



# U.S. Immigration and Customs Enforcement

## REPORT TO CONGRESS

### DETAINED ASYLUM SEEKERS FISCAL YEAR 2007

Required by Section 903 of the  
Haitian Refugee Immigration Fairness Act  
(PL 105-277)

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## INTRODUCTION

Section 903 of the Haitian Refugee Immigration Fairness Act (incorporated in PL 105-277) requires the Attorney General to regularly collect data with respect to asylum applicants in detention. While Section 903 specifically references the responsibility of the 'Attorney General,' on March 1, 2003 the Department of Homeland Security assumed the functions and authorities of the Department of Justice's Immigration and Naturalization Service, including the detention of aliens. This Act specified several areas requiring statistical compilations and one area requiring a non-quantitative response. The Department of Homeland Security has assumed responsibility for compiling the statistics required by Section 903. This report includes the asylum applicants who initially made a claim for asylum in fiscal year (FY) 2007. The report includes both principal applicants and any dependents, and reports on actions taken on the reported cases through March 2008.

### I. Background

Aliens present in the United States may apply for asylum affirmatively with U.S. Citizenship and Immigration Services (USCIS), or defensively before an immigration judge, as a form of relief from removal after being issued a Notice to Appear (NTA) or an I-863, Notice of Referral to Immigration Judge<sup>1</sup>. Aliens found to have a "credible fear"<sup>2</sup> of persecution or torture during expedited removal (ER) processing under section 235(b) of the Immigration and Naturalization Act (INA) may apply for asylum before an immigration judge. In addition, affirmative asylum applications that are not approved by USCIS are referred to an immigration judge for a *de novo* hearing in removal proceedings, unless the alien has continued legal status in the United States. Aliens subject to ER or who have been issued an NTA may be detained, but the custody considerations applicable to an individual asylum applicant vary based upon how the alien was processed and the procedural posture of the alien's case.

In practice, only a very small number of affirmative asylum applicants are detained. On the other hand, many defensive applicants—and nearly all aliens who request asylum during ER processing—are detained for at least some portion of the processing of their immigration cases. Indeed, for ER purposes, custody is statutorily mandated until an alien is found to have a "credible fear" of persecution or torture after which U.S. Immigration and Customs Enforcement (ICE) has discretion in determining whether or not to release the alien under §235(b)(1)(B)(iii)(IV) of the INA.

There is no "typical" asylum applicant, and each case must be treated individually. In some cases, applicants are genuinely seeking protection from persecution on the basis of one of the five protected grounds – race, religion, nationality, political opinion, or membership in a particular social group - as outlined under the refugee definition in the Immigration and Nationality Act. In other instances, applicants are simply seeking better economic opportunities or, regrettably, committing fraud in order to remain in the United States. Often, genuine refugees flee their countries without documents. Therefore, in some circumstances, applicants may be eligible for asylum despite little or no documentation to establish their identity or prove their claim of persecution. As a result, the asylum program may be vulnerable to abuse by individuals seeking to gain status in the U.S. through fraud, some of whom may pose a threat to national security. Numerous background and security checks, both biographic and biometric, are

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<sup>1</sup> Certain aliens, such as aliens admitted under the Visa Waiver Program, Crewmembers and Stowaways, are not placed into removal proceedings, but rather are placed into "asylum-only" proceedings before an immigration judge through the issuance of an I-863.

<sup>2</sup> INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v) defines "Credible Fear of Persecution" as follows:—For purposes of this subparagraph the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208 (8 U.S.C. 1158).

conducted on all asylum seekers, who are also subject to extensive interviews, in an effort to minimize such abuse.

## **II. Asylum Procedures**

Detained aliens' asylum cases receive expedited consideration before the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR). Arriving aliens processed through ER are subject to mandatory detention until they are found by a USCIS asylum officer to have a "credible fear" of persecution or torture. ICE's release determination is based on humanitarian and public interest factors, such as serious medical conditions. Arriving aliens in removal proceedings, other than those processed through ER, may be paroled into the United States and released from custody by ICE, but are not eligible to request bond redetermination hearings before EOIR. Once the alien establishes a credible fear, the case is referred to an immigration judge. Aliens found not to have a "credible fear" of persecution may appeal that finding before an immigration judge. The referral to an immigration judge is to review credible fear determination only, not to address removability or inadmissibility grounds. Other aliens in removal proceedings are generally eligible to request bond determination hearings before EOIR<sup>3</sup>, which are generally heard within two to three days.

## **III. Classification System**

Under the National Detention Standards (NDS), ICE facilities classify all detainees upon arrival, before they are admitted into any general housing population. This classification procedure ensures that each detained alien is placed in the appropriate category and physically separated from detainees in other categories. Classification is based upon reliable, objective information. The use of objective information refers to facts, such as a detainee's removable offense, unrelated past offenses, escape attempts, institutional disciplinary history, violent incidents, and other factors reasonably bearing upon the detainee's potential threat to others. Asylum applicants are treated consistently with these classification standards. Level 1 detainees (non-criminal and minor, nonviolent criminals) may not be housed with Level 3 Detainees (high risk detainees or violent criminals).

The classification system assigns detainees to the least restrictive housing unit consistent with facility safety and security. By grouping detainees with comparable records together, and isolating those at one classification level from all others, the system reduces non-criminal and nonviolent detainees' exposure to physical and psychological danger. This system identifies and isolates the detainees whose histories indicate the characteristics of the hardened criminal, the category most likely to intimidate, threaten, or prey on the vulnerable.

## **IV. Origin of Data Sources**

The statistics in this report were compiled from several different databases. Data regarding affirmative asylum applications are contained in the Refugee Asylum Parole System (RAPS) maintained by USCIS. "Credible fear" statistics are contained in the Asylum Pre-screening System (APSS) maintained by USCIS. Defensive asylum data are currently contained in the Automated Nationwide System for Immigration Review (ANSIR) system maintained by EOIR. Information from each of these databases was matched to information contained in the Deportable Alien Control System (DACS), which is maintained by the Office of Detention and Removal Operations (DRO) within ICE. DACS contains the relevant information on detention case management and removal actions.

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<sup>3</sup> But see INA § 236(c); 8 C.F.R. § 1003.19(h)(2)(i)

As in any record matching exercise, there is the possibility that records were not correctly matched across the systems. None of the systems contain biometric data. The only common field found throughout each system is the alien identification number (A-number).

Readers should use caution in interpreting these statistics; in particular, comparisons across different years may be misleading (i.e., comparing the statistics in this report to the statistics in previous reports). Since the statistics were compiled using detention and outcome data at a different point in time each year, the average length of stay statistics and proportions in various outcome classes are not strictly comparable because elapsed time in a case has a significant impact on the status of the case.

## **V. Summary of Findings**

Section 903 imposed ten reporting requirements, of which nine were statistical. The complete detail for these requests is attached as a series of statistical tables. There are three versions of each table corresponding to the three main types of asylum filings: tables designated “a” include “affirmative” filers; “b” include “credible fear” cases; and “c” include “defensive” filers.

The statistical report includes a statistical table for each numbered subparagraph of Section 903, except one (1) and six (6), which do not require a detailed table. The statistical detail for subparagraphs (3) and (4) is grouped in a single table.

A short summary of the main findings for FY 2007 is included here.

### *(1) The number of detainees*

- (a) 254 of the 24,908 affirmative asylum applicants were detained
- (b) 4,614 of the 5,219 aliens found to have met the “credible fear” screening standard, were detained
- (c) 5,103 of the 6,799 defensive asylum applicants were detained

### *(2) An identification of the countries of origin of the detainees*

- (a) The top three countries for affirmative asylum applicants who were detained are Guatemala (51), Mexico (62), and The People’s Republic of China (22).
- (b) The top three countries for aliens found to have met the “credible fear” screening standard, who were detained are El Salvador (806), The People’s Republic of China (664), and Honduras (549).
- (c) The top three countries for defensive asylum applicants who were detained are El Salvador (896), The People’s Republic of China (691), and Guatemala (433).

### *(3) The percentage of each gender within the total number of detainees*

- (a) Females are 14 percent of the affirmative asylum applicants who were detained
- (b) Females are 42 percent of aliens found to have met the “credible fear” screening standard who were detained
- (c) Females are 25 percent of the defensive asylum applicants who were detained

### *(4) The number of detainees listed by each year of age of the detainees*

- (a) The average age for affirmative asylum applicants who were detained is 29.6
- (b) The average age for aliens found to have met the “credible fear” screening standard who were detained is 27
- (c) The average age for defensive asylum applicants who were detained is 28.5

### *(5) The location of each detainee by detention facility*

- (a) Florida is the leading state for detention of affirmative asylum applicants
- (b) Texas is the leading state for detention of aliens found to have met the “credible fear” screening standard
- (c) Texas is the leading state for detention of defensive asylum applicants

*(6) With respect to each facility where detainees are held, whether the facility is also used to detain criminals and whether any of the detainees are held in the same cells as criminals*

In September 2000, ICE announced 36 National Detention Standards (NDS) applicable to facilities used to hold detainees for more than 72 hours. These facilities include ICE-owned Service Processing Centers, Contract Detention Facilities (CDF), and state or local government facilities used by ICE through Intergovernmental Service Agreements (IGSAs). During 2001, ICE provided training covering the NDS to DRO employees nationwide. In January 2002, ICE implemented the Detention Management Control Program (DMCP). The DMCP was intended to ensure that facilities used by ICE to house detainees are safe, secure and humane. The DMCP is designed to measure facility compliance with the NDS. Two additional National Detention Standards were later created to bring the total to 38 NDS. These were Staff-Detainee Communication and Detainee Transfer Standard.

ICE NDS address the requirements for the designation and classification of detainees. Policy states that facilities shall develop and implement a system for classifying detainees in accordance with ICE policy, rules and guidelines. The classification system created through ICE standards ensures that each detained alien is placed in the appropriate category and physically separated from detainees in other categories. ICE standards require that all detainees be classified before being admitted into the general population of a facility. The facility staff is to use the most reliable, objective information from the detainee’s file during the classification process. “Objective” information refers to facts, such as the current offense, past offenses, escapes, institutional disciplinary history, violent episodes.

The classification system was designed to assign detainees to the least restrictive housing unit consistent with facility safety and security. By grouping detainees by classification together the system reduces non-criminal and nonviolent detainee exposure to physical and psychological dangers. Detainees are assigned housing, offered recreational activities, assigned work according to their classification level, and are also provided food service.

Service Processing Centers, most Contract Detention Facilities (CDF), and State and local jails house both criminal and non-criminal aliens who are separated based on the NDS, as detailed above. ICE has contracted for facilities intended to hold only non-criminal detainees. These are the Broward Transitional Center, Pompano Beach, Florida, and CDF Elizabeth, Elizabeth, New Jersey. In addition, ICE has intergovernmental service agreements with Berks County, Pennsylvania, and Don T. Hutto in Taylor, Texas for family shelter services.

ICE no longer has the responsibility for the care and custody of unaccompanied minors. Section 462 of the Homeland Security Act transferred responsibility for the care and placement of unaccompanied alien children to the Office of Refugee Resettlement of the Department of Health and Human Services. Homeland Security Act of 2002, Pub. Law 107-296, 116 Stat. 2135 (Nov. 25, 2002).

In October 2006, the Department of Homeland Security, Office of the Inspector General (OIG), advised ICE that classification of detainees in certain locations did not meet the requirements of

the National Detention Standards as approved by ICE. The report identified deficiencies such as detainees being misclassified or not classified for placement in general housing populations. As a result, in April 2007, ICE reissued a directive to each Field Office Director to ensure that proper classification procedures were in place at all detention facilities used to house ICE detainees. Field Office Directors confirmed that all Service Processing Centers, Contract Detention Facilities, and Inter-governmental Service Agreement providers fully complied with the ICE National Detention Standard for “Detainee Classification System.”

The directive stressed the importance that all detainees be housed in environments appropriate to their criminal or non-criminal history and that they are not placed in a general housing unit without being properly evaluated and classified using those procedures outlined in the ICE Detainee Classification Standard. Each Field Office Director was required to review their current classification and housing assignment practices in place for detainees under their jurisdiction and to take any corrective action necessary to ensure compliance with the NDS Detainee Classification Standard.

*(7) The number and frequency of the transfers of detainees between detention facilities*

- (a) 56.30 percent of affirmative asylum applicants who were detained were held in only one facility
- (b) 33.24 percent of aliens found to have met the “credible fear” screening standard, who were detained, were held in only one facility
- (c) 39.54 percent of defensive asylum applicants who were detained were held in only one facility

*(8) The average length of detention and the number of detainees by category of the length of detention*

- (a) As of September 2007, the average length of stay for affirmative asylum applicants who had been detained and then released was 39 days; 88 percent of all affirmative asylum applicants who were detained had 90 or fewer days in detention.
- (b) As of September 2007, the average length of stay for aliens found to have met the “credible fear” screening standard who had been detained and then released was 67 days; 67 percent of all aliens found to have met the “credible fear” screening standard who were detained had 90 or fewer days in detention.
- (c) As of September 2007, the average length of stay for defensive asylum applicants who had been detained and then released was 122 days; 52 percent of all defensive asylum applicants who were detained had 90 or fewer days in detention.

*(9) The rate of release from detention of detainees for each district of the Immigration and Naturalization Service*

- (a) (b) (c) See detailed statistics attached

*(10) A description of the disposition of cases*

- (a) 0.1 percent (17/24,908) of affirmative asylum applicants were detained and ultimately granted relief.
- (b) 8.2 percent (452/5,219) of aliens found to have met the “credible fear” screening standard were detained and ultimately granted relief.
- (c) 14.4 percent (979/ 6,799) of defensive asylum applicants were detained and ultimately granted relief.