



Statement for the Record

Human Rights First is a non-profit, nonpartisan human rights advocacy organization that challenges America to live up to its ideals. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. Human Rights First oversees one of the largest pro bono legal representation programs for refugees seeking asylum in the country, with offices in New York, Washington, DC and Houston, Texas working in partnership with volunteer attorneys at U.S. law firms.

Review of the President's Emergency Supplemental Request for Unaccompanied Children

Earlier this year, Human Rights First conducted research at key southern border areas in Texas, Arizona, and California, including the Rio Grande Valley to study the situation of children and families crossing the border.¹ Our review of the President's emergency supplemental request is based on our eyewitness research and over 30 years of nonprofit legal services and expertise in refugee and asylum law.

Human Rights First has expressed concern about some key aspects of the strategy reflected in the administration's emergency supplemental request sent to Congress to address the unprecedented influx of children and families at the U.S.-Mexico border. All proposed actions should be consistent with U.S. refugee protection and human rights commitments, and include protection mechanisms. The organization supports increased resources to conduct timely immigration court proceedings, facilitate access to legal information and counsel, care for unaccompanied children, and for the Office of Refugee Resettlement to have the capacity to both meet the needs of unaccompanied children and refugees. Human Rights First is deeply concerned that some of the strategy reflected in the request would undermine the integrity of the U.S. asylum system and set a poor example for the rest of the world. Human Rights First cautions that proposals to increase family detention or rush cases through the process would be out of step with the United States' legacy of protecting those fleeing persecution, trafficking, and other serious human rights violations. There is also an imbalance in resources, with insufficient resources requested to address the root causes of the conditions prompting flight and not enough requested to address protection, case adjudication, and legal information and representation.

As President Obama and Congress try to address this crisis, they should do so in ways that strengthen the integrity of the immigration and asylum systems, reflect American ideals, and uphold our nation's obligation to protect refugees. The administration's proposal gets only some of that right. While it includes provisions to increase resources for agencies handling the influx, the proposal could do serious damage by increasing detention for children, families, and asylum seekers. There are far better and less expensive alternatives that address the multiple needs of these families and our nation's security.

¹ Human Rights First met with officials from Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP) Border Patrol (OBP) and Office of Field Operations (OFO), and U.S. Citizenship and Immigration Services in key locations along the southern border including the Rio Grande Valley, southern Arizona, and the San Diego area.. The full Human Rights First *Blueprint on How to Protect Refugees and Prevent Abuse at the Border* is available at: <http://www.humanrightsfirst.org/resource/how-protect-refugees-and-prevent-abuse-border>.

Decisions to detain should be based on case by case determinations rather than blanket policies designed to deter others from seeking this country's protection.

While the request includes emergency funds to alleviate the pressure on the agencies managing the influx and staffing immigration courts, it also includes substantial resources sought by the administration to detain children and adults. President Obama is requesting \$879 million for Immigration and Customs Enforcement to cover costs that include immigration removal, as well as expanding available detention facilities and pursuing alternatives to detention. In 2009, the Department of Homeland Security rightly ceased using its primary detention facility for families after multiple reports of inappropriate conditions and treatment of children and families. Human Rights First has advocated for increased funding for alternatives to detention that cost a fraction of the \$160-per-day it takes to maintain an adult detention bed. That approach has proven successful as the government's current contract for alternatives results in a 97.4 percent compliance rate with final immigration hearings.

While Human Rights First welcomes the administration's decision to not include in its appropriations request changes to the Trafficking Victims Protection Reauthorization Act (TVPRA) that would weaken legal safeguards for unaccompanied children, it notes that the President has reaffirmed his intent to continue to seek authority to limit the safeguards in processing cases of unaccompanied children. Human Rights First urges the administration and Congress to maintain the law's crucial protections for unaccompanied children who face particular risks from trafficking.

Human Rights First notes that unless the delays in the immigration court system are addressed nationally, and not only at the border, the integrity of the system will continue to be at risk. By directing increased resources toward those recently apprehended at the border, asylum seekers around the country will be left waiting for years for their cases to be resolved. We recommend that money requested for immigration courts and judges be increased and distributed across the nation, rather than only to adjudicate detained cases at the border. Congress should fund at minimum the 35 additional immigration judge teams called for in the president's Fiscal Year 2015 appropriations request as well as the additional immigration judge teams called for in the emergency supplemental request, but in the long term should add substantially more, and match the 225 new immigration judge teams that were called for in the Senate's comprehensive immigration reform proposals last year.

Rather than spending billions on more immigration detention, Congress should support fiscally prudent and effective alternative appearance measures and timely immigration court hearings nationally – including for individuals who are not held in immigration detention. In order to address the longstanding delays in immigration court hearings and strengthen the integrity of the system, the administration must look at the big picture.

Based on our research, we believe that as Congress considers the president's emergency supplemental request, it should appropriate funds to:

1. Fund an Alternatives to Detention (ATD) Initiative

Immigration detention facilities are not appropriate settings for children and parents with children. Furthermore, there are more cost-effective alternatives that are appropriate in many cases. ICE currently spends over \$2 billion, or \$160 per person per day, on the detention of up to 34,000 immigrants on any given day.

- **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 hold n children, including infants and small children, in immigration detention. Families should only be held for processing in custody for short periods of time and in conditions appropriate for family detention. Per requirements of the *Flores* agreement on treatment of children in DHS custody, DHS should always place children in the least restrictive setting appropriate. If families are detained because they are determined to be a danger or a flight risk, and alternatives are not appropriate, then DHS should only use facilities and standards appropriate to civil immigration detention.
- **For cases that need supervision, DHS needs funds to launch an Alternatives to Detention initiative for border cases.** The supplemental should fund ICE to launch a nationwide initiative to increase its use of alternatives to detention for cases released in the border areas and elsewhere who pose no security risk but that need additional supervision to mitigate flight risk. This initiative should provide case management, supervision, and/or monitoring to support appearance in the area in which individuals relocate upon release. For families, Congress should use the supplemental to direct DHS to build on models of community-based alternatives, such as the pilots underway by Lutheran Immigration and Refugee Service and the U.S. Conference of Catholic Bishops.
- **ICE must be able to respond on a case-by-case basis.** The American immigration system works best when each case is considered on its own merit. However, ICE currently lacks the latitude it needs to make custody decisions on a case-by-case basis. The supplemental should grant ICE the ability to shift funds, where appropriate from detention to other measures to support appearance.

2. Increase Access to Legal Information and Counsel Early in the Process

Many immigrants and asylum seekers apprehended in the border lack access to accurate information and in some cases have been given misinformation about the immigration process in the U.S. The Legal Orientation Program (LOP) provides for competent nonprofit lawyers to explain U.S. procedures to detainees and helps migrants determine the most appropriate course for them. According to a 2012 Justice Department study, LOPs create efficiencies in adjudication by reducing processing time and time spent in detention, and saved the government approximately \$18 million.

- **Fund DOJ to expand access to early legal information presentations – including for families.** LOP is a proven program, and especially if processing and deportation for recent border crossers will be accelerated, immigration detainees should be given access to lawyers within a few days of arrival. Congress should appropriate funds to expand LOP from the existing 25 sites to all facilities nationwide.
- **Fund DOJ to support increased quality representation early in the process for indigent asylum seekers.** The bill should fund expansion of projects to increase access to legal counsel for vulnerable populations, including unaccompanied children. A 2014 independent study by NERA Economic Consulting found that providing counsel to indigent immigrants could effectively pay for itself.

3. Reduce Backlogs and Vulnerability to Abuse, With Fair Case-by-Case Decision-Making

Prior to the most recent surge, in March 2014, there were already over 366,000 cases are pending nationally for approximately 19 months. Similarly, because the USCIS Asylum Office continues to divert resources to addressing credible fear and other protection screenings at the border, the backlog in affirmative asylum cases has grown substantially since the influx at the border. The supplemental should address the imbalance in funding for the courts and address the backlog nationwide. If the bill simply re-directs immigration court resources to expedite cases of migrants detained or released into alternatives to detention on the border, it will only exacerbate national backlogs in the non-detained dockets especially. The Asylum Office needs funding to manage both expedited removal and its affirmative caseload.

- **Fund EOIR to increase immigration court staffing nationally to address removal hearing delays and eliminate hearing backlogs with adequate time and safeguards to ensure access to justice and fairness.** The bill should include funding to increase resources and staffing for the immigration courts to ensure that nationally individual merits hearings are generally scheduled within approximately six months of the filing of an asylum application.
- **Fund USCIS to increase asylum office staffing and resources to reduce backlogs and for the conduct of in-person credible fear and reasonable fear interviews with adequate time and safeguards to ensure access to justice and fairness.** The bill should fund the Asylum Division to conduct timely screening interviews in expedited removal and reinstatement of removal without diverting officers from the affirmative asylum process.

4. Do Not Weaken Protection Safeguards including the TVPRA

DHS should not weaken safeguards including protections within the Trafficking Victims Protection Reauthorization Act (TVPRA) to identify and protect asylum seekers, victims of trafficking, vulnerable children and others with protection concerns and the bill should provide funds to for timely in person protection screening. Unaccompanied children should be screened for protection concerns by experts outside of a law enforcement agency, and screening should occur after an individual has had some time to recover from what are often traumatizing journeys, outside of border detention facilities, and in conditions that do not place children in a compromised position to discuss their victimization. A 2005 U.S. Commission on International Religious Freedom report on adult asylum seekers processed in expedited removal found that border officers often failed to follow procedures designed to identify individuals with protection concerns. As documented by a 2011 Appleseed report on the concerns of screenings of Mexican unaccompanied children at the border, the challenges of a screening in these conditions are especially acute for children, many of whom are extremely young, potentially victims of trafficking, and unable to express fears to an armed border officer after long and harrowing journeys.

- **Unaccompanied alien children (UACs) should receive appropriate screenings and referrals to HHS custody for care and evaluation for protection or reunification.** Congress should not amend the TVRA to expedite the screenings and removals of Central American UACs. Congress should support increased funding for the Office of Refugee Resettlement (ORR) to meet the needs of both unaccompanied children and refugees.