

SEEKING ASYLUM IN THE UNITED STATES

The Process Confronting Those Fleeing From Violence in the
Northern Triangle

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Abstract

The purpose of this document is to describe the preliminary portion of the often complex process for seeking defensive asylum in the United States. This document considers “the preliminary portion” of the defensive asylum process to include all events between an asylum seeker’s arrival at a U.S. port of entry until the decision by an asylum officer as to whether an applicant has a credible fear of persecution upon deportation to his/her country of origin. Specifically, this document examines the experience that confronts asylum seekers who flee from violence in the Northern Triangle of Central America – an area severely affected by the influence of large criminal organizations known as *maras*. After providing an objective description of the asylum process until the credible fear interview (CFI), the document concludes by offering suggestion as to how the U.S. government might improve the preliminary stages of the asylum seeking process to align more closely with U.S. domestic law and international human rights obligations.

The Right to Seek Asylum in the United States

Violence and instability in regions across the world provoke thousands of people each year to seek safety in the United States. Many of these people claim that they qualify for asylum, which is “the legal protection [against removal from the U.S.] granted to people who have come to the United States and are afraid to return to their home country.”ⁱ Asylum seekers differ from refugees only in the sense that the former seeks legal protection against removal upon arrival in the country that they desire to protect them, whereas the latter secures asylum – a term interchangeable with “refugee status” – in a country prior to entering its area of sovereignty.ⁱⁱ Many Central Americans fleeing violence in the Northern Triangle seek asylum in the U.S., and they enter into the process for seeking asylum in the U.S. upon arrival at points of entry across the U.S. southern border with Mexico.

The law of the U.S. does not identify asylum as a universal right.ⁱⁱⁱ The U.S. does, however, adhere to international standards that protect the right to *seek* asylum. The Universal Declaration of Human Rights – which the U.S. and 47 other UN member nations voted to adopt – asserts that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”^{iv} According to this declaration, U.S. government employees must recognize a noncitizen’s asylum claim and are forbidden from rejecting an asylum seeker before the process of credibility determination. An asylum claim is considered under the discretion of asylum officers and immigration judges in the district where a non-citizen resides or enters into the U.S.^v Asylum officers and immigration judges consider claims to asylum within the framework of the 1951 United Nations Convention Relating to the Status of Refugees, which describes an asylum seeker or refugee as any person who:

. . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country.^{vi}

Any noncitizen who is present in the U.S. and cites a credible fear of persecution upon return to his or her home country will enter into the asylum application process. Section 101 of the

Refugee Act of 1980 solidified the above definition of an asylum seeker or refugee in U.S. domestic law. This act legally requires U.S. federal employees to distinguish between asylum seekers and other classifications of migrants, and it outlines the approach that federal employees must take towards noncitizens that potentially face persecution in their home countries.^{vii}

A denial of a noncitizen's right to seek asylum not only violates U.S. international human rights obligations but also U.S. domestic immigration law. Section 208 of the Immigration and Nationality Act of 1951 states, "any alien who is physically present in the United States . . . irrespective of such alien's status, may apply for asylum in accordance with this section."^{viii} In other words:

"CBP [Customs and Border Patrol] officers at ports of entry are charged with referring individuals who express a fear of return or request asylum to trained United States Citizenship and Immigration Services (USCIS) asylum officers who make the legal determination of whether the asylum seeker has a significant possibility of establishing eligibility for asylum."^{ix}

Persons seeking asylum in the U.S. must remember that CBP officers do not have the authority to decide about a person's eligibility for asylum, and they are not permitted to deny an asylum seeker at the border.^x Should a U.S. Customs and Border Protection (CBP) agent claim that one cannot seek asylum for X reason, that person should remain persistent and reference Section 208 of the Immigration and Nationality Act as a binding federal law.¹ Additionally, persons seeking asylum in the U.S. must be careful not to sign any documents that they do not fully understand.

The Defensive Asylum Procedure

The defensive asylum process is designed for those who are placed into removal proceedings upon entry into the United States. Almost every person from Central America who seeks asylum in the United States will do so defensively – regardless of whether one presents oneself to U.S. authorities at the border or attempts to evade detection.^{xi} Department of Homeland Security (DHS) employees typically place noncitizens at the U.S. southern border into expedited removal proceedings. Expedited removal permits immigration officers to "order the removal of nearly any foreign national who arrives at the border without proper documents,"^{xii} such as a visa permitting one to enter the U.S. legally.

A foreign national who fears a return to his/her country of origin due to the threat of violence or persecution should express this fear to the immigration officer who orders an expedited removal.

¹ A May 2017 [report](#) by Human Rights First asserts that CBP officers are encouraging Mexican private security guards or Mexican immigration enforcement agents to approach potential U.S. asylum seekers, before they reach the border, and to deceive them into believing that the U.S. is no longer accepting asylum seekers. Additionally, the report states asylum seekers are more frequently claiming that U.S. private security guards and CBP agents use "improper, deceptive or coercive tactics when processing asylum seekers at U.S. points of entry." One of the most common illegal deterrent tactics is to confuse or sometimes force asylum seekers to sign voluntary deportation documents, thus formally removing their right to remain in the U.S.

It is important that one clarify his/her credible fear of persecution because, according to U.S. law, a CBP officer “shall refer [an] alien for an interview by an asylum officer” if that “alien . . . indicates either an intention to apply for asylum . . . or a fear of persecution.”^{xiii} In other words, an immigration officer is by law prohibited from expediting the removal of asylum seekers.

Once a foreign national present in the U.S. has expressed a credible fear of persecution upon return to the country of origin, the immigration officer must refer the foreign national – now officially classified as an asylum seeker – to a USCIS asylum officer.

The asylum seeker will then await the credible fear interview with a USCIS asylum officer. This interview is designed to answer a single question: does the foreign national face persecution upon return to the country of origin? The credible fear interview is one of the “screening mechanisms” that the Department of Justice describes as intended “to quickly identify potentially meritorious claims to protection and to resolve frivolous ones with dispatch.”^{xiv} It is important to note that the purpose of this stage of the process is to identify whether an applicant should be considered for a hearing before an immigration judge who will grant or deny that person’s protection from removal from the U.S.

The Credible Fear Interview (CFI)

The CFI is “the most important phase of the asylum seeking process,”^{xv} due to the fact that a negative CFI decision terminates an asylum seeker’s application, resulting in deportation to the country of origin and barriers to re-entry into the U.S. Thus, it is essential for an asylum applicant to understand this stage of the process thoroughly.

An asylum seeker is given a minimum of 48 hours to prepare for the credible fear interview, but in the majority of cases “the person must wait days or even weeks in detention before the interview will take place.”^{xvi} U.S. Immigrations and Customs Enforcement (ICE) detains asylum seekers in temporary holding cells “until they can be transferred to a long-term Immigration and Customs Enforcement detention facility, returned to their native country or released until their immigration hearing.”^{xvii} Due to its resemblance to punitive criminal detention, long-term immigration detention can be exceptionally frustrating and confusing for asylum seekers who have been the victims—not the perpetrators—of violence and crime. However, asylum applicants should utilize their time in long-term detention to prepare for the CFI, as a lack of understanding of or preparation for this stage of the process often results in the denial of an asylum claim and the return of the applicant to the country of origin. As soon as s/he is detained, an asylum seeker should formulate a truthful, consistent initial account of their fear of persecution about which s/he can develop specific details as the CFI approaches. This initial account is significant because disconnects between an asylum seeker’s description of persecution to ICE officers in the detention facility and to the asylum officer in the CFI can be grounds for the denial of a credible fear of persecution.

The credible fear interview is often emotionally challenging for asylum seekers, as they are required to recount the traumatic experiences that have led them to seek asylum in the U.S. The resurgence of emotionally agonizing memories – frequently compounded with the frustration of life in a detention facility, language barriers, and insufficient knowledge of the U.S. asylum legal

framework – makes the credible fear interview perhaps the most strenuous step in the asylum seeking process. Asylum seekers may also be anxious of the fact that denial of credible fear of persecution withdraws a claim to asylum, results in deportation, and significantly complicates any attempt to reenter the U.S. An asylum applicant thus has to achieve a balance between invoking emotions to demonstrate the validity of his/her fear and allowing emotions to overcome his/her ability to present a convincing argument in the CFI.

The asylum officer who conducts the credible fear interview considers an applicant's case in the framework of Section 208 of the Immigration and Nationality Act (INA). One effect of the INA § 208 is the conversion of the 1951 UN description of asylum seekers into binding U.S. law. Thus, an asylum applicant must establish that “race, religion, nationality, membership in a particular social group, or political opinion” is a central reason for his/her fear of persecution.^{xviii} On the surface, these classifications do not appear to account for the persecution of innocents by *maras* in the Northern Triangle. However, credible fear of persecution—and sometimes death—based on “membership in a particular social group” is relatively descriptive of the reality that many Central American asylum seekers would face upon a return to their countries of origin. This is particularly true for women of all ages and adolescent males, who criminal organizations often target for sexual and recruitment purposes, respectively. It is ultimately the responsibility of the applicant to communicate accurately that his/her fear of return is both significant and based in one of the five categories outlined by the INA.

An applicant for asylum in the U.S. should compile evidence prior to the CFI in two ways. First, s/he should formulate a detailed, consistent, and truthful account of his/her reasons for seeking asylum in the U.S. An asylum applicant's failure to prepare to deliver an oral testimony of this sort to the asylum officer in the CFI could diminish the officer's ability to establish a legal sufficiency for the applicant's claim to asylum. Second, an asylum applicant should compile any written documents that could bolster his/her argument that s/he faces a fear of persecution upon return to the country of origin. While the asylum officer might not take these written documents and consider them directly, their presence could indicate the factual consistency of the applicant's claim and serve as items to which s/he can allude during the CFI. In addition, an asylum applicant might produce a written testimony of the reasons for his/her credible fear, which could assist the applicant in his/her articulation of a detailed, consistent, and truthful fear of return to the country of origin.

An asylum officer considers specific details about the individual asylum seeker in each CFI. Either before or after an interview, the officer “research[es] country conditions to evaluate applicants' claims [and] review[s] law enforcement databases to identify any bars to asylum.”^{xix} An asylum applicant should remember that consistency and honesty are of the utmost importance, as an asylum officer views the credibility of fear from a variety of angles. Various sources provide asylum officers with “notes about the date the person being interviewed entered the U.S., the place of entry into the U.S., and whether the person initially claimed persecution or torture.”^{xx} Additionally, asylum officers have access to detailed information about country of origin conditions. The research office of U.S. Asylum Officers and Refugee Adjudicators compiles detailed reports about country-specific human rights abuses that asylum officers consult for CFIs.^{xxi} An asylum officer is thus able to identify potential exaggerations or falsities in the testimony of an asylum seeker.

While an asylum officer does consult other sources outside of the CFI, an asylum applicant's testimony remains the primary decider of an interview's outcome. It is the responsibility of the asylum seeker to communicate his/her credible fear of return to the country of origin. In other words, "the applicant must produce sufficiently convincing evidence that establishes the facts of the case."^{xxii} The general duty of the asylum officer is to guide the applicant to disclose all of the information needed "to support a legally sufficient determination" about the interviewee's qualification for asylum.^{xxiii} The asylum applicant is thus accountable for providing evidence to support his/her case, and the asylum officer assesses that evidence to see if the applicant legally qualifies for asylum in the U.S. The INA suggests that an applicant fulfills his/her obligations to present sufficient evidence in the CFI interview if "the applicant's testimony is credible, is persuasive, and refers to specific facts."^{xxiv} The applicant should be aware that the nature of the CFI is non-adversarial meaning that the applicant does not face confrontation by a government attorney and that the asylum officer must approach each case as an unbiased listener.^{xxv} To assure neutrality, every asylum officer adheres to a variety of guidelines outlined in a manual produced by the Refugee, Asylum, and International Operations (RAIO) Directorate of USCIS. For the CFI interview, this manual suggests that the interviewer assess the credibility of an asylum applicant's testimony in terms of its detail, consistency, and plausibility.^{xxvi} With his/her questions, the asylum officer in the CFI is attempting to draw responses from the interviewee that exhibit strength across these three criteria.

The detail of an applicant's claim refers to the ability of the interviewee to recount consistent and believable narratives about persecution in his/her home country that necessitated the pursuit of asylum in the U.S. The asylum officer training manual considers it "reasonable to assume that a person relating a genuine account of events that he or she has experienced will be able to provide a higher level of detail, especially sensory detail, about that event than he or she could if the account were not genuine."^{xxvii} As trained professionals interviewing people from across the world on a daily basis, asylum officers are aware of the constraints to judging credibility in terms of detail. Officers consider the details of a testimony in the context of the time that the events of a narrative occurred, the cultural background of the interviewee, and the possibility of contradictions or inconsistencies within a truthful account, amongst other factors.^{xxviii} Additionally, asylum officers—at least in theory—are prohibited from considering the details of a testimony per se as enough to deny an applicant the further pursuit of asylum.

An asylum officer considers the consistency of an interviewee's testimony in the CFI interview in three ways. The CFI statement by an asylum applicant to the interviewing asylum officer should be "internally consistent [i.e. consistent within the CFI itself], consistent with the applicant's other statements, and consistent with other evidence in the record, such as country condition reports."^{xxix} In the same way that details alone should not determine a lack of credible fear, inconsistencies usually do not move an asylum officer to discard an application outright. This is particularly true in the case of minor inconsistencies, contradictions, or omissions, "such as those that result from faulty memory."^{xxx} Asylum officers are trained to recognize that fragile emotional conditions or a mistrust of authority might account for an applicant's inability to present a completely clear narrative. However, "substantial, material inconsistencies or omissions are a negative factor that can lead, when viewed as part of the record as a whole, to an adverse credibility finding."^{xxxi} It is advantageous for an asylum applicant to exhibit an attitude

of mutual trust and respect towards the interviewer, and any apparent attempts to deceive the asylum officer could limit an applicant's likelihood of establishing a credible fear. In regards to perceived inconsistencies, the RAIO training manual requires an asylum officer to "make certain that [s/he] inform the applicant of [his/her] concerns . . . and give the applicant an opportunity to address those concerns and offer an explanation."^{xxxii} The ultimate job of the interviewing asylum officer is to assess whether the narrative of an asylum applicant's testimony describes a situation that merits that person's protection from removal from the U.S.; inconsistencies diminish the interviewer's ability to gather a clear understand of the applicant's situation in the country of origin.

The plausibility of an asylum applicant's testimony—or contingent elements thereof—during the CFI refers to the extent to which an asylum seeker describes occurrences that are grounded in reality. Asylum officers are generally hesitant to label an interviewee's narrative as implausible because cultural barriers and several of the outstanding circumstances that propel someone to seek asylum abroad account for a variety of surprising asylum seeker narratives. If an asylum officer struggles to fathom the plausibility of a certain claim in the CFI, s/he will "question the applicant closely about the details surrounding that material fact," and, if the the applicant "is able to provide a consistent and reasonable explanation of how the event occurred, that portion of the testimony is credible."^{xxxiii} However, asylum officers are aware that some asylum applicants who do not have a truly credible fear of persecution might be inclined to construct a false narrative of extraordinary circumstances to increase their chances of an affirmative CFI decision. The RAIO training manual provides several examples in which an asylum officer might question the plausibility of an interviewee's narrative. In one case, an applicant "indicated that she was pregnant with the same child for 16 months," claiming that a pregnancy of that duration is the norm in her country of origin.^{xxxiv} An asylum officer in that situation would struggle to connect the woman's allegation of cultural difference with the realm of scientific possibility. Additionally, exaggerations based on political or social preference might lead an asylum officer to question the plausibility of a CFI testimony. For example, one applicant "claimed that the Stalinist Courts in Switzerland had persecuted him."^{xxxv} In this instance, the choice of a highly exaggerative and political adjective along with an asylum officer's knowledge of the conditions in Switzerland would likely lead to plausibility concerns. If an applicant is faced with an accusation of implausibility in his/her narrative, it is best for him/her to patiently assist the interviewer's understanding of the situation by walking him/her through an explanation.

An asylum applicant should approach the CFI with the three RAIO criteria in mind, as this is how an asylum officer approaches each interview. Again, it is important that an asylum seeker gather all relevant evidence prior to the CFI in order to formulate a detailed, consistent, and plausible argument that s/he cannot be deported due to a credible fear of persecution.

The asylum officer guides the CFI by asking the asylum applicant to respond to a series of personal—often emotionally difficult—questions. These questions are intended to determine if an applicant legally qualifies for asylum as defined by the 1951 UN Convention and the INA.

The initial set of questions is akin to an intake in that it usually requires the applicant to provide information that s/he has given previously. These first questions "will be about the detainee's background information including the person's birthdate, home country, and whether the person

has any family ties in the United States.”^{xxxvi} Although this first set of questions might seem straightforward, the asylum officer is observant of any attempts by the applicant to omit major details and of any contradictions with previously provided information. An applicant’s truthful and full responses to the CFI’s initial background questions can demonstrate his/her willingness to cooperate with the interviewer; the opposite is also true.

The asylum officer proceeds to inquire about the nature of the interviewee’s fear of persecution. At this point, the applicant is given the chance to present an account of the contributing factors that led to his/her seeking of asylum in the U.S. After listening to the narrative or during pauses, the asylum officer asks questions designed to assist with his/her understanding of the specific details relating to the applicant’s fear of persecution. The following are examples of questions from past a credible fear interview:

- “Do you think that any public official like the government or police of your country would cause you severe harm or torture if you return?”^{xxxvii}
- “Can you relocate and live safely in your country?”^{xxxviii}

While many questions vary according to the context of each CFI, there are certain questions that an interviewer always asks. The critical point in the CFI is that at which the asylum officer attempts to determine if an applicant “has ever been threatened or harmed due to race or ethnicity, religion, nationality, political opinion, or because the person belongs to a specific social group.”^{xxxix} While there are exceptions, it becomes difficult for an asylum applicant to move past the CFI if s/he cannot cite a fear of persecution due to the categories outlined in the INA and 1951 UN Convention. Further, “if the detainee answers ‘no’ to each of these questions or changes aspects of his or her answer in subsequent interviews or hearings, such inconsistencies will be used to discredit the entire story.”^{xl} Knowing this, an asylum applicant might think it best to falsify a credible fear based on one of the necessary categories; however—as explained above—asylum officers are highly adept at detecting lies or exaggerations. The best strategy for an asylum seeker is to answer each question in the CFI honestly and thoroughly.

In several cases, an asylum applicant may not be able to communicate effectively in English and will require an interpreter in the CFI. While an asylum applicant has the right to attend the CFI with his/her own interpreter, it is often difficult for an asylum seeker to encounter someone who meets the necessary criteria. USCIS authorizes an interpreter only when that person demonstrates the core qualifications of fluency, competency, and impartiality (i.e. lack of bias).^{xli} The requirement of the impartiality of an interpreter often disqualifies an applicant’s friends or family from assuming that role in the CFI. Thus, most asylum applicants allow USCIS to provide an interpreter for the interview, who importantly is held to the same qualifications to assure that the asylum applicant has a clear and fair CFI experience. Federal regulations regarding the procedure for asylum and withholding of removal state, “If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview.”^{xlii} In any case, the interpreter takes an oath to “truthfully, literally and fully interpret

² An [article](#) by Melissa Wallace and Carlos Iván Hernández alleges that a variety of communication barriers exist as a result of deficiencies in “the accuracy and quality of the language access services provided by Customs and Border Protection.” This is particularly true for asylum seekers of indigenous decent, whose native language might not be widely spoken.

the questions asked by the asylum officer and the answers given by the applicant . . . [and to] immediately notify the officer in [the] case if [s/he] become[s] aware of [his/her] inability to interpret in a neutral manner on account of bias.”^{xliii}

The U.S. government does not consider it a *right* for asylum seekers at any stage of the application process to have access to representative counsel. In other words, the government will not provide an asylum seeker with legal or any other form of counsel. USCIS does, however, *permit* asylum seekers to consult a representative, whether that be a friend, family member, or attorney.^{xliv} An asylum applicant might consult a representative prior to the CFI and/or have a representative present during the CFI. Upon referral to a CFI, an “alien may contact an attorney or representative during the minimum 48 hour period between the inspection process at the port of entry (“POE”) and the credible fear interview” (the asylum applicant must contact the representative from the detention facility in which s/he is held).^{xlv} It is thus the responsibility of the applicant to arrange consultation with a representative in preparation for the CFI.

Consultation with an attorney greatly increases an applicant’s chance of moving forward in the asylum application process. This is particularly true for Central Americans who seek asylum based on a fear of persecution due to their membership in a particular social group. Immigration lawyer Vance Berry claims that the presence of lawyers can reduce the likelihood of denial of a Central American’s asylum application at the CFI stage from upwards of 90 percent to 10-12 percent.^{xlvi} An attorney can assist the applicant in formulating an argument that communicates his/her credible fear of persecution in accordance with the 1951 UN Convention and the INA standards. An attorney may not “represent” an asylum applicant during the CFI but is allowed to be present during the interview. Should the asylum seeker pass the CFI and proceed to a hearing before an immigration judge, s/he is allowed direct representation by an attorney in the courtroom.^{xlvii} The primary benefit of consulting an attorney is to help assure that an asylum applicant enters the CFI with a sufficient understanding of asylum in the U.S. It is advantageous for an asylum applicant to seek legal representation before the CFI for a variety of reasons, one of which relates to the fact that an attorney can be exceptionally helpful in the hearing before an immigration judge that follows an affirmative decision in the CFI.

Unfortunately for asylum seekers, the fact that legal counsel during the asylum process is not a guaranteed right means that attaining the representation of an attorney is often either difficult or expensive. Asylum seekers are often incapable of affording the services of a for-hire attorney. However, it is possible for them to find pro bono representation, as several lawyers in areas near long-term detention centers are committed to the idea that qualified asylum applicants should be able to communicate their cases clearly. The U.S. Department of Justice’s Executive Office for Immigration Review (EOIR) provides a [webpage](#) that lists pro bono legal services by area.

In the case that an asylum officer determines a credible fear of persecution (i.e. an affirmative CFI result), an asylum applicant will await his/her hearing before an immigration judge that will determine an ultimate grant or denial of asylum in the U.S. During this period, it is possible for

Wallace and Hernández argue that the CFI is too critical a point in the asylum seeking process for anything less than access to superior interpreters for applicants of any language.

an asylum applicant to apply for parole, but it common that ICE will require an asylum seeker to remain in long-term detention until the date of the hearing.^{xlvi}

In the case that an asylum officer does not find a credible fear of persecution (i.e. a negative CFI result), an asylum applicant is prepared for removal to his/her country of origin unless the applicant requests a review of the negative CFI result by an immigration judge.^{xlix} Should an immigration judge confirm an asylum officer's negative CFI result, the asylum applicant is prepared for removal to the country of origin. On the other hand, if the immigration judge disagrees with the negative CFI decision, it is as if the asylum applicant passed the CFI, and s/he proceeds to a formal hearing before an immigration judge.¹ Unless an applicant does not desire to remain in long-term detention while awaiting the results of the immigration judge's review, it is usually best to request the review of a negative CFI decision.

Problems in Need of Solutions:

- The U.S. government must more closely assure that its employees operate within the confines of domestic law and international obligations. In November 2017, six asylum seekers were assisted by immigrant rights group Al Otro Lado to file a motion for class certification in a lawsuit accusing the U.S. government of "clear violation of U.S. and international law."^{li} The plaintiffs assert "that CBP and DHS are systematically violating U.S. and international law by denying individuals even the opportunity to apply for asylum; instead the government is consistently turning away individuals facing persecution, forcing them to return to countries where they face grave violence and risk of death."^{lii} Several asylum seekers have witnessed CBP officers abuse their authority. A report by the American Immigration Council reports "frequent complaints that CBP officers often dissuade people from seeking asylum, sometimes berating and yelling at them . . . [and] some advocates complained that their clients were harassed, threatened with separation from their families or long detentions, or told that their fears did not amount to asylum claims."^{liii}
- U.S. leaders and citizens alike must seek an understanding of the U.S. asylum process that is grounded in reality. In October, Attorney General Jeff Sessions remarked to the EOIR that the U.S. asylum process is corrupted by "dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process."^{liv} The Attorney General's rhetoric conveys a broader belief amongst Americans with insufficient knowledge of the asylum seeking process. A general lack of understanding about the intense violence from which Central American asylum seekers flee leads many to believe that they do not possess a credible fear and are attempting to exploit the U.S. asylum seeking process. For an example of how certain U.S. citizens misperceive asylum seekers from the Northern Triangle and the general asylum process, see [this article](#).
- Recently, U.S. leaders have portrayed the ability for an asylum seeker to request parole after an affirmative CFI result as a "catch-and-release" loophole. On April 1, 2018, President Trump took to twitter to allege, "Border Patrol Agents are not allowed to properly do their job at the Border because of ridiculous liberal (Democrat) laws like Catch & Release."^{lv} Although it is slightly unclear what the president means by "Catch & Release," the dehumanizing phrase "usually refers to U.S. immigration authorities"

practice of releasing unauthorized immigrants while they await immigration hearings, rather than keeping them in custody.”^{lvi} The reality is that ICE is required to parole certain asylum seekers if they meet relevant criteria. The Asylum Parole Directive states that an asylum seeker found to have a credible fear should be paroled if the Detention and Removal Operations Field Office determines that his/her identity is properly established and that s/he presents no risk of flight.^{lvii} Unfortunately, The denial of parole to asylum seekers in long-term detention after passing the CFI has increased since January 2017. A May 2017 letter to Thomas Homan, the director of ICE, from the executive director of Community Initiatives for Visiting Immigrants in Confinement (CIVIC) claims that her organization “has witnessed a sharp rise in the use of arbitrary and capricious denials of bond and parole for vulnerable asylum seekers in detention.”^{lviii} The numerous signatories of the letter “documented 805 cases at 37 immigration detention facilities of individuals who have been arbitrarily denied parole or bond since January 20, 2017.”^{lix} The report links the escalation of arbitrary parole denials to the Trump administration’s enforcement strategy and the mislabeling of parole as “catch-and-release.”

- The massive difference in CFI and immigration hearing outcomes for asylum seekers with legal counsel from those without this “privilege” means that the U.S. should facilitate asylum applicants’ access to attorneys. Several legal scholars and practitioners have argued that “a non-citizen in [a] deportation hearing has a *per se* right to counsel outlined by the Immigration and Nationality Act (INA) and brought to life by the Fifth Amendment’s due process clause.”^{lx} International obligations require the U.S. to respect the rights of asylum seekers, and perhaps due process should be a protected right.
- While the legal and ethical problems pertaining to the mass incarceration of innocent asylum seekers in the U.S. are too numerous to list in this document, the punitive form of detention that the U.S. employs is a blatant violation of international human rights law. For more information about detention and various other experiences of Central American asylum seekers in the U.S., see the author’s [previous publication](#).

Works Cited

- ⁱ The Advocates for Human Rights. “What is Asylum?” *The Advocates for Human Rights*, n.d., https://www.theadvocatesforhumanrights.org/what_is_asylum_2.
- ⁱⁱ Johnson-Vasquez, Patty. “What’s the Difference Between Refugee and Asylee Applicants?” *Envoy Global*, 22 Oct. 2013, <https://resources.envoyglobal.com/blog/what-s-the-difference-between-refugee-and-asylee-applicants>.
- ⁱⁱⁱ Weissbrodt, David, et al. *Immigration Law and Procedure in a Nutshell*. West Academic Publishing, 1992. 412.
- ^{iv} United Nations General Assembly. “Universal Declaration of Human Rights (Article 14), 10 Dec. 1948, http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.
- ^v Weissbrodt, et al. *Immigration Law and Procedure in a Nutshell*. 412.
- ^{vi} United Nations General Assembly. *Convention Relating to the Status of Refugees*, 28 Jul. 1951, <http://www.unhcr.org/3b66c2aa10.pdf>. 14.
- ^{vii} United States Congress. *Refugee Act of 1980*, 17 Mar. 1980, <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>.
- ^{viii} United States Citizenship and Immigration Services (USCIS). *Immigration and Nationality Act* (Section 208), 30 Jun. 1968, <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-1687.html#0-0-0-192>.
- ^{ix} Human Rights First. “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers.” *Human Rights First*, May 2017, <http://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>. 11.
- ^x Human Rights First. “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers.” 1-13.
- ^{xi} This information was received in an email from Vance Berry on 19 Mar. 2018.
- ^{xii} American Immigration Council. “A Primer on Expedited Removal.” *American Immigration Council*, 3 Feb. 2017, <https://www.americanimmigrationcouncil.org/research/primer-expedited-removal>. 1.
- ^{xiii} United States Government Publishing Office. “United States Code, 2011 Edition, Title 8 – Chapter 12 – Aliens and Nationality.” *United States Code*, n.d., <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title8/pdf/USCODE-2010-title8-chap12-subchapII-partIV-sec1225.pdf>. 241-242.
- ^{xiv} USCIS. “Regulations Concerning the Convention Against Torture,” *Federal Register Interim Regulations*, 19 Feb. 1999, <https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-57543/0-0-0-59216.html>.
- ^{xv} Wallace, Melissa and Carlos Iván Hernández. “Language Access for Asylum Seekers in Borderland Detention Centers in Texas.” *Journal of Language and Law*, vol. ?, no. 68, 2017, <http://www.raco.cat/index.php/RLD/article/viewFile/330726/421596>. 148.
- ^{xvi} Nolo. “What Happens at a Credible Fear Interview?” *Nolo Legal Encyclopedia*, n.d., <https://www.nolo.com/legal-encyclopedia/what-happens-credible-fear-interview.html>.
- ^{xvii} Bale, Rachael. “Detained Border Crossers May Find Themselves Sent to ‘The Freezers.’” *Reveal News*, 18 Nov. 2013, <https://www.revealnews.org/article/detained-border-crossers-may-find-themselves-sent-to-the-freezers/>.
- ^{xviii} USCIS. *Immigration and Nationality Act* (Section 208).

-
- ^{xix} USCIS. “Asylum Officer Ladd.” *About Us (the USCIS)*, n.d., <https://www.uscis.gov/about-us/careers/asylum-officer-ladd>.
- ^{xx} Nolo. “What Happens at a Credible Fear Interview?”
- ^{xxi} Georgetown Law Library. “U.S. Immigration: Research Unit.” *CALS Asylum Case Research Guide*, n.d., <http://guides.ll.georgetown.edu/c.php?g=277485&p=2354654>.
- ^{xxii} USCIS – Refugee Asylum and International Operations (RAIO). “Lesson Plan Overview: Refugee, Asylum, and International Operations Directorate Officer Training Asylum Division Officer Training Course.” *RAIO*, 28 Feb. 2014, <http://cmsny.org/wp-content/uploads/credible-fear-of-persecution-and-torture.pdf>. 12.
- ^{xxiii} USCIS – RAIO. “Lesson Plan Overview.” 12.
- ^{xxiv} USCIS. *Immigration and Nationality Act* (Section 208).
- ^{xxv} Arthur, Andrew R. “Fraud in the ‘Credible Fear’ Process: Threats to the Integrity of the Asylum System.” *Center for Immigration Studies*, Apr. 2017, https://cis.org/sites/cis.org/files/arthur-credible-fear-4-17_0.pdf. 2.
- ^{xxvi} USCIS – RAIO. “RAIO Directorate – Officer Training,” 21 Feb. 2012, [https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies and Manuals/RAIO Directorate Officer Training Manual.pdf](https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies%20and%20Manuals/RAIO%20Directorate%20Officer%20Training%20Manual.pdf). 111.
- ^{xxvii} USCIS – RAIO. “RAIO Directorate – Officer Training.” 111.
- ^{xxviii} USCIS – RAIO. “RAIO Directorate – Officer Training.” 111.
- ^{xxix} USCIS – RAIO. “RAIO Directorate – Officer Training.” 114.
- ^{xxx} USCIS – RAIO. “RAIO Directorate – Officer Training.” 114.
- ^{xxxi} USCIS – RAIO. “RAIO Directorate – Officer Training.” 114.
- ^{xxxii} USCIS – RAIO. “RAIO Directorate – Officer Training.” 115.
- ^{xxxiii} USCIS – RAIO. “RAIO Directorate – Officer Training.” 120.
- ^{xxxiv} USCIS – RAIO. “RAIO Directorate – Officer Training.” 120.
- ^{xxxv} USCIS – RAIO. “RAIO Directorate – Officer Training.” 120.
- ^{xxxvi} Nolo. “What Happens at a Credible Fear Interview?”
- ^{xxxvii} Virginia Raymond – Lawyer. “Redacted Sample – Credible Fear Interview,” n.d., <http://www.virginiaraymond.com/wp-content/uploads/2015/10/REDACTED-SAMPLE-ADULT-credible-fear-interview-.pdf>. 4.
- ^{xxxviii} Virginia Raymond – Lawyer. “Redacted Sample – Credible Fear Interview.” 4.
- ^{xxxix} Nolo. “What Happens at a Credible Fear Interview?”
- ^{xl} Nolo. “What Happens at a Credible Fear Interview?”
- ^{xli} Lee, Paris. “Update on Immigration Interpreters | Can My Family Member Translate for Me?” *Lee and Garasia, LLC*, 13 Jun. 2017, <https://www.njimmigrationattorney.com/blog/2017/06/update-on-immigration-interpreters-can-my-family-member-translate-for-me.shtml>.
- ^{xlii} USCIS. “Reasonable Fear of Persecution or Torture Determinations Involving Aliens Ordered Removed Under Section 238(b) of the Act and Aliens Whose Removal is Reinstated Under Section 241(a)(5) of the Act.” *Title 8 of Code of Federal Regulations*, n.d., <https://www.gpo.gov/fdsys/pkg/CFR-2001-title8-vol1/pdf/CFR-2001-title8-vol1-part208-subpartB.pdf>. 210.
- ^{xliii} Virginia Raymond – Lawyer. “Redacted Sample – Credible Fear Interview.” 1.
- ^{xliv} Coon, Nora. “Due Process Concerns in Family Detention.” *University of Oxford Faculty of Law*, 23 Sep. 2015, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/09/due-process>.

-
- ^{xlv} Kuck, Charles H. “Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices.” *Study on Asylum Seekers in Expedited Removal (As Authorized by Section 605 of the International Religious Freedom Act of 1998)*, Dec. 2004, https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/legalAssist.pdf. 237.
- ^{xlvi} This information was retrieved from an interview with Vance Berry on 18 Mar. 2017 (see Appendix of [author’s capstone](#)).
- ^{xlvi} Kuck. “Legal Assistance for Asylum Seekers in Expedited Removal.” 238.
- ^{xlvi} Human Rights First. “Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers.” *Human Rights First*, Jul. 2016, <http://www.humanrightsfirst.org/sites/default/files/Lifeline-on-Lockdown.pdf>.
- ^{xlix} USCIS. “What Will Happen if the Asylum Officer Does Not Find a Credible Fear?” *Credible Fear FAQ*, 26 Sep. 2008, <https://www.uscis.gov/faq-page/credible-fear-faq#t12831n40176>.
- ^l USCIS. “What Will Happen if the Asylum Officer Does Not Find a Credible Fear?”
- ^{li} American Immigration Council. “CBP Practice of Turning Away Asylum Seekers at U.S. Southern Border Is Systematic, Documented in New Legal Filing,” 14 Nov. 2017, <https://www.americanimmigrationcouncil.org/news/cbp-practice-turning-away-asylum-seekers-us-southern-border-systematic-documented-new-legal>.
- ^{lii} Center for Constitutional Rights. “Al Otro Lado vs. Kelly,” 13 Nov. 2017, <https://ccrjustice.org/home/what-we-do/our-cases/al-otro-lado>.
- ^{liii} Campos, Sara and Joan Friedland. “Mexican and Central American Asylum and Credible Fear Claims: Background and Context.” *American Immigration Council Special Report*, May 2014, https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_and_credible_fear_claims_final_0.pdf. 4.
- ^{liv} The United States Department of Justice. “Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review.” *Justice News*, 12 Oct. 2017, <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.
- ^{lv} @realDonaldTrump. “Border Patrol Agents are not allowed to properly do their job at the Border because of ridiculous liberal (Democrat) laws like Catch & Release. Getting more dangerous. “Caravans” coming. Republicans must go to Nuclear Option to pass tough laws NOW. NO MORE DACA DEAL!” *Twitter*, 1 Apr. 2018, 6:56 a.m., <https://twitter.com/realDonaldTrump/status/980443810529533952>.
- ^{lvi} Rizzo, Salvador. “President Trump’s Claim that Democrats Created ‘Catch and Release Policies.” *The Washington Post*, 4 Apr. 2018, https://www.washingtonpost.com/news/fact-checker/wp/2018/04/04/president-trumps-claim-that-democrats-created-catch-and-release-policies/?noredirect=on&utm_term=.a9b40784ac47.
- ^{lvii} U.S. Immigration and Customs Enforcement (ICE). “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture,” 8 Dec. 2009, https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf. 3.
- ^{lviii} CIVIC: End Isolation. “Attorneys and Advocates Document Widespread Parole & Bond Denials Under Trump,” 31 May 2017, <http://www.endisolation.org/parole-denials>.

^{lix} CIVIC: End Isolation. “Attorneys and Advocates Document Widespread Parole & Bond Denials Under Trump.”

^{lx} Coon, Nora. “Due Process Concerns in Family Detention.”