



## 1. Introduction

*When I set foot on American soil, I had finally reached the land of liberty, the land of peace, and I had a strong feeling of gratitude toward the Most High who had allowed me to escape death and to reach a life of freedom.... After completing my statement [at the airport]...[an] officer arrived with handcuffs. Then he handcuffed my wrists, but I sincerely thought this was a case of mistaken identity. Later on he explained to me that this was the established procedure. We left for [a county] prison. They put me in a cell where it was really cold, and I had no blanket with me. The idea of a land of liberty was beginning to be cast into serious doubt in my mind.*

*After spending two days in this prison, I was transferred to another prison, and before leaving they not only handcuffed my wrists but also put shackles on my feet. Then they brought me to [an immigration] Detention Center, where I am presently detained. My hope of a land of liberty has been transformed into a nightmare. To this is added moral suffering due to detention, for I do not know how long I will spend in this detention center. It is as if I am living through a bad dream, and soon will wake and finally reach this land of freedom that I still seek.*

– Statement of a Rwandan refugee who was detained in the U.S. for several months before being granted asylum<sup>1</sup>

The United States has a long tradition of providing refuge to victims of religious, political, and other forms of persecution. This tradition has been eroded recently beginning with harshly restrictive federal legislation in 1996. This erosion has accelerated in the aftermath of the September 11, 2001 attacks on the United States. As a result of these changes, refugees have been caught up in a web of new laws, regulations and policies

advanced in the name of national security that have transformed the immigration system – and left refugees more vulnerable than ever.

Even before September 11, refugees faced many obstacles in their efforts to win asylum in the United States. A 1996 immigration law imposed a new filing deadline on asylum claims and a fast-track deportation process at airports and borders, called “expedited removal.” Under this process, asylum seekers face mandatory detention when they arrive in the United States. They are held in jails, prisons and detention facilities across the country.

While they can request release from detention on parole, the U.S. parole process for asylum seekers lacks the kinds of basic safeguards that help to ensure that a process is fair. The decision to keep an asylum seeker in detention is now entrusted to the Department of Homeland Security (DHS) and cannot be appealed to an independent judge. Unlike other detained immigrants, those who request refuge when they arrive at our airports cannot have the decision to detain them reviewed even by an immigration judge. The lack of basic safeguards in the asylum detention system has meant that victims of religious and political persecution, rape and torture are unnecessarily detained for months and sometimes years in this country.

In the time since the attacks of September 11, the difficulties faced by asylum seekers who are detained in the United States have increased significantly. This report is the result of a 12-month monitoring and research project aimed at assessing the impact of developments in the new security environment on those who seek refuge in the United States. This report’s focus is on detained asylum seekers, a population that is particularly vulnerable for reasons we outline in this report. Research for the report includes the monitoring of actions taken by the Immigration and Naturalization Service (INS), DHS, and the Department of Justice since September 11<sup>th</sup> which have an impact on asylum seekers, as well as a survey of *pro bono* attorneys and legal service providers around the country, interviews with asylum seekers, and an in-depth survey of the detention procedures of other countries.

The need for enhanced security is clear in the post September 11 world, and detention can be necessary in specific cases. But when some of the new immigration enforcement measures that have been labeled as promoting “national” or “homeland” security are examined more closely, too often fundamental fairness and basic protections have been sacrificed without a meaningful assessment of whether the particular change is actually needed to protect this country. The conduct of a fair asylum process and the maintenance of security are objectives that can both be met. The former need not be sacrificed to the latter.

This report examines changes in U.S. law, regulations, policies and practices – many initiated in the name of advancing security – that are affecting asylum seekers who are detained in U.S. jails and detention facilities. These changes include:

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- the expansion of the Attorney General's immigration detention authority by regulation shortly after the attacks;
- the transfer of the functions of the former INS, including immigration detention authority, to the new Department of Homeland Security in March 2003;
- the launching of nationality-based detention policies, such as those targeting Haitian asylum seekers, and asylum seekers from Iraq and other "terrorist" producing nations – 33 mostly Arab and Muslim countries;
- the changes to the immigration appeals process, initiated by Attorney General Ashcroft, that have undermined the fairness of the asylum adjudication system; and
- more restrictive release practices for asylum seekers held in many parts of the country.

In this new era of homeland security, it has become increasingly apparent that the absence of essential due process safeguards in the asylum detention system has left asylum seekers at the mercy of a new approach: routine, and sometimes blanket, refusals to release asylum seekers rather than meaningful assessments of the need for detention in each individual case.

As a result of this approach:

- A Liberian Pentecostal pastor who had been targeted by the regime of Charles Taylor because he had criticized its use of child soldiers was denied release by DHS even though he was well known to leaders of churches in Maryland, Virginia, and West Virginia.
- Two men who fled persecution in Ukraine have been detained for nearly four years in U.S. jails and detention facilities even though they have extensive ties to the community – their release is supported by their former employers, fellow parishioners and friends in Pennsylvania.
- A 13-year-old Iraqi girl spent more than five months in detention in California before being released to her older brother, who was a legal resident of the United States.
- An 18-year-old Haitian named David Joseph, who has been detained for 14 months, was denied release by the Attorney General on grounds of "national security" even though there was no contention that he himself presented any threat to the public.

For those who are survivors of torture, rape and persecution, detention can be particularly traumatizing. The high rates of depression and post-traumatic stress syndrome (PTSD) suffered by detained asylum seekers have been documented in a comprehensive medical study issued in June 2003 by Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture. While some asylum seekers are held in detention facilities, rather than prisons, those facilities are not much different from prisons. Based on our numerous interviews with detained asylum seekers, it is clear that the absence of a fair

process for determining whether an individual asylum seeker can be released on parole exacerbates the despondency that many feel.

The Bush Administration should make its detention practices conform with U.S. tradition and standards of international human rights law. At the end of this report we outline a series of recommendations for change. As a first step, the U.S. Department of Homeland Security should make the following changes:

- (1) First, create a new high-level refugee protection position in the Office of Secretary Tom Ridge.
- (2) Second, give asylum seekers the chance to have their detention reviewed by an immigration judge, like other immigration detainees.
- (3) Third, put the official parole criteria for asylum seekers into formal regulations.

### **A Nation of Immigrants, A Haven for Refugees**

People fleeing persecution were among the founders of this country, a source of its traditions and democratic institutions. For over two hundred years immigrants to the United States have been a source of America's abiding strength. While the origins and beliefs, nationalities and backgrounds of those driven to flee from religious and political persecution have changed over time, the enormous contribution of refugees to our nation has become a part of the American ideal.

Refugees are often the best and the brightest of their own countries. They include leaders in the arts and sciences and often represent the best of the civil societies of their homelands. They include past and future leaders in the fight for democratic freedoms in their home countries. Many of those who seek a haven in the United States are ordinary people who need help to survive in the face of persecution.

Central to this country's identity is the image of a land that extends its arm to shelter those fleeing persecution and "yearning to breathe free." Refugees are a small fraction of the tens of millions of immigrants who have come to the United States to seek a better life. They stand out because they have faced injustice and persecution in their own countries.

The special standing of refugees, as people requiring *protection*, whose purpose in seeking access to a foreign land is to be sheltered from *persecution*, was reinforced by the experience of World War II. In June 1939, the United States turned back the *S.S. St. Louis*, a ship that left Hamburg carrying 937 people, most of them Jews, in flight from Nazi Germany. Coast Guard ships shadowed the *St. Louis* to ensure no one swam ashore. When returned to Europe, hundreds of the refugees were seized and sent to death camps.<sup>2</sup> The restoration of the United States' self-image as a haven to the persecuted was one factor that provided impetus for the United States to support a strong legal regime to protect refugees – and for the United States to continue to receive and shelter the refugees arriving on its own shores.

The modern framework of international law for the protection of refugees builds upon treaties created as a humanitarian response to a problem that by definition crossed international borders. The 1951 Convention Relating to the Status of Refugees established the basic framework by which refugees are identified and protected around the world. The terms of the 1951 Convention, which applied to refugees fleeing persecution prior to its enactment, were extended to cover all future refugee situations through the 1967 Protocol Relating to the Status of Refugees – a treaty to which the United States is a party. The United States strongly supported the basic principles of these post-World War II norms. These international conventions grew out of the recognition that refugees should not be returned to the hands of their persecutors – a principle as important in the 21<sup>st</sup> century as it was in the aftermath of World War II.

Since World War II, the United States has granted refuge to a wide range of people from around the world. In recent decades they have included peaceful pro-democracy and human rights advocates jailed by repressive regimes; torture survivors from Liberia, Iraq, Tibet and other places; victims of religious persecution from China, Egypt, Iran, and Sudan; women persecuted because of their resistance to restrictive gender-based rules; journalists targeted in Colombia, Haiti, and other countries because of their efforts to expose the truth; and many other victims of human rights abuses from around the world.

These refugees are a source of strength to this country. In the era of homeland security, it is more important than ever for this nation to stay true to the principles on which it is built – and to its identity as a nation of immigrants and refuge for the persecuted.

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*My husband and I came here for protection. Everybody says the U.S. is a country of liberty and democracy, and all we wanted was to live in peace. We heard here they protect people. All we expected was protection and peace. I had no idea I'd be in a jail. I never dreamed I would be wearing clothes like this. I never thought we would leave only to now go through this. But, there is God, and hopefully someone will help us.*

– Iraqi woman, seeking asylum and detained in a Florida jail<sup>3</sup>

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