

Analysis of DHS's Status Report on the Implementation of USCIRF Recommendations¹

Overview: In February 2005, the bi-partisan U.S. Commission for International Religious Freedom (USCIRF or the Commission) issued its congressionally authorized *Report on Asylum Seekers in Expedited Removal* after conducting an extensive expert study of the U.S. asylum and detention system. USCIRF's report documented serious failings in U.S. treatment of refugees who seek asylum in the United States and recommended a series of specific policy reforms. All of the reforms recommended were within the administration's authority to implement; none required congressional action. Despite the passage of nearly four years since the report was issued, as well as a follow-up "report card" done by the Commission in February 2007, DHS had neither implemented most of the recommendations nor provided a response to the Commission. On November 28, 2008, DHS issued a "status report" on its implementation of USCIRF's recommendations. The chart below analyzes DHS's response to USCIRF's recommendations suggesting, in short, that despite some areas of progress, DHS has failed to implement many recommendations that are crucial to refugee protection.

USCIRF Recommendation	DHS Response	Analysis
<p>USCIRF Recommendation One: IN ORDER TO MORE EFFECTIVELY PROTECT BOTH HOMELAND SECURITY AND BONA FIDE ASYLUM SEEKERS, THE DEPARTMENT OF HOMELAND SECURITY SHOULD CREATE AN OFFICE- HEADED BY A HIGH-LEVEL OFFICIAL- AUTHORIZED TO ADDRESS CROSS CUTTING ISSUES RELATING TO ASYLUM AND EXPEDITED REMOVAL.</p>		
<p>USCIRF Recommendation 1: The Department of Homeland Security should create an office headed by a high-level Refugee Coordinator, with authority to coordinate DHS policy and regulations, and to monitor the implementation of procedures affecting refugees or asylum seekers, particularly those in the Expedited Removal process.</p>	<p>DHS created the position of Special Advisor for Refugee and Asylum Affairs within the Department's Policy Directorate in 2006. Principal areas of responsibility: (1) coordination of work done by DHS agencies on refugee/asylum issues; (2) policy advice on these issues to DHS leadership; (3) relationship development with govt. agencies and NGOs. Includes measures to ensure fair treatment of asylum seekers in expedited removal and development of measures resulting from USCIRF recommendations.</p>	<p>It is exceedingly difficult to resolve inter-bureau issues relating to asylum within DHS; the result has been erosion in protection for refugees. The Special Advisor lacks both the status and resources to implement reforms and to coordinate DHS policy and regulations effectively. The Special Advisor was quickly given the additional responsibility for handling broader immigration policy matters, further limiting the focus and effectiveness of the refugee protection function. (When the original appointee left this consolidated post, the Special Advisor position was placed under a Senior Advisor on Immigration matters, further diluting the authority of that office). To properly implement USCIRF's recommendation, this senior</p>

¹ Developed by Human Rights First; for comments or follow up, please contact Annie Sovcik at sovcika@humanrightsfirst.org. The full 500-page report is available at http://www.uscirf.gov/index.php?option=com_content&task=view&id=1892&Itemid=1.

		<p>position should be created in the DHS Secretary or Deputy Secretary's office, and should be given at least eight staff members to oversee different areas related to asylum, as well as adequate resources.</p>
<p>USICRF Recommendation Two: DECREASE THE BURDENS ON IMMIGRATION COURTS, THE DETENTION SYSTEM, AND THE APPLICANTS BY PERMITTING ASYLUM OFFICERS TO GRANT ASYLUM CLAIMS DURING THE CREDIBLE FEAR INTERVIEW.</p>		
<p>USCIRF Recommendation 2: The burden on the detention system, the immigration courts, and bona fide asylum seekers in Expedited Removal themselves should be eased by allowing asylum officers to grant asylum in approvable cases at the time of the credible fear interview, just as they are already trained and authorized to do for other asylum seekers.</p>	<p>Rejected. Study undertaken by DHS three years after recommendation concluded that it would be resource-intensive and would benefit only small population while disadvantaging many (potentially causing longer detention).</p> <p>Credible fear grant rate has been reduced from over 90% to 60% in FY 2007.</p>	<p>No detail is provided on how the DHS study confirmed the disadvantages of this recommendation.</p> <p>Still not clear how asylum seekers whose cases are not immediately approvable are disadvantaged, since all applicants must prepare their cases and be subjected to security checks. Further exploration warranted of how asylum officers can play a more meaningful role in the process; i.e. whether the non-adversarial setting of an asylum officer interview may be a more appropriate forum than an adversarial proceeding before an immigration judge for initial consideration of whether the asylum seeker is eligible for protection.</p>
<p>USCIRF Recommendation Three: ESTABLISH DETENTION STANDARDS AND CONDITIONS APPROPRIATE FOR ASYLUM SEEKERS. DHS SHOULD ALSO PROMULGATE REGULATIONS TO PROMOTE MORE CONSISTENT IMPLEMENTATION OF EXISTING PAROLE CRITERIA, TO ENSURE THAT ASYLUM SEEKERS WITH A CREDIBLE FEAR OF PERSECUTION- AND WHO POSE NEITHER A FLIGHT NOR A SECURITY RISK- ARE RELEASED FROM DETENTION.</p>		
<p>USCIRF Recommendation 3.1: DHS should address the inconsistent application of its existing parole criteria by codifying the criteria into formal regulations.</p>	<p>Parole directive in November 2007 changes existing criteria, and is not promulgated as a regulation.</p>	<p>DHS failed to promulgate regulations, and offered no explanation for choosing to issue the new policy in the form of guidance rather than enforceable regulations. Parole guidelines should be codified into regulations. Because discretion is afforded to local officials, we are concerned that parole decisions will continue to turn not on merit of the parole request but on availability of bed space as it has in the past.</p>

<p>USCIRF Recommendation 3.2: DHS should develop standardized forms and national review procedures to ensure that its existing parole criteria are more consistently applied nation-wide.</p>	<p>Agrees with need to develop appropriate procedures to ensure consistent application of criteria. Implemented parole directive in November 2007 “designed to ensure transparency, consistency, and quality assurance” and aims at uniform application.</p> <p>Directive establishes centralized record keeping and supervisory review process. Field offices submit monthly statistical reports. Biannual quality assurance reviews.</p> <p>Directive requires DRO to provide alien with written notice if parole is denied and to provide sufficient information to understand reasons, inform they may renew request, provide guidance on additional materials to submit.</p> <p>Results: from 11/6/07 to 6/30/08: 107 grants out of 215 requests.</p> <p>Considering ways to ensure asylum seekers are aware of opportunity to request parole.</p> <p>UNHCR training on international obligations towards refugees and unique asylum issues completed nationwide in February.</p>	<p>The new parole directive shifts the standard for parole, adding a second layer of eligibility criteria. It is no longer sufficient for asylum seekers to establish identity, community ties and show that they do not present a flight or security risk – the original criteria under which parole of asylum seekers was favored. Instead, asylum seekers must meet the original criteria as a threshold, and then <i>also</i> demonstrate an additional justification for release (i.e. pregnancy, medical condition, serving as a government witness, or a documented demonstration that release is in the public interest). The new directive should be rescinded and the former approach favoring parole where identity, community ties, lack of flight or security risk have been established, should be reinstated and codified into enforceable regulations.</p> <p>Welcome the creation of uniformed worksheet and initiative to gather data. Though note that no comprehensive data has yet been released a year after directive was implemented.</p> <p>Current directive does not ensure all asylum seekers are reviewed for eligibility. DHS failed to provide information on how many aliens were found to have a credible fear of persecution but did not apply for parole, and what obstacles might have prevented a parole application. According to statistics provided by the Asylum Office, 884 arriving asylum seekers established credible fear between November 2007 and</p>
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		<p>June 2008. However, as DHS points out, only 215 requests for parole were filed during this period. This means that over 650 asylum seekers who had established credible fear were not reviewed for eligibility for release.</p>
<p>USCIRF Recommendation 3.3: When non-criminal asylum seekers in Expedited Removal are detained, they should not be held in prison-like facilities, with the exception of those specific cases in which DHS has reason to believe that the alien may pose a danger to others. Rather, non-criminal asylum seekers should be detained in “non-jail-like” facilities such as the model developed by DHS and INS in Broward County, Florida. DHS should formulate and implement nationwide detention standards created specifically for asylum seekers. The standards should be developed under the supervision of the proposed Office of the Refugee Coordinator, and should be implemented by an office dedicated to the detention of non-criminal asylum seekers, developing a small number of centrally managed facilities specific to and appropriate for, asylum seekers. The current DHS standards – based entirely on a penal model - - are inappropriate.</p>	<p>New performance-based standards “designed to improve the delivery of care to detainees...consistent with the approach...used by the American Correctional Association.”</p> <p>Classification standard re-issued nationwide in August 2007. System places ICE detainees in appropriate categories and prohibits placement of detainees in general housing without first classifying them. Grouping detainees with comparable records together. Aim is to assign them to least restrictive housing unit.</p> <p>Oversight: (1) Detention Facilities Inspection Group within OPR; (2) contracted annual inspection; (3) contracted onsite inspector.</p>	<p>DHS’s response does not address this recommendation. DHS does not provide an assessment of what steps, if any, it has taken to decrease reliance on jail-like facilities for asylum seekers. Further, DHS does not even respond to the recommendation that standards and facilities appropriate to asylum seekers be developed. In fact, DHS has expanded its use of jail-like facilities in recent years by opening up several large detention centers, and has promulgated new detention standards for all detainees that continue to rely on correctional standards.</p> <p><u>Jail-like facilities:</u> USCIRF found that all but one of the facilities used by ICE to detain asylum seekers are jails or jail-like facilities that are inappropriate for asylum seekers, and recommended that asylum seekers, when detention is necessary, only be held in “non jail like facilities.” This is not the case in the DHS detention system that continues to hold asylum seekers in jail-like detention centers managed by ICE or by private contractors, as well as in hundreds of county jails. In these jails and jail-like facilities, asylum seekers are treated like prisoners in correctional facilities: handcuffed and sometimes shackled when transported; required to wear prison-like uniforms – even when they appear in immigration court in front</p>

		<p>of a judge – and only allowed to visit with family and friends through a glass partition. Some of these facilities have less outdoor access than many criminal prisons.</p> <p><u>Detention standards:</u> The Commission retained a psychologist with expertise in correctional institutions, and conducted extensive site visits and a survey of detention facilities. USCIRF recommended DHS establish detention standards appropriate for asylum seekers. Nevertheless, the only standards in place in the U.S. immigration detention system are based upon penal standards. The revised “performance based standards” that DHS highlighted in its response are still based upon “American Correctional Association” standards. They are inappropriate for asylum seekers and do not address the Commission’s recommendations.</p>
<p>USCIRF Recommendation 3.4: DHS should ensure that personnel in institutions where asylum seekers are detained are given specialized training to better understand and work with a population of asylum seekers, many of whom may be psychologically vulnerable due to the conditions from which they are fleeing.</p>	<p>The Office of Civil Rights and Civil Liberties (CRCL) (with USCIS and UNHCR) developed asylum training course to promote understanding of unique characteristics of asylum seekers. Incorporated into DRO training (in addition to existing training on how to work with asylum population), mandatory for Contract Detention Facility (CDF) staff, strongly encouraged for IGSA staff. CBP integrating some parts of it into its training. Available to all USCIS staff.</p>	<p>Welcome the fact that CRCL has worked with NGOs and UNHCR to develop an asylum training, however it is unclear how effective this training program has been. It is highly problematic that this training is not mandatory at IGSA, where over 50% of detainees overall are held, asylum seekers are most vulnerable, most likely to be co-mingled with criminals, and guards are least likely to be sympathetic to the unique vulnerabilities of asylum seekers.</p>
<p>USCIRF Recommendation 3.5: DHS should exercise discretion and not place a properly documented alien in Expedited Removal – and mandatory detention – when the sole basis for doing so is the alien’s expression of a desire to</p>	<p>Rejected. Some bona fide asylum seekers may use nonimmigrant visa to flee, but in other cases asylum “has been used...to realize their intent to immigrate.” Some who request asylum at POE will have made willful</p>	<p>This practice penalizes those whose identity is not at issue and who, though possessing valid documents for entry, decide to come forward and make their desire to seek protection in the U.S.</p>

<p>apply for asylum at the port of entry.</p>	<p>misrepresentations in obtaining their visa and be inadmissible, so subject to mandatory detention.</p>	<p>known. Furthermore, the Commission had urged DHS to revisit its presumption that intent to apply asylum is tantamount to intent to “immigrate.” Current DHS practice provides an incentive to even the most honest and thoroughly documented asylum seeker to attempt to gain entry on his or her non-immigrant visa, since a prompt request for asylum will be met with prompt detention.</p>
<p>USCIRF Recommendation Four: EXPAND EXISTING PRIVATE-PUBLIC PARTNERSHIPS TO FACILITATE LEGAL ASSISTANCE FOR ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL, AND IMPROVE ADMINISTRATIVE REVIEW AND QUALITY ASSURANCE PROCEDURES TO IMPROVE CONSISTENCY IN ASYLUM DETERMINATIONS BY IMMIGRATION JUDGES.</p>		
<p>USCIRF Recommendation 4.1.a: The Legal Orientation Program (LOP), administered by the Executive Office for Immigration Review (EOIR) in partnership with non-governmental organizations (NGO’s), should be expanded beyond the seven facilities in which it is currently administered.</p>	<p>13 new LOP sites opened in 2008.</p>	<p>Welcome the creation of thirteen additional LOP sites (though note that it was accompanied by the creation of several thousands of additional detention beds). The Legal Orientation Program should be expanded nation-wide, and be made available to asylum seekers who are not yet in proceedings.</p>
<p>USCIRF Recommendation 4.1.b: Each of the local eight asylum offices should form partnerships with service providers in their area to ensure that asylum seekers have an attorney to consult with during the credible fear process. Such a collaborative project between the Arlington, Virginia Asylum Office and the Capital Area Immigrants Rights Coalition has already demonstrated that it can enhance the efficiency of the asylum process.</p>	<p>In Dec. 2006, CIS informed NGOs it was open to partnerships, and issued a memorandum to its field offices encouraging them to welcome such initiatives. San Francisco office established partnership with Lawyer’s Committee for Civil Rights. Arlington office established partnership with Georgia Asylum & Immigration Network for cases in Atlanta.</p>	<p>This is promising. The Asylum Office has been talking about developing this program for a while, encouraging NGOs to reach out to start programs locally.</p>
<p>USCIRF Recommendation 4.1.c: ICE and EOIR should also collaborate with local service providers to ensure that NGO’s, particularly those that conduct “Know Your Rights Presentations” at DHS detention facilities in LOP, should have</p>		<p>[See above – LOP programs should be set up to include all detainees, not just those who are scheduled for hearings]</p>

access to aliens in Expedited Removal proceedings, including those aliens who have not been referred for a credible fear determination, so long as such interviews do not delay the Expedited Removal process.		
USCIRF Recommendation 4.2.a (addressed to DOJ only).		
USCIRF Recommendation 4.2.b (excerpt relevant to DHS): Immigration judges should be provided training specific to issues related to the reliability of DHS forms that they use to ascertain the credibility of testimony; e.g. the Forms I-867 and I-870 analyzed by this study.	DHS available to participate in trainings for IJs and BIA on reliability and purpose of I-867A and B.	No information provided as to whether DHS has participated in such trainings.
USCIRF Recommendation Five: IMPLEMENT AND MONITOR QUALITY ASSURANCE PROCEDURES TO ENSURE MORE RELIABLE INFORMATION FOR HOMELAND SECURITY PURPOSES, AND TO ENSURE THAT ASYLUM SEEKERS ARE NOT TURNED AWAY IN ERROR.		
USCIRF Recommendation 5.1: Create a reliable inter-bureau system that tracks real-time data of aliens in Expedited Removal proceedings.	Adopted. ICE working to replace data system with ENFORCE Alien Removal Module deployed in August 2008 to support “real-time inter-agency information sharing.”	No concrete examples provided as to how this information sharing is functioning, at what level, and what positive impact it has had.
USCIRF Recommendation 5.2: Reconcile conflicting field guidance to require that any expression of fear at the port of entry must result in either a referral for a credible fear determination or, in cases where the inspector or Border Patrol agent believes the alien would “clearly not qualify” for asylum or CAT relief, contact with an asylum officer to speak to the alien via a telephonic interpretation service to determine whether or not the alien needs to be referred.	Rejected. Current CBP guidance is consistent with DHS guidelines. Manual reviewed by USCIRF may have been outdated. Current guidance directs to not ask detailed questions on nature of fear and to leave that for asylum officer, and to “err on the side of caution, apply the criteria generously.” Oversight: (1) Field musters to remind CBP of proper procedure; (2) centralized ER training program; (3) reviews by Office of Internal Affairs, Management Inspection Division; use of standardized forms.	Anecdotally, there are continuing concerns that bona fide asylum seekers (especially victims of domestic violence and individuals with gang-based claims) may not be getting properly referred for credible fear interviews. More research is necessary to determine.
USCIRF Recommendation 5.3: DHS should improve quality assurance by expanding and enhancing the videotape systems currently used at Houston and Atlanta to all major ports of entry and Border patrol stations to unintrusively record all	CBP believes current oversight is sufficient, but is exploring expanded use of videotaping by assessing cost and feasibility. Rejected use of testers.	Discouraged that three and a half years after the recommendation was made, CBP is still in the process of exploring the recommendation, and does not acknowledge the crux of the Study: that

<p>secondary interviews, and consider employing the use of undercover “testers” to verify that Expedited Removal procedures are being properly followed.</p>	<p>Monitoring by CRCL, UNHCR, GAO, DHS OIG.</p>	<p>the fundamental flaw in the system is that the paper files frequently do not accurately reflect what actually occurred during the interview. Continue to encourage use of videotaping to monitor secondary inspections.</p> <p>Welcome the use of in-person monitoring rather than relying entirely on review of a paper file, but note that UNHCR does not have the resources to provide quality assurance services for DHS, and re-iterate the important role that “testers” could play.</p>
<p>USCIRF Recommendation 5.4: Sworn Statement Form I-867B should include an explanation of the specific purpose for which the document is designed to serve, and its limitations.</p>	<p>Forms “clearly and fully advise aliens” on procedure and rights. CBP would be happy to train EOIR and other DHS personnel.</p>	<p>A training for EOIR and DHS personnel on the nature of the forms would be helpful – though overdue – but may not be sufficient. More specific language on the form itself may be necessary to more adequately advise DHS staff and particularly immigration judges of the limited scope of the form.</p>
<p>USCIRF Recommendation 5.5: Current DHS procedures concerning the administration of the Form I-867A and B should be maintained, but should be more vigorously monitored.</p>	<p>2004: Self Inspection Program for CBP- reviewed ER.</p> <p>2006: CBP’s Management Inspection Division conducted two ER reviews and “did not observe any misrepresentation, intimidation, or coercion to aliens”</p> <p>Inter-agency monitoring teams evaluating ER focusing on whether agents follow requirements related to referral for credible fear interviews.</p> <p>Border Patrol agents trained on I-867.</p> <p>Supervisors closely monitor on-site.</p>	<p>DHS lists a number of monitoring mechanisms that are in place to oversee the correct implementation of expedited removal and proper referrals for credible fear interviews. However, no information is provided on what areas for improvement these monitoring activities have identified, or how any concerns have been addressed as a result of these monitoring activities.</p>
<p>USCIRF Recommendation 5.6: The efficiency of the Expedited Removal process should be</p>	<p>CIS Asylum Division has subjected significant portion of CF cases from inland ER to</p>	<p>Asylum Division’s attention to this recommendation is appreciated.</p>

<p>enhanced by amending DHS quality assurance procedures for the credible fear interview.</p>	<p>headquarters for quality assurance, including more than half of all positive CF findings.</p> <p>CIS completed review of training materials on CF and these have been revised. Officers reminded that applicant still bears burden.</p> <p>Asylum Division initiated examination of CF and whether there's an incentive towards a particular decision.</p>	
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