence, or otherwise assist their attorneys in case preparation.”)

¹²⁵ *Ibid.*, at 219-20.

¹²⁶ Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program*, Volume 1, August 2000, at 2.

¹²⁷ Vera Institute of Justice, *Testing Community Supervision for the INS*, at iii, 8, 27, 31; Christopher Stone, “Supervised Release as an Alternative to Detention in Removal Proceedings: Some Promising Results of a Demonstration Project,” *Georgetown Immigration Law Journal*, Spring 2000 at 283, 285.

¹²⁸ Esther Ebrahimian, “The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention,” *Detention Watch Network News*, August/September 2000, at #8.

¹²⁹ See Senate Appropriations Report, Report 107-42, “Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, 2002, P.L. 107-77, pg. 40.

¹³⁰ See Letter from Senator Leahy, Senator Hatch, Senator Kennedy and Senator Brownback to Attorney General Ashcroft, August 16, 2002, on file with LCHR.

¹³¹ See House Judiciary Committee Report, H.Rpt. 108-10, (report accompanying H.J. Res. 2, Omnibus Appropriations Bill of 2003), p. 626.

¹³² *Id.*