

How to Manage the Increase in Families at the Border

The current surge of migrants crossing the southern U.S. border reflects a sharp increase in the number of unaccompanied minors, children crossing with one or both parents, and adults who are seeking asylum and are detained in “expedited removal” processing. The overwhelming majority of these people are from El Salvador, Guatemala, and Honduras, with many fleeing rising violence and instability in their home countries.

In April 2014, Human Rights First visited key border points, border patrol stations and immigration detention facilities in Arizona, California and Texas, to research the increase in the last two years of adult asylum seekers. Since our visits, even greater increases in the number of families – in particular single parents with children – crossing the border and seeking protection have been reported. Human Rights First’s recommendations on how the United States should handle this influx carry even more urgency now.

The Obama Administration and the U.S. Congress have the tools to confront the complex challenges at the border, but they need to act quickly to do so. While effectively confronting the influx at the border will require addressing the impunity and rule of law deficits that are driving many to flee in search of protection, the immediate response of the administration and Congress to the challenges posed by the increase in unaccompanied children, families and other migrants at the border should also ensure effective implementation of safeguards for asylum seekers, victims of trafficking, and others with protection concerns. The United States has a strong interest in maintaining the integrity and effectiveness of its immigration and asylum systems and safeguarding them from abuse.

The following are key steps that the Administration and Congress can take to directly and immediately address the increase in families, unaccompanied children, and other vulnerable populations crossing the border:

Maximize use of alternatives to detention

Cost effective alternatives to detention enjoy broad support in the criminal justice system and have a demonstrated track record of supporting appearance but are under-used on a national level. For border cases where immigration authorities determine there is concern about flight risk and compliance, DHS should use alternative measures instead of costly jails and detention facilities.

- **Children and families should not be detained, especially in existing detention facilities.** In 2009, DHS ceased using its primary detention facility for families after multiple reports of inappropriate conditions for and treatment of children and their parents. The United States should not detain children, including infants and small children. Families should only be held for processing in custody for short periods of time and in conditions appropriate for family detention. Per legal requirements of the *Flores* agreement on treatment of children in DHS custody, DHS should always place children in the least restrictive setting appropriate.
- **Implement a nationwide initiative of alternatives to detention for border cases that need supervision, including by building on community-based models of alternatives.** DHS does not currently maximize use of alternatives to detention for cases of border arrivals. Alternatives to detention cost 17 cents to \$17 per person per day and enjoy a broad range of support for their cost-savings from groups including the Council on Foreign Relations Independent Task Force on Immigration Policy, chaired by Jeb Bush and the Texas Public Policy Foundation – home to Right on Crime. The most recent statistics from the contract currently used by ICE show a 97.4 percent appearance rate for final hearings.

Strengthen – do not weaken – protection safeguards

Many apprehended at or after crossing the border are placed into expedited removal, through which individuals can be deported without a court hearing. To protect asylum seekers, Congress created the “credible fear” screening process. As it addresses the influx, DHS should strengthen – and not weaken - safeguards to protect asylum seekers, trafficking victims and other vulnerable individuals.

- **Customs and Border Protection officials should effectively implement safeguards to identify individuals who should be referred to a credible fear interview. USCIS should conduct credible fear interviews in person, and in a timely manner.**

These interviews should occur within 14 days of arrival, but also allow for a short several day waiting period for asylum seekers to recover from their travels and receive a legal orientation presentation. USCIS should request, and Congress allocate, the resources needed to meet the credible fear caseload without taking resources from the affirmative process. DHS should implement protection safeguards recommended by the U.S. Commission on International Religious Freedom.

- **Revise Flaws in Credible Fear Lesson Plan.** USCIS should revise the February 2014 Credible Fear Lesson so that credible fear screenings do not use an incorrectly high standard and do not require inappropriate levels of evidence for an initial screening. To monitor that credible fear screenings are done correctly, USCIS should immediately intensify supervisory review of credible fear determinations under the plan, and should invite UNHCR to observe the conduct of credible fear interviews during this surge.
- **Immigration hearings should take place in a timely manner while allowing proper time for immigrants to receive legal information, obtain counsel, and adequately prepare a case.** Any attempt to expedite hearings in order to address the increased caseload at the border should not rush cases through the system undermining access to justice. Individuals require time to obtain legal counsel and to prepare and present a case for asylum or other relief.

Increase access to legal information and counsel

Many individuals expressing a fear of return lack critical information about U.S. immigration and asylum laws and the requirements that they are expected to fulfill if they are placed into removal proceedings and/or released from detention. The lack of access to information and counsel is exacerbated in detention facilities – currently only 25 of ICE's approximately 250 detention centers have a formal Legal Orientation Program (LOP), and nationally around one in five detained immigrants does not have a lawyer in proceedings.

- **Congress should appropriate funds to expand cost-efficient legal information presentations to all detention facilities to be provided within a few days of arriving in detention.** LOPs are highly cost-effective, with one DOJ study showing a cost-saving to the government of \$18 million. Immigration judges report that proceedings are more efficient when an

individual has representation or, at minimum, has received critical legal information. These presentations allow immigration detainees to receive accurate information from credible non-profit attorneys, rather than relying on potentially inaccurate information from other detainees.

- **Congress should support and the administration should expand projects to increase legal counsel for vulnerable populations, including indigent asylum seekers in immigration detention.** A May 2014 study found that the efficiencies created through increased legal representation in court proceedings and reduced detention time would mitigate the costs of providing legal representation to indigent immigrants.

Reduce backlogs and vulnerability to abuse

Funding for the immigration courts that process removal cases of those who enter and apply for asylum or other relief has not kept pace with funding levels for immigration enforcement. Over 366,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 578 days, undermining the system's integrity and leaving it vulnerable to abuse. Similarly, the USCIS Asylum Division has had to redeploy so many of its staff to process credible fear claims that it now has a backlog in affirmative asylum applications.

- **Congress should appropriate funds to increase nationally the number of immigration court judges and related resources to address removal hearing delays, eliminate backlogs and conduct timely hearings.** A timely, but not rushed, immigration court removal process is essential to maintain the integrity of the U.S. immigration system.
- **Congress should appropriate funds to increase asylum office resources to conduct timely in-person credible fear and reasonable fear screening interviews.** These interviews are critical components of expedited removal and reinstatement of removal; these tools raise protection concerns and should not be used unless screening measures are effectively implemented and properly resourced.

The full Human Rights First Blueprint is available at: <http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border>.